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EDMUND G. BROWN JR.
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NOTICE OF PROPOSED RULEMAKING
Title 22. Social Security
DPH-15-003 In-Patient Treatment of Eating Disorders
Notice Published: October 12, 2018

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write or call: Anita Shumaker, Office of Regulations, 1415 L Street Suite 500, Sacramento, CA 95814, at (916) 440-7718, email to Anita.Shumaker@CDPH.ca.gov or use the California Relay Service by dialing 711.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations by 5:00 p.m. on November 26, 2018, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written comments may be submitted as follows:

1. By email to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-15-003 Inpatient Treatment of Eating Disorders" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By postal service or hand delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier, "**DPH-15-003 Inpatient Treatment of Eating Disorders**", with the comment author's name and email or mailing address.



PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

ASSISTIVE SERVICES

For individuals with disabilities, The Department will provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takes, reading or writing assistance. To request these assistive services, please call (916) 558-1710 or (California Relay at 711 or 1-800-735-2929), email Regulations@cdph.ca.gov or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are made less than 10 business days prior to a public hearing.

AUTHORITY AND REFERENCE

The Department is authorized to make and enforce regulations pertaining to Licensing and Certification of Health Facilities, Home Health Agencies, Clinics, and Referral Agencies pursuant to Health and Safety Code 1254.5, 131000, 131050, 131051, 131052 and 131200. This proposal implements, interprets, or makes specific the licensing and certification of health facilities ability to provide inpatient treatment of eating disorders, Health & Safety Code statutes by adopting Chapter 2.6 Article 1 sections 71900 and 79101 of the California Code of Regulations, Title 22 (22 CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Summary of Proposal

The 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).

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

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.

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

² *Eating Disorder Facts and 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.*

Objectives (Goals) of the Regulation

- 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.

Anticipated 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, and the increase in openness and transparency in business and government amongst other things. 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.

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.

EVALUATION AS TO WHETHER THE PROPOSED REGULATION ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE AND FEDERAL REGULATIONS

The Department has reviewed existing state and federal regulation related or affect this area and concludes that the proposed regulations are compatible or consistent with existing state and federal regulations.

FORMS INCORPORATED BY REFERENCE

Not applicable.

MANDATED BY FEDERAL LAW OR REGULATIONS

Not applicable.

OTHER STATUTORY REQUIREMENTS

Not applicable.

LOCAL MANDATE

The Department has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs for which

reimbursement is required by part 7 (commencing with Section 17500) of division 4 of the Government Code.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

A) Cost to any local agencies or school districts that must be reimbursed pursuant to Section 17561 of Government Code:

None.

B) The cost or savings to any state agency:

None.

C) Impact on any cost or savings in federal funding of the program:

None.

D) Other nondiscretionary costs or savings imposed on local agencies:

None.

HOUSING COSTS

The Department has determined that the regulations will not have an impact on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

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.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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 6/13/2018 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.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTING REQUIREMENT

The proposed regulatory amendments do not change current business reporting requirements.

EFFECT ON 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.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

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

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.

TECHNICAL, THERETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR 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

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Chelsea Driscoll (916) 552-8778. All other inquiries concerning the action described in this notice may be directed to, Anita Shumaker, Office of Regulations, at (916) 440-7718, or to the designated backup contact, Charlet Archuleta, Office of Regulations, at (916) 440-9403.

AVAILABILITY STATEMENTS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address previously noted, will be the location of public records, including reports, documentation, and other material related to the proposed regulations.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7718 (or the California Relay Service at 711), or send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

A copy of the final statement of reasons when prepared will be available upon request from the Office of Regulations.

Internet Access

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov and by clicking on the following: Programs, Office of Regulations, and the Proposed Regulations link.