

NOTICE OF PROPOSED RULEMAKING
TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES
CHAPTER 3. COMMUNITY SERVICES
SUBCHAPTER 23
COMMUNITY CRISIS HOMES

The Department of Developmental Services (DDS) proposes to adopt the proposed regulations as well as forms DS 6023, DS 6024 and DS 6028 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 February 4, 2019.

DDS will only consider comments received by that time.

CONTACT: Tiffani Andrade
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PUBLIC HEARING

DDS has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, FINAL STATEMENT OF REASONS, AND RULEMAKING FILE

Copies of the express terms of the proposed regulations 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 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, or at the end of the written comment period, copies of the Final Statement of Reasons will be available from the office listed above once it is prepared.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Office may adopt the proposed regulations substantially as described in this notice. If the Office makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Office adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Tiffani Andrade at the address indicated above. The Office will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AUTHORITY AND REFERENCE

Welfare and Institutions Code: 4698 and 4698.1 authorizes the DDS to adopt these proposed regulations. The proposed regulations implement Title 17, Chapter 3, Subchapter 23.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., was enacted to reduce institutionalization of people with developmental disabilities and prevent dislocation from their home communities. Under the Lanterman Act, people with developmental disabilities have a right to 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 individuals.

To continue the development of alternative living arrangements, Senate Bill 856, Chapter 30, Statutes of 2014, requires the Department of Developmental Services (DDS) to develop the residential option of Community Crisis Homes, as well as Enhanced Behavioral Supports Homes. DDS initiated the proposed regulations for Enhanced Behavioral Supports Homes in January 2015, as DDS determined this

residential option was a priority in order to provide resources for the individuals leaving the Developmental Centers. The Enhanced Behavioral Supports Homes' permanent regulations have been finalized, and DDS is now proceeding with the development of the Community Crisis Homes regulations. These proposed regulations are the next step to ensure that as individuals relocate out of the Developmental Centers and the Crisis Units close, there are resources for individuals in the community. These homes are also a resource for individuals who might otherwise require more institutional, restrictive settings. The Community Crisis Homes are required by statute to be an alternative to placements such as an out-of-state placement, a general acute hospital, an acute psychiatric hospital, or an institution for mental disease.

The following regulation sections will be finalized:

Section 59000: Defines terms relative to Community Crisis Home and these regulations.

Section 59001: Sets forth general requirements for the operation of the Community Crisis Home.

Section 59002: 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 59003: Requires DDS to review the Facility Program Plan for compliance with the requirements of section 59002, permits DDS to approve the Facility Program Plans, and requires DDS to submit a Certificate of Approval to the Department of Social Services as a condition of licensure.

Section 59004: Specifies the minimum qualifications that must be met by a facility administrator.

Section 59005: Specifies the minimum qualifications that must be met by direct care staff persons.

Section 59006: Specifies the minimum staffing requirements required for the orderly operation of the facility and health and safety of consumers.

Section 59007: Specifies the minimum amount of training required of direct care staff to competently care for consumers.

Section 59008: Specifies the minimum amount of continuing education required of direct care staff for continued competent care of consumers.

Section 59009: Specifies the assessments that must be completed and plans that must be completed to smoothly transition consumers into the Community Crisis Home.

Section 59010: Requires the development of an Individual Behavior Supports Plan for each consumer that outlines the behavioral treatment the consumer will receive.

Section 59011: Requires the maintenance of a facility file and specifies what must be included in the file.

Section 59012: Requires the maintenance of a consumer file and specifies what must be included in the file.

Section 59013: Requires regional centers to monitor a Community Crisis Home for consistent treatment and health and safety of the consumer.

Section 59014: Requires a contract between the Community Crisis Home and the regional center and specifies what must be in the contract.

Section 59015: Allows for contract termination when the Community Crisis Home is unable to maintain substantial compliance with applicable laws or its contract with the regional center or when the Community Crisis Home demonstrates an inability to provide for the health and safety of consumers.

Section 59016: As a matter of due process, allows the Community Crisis Home to appeal the regional center's decision to terminate the contract.

Section 59017: Specifies which situations are considered an immediate danger.

Section 59018: Specifies which situations are considered substantial inadequacies.

Section 59019: Specifies requirements for corrective action plans.

Section 59020: Requires the regional center to apply sanctions when there is noncompliance with the corrective action plan.

Section 59021: Describes the process by which the facility administrator may appeal regional center findings of immediate danger, substantial inadequacies and sanctions.

Section 59022: 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.

The legislative change will also affect the following forms, incorporated by reference:

Form DS 6023 Rate Development - Facility Costs (Updated 10/2016): Form to be used to assist in the development of the facility rate.

Form DS 6024 Rate Development - Individual Costs Associated with Residency (Updated 10/2016): Form to be used to assist in the development of individualized consumer rates.

Form DS 6028 Community Crisis Home - Rate Development Transition Costs (New 10/2016): Form to be used to fund additional services and supports for the consumer during times of transition into, or out of, the Community Crisis Home.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

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. The legislation SB 856, implemented Section 4698 of the WIC code. 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 worker safety or impact the state's environment.

Adoption of these proposed regulations is required as a condition of the development of licensed residential facilities authorized by SB 856.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS:

DDS has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, DDS has concluded that these are consistent and compatible with Title 22, Division 6, Chapter 6.1 regulations that concern Community Crisis Homes.

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:

DDS has determined that the proposed regulations do not impose a mandate on local agencies or school districts.

DISCLOSURES REGARDING THE PROPOSED ACTION (Fiscal Impact)

DDS has made the following determination:

Mandate on local agencies and school districts: None.

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

Cost or savings to any state agency: DDS estimates that the proposed regulations will result in General Fund Savings between \$395,000 and \$865,000 annually.

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: DDS estimates that the proposed regulations will increase federal funding by \$379,000 annually.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES:

DDS has determined that the proposed regulation 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 the proposed regulation will not impact directly affecting small businesses. The regulations do not require any person or business to develop and operate a community crisis home.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:

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.

STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

DDS concludes that it is (1) unlikely that the proposal will create or eliminate any jobs; (2) unlikely that the proposal will create or eliminate any businesses; (3) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

The regulations do not require any person or business to develop and operate a community crisis home. It is unknown how many existing businesses will choose to develop and operate these homes, or how many new businesses will be created for this purpose. It is also unknown if existing employees will work in any homes developed, or if new jobs will be created.

BENEFITS OF THE PROPOSED ACTION:

The benefit analysis was discussed above in the Informative Digest/Policy Statement Overview section of this document and further discussed in the Initial Statement of Reasons document.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DDS has determined that no reasonable alternative is considered or has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is 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.

DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

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