

NOTICE OF PROPOSED RULEMAKING

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

Enhanced Behavioral Supports Homes

The Department of Developmental Services (DDS) proposes to adopt the proposed regulations as well as forms DS 6023 and DS 6024 described below after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the contact listed below.

The written comment period closes at 5:00 p.m. on November 7, 2016.

DDS will consider only comments received by DDS by that time.

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PUBLIC HEARING

DDS will hold a public hearing starting at 1:00 p.m. on November 7, 2016 at the following location:

1600 9th Street
Room 360
Sacramento, California

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. DDS requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. DDS will adjourn the hearing immediately following the completion of testimony presentations. The room is wheelchair accessible.

Following the public hearing, DDS may thereafter adopt the proposed regulations substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15

days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the department contact identified above.

Copies of the express terms of the proposed regulation and the Initial Statement of Reasons are available from the contact listed above. This notice, the Initial Statement of Reasons and the text of the proposed regulations are also available on the Internet at <http://www.dds.ca.gov/ProposedRegs>. Additionally, all information which DDS considered as the basis for these proposed regulations (i.e., the rulemaking file) is available for public reading/perusal at the contact address listed above. Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed above once it is prepared.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions Code section 4500 et seq., was enacted to reduce institutionalization of people with developmental disabilities and prevent their dislocation from their home communities. Under the Lanterman Act, people with developmental disabilities have a right to treatment and habilitation services and supports in the least restrictive environment. With the reduced reliance on restrictive institutional and out-of-state placements, there is a need to increase community capacity and develop new alternatives, particularly for the most difficult –to-serve consumers, including those with challenging behaviors.

The vast majority of people with developmental disabilities live and receive services and supports in the community; however, many still reside in restrictive institutional settings, including state developmental centers and locked mental health facilities, while others receive services in out-of-state placements. This includes individuals who are difficult to serve in the community due to behaviors which are difficult to manage. To continue the development of alternative living arrangements for people with developmental disabilities, Senate Bill 856, Chapter 30, Statutes of 2014 (SB 856), requires the DDS to develop Enhanced Behavioral Supports Homes to reduce reliance on institutional living arrangements for, or out-of-state placements of, people with developmental disabilities who receive services and supports pursuant to the Lanterman Act but are difficult to serve in the community with currently available resources and living options. Many consumers who require intensive services and supports due to challenging behaviors that cannot be managed in a community setting without the availability of enhanced behavioral services and supports, and who are now in more restrictive placements, including developmental centers, locked mental health facilities and out-of-state placements, or are at risk of institutionalization, will be afforded more appropriate, less restrictive community-based alternatives with the development of Enhanced Behavioral Supports Homes.

As required by SB 856, Section 4684.86 of the Welfare & Institutions Code, DDS has promulgated emergency regulations, at Title 17 California Code of Regulations (CCR),

Division 2, Chapter 3, Subchapter 24 (effective February 5, 2016), establishing program standards for Enhanced Behavioral Supports Homes, licensed as either Adult Residential Facilities or Group Homes by the Department of Social Services. These standards include program plan requirements, staffing structure, staff qualifications and training, requirements and timelines for the completion and updating of consumers individual behavior supports plans, admission and continued stay requirements, requirements for ensuring appropriate services and supports are provided at the time of admission, the rate methodology, and assurances of consumer rights and protections. As required by SB 856, the emergency regulations were developed in consultation with stakeholders, including the State Department of Social Services, consumer advocates, and regional centers. DDS is now undertaking the regular rulemaking process to make the emergency regulations permanent.

The statutory authorization for the development of Enhanced Behavioral Supports Homes benefits individuals with developmental disabilities eligible for services under the Lanterman Act. It furthers the purpose and intent of the Lanterman Act by enabling individuals who would otherwise require placement in more restrictive, institutional settings to live in less restrictive, community-based living arrangements. The proposed regulations are intended to ensure that safeguards and procedures are in place consistent with the intent of the governing statutes and the Lanterman Act to protect individuals' rights with respect to procedures for admission to and residence in Enhanced Behavioral Supports Homes.

As these are the only regulations dealing with this subject matter for people with developmental disabilities, DDS finds that the proposed regulations are compatible and consistent with the intent of the Legislature in adopting SB 856, as well as the Lanterman Act and other existing state statute and regulations.

Section 59050: Defines terms relative to Enhanced Behavioral Supports Homes and these regulations.

Section 59051: Sets forth general requirements for the operation of the Enhanced Behavioral Supports homes.

Section 59052: Specifies the items to be included in the Facility Program Plan to ensure the stable operation of the facility and ensure the health and safety of the consumers in residence.

Section 59053: Requires department review of the Facility Program Plan to ensure it meets the requirements of section 59052 and permits department approval of the Facility Program Plan and requires the department to submit a Certificate of Approval to the Department of Social Services as a condition of licensure.

59054: Requires the development of an Individual Behavior Supports Plan for each consumer that outlines the behavioral treatment the consumer will receive.

59055: Specifies regional center monitoring of an Enhanced Behavioral Supports Home to ensure consistent treatment of the consumer and ensure the health and safety of the consumer.

59056: Specifies the assessments that must be completed and plans that must be completed to ensure a consumer is smoothly transitioned into the Enhanced Behavioral Supports Home.

59057: Requires a contract between the Enhanced Behavioral Supports Home and the regional center and specifies what must be in the contract.

59058: Allows for contract termination when the Enhanced Behavioral Supports Home is unable to maintain substantial compliance with applicable laws or its contract with the regional center or when the Enhanced Behavioral Supports Home demonstrates an inability to ensure the health and safety of consumers.

59059: As a matter of due process, allows the Enhanced Behavioral Supports Home to appeal the regional center's decision to terminate the contract.

59060: Specifies the minimum qualifications that must be met in order to be a facility administrator.

59061: Specifies the minimum qualifications that must be met in order to be direct care staff persons.

59062: Specifies the minimum staffing requirements to ensure the orderly operation of the facility and to ensure the health and safety of consumers.

59063: Specifies the minimum amount of training required of direct care staff to ensure competent care of consumers.

59064: Specifies the minimum amount of continuing education required of direct care staff to ensure continued competent care of consumers.

59065: Specifies which situations are considered an immediate danger.

59066: Specifies which situations are considered substantial inadequacies.

59067: Requires the development of a corrective action plan.

59068: Requires the regional center to apply sanctions when there is noncompliance with the corrective action plan.

59069: As a matter of due process, allows the facility administrator to file an appeal of regional center findings of immediate danger, substantial inadequacies and sanctions.

59070: Requires the maintenance of a facility file and specifies what must be included in the file.

59071: Requires the maintenance of a consumer file and specifies what must be included in the file.

59072: Sets forth the procedures for development of rates for both facility costs and individual costs associated with residency, and specifics for payment of said rates.

FORMS INCORPORATED BY REFERENCE

Form DS 6023 Enhanced Behavioral Supports Home – Rate Development Facility Cost (New 10/2015):

This is the new form developed for use in determining the facility rate.

Form DS 6024 Enhanced Behavioral Supports Home – Rate Development Individual Costs Associated With Residency (New 10/2015):

This is the new form developed for use in determining an individual consumer's rate.

LOCAL MANDATE STATEMENT

These regulations do not constitute a mandate on local agencies or school districts.

FISCAL IMPACT

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: None. DDS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

DDS has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

SMALL BUSINESS IMPACT STATEMENT

DDS has determined that there is no impact on small business as a result of filing of these regulations because the regulations only govern program requirements for licensed residential care providers that choose to operate an Enhanced Behavioral Supports Home.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The proposed regulations are a continuation of the current emergency regulations. The authorizing statutes permit but do not require the establishment of Enhanced Behavioral Supports Homes, which are licensed as Adult Residential Facilities or Group Homes. The adoption of the proposed regulations will neither create or eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California. These regulations are expected to improve the health and welfare of California residents by filling an unmet need and enabling the development of previously unavailable community living alternatives for consumers who require intensive services and supports due to challenging behaviors. SB 856 and the proposed regulations benefit the general welfare of people with developmental disabilities by furthering the intent of the Lanterman Act, as well as the federal Americans with Disabilities Act, to support their integration into the community.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

DDS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of DDS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE

Authority: Welfare and Institutions Code sections 4684.80, 4684.81, 4684.82, 4684.83, 4684.84, 4684.85, 4684.86, and 4684.7.

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CONTACT PERSON REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATIONS

Contact Person: Tiffani Andrade (916) 654-3016

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