

INITIAL STATEMENT OF REASONS
(Government Code § 11346.2(b))
California Code of Regulations
Title 17, Division 2, Chapter 3, Subchapter 24

DESCRIPTION OF THE PROBLEM ADDRESSED

Pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions (W&I) Code section 4500 et seq., people with developmental disabilities, as defined in W&I Code section 4512(a), receive, as an entitlement, services and supports based on their individual needs and choices. The Department of Developmental Services (Department) is responsible for administering the Lanterman Act.

Under the Lanterman Act, California provides community-based services to more than 250,000 children and adults with developmental disabilities and their families through a statewide system of 21 regional centers. Regional centers are private, nonprofit agencies under contract with the Department for the adoption of services and supports to people with developmental disabilities. As a single point of entry, regional centers provide diagnostic and assessment services to determine eligibility; convene person-centered planning teams to develop an Individual Program Plan (IPP) for each eligible consumer; and either purchase or obtain from generic agencies appropriate services and supports for each consumer in accordance with his or her IPP. In addition, the Department administers three state developmental centers and one community-based state-operated facility serving approximately 1,000 individuals.

The Lanterman Act was enacted to reduce institutionalization of people with developmental disabilities and keep them within 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. Toward this end, the Lanterman Act states that “[a]n array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each state of life and to support their integration into the mainstream life of the community” (W&I Code § 4501). 2012 Budget Trailer Bill language (AB1472) imposed a moratorium on admissions into state developmental centers and closure plans for the remaining state developmental centers arose from 2015 Budget Trailer Bill language (SB 82). With the reduced reliance on costly and 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 Department 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 (DCs), 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, the Department 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. 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.

The Department is now undertaking the regular rulemaking process to make the Enhanced Behavioral Supports Homes (EBSH) emergency regulations permanent.

SPECIFIC PURPOSE AND RATIONALE FOR NECESSITY

Subchapter 24

Article 1 – Definitions

§ 59050. Definitions.

§ 59050(a)

Specific Purpose

An Administrator is charged with the oversight of the facility and is a position required by both the Department and the Department of Social Services. This provision clarifies that an Administrator has the same meaning as in Title 22.

Rationale for Necessity

This adoption is necessary to ensure consistency between the Department and the Department of Social Services, and clarifies that an Administrator has the same meaning as defined in Title 22, California Code of Regulations, Section 80001(a)(2).

§ 59050(b)

Specific Purpose

This provision clarifies the certification requirements of the "Assistant Behavior Analyst", as it pertains to the EBSH's and for consistency with the requirements for recognition through the national Behavior Analyst Certification Board.

Rationale for Necessity

This adoption is necessary for clarity and consistency.

§ 59050(c)

Specific Purpose

This provision clarifies who may be considered an “Authorized Consumer Representative” in acting on behalf of a consumer should they be unable act on their own behalf.

Rationale for Necessity

This adoption is necessary to ensure consistency between the Department and the Department of Social Services, as the definition differs from the term “authorized representative” as defined in Title 22, California Code of Regulations, Section 80001(a)(7).

§ 59050(d)

Specific Purpose

This provision clarifies the certification requirements of the “Behavior Analyst”, as it pertains to the EBSH’s and for consistency with the requirements for recognition through the national Behavior Analyst Certification Board.

Rationale for Necessity

This adoption is necessary for clarity and consistency.

§ 59050(e)

Specific Purpose

This provision updates the definition of “Clients’ Rights Advocate” from elsewhere in Division 2 of Title 17, in line with Welfare & Institutions Code.

Rationale for Necessity

This adoption is necessary for clarity and to update out-of-date language within Division 2 of Title 17.

§ 59050(f)

Specific Purpose

This provision clarifies who may be considered a consultant for the purposes of providing services to consumers as specified in Section 59062(e), as well as expands the pool of acceptable consultant services to those individuals identified by the Individual Behavior Supports Team as providing a service which meets the unique individual support needs of each consumer placed in an EBSH.

Rationale for Necessity

This adoption is necessary for clarity and consistency. Consultant services provided by EBSH’s shall be appropriate to meet individual consumer service needs, which may be beyond typical services provided by individuals or groups currently eligible for vendorization.

§ 59050(g) and (g)(1)

Specific Purpose

This provision clarifies that the term “consumer” as used in these regulations means an individual who meets the eligibility requirements of Section 4512 of the Welfare & Institutions Code, and Sections 54000, 54001, and 54010, and is also known as a “client” per Title 22, California Code of Regulations, Section 80001(c)(9) for licensing purposes.

Rationale for Necessity

This adoption is necessary to ensure consistency and congruency between the Department and the Department of Social Services.

§ 59050(h)

Specific Purpose

In alignment with the shift to positive outcomes based services, it is necessary to have systems in place to ensure continuous improvement of services for consumers. The term “Continuous Quality Improvement System” is used in these regulations in reference to the process to be developed by providers for use in the EBSH’s.

Rationale for Necessity

This adoption is necessary for clarity and consistency, and to define new terminology.

§ 59050(i)

Specific Purpose

This provision clarifies the term “day”, as used in these regulations.

Rationale for Necessity

This adoption is necessary for clarity, as the term “day” is defined in different manners elsewhere in code and regulation.

§ 59050(j)

Specific Purpose

This provision clarifies that the term “Department” as used in these regulations refers to the Department of Developmental Services.

Rationale for Necessity

This adoption is necessary for clarity, as the Department of Social Services is also referenced within these regulations.

§ 59050(k)

Specific Purpose

This provision clarifies which individuals are considered “direct care staff”, for purposes of provision of direct supervision and special services and determination of meeting minimum staffing requirements. Reference to Section 56002(a) provides consistency among residential facilities and reference that “direct care staff” is synonymous with “direct support professional”.

Rationale for Necessity

This adoption is necessary for clarity and consistency in providing required direct supervision and special services to consumers.

§ 59050(k)(1)

Specific Purpose

This provision clarifies that direct supervision and special services includes “care and supervision” as defined in Title 22, California Code of Regulations, Section 80001(c)(3) for licensing purposes.

Rationale for Necessity

This adoption is necessary to ensure consistency and congruency between the Department and the Department of Social Services.

§ 59050(l)

Specific Purpose

A consumer admitted to an EBSH will be in need of intensive behavioral services and supports. This provision is necessary to define what is meant by the term “emergency intervention”.

Rationale for Necessity

This adoption is necessary to ensure consistency and congruency between the Department and the Department of Social Services, and to specify that emergency interventions only occur during the time period a consumer presents a danger to self or others.

§ 59050(m)

Specific Purpose

A consumer admitted to an EBSH will be in need of intensive behavioral services and supports, which may include emergency interventions. As such, the facility would be required by the Department of Social Services to develop an “emergency intervention plan”. This provision is necessary to define what is meant by the term “emergency intervention plan”.

Rationale for Necessity

This adoption is necessary to ensure consistency and congruency between the Department and the Department of Social Services.

§ 59050(n)

Specific Purpose

To be admitted to an EBSH, a consumer must be in need of enhanced behavioral supports, staffing, and supervision. This provision is necessary to define what is meant by “enhanced behavioral services and supports”, the specialized program requirements for consumers with challenging behaviors.

Rationale for Necessity

This adoption is necessary for clarity, to ensure services are in line with Section 4684.80 of the Welfare & Institutions Code, exceed services of a Residential Facility Service Level 4-i pursuant to Sections 56004 and 56013, and to ensure consumers placed into EBSH’s are in need of and receive intended services.

§ 59050(o)

Specific Purpose

This provision is necessary to specify the certification and licensure requirements of an EBSH, the population to be served and type of services to be provided, and the maximum capacity.

Rationale for Necessity

This adoption is necessary for clarity and consistency with Section 4684.81 of the Welfare & Institutions Code and to reiterate the four bed maximum capacity.

§ 59050(p)

Specific Purpose

This provision is necessary to specify the function of the “facility liaison” and the regional center responsible for assignment.

Rationale for Necessity

This adoption is necessary for clarity and consistency with Section 56048.

§ 59050(q)

Specific Purpose

This definition explains what constitutes an “immediate danger”, and is in line with current language in Title 17 pertaining to residential facilities.

Rationale for Necessity

This adoption is necessary for consistency and clarity.

§ 59050(r)

Specific Purpose

The components required of an “individual behavior supports plan” are specified in this section, and are in line with Section 4684.80 of the Welfare & Institutions Code.

Rationale for Necessity

This adoption is necessary for clarity and to differentiate from the various consumer support plans currently in use, such as individual program plan and individual service plan, so that providers are clear on the type of plan required.

§ 59050(s), (s)(1-6)

Specific Purpose

This provision is necessary to specify the function of and required individuals comprising the “individual behavior supports team”.

Rationale for Necessity

This adoption is necessary for clarity and to differentiate from the various consumer support teams currently in use, such as planning team and interdisciplinary team, so that providers are clear on the required membership of the “individual behavior supports team”, the makeup of the team, and the responsibility with which the team is tasked, as delineated in Section 4684.80(d)(6) of the Welfare & Institutions Code.

§ 59050(t)

Specific Purpose

The “individual program plan” is the written plan developed in accordance with the provisions of Sections 4646 and 4646.5 of the Welfare & Institutions Code.

Rationale for Necessity

This adoption is necessary for clarity and to differentiate from the various consumer support plans currently in use, such as individual behavior supports plan and individual service plan, so that providers are clear on the type of plan required.

§ 59050(u)

Specific Purpose

This provision is necessary to specify the function and composition of the “planning team” as delineated in Sections 4512, 4646 and 4646.5 of the Welfare & Institutions Code.

Rationale for Necessity

This adoption is necessary for clarity and to differentiate from the various consumer support teams currently in use, such as individual behavior supports team, so that providers are clear on

the required membership of the “planning team” and the responsibility with which the team is tasked, as delineated in Welfare & Institutions Code, and for consistency with Section 56022.

§ 59050(v), (v)(1-6)

Specific Purpose

This provision provides the definition of the term “qualified behavior modification professional” as this is a new term presented in Sections 4684.80 and 4684.84 of the Welfare & Institutions Code, but not defined. This definition outlines the minimum qualifications for the position. This definition builds upon the requirements for designation as a “qualified professional” as found within Section 50810 in relation to behavior modification interventions that may cause pain or trauma.

Rationale for Necessity

This adoption is necessary for consistency and clarity.

§ 59050(w)

Specific Purpose

This provision clarifies the certification requirements of the “Registered Behavior Technician”, as it pertains to the EBSH’s and for consistency with the requirements for recognition through the national Behavior Analyst Certification Board.

Rationale for Necessity

This adoption is necessary for clarity and consistency.

§ 59050(x)

Specific Purpose

This provision explains what constitutes a “substantial inadequacy”, and is in line with current language in Title 17 pertaining to residential facilities.

Rationale for Necessity

This adoption is necessary for consistency.

§ 59050(y)

Specific Purpose

This provision is necessary to define “working day” to mean the same as is defined in Sections 6700 and 6701 of the Government Code.

Rationale for Necessity

This adoption is necessary for clarity and consistency, to differentiate between various units of time, such as “day”, “calendar day”, and “working day”.

Article 2 – General Requirements

§ 59051. General Requirements.

§ 59051(a)

Specific Purpose

This provision is necessary to ensure that a regional center staff is assigned to the facility for coordination between the regional center and facility.

Rationale for Necessity

This adoption is necessary for consistency, to be in line with the requirements of Section 56048.

§ 59051(b)

Specific Purpose

This provision reiterates that the Department may decertify an EBSH facility that is not in compliance with laws and/or cannot ensure the health and safety of consumers, and that the Department will inform the Department of Social Services.

Rationale for Necessity

This adoption is necessary to make providers aware of the Department's ability to decertify a facility. It acknowledges the dual department relationship and ensures timely communication between the Department and the Department of Social Services to allow for consistency and congruency in following regulatory requirements, as the Department of Social Services is tasked with revocation of licensure if a facility has been decertified by the Department, per Section 1567.67 of the Health & Safety Code.

§ 59051(c)

Specific Purpose

This provision requires the EBSH to have an operable automatic fire sprinkler system.

Rationale for Necessity

This adoption is necessary to ensure the health and safety of the consumers and to be in compliance with building and fire code requirements specific to the facility designation.

§ 59051(d)

Specific Purpose

This provision requires that each consumer is afforded a private bedroom.

Rationale for Necessity

This adoption is necessary to afford consumers with challenging behaviors their own personal space, and is consistent with the current trend of private bedrooms in newly developed facilities across the residential service delivery system and the federal standards, as well as to provide clarity for the Department of Social Services pertaining to approval of facility licensure and monitoring.

§ 59051(e)

Specific Purpose

This provision requires an applicant for an EBSH to complete the vendoring regional center's residential services orientation.

Rationale for Necessity

This adoption is necessary to ensure that the EBSH is in line with the requirements for other residential facilities, and the applicant has received an orientation of current residential practice and policy, to be consistent with Section 56003(a).

§ 59051(f)

Specific Purpose

This provision prohibits the use of seclusion in an EBSH.

Rationale for Necessity

This adoption is necessary to reiterate Section 50515(a) for clarity and consistency, to ensure the health and safety of consumers by not allowing prohibited behavioral intervention techniques.

Article 3 – Facility Program Plan

§ 59052. Facility Program Plan.

§ 59052(a), (a)(1-12)

Specific Purpose

An applicant for an EBSH is required to develop a facility program plan. This provision is necessary to identify the minimum requirements and components of the program plan.

Rationale for Necessity

This adoption is necessary for clarity and to ensure consistency with the program plan requirements for residential facilities as outlined in Section 56013 (and exceeding the requirements for a level 4i facility), address requirements from Section 4684.86 of the Welfare & Institutions Code, and include provisions as required by the Department of Social Services for licensure as well as additional requirements to ensure the provision of appropriate, quality services, maintenance of consumer rights, as well as the health and safety of individuals placed in the facility.

§ 59052(b)

Specific Purpose

This provision requires that the applicant sign and date the facility program plan.

Rationale for Necessity

This adoption is necessary to ensure the plan is approved for submission by the appropriate party via the applicant's signature, and that each entity is working off the same version of the submitted plan via the date indicated.

§ 59053. Facility Program Plan Approval.

§ 59053(a)

Specific Purpose

This provision specifies to which regional center the applicant shall submit their proposed program plan.

Rationale for Necessity

This adoption is necessary for clarity, as there may be both vendoring and placing regional centers involved with the EBSH.

§ 59053(b)

Specific Purpose

This provision requires the regional center to submit the proposed program plan along with their recommendation for approval to the Department.

Rationale for Necessity

This adoption is necessary to ensure that the regional center has reviewed and supports the development of the EBSH.

§ 59053(c)

Specific Purpose

This provision requires that the Department issue a Certificate of Program Approval upon approval of the program plan, and provide copies to the regional center and the Department of Social Services within 30 days.

Rationale for Necessity

This adoption is necessary so that all involved parties are aware of and have documentation that the Department has reviewed the facility program plan for appropriateness and compliance with statutory and regulatory requirements, and has approved the plan, as required in Section 4684.81 of the Welfare & Institutions Code. It also provides a time frame to ensure the copy is provided in a timely manner.

§ 59053(d)

Specific Purpose

This provision clarifies that the Certificate of Program Approval must be submitted as part of the Plan of Operation to the Department of Social Services.

Rationale for Necessity

This adoption is necessary as the Department of Social Services cannot license an EBSH facility which does not first have certification through the Department, pursuant to Section 1567.62 (b, c) of the Health & Safety Code.

§ 59053(e)

Specific Purpose

This provision requires that any proposed changes to the program plan must be submitted to the Department and contracting regional center, and approved prior to implementation. It also requires the Department to notify the Department of Social Services on the same day of any approval of changes.

Rationale for Necessity

This adoption is necessary to clarify that any changes must be approved before implementation. As certification of program approval is a requirement of licensure, the Department of Social Services must be made aware of any approved changes to the program plan, as they may affect the plan of operation.

Article 4 – Individual Behavior Supports Plan

§ 59054. Individual Behavior Supports Plan.

§ 59054(a)

Specific Purpose

The Individual Behavior Supports Plan is integral to the coordination and provision of services to the consumers placed in the EBSH. This provision charges a specific person, the administrator, with responsibility in ensuring the plan is developed and updated

Rationale for Necessity

This adoption is necessary to charge a specific person, the administrator, with responsibility in ensuring the plan is developed and updated, so that all entities involved in the operation and oversight of the facility know who is held accountable.

§ 59054(b)

Specific Purpose

This provision directs that an Individual Behavior Supports Plan be completed within seven days of admission into the EBSH.

Rationale for Necessity

This adoption is necessary so that the essential services and supports for a consumer are identified in a timely manner, and to be in line with the requirements of Section 4684.83 of the Welfare & Institutions Code.

§ 59054(c)

Specific Purpose

This provision directs that the Individual Behavior Supports Team provide input regarding the Individual Behavior Supports Plan within 30 days of admission, review the plan monthly, and provide updated information as warranted.

Rationale for Necessity

This adoption is necessary to specify responsibility for updating of the Individual Behavior Supports Plan, including timelines and individuals involved. The requirement to update the plan within 30 days is in line with the timeline for updating the consumers' Individual Program Plan per Section 56022. The Department has determined that requiring monthly review of the Individual Behavior Supports Plan is reasonable to protect the consumer's right to receive appropriate services and supports in the least restrictive environment.

§ 59054(d)

Specific Purpose

To ensure that the Individual Behavior Supports Plan is relevant to the needs of the individual, this provision directs that the plan be function and evidence based, as well as target functionally equivalent replacement behaviors.

Rationale for Necessity

This adoption is necessary to ensure that the plan meets the needs of the consumer, and is outcome based and written in a manner so that pertinent data can be effectively collected.

§ 59054(d)(1-10)

Specific Purpose

These provisions specify what information is to be included in the Individual Behavior Supports Plan.

Rationale for Necessity

This adoption is necessary for clarity and consistency in plan contents. The required components are in line with the requirements of Section 4684.80 of the Welfare & Institutions Code, and what is currently included in consumers' Individual Program Plans and Individual Service Plans. The components ensure that an appropriate plan is in place to meet a consumer's service and support needs in dealing with challenging behaviors effectively.

§ 59054(e)

Specific Purpose

This provision directs to whom the Individual Behavior Supports Plan shall be submitted.

Rationale for Necessity

As the placing regional center is responsible for monitoring the direct services received by a consumer and the vendoring regional center responsible for monitoring facility services, this adoption is necessary to clarify who should receive a copy of the plan, and who is responsible for providing the copy to the regional center(s), and to meet provisions of Section 56026. This adoption also directs that a copy of the plan may be submitted to the clients' rights advocate as applicable, to ensure advocacy services are available, per Section 4433 of the Welfare & Institutions Code.

Article 5 - Monitoring

§ 59055. Regional Center Monitoring.

§ 59055(a)

Specific Purpose

This provision specifies that the consumer's regional center is charged with monitoring and evaluating services, with a minimum of quarterly face-to-face visits.

Rationale for Necessity

This adoption is necessary to ensure appropriate services and supports are being provided to the consumer, and to be in line with requirements in Section 56047.

§ 59055(b)

Specific Purpose

This provision requires the vendoring regional center to monitor and evaluate the EBSH quarterly, in a format prescribed by the Department.

Rationale for Necessity

This adoption is necessary to ensure the provision of effective, quality services in the EBSH. Utilizing a format as specified by the Department allows for consistency in data collected state-wide, and allows the Department to effectively review the pilot project as required by Section 4684.84(d) of the Welfare & Institutions Code. The required monitoring is in line with the requirements of Section 56048, but exceeds the required frequency due to the nature of services being provided in an EBSH, as required by Section 4684.81(i)(2) of the Welfare & Institutions Code.

§ 59055(c)

Specific Purpose

The regional center qualified behavior modification professional is required to visit the consumers at the facility monthly to monitor the Individual Behavior Supports Plan. This provision also requires they prepare written documentation and conduct at least four visits per year unannounced.

Rationale for Necessity

This adoption is necessary for clarity to differentiate this monitoring visit from the other required visits which the regional center must perform, and as required by Section 4684.84(b) of the Welfare & Institutions Code.

§ 59055(d)

Specific Purpose

This provision requires the Department to monitor the regional center's compliance with the visits required in (a), (b), and (c). Such monitoring will include onsite visits to the facility, at least every six months.

Rationale for Necessity

This adoption is necessary to ensure enriched oversight requirements are met to ascertain that enhanced services and supports are being provided to effectively meet the needs of the consumers placed in the EBSH. This is especially necessary during the program pilot project period to determine the effectiveness of providing enhanced behavioral services in a homelike setting, per Section 4684.81(a) of the Welfare & Institutions Code.

§ 59055(e), (e)(1 - 2)

Specific Purpose

If a substantial threat to a consumer's health or safety is identified, this provision allows the Department to direct the regional center to obtain alternative or additional services and supports for the consumer. The Department may consider notifications from the Department of Social Services of health and safety risks. This provision also allows for the Department to request relocation of the consumer under certain conditions, and requires an Individual Program Plan meeting be convened within two working days to review the service and support needs of the consumer.

Rationale for Necessity

This adoption is directed by Section 4684.81(h) of the Welfare & Institutions Code and Section 1567.65 of the Health & Safety Code, and is necessary to ensure the immediate well-being of the consumer(s) residing in the EBSH. Welfare & Institutions Code directs that an Individual Program Plan Meeting be convened to determine the appropriate course of action if possible, but allows for 30 days to review the Individual Program Plan. However, due to the intensive nature of the service and support needs of consumers residing in an EBSH, the Department feels that both the Individual Program Plan and Individual Behavioral Support Plan warrant immediate review and updating when a substantial threat is determined.

Article 6 – Admission

§ 59056. Consumer Admission.

§ 59056(a), (a)(1 - 3)

Specific Purpose

This provision directs the events to occur prior to a consumer's admission into an EBSH, including obtaining a medical assessment, assessing the consumer's need for enhanced behavioral services and supports, and releasing of pertinent information to the facility, and the individual responsible for each.

Rationale for Necessity

This adoption is necessary for consistency with Section 56017, and Title 22, California Code of Regulations, Section 80069, and other licensing requirements specific to the facility licensure type, to ensure the consumer meets the requirements for admission.

§ 59056(b), (b)(1)

Specific Purpose

This provision directs that the Administrator shall ensure completion of the Individual Behavior Supports Plan within seven days of admission.

Rationale for Necessity

This adoption is necessary for clarity, consistency, and accountability, and to be in line with Section 4684.83 of the Welfare & Institutions Code.

§ 59056(c), (c)(1 – 2)

Specific Purpose

Within 30 days of admission, a behavioral assessment and updates to the Individual Behavior Supports Plan are to be completed. This provision assigns responsibility for these tasks to the administrator, as well as specifies who is required to provide input.

Rationale for Necessity

This adoption is necessary to designate responsibility to one individual to ensure compliance with Section 4684.83 of the Welfare & Institutions Code.

§ 59056(d)

Specific Purpose

This provision assigns responsibility to the administrator for development and updating of the plans required in this Section.

Rationale for Necessity

This adoption is necessary for clarity and accountability.

§ 59056(e)

Specific Purpose

This provision requires that the regional center notify the clients' rights advocate of admissions and individual behavior supports team meetings.

Rationale for Necessity

This adoption is necessary to ensure protection of consumers' rights when admitted to an EBSH which may utilize restrictive behavioral techniques, and to ensure advocacy services are available, per Section 4433 of the Welfare & Institutions Code.

Article 7 – Contract

§ 59057. Contract.

§ 59057

Specific Purpose

This provision requires that a contract is executed between the vendoring regional center and the EBSH vendor prior to any consumer being placed in the facility.

Rationale for Necessity

This adoption is necessary to ensure compliance with Section 4684.82 of the Welfare & Institutions Code.

§ 59057(a - g)

Specific Purpose

These provisions outline the minimum requirements to be included in the contract between the regional center and EBSH vendor.

Rationale for Necessity

These adoptions are necessary to establish minimum contract requirements which are in line with current contracting regulations and practices with, such as within Sections 50607 through 50610, and for clarity and consistency in contract components between regional centers.

§ 59058. Contract Termination.

§ 59058(a),(a)(1-2)

Specific Purpose

This provision allows for contract termination when the regional center determines that the EBSH is unable to maintain compliance with law or its contract, or inability to ensure the health and safety of the consumers.

Rationale for Necessity

This adoption is necessary for clarity and consistency with Section 50611.

§ 59058(b)

Specific Purpose

This provision requires the regional center to notify the EBSH in writing its intent to terminate the contract within 30 days of delivery of the letter.

Rationale for Necessity

This adoption is necessary for consistency with Section 50611 and Section 4710 of the Welfare & Institutions Code.

§ 59058(c)

Specific Purpose

This provision requires the regional center to notify the Department and the Department of Social Services the same day it terminates a contract with an EBSH.

Rationale for Necessity

When a regional center terminates a contract, the Department and the Department of Social Services are required to be notified pursuant to Section 4684.85 of the Welfare & Institutions Code on the date the decision to terminate the contract is signed. Given the dual department relationship in monitoring EBHS's, this adoption is necessary for timeliness in reporting, as the Department must decertify an EBSH when a contract is terminated, necessitating the Department of Social Services to revoke the license of the EBSH, pursuant to Sections 4684.81(g) and 4684.85 of the Welfare & Institutions Code and Section 1550 of the Health & Safety Code.

§ 59058(d)

Specific Purpose

This provision makes it clear that when a contract is terminated, the EBSH loses certification and in turn vendorization.

Rationale for Necessity

This adoption is necessary for clarity. In order for a facility to be vendorized, it is required to be licensed. If the facility loses its certification due to contract termination, the Department of Social Services will revoke the license.

§ 59059. Contract Termination Appeals.

§ 59059(a)

Specific Purpose

This provision indicates that an EBSH may appeal a regional center decision to terminate its contract.

Rationale for Necessity

This adoption is necessary to allow the EBSH opportunity to appeal contract termination, as this would also result in loss of vendorization.

§ 59059(b)

Specific Purpose

This provision directs that the appeal must be in writing and include reasons why the termination is inappropriate.

Rationale for Necessity

This adoption is necessary for clarity, and is consistent with Section 4684.85(b) of the Welfare & Institutions Code and in line with the requirements in Section 54382.

§ 59059(c)

Specific Purpose

This provision allows for the 10 days for the EBSH to appeal the regional center's notification of its intent to terminate the contract.

Rationale for Necessity

This adoption is necessary for clarity, and is consistent with Section 4684.85(b) of the Welfare & Institutions Code.

§ 59059(d)

Specific Purpose

This provision requires that the regional center's director respond within 10 days to the facility's appeal.

Rationale for Necessity

This adoption is necessary for clarity, and is consistent with Section 4684.85(b) of the Welfare & Institutions Code.

§ 59059(e)

Specific Purpose

This provision specifies that the director's decision is the final administrative decision.

Rationale for Necessity

This adoption is necessary for clarity so that vendors understand the director's decision is final, and is consistent with Section 4684.85(b) of the Welfare & Institutions Code.

§ 59059(f)

Specific Purpose

The regional center is required to submit the director's decision to both the Department and the Department of Social Services per this provision, on the date it is signed.

Rationale for Necessity

This adoption is necessary for clarity, to ensure both departments involved are kept informed, and is consistent with Section 4684.85(b) of the Welfare & Institutions Code.

§ 59059(g)

Specific Purpose

This provision requires that the regional center mail the director's decision to the EBSH administrator within two working days of signature.

Rationale for Necessity

This adoption is necessary to ensure the EBSH receives the official decision in writing, and provisions can be made to relocate consumers should the contract ultimately be terminated.

§ 59059(h)

Specific Purpose

When an EBSH appeals a contract termination, this provision specifies that the contract termination is suspended pending the outcome of the appeal.

Rationale for Necessity

This adoption is necessary to avoid unnecessarily relocating consumers, and allow time for relocation of consumers to appropriate placements if so required pending the outcome of the appeal.

Article 8 – Personnel

§ 59060. Administrator Qualifications.

§ 59060(a), (a)(1)(A-C)

Specific Purpose

This provision outlines the minimum experience and professional background required for the administrator position.

Rationale for Necessity

This adoption is necessary for clarity, as the EBSH's require a higher level of minimum qualifications for the administrator than for other facility types to effectively operate the facility, due to the nature of clientele to be served, thus exceeding the requirements in Section 56037(f).

§ 59060(b)

Specific Purpose

This provision stipulates that the administrator complete the regional center's Residential Services Orientation.

Rationale for Necessity

This adoption is necessary to ensure that the EBSH is in line with the requirements for other residential facilities, and the administrator has received an orientation of current residential practice and policy, per Section 56003(b).

§ 59061. Direct Care Staff Qualifications.

§ 59061(a), (a)(1 – 2)

Specific Purpose

This provision outlines the minimum experience and professional background required or to be obtained for the direct care lead staff position.

Rationale for Necessity

This adoption is necessary for clarity, as the EBSH's require a higher level of minimum qualifications for staffing than other facility types to effectively provide services and supports to the consumers placed at the facility, due to the nature of support needs of the clientele to be served, and allows for staff coming from the developmental centers to serve in this position.

§ 59061(b), (b)(1 – 2)

Specific Purpose

This provision outlines the minimum experience and professional background required or to be obtained for the direct care staff position.

Rationale for Necessity

This adoption is necessary for clarity, as the EBSH's require a higher level of minimum qualifications for staffing than other facility types to effectively provide services and supports to the consumers placed at the facility, due to the nature of supports needs of the clientele to be served, and allows for staff coming from the developmental centers to serve in this position.

§ 59062. Staffing Requirements.

§ 59062(a)

Specific Purpose

This provision requires that at least one direct care lead staff and one direct care staff are on duty when a consumer is under the supervision of the facility to ensure the health and safety of the consumers, and that additional staffing beyond this minimum is determined by each consumer's individual need as determined by the DS 6024 rate worksheet.

Rationale for Necessity

This adoption is necessary for clarity, to meet the health and safety needs of the consumers, and exceeds the staffing requirements in Section 56004. This adoption provides a clear base minimum to assist in determining if appropriate staffing levels are being maintained.

§ 59062(b)

Specific Purpose

This provision requires that direct care staff who have not completed orientation and emergency intervention training be under the direct supervision and observation of a fully trained direct care lead staff when providing care to consumers.

Rationale for Necessity

Due to the intensive needs to the consumers being served in the EBSH, this adoption is necessary for the safety of both consumers and staff.

§ 59062(c)

Specific Purpose

This provision assigns responsibility to the administrator for assigning a qualified behavior modification professional to consumers, who shall provide a minimum of six hours per month of behavioral assessment and interventions to each consumer, and this time documented in the consumer file.

Rationale for Necessity

This adoption is necessary to assign responsibility to the administrator for ensuring that each consumer receives a minimum of six hours behavioral assessment and intervention monthly by a qualified behavior modification professional, and that this time is documented. Six hours provides a minimum to ensure that individual attention is provided to each consumer to address their individual intensive behavioral needs.

§ 59062(d)

Specific Purpose

The administrator is required to be on duty a minimum of twenty hours per week to ensure the effective operation of the facility.

Rationale for Necessity

This adoption is necessary for consistency, and is in line with current best practices for the minimum time required of administrators to provide oversight to residential facilities. The minimum hours help ensure that adequate oversight is provided to the facility to maintain licensing and certification standards.

§ 59062(e)

Specific Purpose

This provision assigns responsibility to the administrator for ensuring that each consumer receives an additional six hours of consultation hours monthly, which are appropriate to meet the individual consumers' needs.

Rationale for Necessity

This adoption is necessary to assign responsibility to the administrator for ensuring that each consumer receives a minimum of six hours monthly of consultation which meets the individual consumer service needs. Six hours provides a minimum to ensure that individual attention is provided to each consumer to address their intensive support needs, and exceeds the requirements in Section 56004(f).

§ 59062(f)

Specific Purpose

This provision requires the EBSH provide additional professional, administrative, or direct care staff above the basic requirements, as determine by the regional center and Individual Behavior Supports Team, to provide for the health and safety of consumers.

Rationale for Necessity

This adoption is necessary to hold the EBSH accountable for providing services and supports to meet the consumers' needs, beyond the basic minimum requirements, should such need be determined by the team. This is in line with Title 22, California Code of Regulations, Section

80065 (b) which gives the Department of Social Services the authority to require a licensee to provide additional staff whenever it determines that additional staff are required for the provision of services necessary to meet client needs.

§ 59063. Staff Training.

§ 59063(a), (a)(1 – 9)

Specific Purpose

This provision requires that the administrator ensure that direct care staff received 32 hours of orientation within the first 40 hours of employment. This orientation is to include the requirements of Title 22, California Code of Regulation as related to the specific facility type, as well as specified topics as listed.

Rationale for Necessity

This adoption is necessary to assign responsibility of staff orientation to the administrator, and specify the number of hours required to be included. This adoption allows for the orientation topics required by Title 22, California Code of Regulations to be included in the required orientation hours, and is in line with the requirements of Section 56038. Orientation topics required help ensure staff are provided the base knowledge to assist in implementation of the facility's program plan and ensure the health, safety, and rights of consumers being served. Training topics and the requirement that orientation to be completed within the first 40 hours of employment are in line with the requirements of Section 56038.

§ 59063(b), (b)(1 -2)

Specific Purpose

This provision requires that the administrator ensure that direct care staff receive 16 hours of emergency intervention training pursuant to Title 22, California Code of Regulations as related to specific facility type.

Rationale for Necessity

This adoption is necessary to assign responsibility of staff emergency intervention training to the administrator. It is in line with the requirements of Title 22, California Code of Regulations, Sections 84365 and 85365, and Section 4684.86(a)(1)(A) of the Welfare & Institutions Code.

§ 59063(c)

Specific Purpose

Direct care staff who have not completed the 16 hour training as required above, may not implement emergency interventions per this provision.

Rationale for Necessity

This adoption is necessary for clarity and to ensure the health and safety of both consumers and staff, so that an untrained staff person does not participate in emergency interventions which may cause injury or trauma.

§ 59063(d), (d)(1 – 2)

Specific Purpose

These provisions require that the administrator ensure direct care staff receive hands-on training in both first aid and cardiopulmonary resuscitation by a certified instructor prior to providing hands-on care to consumers, that certifications are maintained current and on file, and the certification for cardiopulmonary resuscitation is renewed annually.

Rationale for Necessity

These adoptions are necessary to assign responsibility to the administrator for ensuring staff receive training and maintain current certifications in first aid and cardiopulmonary resuscitation. They are also necessary for the health and safety of the consumers; hands-on training and annual recertification in cardiopulmonary resuscitation ensures well trained staff in the event of a medical emergency situation, which may be a possibility due to behavioral episodes or when emergency behavioral interventions are employed. The requirement for first aid is in line with Title 22, California Code of Regulations, Section 80075(f).

§ 59063(e)

Specific Purpose

This provision requires that the administrator ensure direct care staff has completed or completes both years of the competency-based training required by Welfare & Institutions Code (DSP Year 1 and DSP Year 2) prior to or within one year of employment at the EBSH.

Rationale for Necessity

This adoption assigns responsibility to the administrator, and is necessary to ensure well-trained, knowledgeable direct care staff, given the acute needs of the population to be served in the EBSH. This adoption exceeds the requirement in Section 56033 and Section 4695.2 of the Welfare & Institutions Code.

§ 59064. Continuing Education.

§ 59064(a), (a)(1)

Specific Purpose

This provision requires that the administrator ensures direct care staff complete twenty hours of continuing education training annually. For staff employed by an EBSH licensed as a group home, ten hours required in Title 22, California Code of Regulations, Section 84065(j) may count towards the twenty hours requirement.

Rationale for Necessity

This adoption is necessary to assign responsibility to the administrator for ensuring direct care staff complete at least twenty hours of continuing education annually. It allows for ten of the hours required by Title 22 for direct care staff in an EBSH licensed as a group home to count towards the twenty hours. The requirements for continuing education exceed the requirements in Section 56038, are in line with the requirement of Section 4684.86(a)(1)(B) of the Welfare & Institutions Code to provide training for direct care staff to address the specialized needs of the consumers, and help to ensure well-trained, knowledgeable staff.

§ 59064(b)

Specific Purpose

This provision charges the administrator with requiring additional continuing education as necessary to ensure the health and safety of the consumers.

Rationale for Necessity

This adoption is necessary to hold the administrator accountable for ensuring direct care staff are adequately trained so as to effectively provide services and supports to meet the consumers' needs.

§ 59064(c)

Specific Purpose

This provision allows successful completion of the competency-based training required in Section 59063(e) to satisfy the continuing education requirements in (a).

Rationale for Necessity

This adoption is necessary for clarity, consistency, and to be in line with the provisions of Section 56038(f).

§ 59064(d)

Specific Purpose

This provision requires the administrator to ensure that direct care staff renew the emergency intervention training required in Section 59063(b) annually.

Rationale for Necessity

This adoption is necessary to hold the administrator accountable for ensuring direct care staff meet and maintain training requirements.

Article 9 – Corrective Action Plans and Sanctions

§ 59065. Immediate Danger.

§ 59065(a)

Specific Purpose

This provision requires the regional center to immediately investigate reported situations which are or may constitute an immediate danger.

Rationale for Necessity

This provision directs the regional center to comply with Section 56053 when investigating a potential immediate danger.

§ 59065(b)

Specific Purpose

This provision directs the regional center to comply with Section 56053 when investigating a potential immediate danger.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Section 56053(b).

§ 59066. Substantial Inadequacies.

§ 59066(a)

Specific Purpose

This provision requires the regional center to immediately investigate reported situations which are or may constitute a substantial inadequacy.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Section 56054(b).

§ 59066(b)

Specific Purpose

This provision allows the regional center to make unannounced visits when investigating a substantial inadequacy.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Section 56054(b), to ensure the health and safety of consumers.

§ 59067. Corrective Action Plan (CAP).

§ 59067(a)

Specific Purpose

This provision requires the regional center and administrator to comply with the requirements for CAPs as outlined in Section 59056.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Section 59056.

§ 59067(b)

Specific Purpose

This provision requires the regional center to send a copy of the CAP to both the Department and the Department of Social Services.

Rationale for Necessity

This adoption is necessary due to the dual department relationship in certifying and licensing the facility, thus both departments must be made aware of any potential issues with the facility operation.

§ 59068. Sanctions.

Specific Purpose

Regional centers are directed to apply sanctions to an EBSH pursuant Section 56057 per this provision.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Section 56057.

§ 59069. Facility Appeals.

§ 59069(a)

Specific Purpose

This provision allows the administrator to appeal a regional center action against an EBSH from Sections 59065, 59066, and 59608, pursuant to Sections 56061 through 56065 and 56067.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Sections 56061 and 56064.

§ 59069(b), (b)(1 – 2)

Specific Purpose

During the appeal process, regional center actions in the case of an immediate danger will remain in effect throughout the appeal, and actions in the case of a substantial inadequacy will be suspended until the appeal is complete.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Section 56066.

§ 59069(c)

Specific Purpose

This provision allows the regional center to take immediate action if conditions in the facility deteriorate into an immediate danger due the substantial inadequacy not being corrected.

Rationale for Necessity

This adoption is necessary for consistency and to be in line with the requirements of Section 59066(a)(2)(A), and to ensure the health and safety of consumers.

Article 10 – Records Maintenance

§ 59070. Facility Files.

Specific Purpose

This provision requires that the facility maintain a facility, which allows for electronic records, and specifies minimum inclusions in the file.

Rationale for Necessity

This adoption is necessary for consistency and to allow for electronic records to be in line with current trends and practices, and as defined in Section 50602(h). It is also necessary so that the various entities with monitoring and oversight responsibilities have access to the required documentation, and to be in line with Section 56059.

§ 59070(a)

Specific Purpose

This provision requires a copy of the program plan to be included in the facility file.

Rationale for Necessity

This adoption is necessary for consistency with Section 56059, and to ensure compliance with Section 4684.81(i) of the Welfare & Institutions Code.

§ 59070(b)

Specific Purpose

This provision requires a copy of the weekly staff schedule to be included in the facility file.

Rationale for Necessity

This adoption is necessary for consistency with Section 56059 and to determine that staffing hours exceed those required for a Level 4i residential facility in Section 56004.

§ 59070(c), (c)(1 – 5)

Specific Purpose

This provision outlines the minimum documentation to be maintained in personnel files.

Rationale for Necessity

This adoption is necessary for consistency with Section 56059 and exceeds the requirements in Section 56013.

§ 59070(d)

Specific Purpose

This provision requires that the Emergency Intervention Plan required by the Department of Social Services be included in the facility file.

Rationale for Necessity

This adoption is necessary due to the dual department relationship in monitoring and oversight of the facility.

§ 59070(e)

Specific Purpose

A copy of the Certificate of Program Approval issued by the Department must be maintained in facility file per this provision.

Rationale for Necessity

This adoption is necessary due to the dual department relationship in monitoring and oversight of the facility, to have documentation readily available supporting certification and licensure requirements.

§ 59070(f)

Specific Purpose

This provision requires that documentation of regional center facility monitoring visits is maintained on file.

Rationale for Necessity

This adoption is necessary for clarity and consistency. Maintaining record of monitoring visits is in line with the requirements of Sections 56048 and 56059(c), allows the Department to ensure regional center compliance with monitoring requirements, and provides the facility documentation they have been informed of items which may require follow up and the plans agreed upon to accomplish this.

§ 59070(g)

Specific Purpose

This provision requires that documentation of regional center Qualified Behavior Modification Professional monitoring visits is maintained on file.

Rationale for Necessity

This adoption is necessary to allow the Department to monitor that the Qualified Behavior Modification Professional is providing monitoring visits as required in Section 4684.84(b) of the Welfare & Institutions Code. Maintaining record of monitoring visits is in line with the requirements of Sections 56048 and 56059(c).

§ 59070(h)

Specific Purpose

This provision requires that the facility maintain on file documentation of any behavior or emergency intervention reporting completed.

Rationale for Necessity

This adoption is necessary due to the dual department relationship in monitoring and oversight of the facility, related to licensure and certification, to have documentation readily available for review.

§ 59070(i - l)

Specific Purpose

These provisions require that the facility maintain copies of any findings of immediate danger, substantial inadequacies, corrective action plans, and sanctions on file.

Rationale for Necessity

These adoptions are necessary for consistency with Section 56059 (c), and for the facility to maintain documentation that any identified issues have been corrected.

§ 59070(m)

Specific Purpose

This provision requires the facility to maintain copies of any appeals made by the facility.

Rationale for Necessity

This adoption is necessary to ensure the facility maintains documentation that appeal procedures and timelines have been followed.

§ 59071. Consumer Files.

Specific Purpose

This provision requires that the facility maintain consumer files, which allow for electronic records, and specifies minimum inclusions.

Rationale for Necessity

This adoption is necessary for consistency and to allow for electronic formats to be in line with current trends and practices, and as defined in Section 50602(h). It is also necessary so that the various entities with monitoring and oversight responsibilities have access to the required documentation, and to be in line with Section 56059.

§ 59071(a)

Specific Purpose

This provision requires a copy of the medical assessment required in Section 59056(a) be kept in the consumer file.

Rationale for Necessity

This adoption is necessary to meet requirements of Sections 56017(b)(7) and Title 22, California Code of Regulations, Section 80069, and as directed in Section 59056(a).

§ 59071(b, c)

Specific Purpose

These provisions require the Individual Behavior Supports Plan and any updates be maintained in the consumer file.

Rationale for Necessity

To maintain quality of care, this adoption is necessary to ensure that the facility is developing and updating the Individual Behavior Supports Plan per Section 4684.83 of the Welfare & Institutions Code, and allow for monitoring by the regional center and the Department as required in Section 4684.84 of the Welfare & Institutions Code.

§ 59071(d)

Specific Purpose

This provision requires the facility to maintain emergency contact information for each consumer.

Rationale for Necessity

This adoption is necessary for consistency with Section 56059 and to ensure appropriate individuals are contacted timely in the event of an emergency situation.

§ 59071(e)

Specific Purpose

This provision requires that the consumers' IPP is maintained on file.

Rationale for Necessity

This adoption is necessary for consistency with Section 56059.

§ 59071(f)

Specific Purpose

This provision requires Special Incidents pursuant to Section 54327, be maintained on file.

Rationale for Necessity

This adoption is necessary for consistency with Section 56059 and to ensure compliance with Section 54327.

§ 59071(g)

Specific Purpose

This provision requires that data collection, which includes progress notes, consultant visits, and interventions, be maintained on file.

Rationale for Necessity

This adoption is necessary for consistency with Sections 56026 and 56059 and to provide source documentation of services and supports provided to the consumer.

§ 59071(h)

Specific Purpose

This provision requires that the facility use a medication administration documentation process, kept on file, which includes verification of the staff who provided the assistance.

Rationale for Necessity

This adoption is necessary to ensure the appropriate administration of medication. It serves as a tool to document medication administration, as well as detect any errors or issues with medication administration procedures or with specific staff, to be able to determine the most effective course of action in remedying the situation. This exceeds the requirements in Sections 56206, 56059, and the typical data required to be collected in 56013.

Article 11 – Rates

§ 59072. Establishment of Rates.

§ 59072(a)

Specific Purpose

This provision assigns service code 900 to the EBSH Facility Component rate.

Rationale for Necessity

This adoption is necessary to assign a service code for billing purposes, for consistency among vendors, per Section 54340(c).

§ 59072(a)(1)(A – B)

Specific Purpose

This provision requires the EBSH administrator to complete a form DS 6023, which is incorporated by reference, to determine the facility rate, submit it to the regional center as part of the contract execution, and review and update the facility rate form as part of contract renewal. It also provides that changes to the facility rate becomes effective on the first of the month following approval.

Rationale for Necessity

This adoption is necessary to specify that the facility component rate methodology established pursuant to Section 4884.81(j) is tied to contract development and renewal between the regional center and the EBSH, specifies the form to be utilized for consistency, and holds the administrator responsible for submission of the completed form. Tying the approval of the facility rate to the contract ensures it is timely and updated.

§ 59072(a)(2)(A – B)

Specific Purpose

This provision specifies that the facility rate shall not exceed the rate limit determined by the Department and is subject to the appropriation of funds pursuant to the Budget Act of each fiscal year.

Rationale for Necessity

This adoption is necessary for consistency.

§ 59072(a)(3)(A – D)

Specific Purpose

This provision clarifies that the facility rate is prorated based on capacity and explains how the rate is paid to the facility in certain situations, such as vacancies and temporary absences. To discourage extended vacancies, a temporary vacancy is defined as 60 days or fewer, and provisions are included requiring continued payment of the vacant prorated portion be reviewed at regular intervals.

Rationale for Necessity

This adoption is necessary to further define Section 4684.81(k) of the Welfare & Institutions Code, and for consistency in practice.

§ 59072(b)

Specific Purpose

This provision assigns service code 901 to the EBSH Individualized Services and Supports Component rate.

Rationale for Necessity

This adoption is necessary to assign a service code for billing purposes, for consistency among vendors, per Section 54340(c).

§ 59072(b)(1)(A – B)

Specific Purpose

This provision requires the EBSH administrator to complete a form DS 6024, which is incorporated by reference, to determine the individualized costs rate component, submit it to the regional center for approval prior to a consumer's admission, and review and update the individual cost rate within 60 days of placement and at least annually thereafter. Updated form DS 6024 must be submitted to the regional center within 30 days.

Rationale for Necessity

This adoption is necessary to specify that the individualized costs rate component methodology established pursuant to Section 4884.81(j) must be completed prior to placement, specifies the form to be utilized for consistency, and holds the administrator responsible for submission of the completed form. Requiring the rate to be reviewed after 60 days and at least annually, and that updated form DS 6024 be submitted within 30 days, ensures that appropriate services and supports are being provided for consumers.

§ 59072(b)(2)(A – B)

Specific Purpose

This provision specifies that the individualized costs rate shall not exceed the rate limit determined by the Department and is subject to the appropriation of funds pursuant to the Budget Act of each fiscal year.

Rationale for Necessity

This adoption is necessary for consistency.

§ 59072(b)(3)(A – C)

Specific Purpose

This provision explains how the individualized costs rate is paid in certain situations, such as temporary absences. The individualized rate may be paid in 14 day increments for a consumer's temporary absence with the regional center director's approval, and requires the facility to provide direct supervision and services in order to receive the individualized rate during the absence.

Rationale for Necessity

This adoption is necessary to further define Section 4684.81(k) of the Welfare & Institutions Code, and for consistency in practice.

§ 59072(c)

Specific Purpose

This provision specifies that Department forms DS 6023 and DS 6024 are incorporated into the regulations by reference.

Rationale for Necessity

This adoption is necessary to connect the new Department forms to the rate setting for the EBSH, for consistency in rate development processes.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The adoption of these regulations is necessary to permit the continued availability of the residential options authorized by SB 856 and to establish program standards, consumers' rights protections, and other requirements for these homes. The benefit of these regulations is in furthering the intent of SB 856 and the Lanterman Act: to minimize institutionalization by establishing community living options to meet the needs of individuals with challenging behaviors and who would otherwise be at risk of admission to or continued placement in more restrictive, locked institutional settings, or placement out of state. The regulatory requirements are designed to protect the rights of consumers admitted to Enhanced Behavioral Supports Homes, including periodic reassessments of the continued appropriateness of the placement for each consumer.

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. 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. DDS also determined 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 who choose to operate an Enhanced Behavioral Supports Home.

ECONOMIC IMPACT ASSESSMENT

The proposed regulations clarify and interpret Section 4684.86 of the Welfare & Institutions Code. The authorizing statutes permit but do not require the establishment of Enhanced Behavioral Supports Homes, and the program standards for their development. 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.

In accordance with Government Code section 11346.3(b), the Department has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs within the State of California

Developing regulations for Enhanced Behavioral Supports Homes, will not result in the creation or elimination of jobs in California.

Creation of New or Elimination of Existing Businesses within the State of California

The proposed regulations establish procedures, consumer safeguards, and program standards

related to development of Enhanced Behavioral Supports Homes. No new businesses in California will be created or existing businesses eliminated.

Expansion of Businesses Currently Doing Business within the State

The proposed regulations establish procedures, consumer safeguards, and program standards related to development of Enhanced Behavioral Supports Homes. There will be no expansion of businesses currently doing business within the state as a result of the proposed regulations.

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

These regulations are expected to improve the health and welfare of California residents with developmental disabilities by filling an unmet need and enabling the development of previously unavailable community living alternatives for individuals who require intensive services and supports due to challenging behaviors. SB 856, Section 4684.86 of the Welfare & Institutions Code, 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. Otherwise, the proposed regulations will not affect the health and welfare of California residents in general and will not affect worker safety or impact the state's environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Department has not relied on any technical, theoretical, and/or empirical study, reports or documents.

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.