

INITIAL STATEMENT OF REASONS

Summary of Proposal

The California Department of Public Health (Department) proposes to adopt Chapter 2.6 (sections 71900-71901) of Division 5, title 22 of the California Code of Regulations (CCR) to designate congregate living health facilities (CLHFs) as a type of health facility licensed by the Department that may perform inpatient treatment of eating disorders.

Background

On September 25, 1987, the Governor signed Assembly Bill 2222 into law (Stats. 1987, ch. 1142) (the Law), which amended Health and Safety Code (Health & Saf. Code) section 1254.5, subdivision (1) (the Code). In addition to other facilities already designated in the Code, the Law was intended to provide the Department with the authority to designate licensed health facilities for inpatient treatment of eating disorders. Currently, the Code specifies that general acute care hospitals and acute psychiatric hospitals (as defined in Health Saf. Code § 1250 subd. (a) & (b), respectively) may provide inpatient treatment of eating disorders.

Since the passage of the Law, the Department has approved licensure requests for a number of CLHFs as a class of health facility that may provide inpatient treatment of eating disorders. However, the Department has not formally promulgated the designation of CLHFs as a recognized health facility for such treatment.

The Department proposes this regulatory change to formalize the designation of CLHFs as providers for inpatient treatment of eating disorders. Doing so brings the Department into compliance with the Administrative Procedure Act (APA).

Policy Statement Overview

Problem Statement: According to National Association of Anorexia Nervosa, more than 30 million people in the U.S. will suffer from an eating disorder. At least 13 percent of women over the age of 50 have symptoms of an eating disorder. Children under 12 admitted to the hospital for eating disorders rose 119 percent in less than a decade. Eating disorders have the highest mortality rate of any mental illness, with nearly one person dying every hour as a direct result of their eating disorder. Anorexia is the 3rd most common chronic illness among adolescents, after asthma and obesity. Over 70 percent of sufferers will not seek treatment due to stigma, misconceptions, lack of education, diagnosis and lack of access to care. ¹

¹ *Eating Disorder Facts and Statistics*, National Association of Anorexia Nervosa and Associated Disorders; 2018

Despite the serious nature of this disease, only 35 percent of people that receive treatment for eating disorders get treatment at a specialized facility.² The treatment of eating disorders can be complex and difficult. Often, “eating disorders require a comprehensive treatment plan involving medical care and monitoring, psychosocial interventions, nutritional counseling, and when appropriate, medication management.”³ For example, treatment of anorexia nervosa is frequently provided in an inpatient hospital setting where feeding plans can be developed, and the patient’s medical and nutritional needs can be best managed.⁴

These factors illustrate the need to ensure there are sufficient inpatient treatment settings for those suffering from eating disorders. Pursuant to the Code, currently only general acute care hospitals and acute psychiatric hospitals may treat inpatients with eating disorders. The Legislature, however, recognized the serious nature of this disease and provided the Department with the authority to designate additional types of facilities that can offer inpatient care. In promulgating this regulation, the Department seeks to formally provide that CLHFs can treat eating disorders, which could expand treatment options for those suffering from eating disorders.

Objectives (Goals): Broad objectives of this proposed regulatory action are:

- Formally designating CLHFs as a type of facility that can provide treatment for eating disorders.
- Improving patient outcomes and experiences for Californians.
- Aligning departmental practice with the requirements of the APA in its approval of inpatient treatment of eating disorders at CLHFs.

Benefits: Including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, anticipated benefits from this proposed regulatory action are:

- Existing CLHFs that want to treat eating disorders on an inpatient basis would formally be allowed to apply for a license to do so.
- Protect some of the state’s most vulnerable populations that are at the highest risk for negative health outcomes as a result of this disease.
- The increased inpatient treatment of eating disorders may help lower rates of eating disorders diagnosis and potentially decrease mortality rates for the disease.
- Provide clarity for the regulated community as to the types of facilities that may provide inpatient treatment of eating disorders.

Evaluation as to Whether the Proposed Regulation is Inconsistent or

² *Eating Disorder Statistics, supra.*

³ *Facts About Eating Disorders and the Search for Solutions*, National Institute of Mental Health. Bethesda (MD): National Institutes of Health, U.S. Department of Health and Human Services; 2001.

⁴ *Ibid.*

Incompatible with Existing State and Federal Regulations

The Department has reviewed existing state and federal regulations and concludes that the proposed regulations are compatible with existing state and federal regulations.

Detailed Discussion of Each Regulation

The Department proposes to adopt the following sections to implement the regulations needed to address inpatient treatment of eating disorders, as follows:

Section 71900. Definitions.

Adopt subdivision (a)(1)-(3) that defines terms used in the Code and Article 1. These definitions are necessary to clarify and to ensure consistency in the terminology used in these regulations. Each of the definitions is discussed below:

“Department” is defined in the proposed regulations for the purpose of making the regulation text more readable.

“Eating disorder” is included as a defined term and the proposed regulations refer to the definition as provided for in the Code.

“Inpatient” is defined differently than it is in the Code. The definition that the Department proposed is taken verbatim from a portion of the defined term “patient” from section 70053(a)(1) of the CCR.

Section 71901. Designated Health Facilities.

Adopt subdivision (a)(1)-(3) to provide a comprehensive list of those licensed health facilities that may provide inpatient treatment of eating disorders. In the proposed section 71901, subdivision (a)(3), the Department provides that CLHFs are also authorized to offer such inpatient care.

In drafting these regulations, the Department considered limiting those CLHFs that provide inpatient treatment expressly to those that provide services pursuant to HSC section 1250, subdivision (i)(2)(B); however, the Department determined that limiting treatment to those facilities licensed under subparagraph (B) could potentially limit access of patients in need of treatment.

Adopt subdivision (b) to explain that the proposed chapter applies only to the inpatient treatment of eating disorders and not to any outpatient treatment relating to eating disorders. The Department proposes adding this language to ensure that there is no ambiguity as to the applicability of this proposed regulation.

Economic Impact Assessment

The Department has made an initial determination that these regulations would not have a significant statewide adverse economic impact directly affecting businesses, and individuals, including the ability of California businesses to compete with businesses in other states. The proposed regulations will not significantly affect:

- The creation or elimination of jobs within the state.
- The creation of new business or the elimination of existing businesses within the state.
- The expansion of businesses currently doing business within the state, however some existing CLHFs may elect to begin providing eating disorder treatment.
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the environment.

The Department notes that this proposed regulation, which formally designates CLHFs as facilities that may treat inpatient eating disorders, is not expected to result in an expansion of businesses or the creation of new jobs. However, the proposed regulation could potentially result in a larger number of existing CLHFs treating those with eating disorders.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations are reasonably necessary to protect the health and welfare of those who suffer from eating disorders and allow greater access to inpatient treatment.

Documents Relied Upon

- Eating Disorder Statistics – National Association of Anorexia Nervosa and Associated Diseases (<http://www.anad.org/get-information/about-eating-disorders/eating-disorders-statistics/>)
- *Facts About Eating Disorders and the Search for Solutions*, National Institute of Mental Health. Bethesda (MD): National Institutes of Health, U.S. Department of Health and Human Services; 2001

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

STATEMENT OF DETERMINATIONS

Alternatives Considered

The Department must determine that no reasonable alternative considered by the Department or has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be less burdensome to affected private persons than the proposed regulatory action, or would be more cost effective to affected private persons. Should the Department decide not to formally designate CLHFs as an inpatient treatment facility type for eating disorders, CLHFs would be out of compliance and the number of facilities providing eating disorder services would be reduced.

Local Mandate Determination

The Department has determined that the proposed regulations do not impose a mandate on local agencies or school districts that requires state reimbursement.

Determination Whether Regulation Effects Small Business

The Department has determined that the proposed regulation will have no effect on small business in California other than formalizing CLHFs as a designated facility for the inpatient treatment of eating disorders for which there is no associated costs.

Housing Costs

The Department has determined that the regulations will have no impact on housing costs.