

## **DEPARTMENT OF DEVELOPMENTAL SERVICES**

### **NOTICE OF EMERGENCY AMENDMENTS AND FINDING OF EMERGENCY Children's Community Crisis Homes (CCH) Emergency Regulations**

#### **FINDING OF EMERGENCY REGULATORY ACTION IS NECESSARY**

Pursuant to Welfare and Institutions Code (WIC) sections 4698.1(b) and 4684.86, the Department of Developmental Services (Department) is hereby exempted from the requirement to describe specific facts showing the need for immediate action to amend the regulations in California Code of Regulations, title 17, division 2, chapter 3, subchapter 23 and subchapter 24, sections 59000, 59002, 59006, 59007, 59008, 59009, 59010, 59012, 59022, 59050, and 59072, and adopt new regulations in sections 59009.5, 59010.1, 59010.2, 59010.3, 59010.4 and 59010.5, which is deemed to address an emergency and is necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of sections 11346.1 and 11349.6 of the Government Code.

Government Code section 11342.545 defines emergency as "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare."

#### **NOTICE AND INTRODUCTION**

NOTICE IS HEREBY GIVEN that the Department proposes the emergency amendments of the regulations. Government Code section 11346.1, subdivision (a)(2), requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, it shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In addition to the five-day comment period for the emergency filing indicated above, there will also be a 45-day public comment period when these proposed regulations are amended and noticed via the regular rulemaking process.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed emergency action to OAL. The Department plans to file the emergency rulemaking package with OAL within five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed emergency regulations, the comments must be received by both the

Department and OAL within five calendar days of the Department's filing of the emergency regulations with OAL.

Please check the OAL website at [www.oal.ca.gov](http://www.oal.ca.gov) to find out when the emergency regulations are filed with OAL and open for public comment.

Comments should be sent **simultaneously** to the Department of Developmental Services and the Office of Administrative Law, either by email or U.S. mail sent to the following:

Department of Developmental Services  
Attn: Legislation, Regulations & Public Affairs  
**RE: "DDS Children's CCH Emergency"**  
1600 9th Street  
Sacramento, CA 95814  
Electronic Submittal: [Community Crisis Homes \(CCH\) for Children](#)

and

Office of Administrative Law  
Reference Attorney  
**RE: "DDS Children's CCH Emergency"**  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
E-mail: [Staff@oal.ca.gov](mailto:Staff@oal.ca.gov)

**"Please note:** Public comments should not include any personal or medical information, as your written and oral comments, and attachments become part of the public record and can be released to the public upon request under the California Public Records Act (Gov. Code, § 6250 et seq.)."

## **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW**

The Lanterman Developmental Disabilities Services Act (Lanterman Act), WIC, 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 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.

## **Background:**

To continue the development of alternative living arrangements, Senate Bill (SB) 856, (Committee on Budget and Fiscal Review, Chapter 30, Statutes of 2014), required the Department to develop the residential option of Community Crisis Homes, as well as Enhanced Behavioral Supports Homes. The Department has finalized both regulations.

The Legislature enacted, and the Governor signed SB 81, (Committee on Budget and Fiscal Review, Chapter 28, Statutes of 2019) which amended Health and Safety Code sections 1180.4 and 1567.81 and Welfare and Institutions Code section 4698 related to community crisis homes and requires the Department to develop Community Crisis Homes regulations for children. 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. More and more children are being presented with needs associated with being served in a crisis residential model. Regularly, there are requests to the Department for statewide resources that can serve children in a crisis. However, quite often, there are few or no residential resources available for children in a crisis.

As part of the 2019-20 State Budget package, SB 81 amended and added numerous sections of law pertaining to Human Services, including amendments which require the Department to develop guidelines around the use of restraint or containment in community crisis homes.

## **OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS**

The proposed regulations will implement the requirements of WIC, sections 4698 and 4698.1 and enable consumers eligible to reside in Children's Community Crisis Homes to avoid placement in more restrictive settings. The addition of the guidelines into the regulations will benefit the Community Crisis Homes' staff and consumers by providing clarity for the use of restraints or containment in the homes.

## **Existing Law**

SB 81 requires the Department to adopt emergency regulations to implement WIC, sections 4698 and 4698.1, whereby existing regulations related to children's community crisis homes do not exist.

## **Summary and Rationale of the Proposed Amendments**

The proposed amendments to CCR, sections 59000, 59002, 59006, 59007, 59008, 59009, 59010, 59012, 59022, 59050, and 59072, are summarized as follows:

#### Section 59000

This regulatory action would amend title 17, division 2, chapter 3, subchapter 23, section 59000 to reformat and number each definition and to specify the terminology that is used by current statutes and regulations. The amendments will clarify how these terms are utilized for Children's Community Crisis Homes. The detailed definitions are necessary to specify the meaning of the new terms used throughout the Community Crisis Homes regulations. Furthermore, these definitions are necessary to improve the transparency, comprehensibility, and consistency of the new terms in the Community Crisis Homes regulations and to help ensure safe and appropriate care.

#### Section 59000, Subd. (3)

The definition for Authorized Consumer Representative does not align with the existing definition in section 59050. The term "child" was added to the definition rather than "minor" as defined in section 59050 and is necessary in order to be consistent with the definition of the term used title 22, section 84001 (c)(2).

#### Section 59000, new Subd. (5)

The definition for the term "behavioral restraint" was added to align with Health and Safety Code section 1180.1 and is necessary to define the term to provide a clear understanding of the new term as used in this regulation for consistency and clarity. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

#### Section 59000, new Subd. (6)

The definition for the term "child" was added for consistency and clarity, aligns with the Department of Social Services definition in title 22, section 84001 (c)(2) and is necessary to ensure that our regulations do not conflict.

#### Section 59000, Subd. (9)

The term "individual" was amended to "person" in the definition for consumer as the term person is more appropriate and the term that is used consistently throughout the regulation. This amendment is necessary for consistency.

#### Section 59000, Subd. (10)

The definition of Community Crisis Home was amended to add group home as an additional facility type, amended the term individuals to persons which and is necessary for consistency and to reflect the establishment of community based residential options of community crisis homes for children pursuant to WIC 4698 (b)(1). Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (11)

It is necessary to add and define the term “Community Emergency Services” in order to provide a clear understanding of the term as used in this regulation. The definition is consistent with the understanding by the general public and professionals. Furthermore, the terms used to define “Community Emergency Services” are common terms already defined or used throughout the existing regulation text.

Section 59000, new Subd. (12)

It is necessary to add and define the term “containment” in order to provide a clear understanding of the new term as used in this regulation. This definition is consistent with Health and Safety code section 1180.1 (b). Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (15)

It is necessary to add and define the term “culturally competent and linguistically appropriate” in order to provide a clear understanding of the new term as used in this regulation. This definition is consistent with WIC 5840.6. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (19)

It is necessary to add and define “Dual Agency Client” in order to provide a clear understanding of the new term as used in this regulation. This definition is consistent with Health and Safety code sections 1567.81 and 1567.62.

Section 59000, new Subd. (22)

It is necessary to add and define “Extended Procedure” to provide a clear understanding of the term as used in this regulation. This definition is consistent with Health and Safety code section 1180.4 (h). Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (24)

It is necessary to add and define “Functional Behavior Assessment” to clarify the meaning and provide a clear understanding of the new term as used in this regulation. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (28)(B)(4.)

It is necessary to add Representative(s) from the responsible local education agency or agencies to the list for the Individual Behavior Supports Team members in order to provide an opportunity for the involvement of those responsible for providing an individual's educational services for collaboration and continuity of care across settings.

Section 59000, new Subd. (29)

It is necessary to add and define "Individualized Emergency Intervention Plan" to clarify the implementation of emergency intervention techniques by the licensee that will be used with a specific client and diffuse and safely resolve emerging crisis situations and strategies to minimize time spent in seclusion or behavioral restraints. The new definition is necessary to provide a clear understanding of the new term as used in this regulation. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (31)

It is necessary to add and define "Intensive Transition Services" to clarify the meaning and provide a clear understanding of the term as used in this regulation. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (32)

It is necessary to add "Licensee" to clarify the meaning and provide a clear understanding of the term as used in this regulation. This definition is consistent with title 22, California Code of Regulations, section 80001 (l)(4). Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (32)

It is necessary to add "Physical restraint" to clarify the meaning and provide a clear understanding of the new term as used in this regulation. This definition is consistent with Health and Safety Code Section 1180.1 (d). Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (35)

It is necessary to add "Prone restraint" to clarify the meaning and provide a clear understanding of the new term as used in this regulation. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, Subd. (36)

It is necessary to amend the term individual to person for the definition of Qualified Behavior Modification Professional in order to provide consistency throughout the regulation.

Section 59000, Subd. (37)

It is necessary to amend the term individual to person for the definition of Registered Behavior Technician in order to provide consistency throughout the regulation.

Section 59000, new Subd. (38)

It is necessary to add “Seclusion” to clarify the meaning and provide a clear understanding of the new term as used in this regulation. This definition is consistent with Health and Safety Code section 1180.1 (e). Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (39)

It is necessary to add “Supine restraint” to clarify the meaning and provide a clear understanding of the new term as used in this regulation. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (41)

It is necessary to add “Time-Out” and to provide a definition as required pursuant to Health and Safety Code section 1180.1(e). The clarification to the meaning helps to provide a clear understanding of the new term as used in this regulation. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59000, new Subd. (42)

It is necessary to add “Trauma-Informed Care” to clarify the meaning and provide a clear understanding of the new term as used in this regulation. Furthermore, this definition is necessary so that children and adults who are in the crisis are cared for in a safe, and therapeutically appropriate manner that promotes the consumer's well-being and ensures that their rights are preserved.

Section 59002 new Subd. (a)(8)(D)(1.)

This regulatory action would add the requirements for the contents of the Emergency Intervention Plan to include procedures for documenting each use of physical restraint in the consumer's record. This is necessary in order to make sure the consumer's record has clear procedures for documenting each use of physical restraint for the safety and well-being of the consumers.

Section 59002 new Subd. (a)(8)(D)(2.)

This regulatory action would add the requirements for the contents of the Emergency Intervention Plan to include procedures for reviewing each use of physical restraint with the consumer and authorized representative or parent. This is necessary in order to ensure that the consumer's authorized representative or parent are also included and made aware.

Section 59002 new Subd. (a)(8)(D)(3.)

This regulatory action would add the requirements for the contents of the Emergency Intervention Plan to include procedures for accessing community emergency services. This is necessary in order to make sure the consumer, staff, and authorized representatives are made aware of the procedures for the health, safety and well-being of all participants.

Section 59002 new Subd. (a)(8)(D)(3.)(a.)

This subsection would clarify the procedures for accessing community emergency services and require when and how to involve law enforcement in response to an incident at the facility, to be included in the plan. This is necessary in order to make sure the consumer, staff, and authorized representatives are made aware of the procedures for the health, safety and well-being of all participants.

Section 59002 new Subd. (a)(8)(D)(4.)

This regulatory action would add the requirements in Title 22, California Code of Regulations, section 85122 for a Community Crisis Home licensed as an adult residential facility and section 84322 for a Community Crisis Home licensed as a group home to be included in the Emergency Intervention Plan. This is necessary in order to provide consistency between both types of facilities and to ensure there are no conflicts with another state department who has been successful with their regulations.

Section 59002 new Subd. (a)(8)(D)(5.)

This regulatory action would add the requirement to include an outline of procedures to be included in the Emergency Intervention Plan for the safety and well-being of the consumer and staff when an exception to the 15-minute restraint time limit is required. This is necessary to provide a clear understanding of the procedures for the staff and the consumer.

Section 59002 new Subd. (a)(15)

This regulatory action would amend title 17, division 2, chapter 3, subchapter 23, section 59002 to add new subdivision (a)(15) to ensure appropriate application of the facility program plan's emergency intervention techniques and its use of restraint or containment in Community Crisis Homes pursuant to title 22, section 84300, and Health and Safety section 1180.4(h). The amendments will ensure the program plan details and will ensure the appropriate use of emergency intervention techniques-including not using restraint as an extended procedure and specifying procedures for the authorized exception by the administration if there is still risk of imminent serious injury or harm. Furthermore, it is necessary for consistency and clarity.



Section 59002 new Subd. (a)(16)

This regulatory action would amend title 17, division 2, chapter 3, subchapter 23, section 59002 to add new subdivision (a)(16) to clarify and specify the facility program plan's group home requirements for placement duration of dual agency clients and by providing requisite criteria and procedures pursuant to title 22, Health and Safety section 1567.81(d). It is necessary for consistency and clarity.

Section 59002 new Subd. (a)(17)

This regulatory action would amend title 17, division 2, chapter 3, subchapter 23, section 59002 to add new subdivision (a)(17) to specify and include cultural and linguistic background as a component of competency training regarding the diverse needs of the populations being served. The stakeholder recommendation is that it is necessary to highlight cultural and linguistic backgrounds as a diversity component in competency training and focus for administrators and staff to ensure the person's cultural and linguistic background are taken into account when making decisions on their needs.

Section 59006, Subd. (a)

This regulatory action would update the document incorporated by reference DS 6024 "Rate Development - Individual Costs Associated with Residency" (revised 5/2020). It is necessary to update this section to reflect the revised DS Form 6024 which is used to assist in the development of individualized consumer rates.

Section 59006, Subd. (c)

The term Administrator was updated to Licensee to appropriately and accurately identify whose responsibility it is to ensure that staff caring for consumers in crisis participate in and maintain appropriate training.

Section 59006, Subd. (d)

The term Administrator was updated to Licensee to appropriately and accurately identify whose responsibility it is to ensure that staff caring for consumers in crisis participate in and maintain appropriate training.

Section 59006, Subd. (e)

This regulatory action clarifies the requirements of each community crisis home by indicating the administrator must be present and on duty at a minimum of 20 hours per week at each facility. By changing the "per" facility to at each clarifies that the administrator will only be at its assigned facility, not every facility.

Section 59007(a)

This regulatory action would amend title 17, division 2, chapter 3, subchapter 23, section 59007 to specify the training requirements applicable to the facility's licensure type for both group homes and adult residential facilities and to specify the staff training requirements for clarity, transparency, and comprehension in order to ensure staff are able maintain ongoing competence and confidence in dealing with crisis situations.

Section 59007, Subd. (a)(1)

This regulatory action would specify the training requirements applicable to the facility's licensure type for both group homes and adult residential facilities. It is necessary to correct and update the cross reference to title 22, from section 80065(f) to 85365. It is necessary to update this cross reference for consistency with the Department of Social Service's regulations where they recently expanded title 22, section 85365 to reference the provisions in sections 84065 and 85065 for Adult Residential Facilities (ARFs).

Section 59007, new Subd. (a)(3)(D)

This regulatory action would add "Trauma-informed care" to the overview of primary and secondary diagnoses to ensure a strength-based approach is taken that anticipates and avoids processes and practices that are likely to result in trauma or retraumatize individuals with a history of trauma. It is necessary because it upholds the importance of consumer participation in the development, delivery, and evaluation of services.

Section 59007, new Subd. (a)(4)

This regulatory action would add subsections which are necessary to provide a clear understanding that the two types of Community Crisis Homes have specified consumers' rights and protections.

Section 59007, new Subd. (a)(6)

This regulatory action would spell out the acronym for Individual Program Plan for clarity.

Section 59007, new Subd. (b)

This subsection aligns with the training and personnel requirements of title 22, section 84065(i). It is necessary to add this section for clarity to specify the Department of Social Service's child care training requirements and ensure compliance for group homes.

Section 59007, Subd. (c)

This subsection is modified to add and specify the training requirements for Community Crisis Homes licensed as a group home and an adult residential facility. This is necessary to provide a clear understanding of the differing requirements for emergency intervention training in the two different types of Community Crisis Homes, for consistency with title 22.

Section 59007, Subd. (e)

The term Administrator was updated to Licensee to appropriately and accurately identify whose responsibility it is to ensure that staff caring for consumers in crisis participate in and maintain appropriate training.

Section 59007, Subd. (f)

The term Administrator was updated to Licensee to appropriately and accurately identify whose responsibility it is to ensure that staff caring for consumers in crisis participate in and maintain appropriate training.

Section 59008, Subd. (a)

The term Administrator was updated to Licensee to appropriately and accurately identify whose responsibility it is to ensure that staff caring for consumers in crisis participate in and maintain appropriate training. Furthermore, the number of continuing education hours was updated to 25 from 20 to include 5 hours of competency-based continuing education in the areas of person-centered practices, positive behavior supports, trauma-informed care, and cultural competency to ensure ongoing staff competency and confidence in dealing with consumers in a supportive and therapeutic manner.

Section 59008, new Subd. (b)

This regulatory action would amend section 59008 to add and specify the continuing education requirements for Community Crisis Homes licensed as group homes required by title 22, California Code of Regulations, Section 84065(j). After collaboration with stakeholders, the Department found it necessary to allow and specify that group home training hours may count toward continuing education requirements.

Section 59008, Subd. (c)

The term Administrator was updated to Licensee to appropriately and accurately identify whose responsibility it is to ensure that staff caring for consumers in crisis participate in and maintain appropriate training.

Section 59008, Subd. (e)

This regulatory action would amend section 59008 to correct the term Administrator and replace it with the appropriate term Licensee as defined in the regulations for consistency and clarity.

Section 59008, new Subd. (f)

This regulatory action would amend section 59008 to add an additional 5 hours of competency-based continuation education training requirements in the areas of person-centered practices, positive behavior supports, trauma-informed care, and cultural competency to ensure ongoing staff competency and confidence in dealing with consumers in a supportive and therapeutic manner for emergency intervention and de-escalation strategies and is necessary to maintain safety for the consumers and staff while emphasizing positive behavioral supports and techniques that are alternatives to physical restraint.

Section 59009, Subd. (e)(2) new (A)

This regulatory action would amend section 59009 to add a requirement for the administrator to ensure completion of a written functional behavior assessment for consumer admission. It is necessary to add "A written functional behavior assessment" because the functional behavior assessment process includes a variation of procedures developed to ascertain the purpose or reason for behaviors displayed by individuals with intellectual and developmental disabilities. The results of functional behavior assessment inform and aids in the development of a function-based and evidence-based Individual Behavior Supports Plan which includes functionally equivalent replacement behaviors.

Section 59010, Subd. (d)(10)

This regulatory action would amend section 59010 to clarify the details of the Individual Behavior Supports Team and is necessary to specify details for the transition plans for consumers. It is necessary to add a review of the transition plan at least monthly based on feedback provided by stakeholders and the necessity to regularly review and modify components of the transition plan as data indicates need.

Section 59010, Subd. (d)(10), new (A), (B), (C), and (D)

This regulatory action would add new subdivisions (d)(10)(A) - (D) in section 59010. It is necessary to add measurable transition objectives and criteria, including baseline measures to ensure transition planning for each individual occurs and is guided by current progress and data, which was also expressed as a priority by stakeholders. It is necessary that projected services and support needs be included in the monthly review of the transition plan to ensure current progress and data are reviewed, and modifications be made to those projected services and supports as necessary. It is necessary to include a projected timeline for stabilization in the transition plan to set goals and objectives for the consumer. Once the individual is approaching their stabilization goals and the regional center has identified a community option, the formal transition process should begin. It is necessary to include a plan for cross-training needs in the transition plan so coordination of logistics for the training can be planned for as the consumer stabilizes.

Section 59012, Subd. (d)

This regulatory action would spell out the acronym for Individual Program Plan and is necessary for clarity.

Section 59012, new Subd. (h)

This regulatory action would amend section 59012 to add a functional behavior assessment to consumer files. It is necessary to add this section for consistency and to ensure that the functional behavior assessment required by section 59009(e)(2)(A) is included in the consumer file and accessible at the facility for review. This provides information regarding the implementation of other function-based and evidence-based services and supports developed by the Qualified Behavior Modification Professional (QBMP) and/or other consultants.

Section 59012, new Subd. (i)

This regulatory action would amend section 59012 to add the debrief documentation to consumer files. It is necessary to add this section for consistency and to ensure that the debrief documentation required by section 59010.4(e) is included in the consumer file and accessible at the facility for review.

Section 59012, new Subd. (j)

This regulatory action would amend section 59012 to add any other records containing current emergency or health-related information for current customers to consumer files. It is necessary to add this section for consistency and to ensure that the health-related information is included in the consumer file and accessible at the facility for review.

Section 59022, Subd. (a)(1), (b)(1), (b)(3)(D) and (f)

This regulatory action would amend title 17, division 2, chapter 3, subchapter 23, section 59022 which sets forth the procedures for the development of rates for both facility costs and individual costs associated with residency, and specifics for payment of said rates for both group homes and adult residential facilities. The amendments update the forms incorporated by reference: DS 6023 Rate Development - Facility Costs (revised 5/2020) and DS 6024 Rate Development - Individual Costs Associated with Residency: Form (revised 5/2020). It is necessary to update the revised dates of the forms incorporated by reference in these sections of the regulation for consistency and clarity.

Section 59050, Subd. (v)

It is necessary to amend the term individual to person for the definition of Qualified Behavior Modification Professional in order to provide consistency throughout the regulation.

Section 59072, Subd. (a)(1) and (b)(1)

This regulatory action would amend title 17, division 2, chapter 3, subchapter 24, section 59072 to update the forms incorporated by reference: DS 6023 Rate Development - Facility Costs (revised 5/2020) and DS 6024 Rate Development - Individual Costs Associated with Residency: Form (revised 5/2020). It is necessary to update the revised dates of the forms incorporated by reference in these sections of the regulation for consistency and clarity.

### **Summary and Rationale of the Proposed Adoption of New Regulations**

The proposed adoption to title 17, CCR, new Articles 5.5 and 6.5, and new sections 59009.5, 59010.1, 59010.2, 59010.3, 59010.4, and 59010.5, are summarized as follows:

**New Article 5.5, Transition/Discharge**

The regulatory action would add a new article 5.5 to title 17, division 2, chapter 3, subchapter 23. This is necessary to provide the details related to transition and discharge.

**New Section 59009.5**

This regulatory action would adopt new section 59009.5 Transition/Discharge from the Community Crisis Home, to clarify the procedures for transition to and from Community Crisis Home facilities and is necessary for consistency and to specify the transition goals and timelines related to Community Crisis Homes so that there is an understanding of these goals and requirements. The goals and timelines were developed in accordance with existing statutes and regulations, as well as collaboration with stakeholders who provided clinical best practices.

New Section 59009.5, Subd (a)

This regulatory action specifies when transition planning should begin and where in regulation the requirements for transition planning exist. This is necessary to provide specificity and clarity.

New Section 59009.5, Subd (b)(1)-(5)

This regulatory action specifies and outlines the requirements and procedures to obtain approval for additional days for a consumer residing in a Community Crisis Home beyond 18 months for Community Crisis Homes licensed as an adult residential facility and 12 months for Community Crisis Homes licensed as a group home pursuant to title 17, California Code of Regulations, section 59022(b)(3)(D) and is necessary to provide clarity in requirements for obtaining approval for a regional center requesting additional days beyond 18 months.

New Section 59009.5, Subd (c)

This regulatory action specifies that Department approval shall be granted for no more than 30 days at a time. The requirement for 30 days is necessary to ensure transition planning activities are occurring on a regular and frequent basis and communicated to the Department.

New Section 59009.5, Subd (d)

This regulatory action specifies the review period and requirements for requests for additional days. This is necessary to provide clarity of the ongoing review and approval process including the information required for submittal to the department.

New Section 59009.5, Subd (d)(1)

This regulatory action requires that the latest information is updated with the historical and current graphed data of target behavior(s) for visual analysis since entering the Community Crisis Home. This is necessary to provide the Department with the appropriate data needed to understand progress towards the reduction of target behaviors and skill acquisition since entering the facility as a measure of treatment effectiveness.

New Section 59009.5, Subd (d)(2)

This regulatory action requires an updated Individual Behavior Supports Plan and transition plan with an explanation of barriers that have prevented stabilization and/or transition out of the Community Crisis Home. This is necessary to provide the Department with an understanding of progress towards stabilization and ongoing transition planning activities.

New Section 59009.5, Subd (d)(3)

This regulatory action requires an explanation of why residing in the Community Crisis Home for additional days is necessary to protect the consumer's health or safety. This is necessary to provide the Department with an explanation of any health or safety concerns that would support residing in the facility for additional days.

#### New Section 59009.5, Subd (e)

This regulatory action requires the facility administrator shall develop a summary of the individual's developmental, behavioral, social, health, and nutritional status at the time of discharge. A copy of the final summary, in addition to the current Functional Behavior Assessment and Individual Behavior Supports Plan will be provided to the next placement. This is necessary ensure a comprehensive, person-centered summary and effective intervention supports and strategies are provided to the next placement to increase the probability of maintaining stabilization in the new placement.

#### New Article 6.5, Restraint and Containment

This regulatory action would add new Article 6.5, Restraint and Containment to title 17, division 2, chapter 3, subchapter 23, to clarify and specify the Department's Guidelines for the Use of Restraint or Containment in Community Crisis Homes, which is necessary and required pursuant to WIC, section 4698.1(b), whereby the Department, in consultation with appropriate professionals and the protection and advocacy agency shall develop guidelines by March 2020, regarding the use of physical restraint or containment in community crisis homes and appropriate safeguards for the protection of clients' rights. Furthermore, this new article aligns with title 17, California Code of Regulations, sections 59001(g), 50515(a), and 54327, title 22, California Code of Regulations, section 80075, and Health and Safety Code section 1180.1 and 1180.4 related to physical restraint and containment as well as the definition pursuant to Health and Safety Code, section 1180.1(b) and (d).

#### New Section 59010.1

This regulatory action would add new section 59010.1 entitled Prohibited Emergency Intervention. This new section provides the reference to the regulatory sections that describe the emergency interventions that are prohibited for all community care facilities. Prone and Supine restraints were added as additional prohibited emergency interventions for Community Crisis Homes because prone and supine containment have been attributed to injuries causing the death of individuals. These techniques also pose the highest risk for staff injury among restraint procedures currently allowed. This regulatory action is necessary for clarity, consistency, health and safety, and nonduplication.

#### New Section 59010.2

This regulatory action would add new section 59010.2 entitled Time Limits on the Use of Physical Restraint and subsections (a)-(i). As required by Welfare and Institutions Code section 4698, this regulatory action would add guidelines and specify the time limits on the use of physical restraint and is necessary because it clarifies the physical restraint and containment regulations and statutes so they can be easily understood by Community Crisis Home providers.

#### New Section 59010.2, Subd (a)

This regulatory action would add new section 59010.2 subdivision (a) to specify that physical restraint shall not continue longer than necessary to control the behavior for which the physical restraint was employed and that the use of physical restraint must be

discontinued as soon as the consumer's behavior no longer poses imminent danger of serious injury to self or others. This is necessary because it clarifies the physical restraint and containment regulations and statutes so they can be easily understood by Community Crisis Home consumers and providers.

New Section 59010.2, Subd (b)

This regulatory action would add new section 59010.2 subdivision (b) to specify that physical restraint is prohibited as an extended procedure, except as specified in title 22, sections 84322 (f) for group homes and 85122 (e) for adult residential facilities and only with administrator approval. As required by Welfare and Institutions Code section 4698, this regulatory action would specify the details regarding the use of physical restraint and is necessary because it clarifies the physical restraint and containment regulations and statutes so they can be easily understood by Community Crisis Home consumers and providers.

New Section 59010.2, Subd (b)(1)

This regulatory action would add new section 59010.2 subdivision (b)(1) to specify that the individual who approves the continuation of physical restraint must be a person other than the individual who restrained the consumer as one of the requirements necessary to continue the use of physical restraint. This requirement ensures a trained staff not involved in the physical restraint is constantly assessing and monitoring the restrained individual's physical and psychological status to ensure health and safety. It also ensures that approval of continuous use of physical restraint is objective and is available to consult with others if indicated and is necessary to clarify the physical restraint and containment requirements so they can be easily understood by Community Crisis Home consumers and providers.

New Section 59010.2, Subd (b)(2)

This regulatory action would add new section 59010.2 subdivision (b)(2) to specify that the individual who visually checks the consumer after 15 minutes to ensure the consumer is not injured and that the consumer's personal needs, such as access to toilet facilities, are being met, must be a person other than the individual restraining the consumer. This requirement is necessary to ensure the health and safety of the consumer and for consistency with title 22 and Health and Safety Code Section 1180.4.

New Section 59010.2, Subd (b)(3)

This regulatory action would add new section 59010.2 subdivision (b)(3) to specify that after the initial 15 minutes, the individual who approves the continuation of the physical restraint shall observe the consumer's behavior while the consumer is being restrained to determine whether continued use of the physical restraint is justified pursuant to title 17, section 59010.2 (a). This requirement is necessary to ensure the health and safety of the consumer and to justify the continued use of physical restraint is appropriate.



#### New Section 59010.2, Subd (c)

This regulatory action would add new section 59010.2 subdivision (c) to specify pursuant to title 22, section 85122(e)(6)(A)(1), that within 24 hours the administrator must document in the consumer's record written approval for the continued use of physical restraint beyond 15 consecutive minutes, including an explanation of why it is necessary for physical restraint to extend beyond 15 minutes and a description of consumer's behavior that poses an imminent danger of serious injury to self or others. This requirement is necessary to ensure timely documentation of the approved continued use of physical restraint and ensure information about the reasons for the continued physical restraint is available for review by the Individual Behavioral Supports Team. The time limit of 15 consecutive minutes is necessary because it aligns with the Department of Social Services regulations which has proven to be successful.

#### New Section 59010.2, Subd (d)

This regulatory action would add new section 59010.2 subdivision (d) to specify that staff must make provisions for responding promptly and appropriately to a consumer's request for services and assistance with repositioning the consumer when appropriate. This requirement is necessary to decrease risk for injury or harm due to the use of physical restraint by responding to consumers request for services.

#### New Section 59010.2, Subd (e)

This regulatory action would add new section 59010.2 subdivision (e) to specify that if a physical restraint lasts longer than 30 consecutive minutes, the consumer in a physical restraint must be visually checked every 15 minutes until the physical restraint is terminated, to ensure the consumer is not injured, that consumer's personal needs are being met, and that the continued use of the physical restraint is justified pursuant to title 17, section 59010.2 (a). This requirement is necessary to ensure the health and safety of the consumer and remain consistent with title 22, section 84322.

#### New Section 59010.2, Subd (e)(1)

This regulatory action would add new section 59010.2 subdivision (e)(1) to specify that the visual checks must be documented in the consumer's record. This requirement is necessary to ensure the visual observation and assessment occurs every 15 minutes that the consumer is not injured, personal needs have been met, and the continued use of physical restraint is appropriate.

#### New Section 59010.2, Subd (e)(2)

This regulatory action would add new section 59010.2 subdivision (e)(2) to specify that the person conducting the check must not be the individual who restrained the consumer. This requirement is necessary to ensure that the person conducting the visual check can adequately assess and address the consumer's needs and to reduce the risk for injury or harm due to the use of physical restraint by responding to the consumers requests for assistance or repositioning.

New Section 59010.2, Subd (f)

This regulatory action would add new section 59010.2 subdivision (f) to describe the requirements if a physical restraint lasts longer than 60 minutes and is necessary to adequately assess the consumer's health and safety.

New Section 59010.2, Subd (f)(1)

This regulatory action would add new section 59010.2 subdivision (f)(1) to specify if a physical restraint lasts longer than 60 minutes pursuant to title 22, section 84322, the Administrator must evaluate whether the facility has adequate resources to meet the consumer's needs and reevaluate at 30-minute intervals thereafter pursuant to title 22, section 84322. This requirement is necessary to ensure that the administrator is continually assessing the need for continued physical restraint and the facilities ability to continue to meet the consumer's needs or if assistance from an outside agency may be warranted.

New Section 59010.2, Subd (f)(2)

This regulatory action would add new section 59010.2 subdivision (f)(2) to specify that physical restraint used in excess of 60 consecutive minutes to be applicable to adults and children pursuant to title 22, section 84322 must be approved, every 30 minutes, in writing by the Administrator.

New Section 59010.2, Subd (f)(3)

This regulatory action would add new section 59010.2 subdivision (f)(3) to specify that the consumer's authorized representative must be notified, and if the consumer is a child, the child's authorized representative must approve when physical restraint are used in excess of 60 consecutive minutes. This requirement is necessary to ensure the consumer's authorized representative is aware of incident of physical restraint that had extended duration and remain consistent with title 22, section 84322(f)(2)E.

New Section 59010.2, Subd (g)

This regulatory action would add new section 59010.2 subdivision (g) to specify that if a physical restraint exceeds two (2) hours, the consumer must be allowed to access liquids, meals and toileting and range of motion exercises at regular intervals not exceeding two (2) hours. This requirement is necessary to ensure the consumer is able to remain comfortable in physical restraint, decrease risk of injury from the physical restraint, and remain consistent with title 22, section 84322(f)(2)(H).

New Section 59010.2, Subd (h)

This regulatory action would add new section 59010.2 subdivision (h) to specify that physical restraint must not exceed four (4) cumulative hours in a 24-hour period. This requirement is necessary to reduce risk of injury from physical restraint, avoid excessive use of physical restraint, and is applicable to adults and children, consistent with title 22, section 84322(f)(2)(G).

#### New Section 59010.2, Subd (h)(1)

This regulatory action would add new section 59010.2 subdivision (h)(1) to specify that the facility must inform the consumer's authorized representative and contact community emergency services to determine whether or not the consumer should be removed from the facility. This requirement is necessary the consumer's authorized representative is aware of the duration of physical restraint and appropriate professionals assess individuals who may require a higher level of care when physical restraint is required for an extended duration.

#### New Section 59010.2, Subd (i)

This regulatory action would add new section 59010.2 subdivision (i) to specify that within 48 hours of a physical restraint of 60 cumulative minutes or longer that occurred in a 24-hour period, the consumer's needs and services plan must be reviewed by the Individual Behavior Supports Team and modified as needed. This requirement is necessary to ensure the Individual Behavior Supports Team evaluates the use of physical restraint lasting longer than 60 minutes revises the needs and services plan as needed to include interventions and strategies likely to reduce the need for physical restraint.

#### New Section 59010.3

This regulatory action would add new section 59010.3 entitled Assessment of Potential Physical Injury After Each Use of Physical Restraint and subsections (a)-(c). The new section would specify the details for assessment of potential physical injury after each use of physical restraint. It is necessary to specify and clarify the specific details for assessing and individual after the use of physical restraint so that Community Crisis Home providers understand what is required for the health and safety of the consumers.

#### New Section 59010.3, Subd (a)

This regulatory action would add new section 59010.3 subdivision (a) to specify what is required within 30 minutes after termination of each use of physical restraint. This requirement is necessary to specify and clarify the need for timely assessment of the consumer's physical and psychological needs and well-being following the use of physical restraint.

#### New Section 59010.3, Subd (a)(1)

This regulatory action would add new section 59010.3 subdivision (a)(1). The regulatory action would specify that the Administrator or Administrator's designee shall assess in-person the consumer's immediate needs and physical well-being the details for assessment of potential physical injury after each use of physical restraint. It is necessary to specify and clarify the specific details for assessing and individual after the use of physical restraint so that Community Crisis Home providers understand what is required for the consumer's health and safety.

New Section 59010.3, Subd (a)(1)(A)

This regulatory action would add new section 59010.3 subdivision (a)(2). The regulatory action to specify that an assessment by a qualified medical professional is required if there is physical injury or suspected physical injury. This requirement is necessary to ensure adequate and timely medical care is provided in the event there is injury or suspected injury following the use of physical restraint.

New Section 59010.3, Subd (a)(2)

This regulatory action would add new section 59010.3 subdivision (a)(3). The regulatory action to specify that the Administrator or Administrator's designee shall assess in-person the consumer's psychological well-being and the need for emotional support. This requirement is necessary ensure a timely and adequate assessment of the consumers mental and emotional needs from a trauma-informed perspective.

New Section 59010.3, Subd (a)(2)(A)

This regulatory action would add new section 59010.3 subdivision (a)(4). The regulatory action to specify that if there is psychological trauma or suspected psychological trauma, they shall be treated for trauma. This requirement is necessary to ensure utilization of trauma-informed care for individual with psychological or suspected psychological trauma sustained as a result of the use of physical restraint.

New Section 59010.3, Subd (b)

This regulatory action would add new section 59010.3 subdivision (b). The regulatory action to specify the requirements within 4 hours after each use of physical restraint. This requirement is necessary to ensure timely documentation and staff assessment requirements following the use of physical restraint.

New Section 59010.3, Subd (b)(1)

This regulatory action would add new section 59010.3 subdivision (b)(1). The regulatory action to specify that if medical attention is sought, it must be documented in the consumer's record, and reported to the Department within 4 hours after each use of physical restraint. This requirement is necessary to ensure there is an accurate recording of the facts related to medical attention sought following the use of physical restraint.

New Section 59010.3, Subd (b)(2)

This regulatory action would add new section 59010.3 subdivision (b)(2). The regulatory action to specify that the Administrator or Administrator's designee shall assess the physical and psychological well-being of the staff involved in the physical restraint as well as of anyone who observed the physical restraint and provide support as needed. This requirement is necessary to ensure timely and adequate assessment of the physical and psychological well-being of staff involved in physical restraint and identified needs are addressed using trauma-informed care.

#### New Section 59010.3, Subd (c)

This regulatory action would add new section 59010.3 subdivision (c). The regulatory action specifies that if suspected physical injury or a complaint of physical injury are reported to or witnessed by staff during or after the physical restraint, it must be reported to the Community Crisis Home Administrator or Administrator's designee immediately. In this case, a written incident report must be submitted to the Department of Social Services and the regional center as specified by (title 22, § 80061). The regional center then submits the report to the Department. Suspected physical injury is also to be reported immediately to a qualified medical professional for examination. These requirements are necessary to ensure timely and adequate notification of injury or suspected injury are made to the administrator and documented to remain consistent with title 22, section 80061.

#### New Section 59010.4

This regulatory action would add new section 59010.4 entitled Debriefing After the Use of Physical Restraint and subsections (a)-(f). This section will specify the debriefing requirements after the use of physical restraint and is necessary to ensure there is adequate assessment of the events leading to the use of physical restraint and alternative methods that can be used to prevent the use of physical restraint in the future.

#### New Section 59010.4, Subd (a)

This regulatory action would add new section 59010.4 subdivision (a). The regulatory action specifies that a facility must conduct a debriefing as quickly as possible but no later than 24 hours following every incident involving the use of physical restraint. This requirement is necessary to ensure timely review and documentation of the facts related to the use of physical restraint occurs as closely to the event as possible.

#### New Section 59010.4, Subd (b)(1)

This regulatory action would add new section 59010.4 subdivisions (b)(1). This regulatory action specifies the consumer who was physically restrained must attend the debriefing, unless the consumer voluntarily declines.. It is necessary to have the consumer as an attendee because the consumer was directly involved in the incident and will need to be involved for the future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of debriefing activities.

#### New Section 59010.4, Subd (b)(2)

This regulatory action would add new section 59010.4 subdivisions (b)(2). This regulatory action specifies the authorized consumer representative must attend the debriefing if applicable. It is necessary to have the authorized consumer representative as an attendee if applicable because the authorized consumer representative will need to be involved for the future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of debriefing activities.

New Section 59010.4, Subd (b)(3)

This regulatory action would add new section 59010.4 subdivisions (b)(3). This regulatory action specifies the staff involved in the incident must attend the debriefing. It is necessary to have the staff involved in the incident as attendees because they were directly involved in the incident and will need to be involved for the future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of debriefing activities.

New Section 59010.4, Subd (b)(4)

This regulatory action would add new section 59010.4 subdivisions (b)(4). This regulatory action specifies the Administrator or Administrator's designee must attend the debriefing. It is necessary to have the Administrator or Administrator's designee as an attendee because the Administrator or Administrator's designee will need to be involved for the future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of debriefing activities.

New Section 59010.4, Subd (b)(5)

This regulatory action would add new section 59010.4 subdivisions (b)(5). This regulatory action specifies that the facility's Qualified Behavior Modification Professional must attend the debriefing. It is necessary to have the facility's Qualified Behavior Modification Professional as an attendee because the facility's Qualified Behavior Modification Professional will need to be involved for the future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of debriefing activities.

New Section 59010.4, Subd (c)

This regulatory action would add new section 59010.4 subdivision (c). The regulatory action specifies that the debriefing may also include individuals requested by the consumer. This requirement is necessary as the consumer may request the presence of other individuals who may provide additional support or comfort to them during debriefing activities.

New Section 59010.4, Subd (d)(1)

This regulatory action would add new section 59010.4 subdivision (d)(1). The regulatory action specifies that the debriefing must include assisting the consumer with identifying the precipitant of the incident and suggest methods of more safely and constructively responding to the incident. This requirement is necessary to help the consumer identify triggers or setting events that may have been a precipitant to the incident and review other ways they might respond in the future in similar circumstances that might deescalate the situation and reduce the likelihood of future physical restraint.

New Section 59010.4, Subd (d)(2)

This regulatory action would add new section 59010.4 subdivision (d)(2). The regulatory action specifies that the debriefing must include assisting the staff in understanding the precipitants to the incident, and to develop alternative methods of helping the consumer avoid or cope with those incidents. This requirement is necessary to help the staff

involved in the incident identify triggers or setting events that may have been a precipitant to the incident including ways in which they could assist the consumer with engaging in alternative behaviors that will reduce further escalation and the likelihood of future use of physical restraint.

New Section 59010.4, Subd (d)(3)

This regulatory action would add new section 59010.4 subdivision (d)(3). The regulatory action specifies that the debriefing must include identifying what led to the incident and what factors contributed to the incident leading to the use of physical restraint. This requirement is necessary to review precipitating factors leading to the use of physical restraint and assess the fidelity of implementation with the Individual Behavior Supports Plan. This helps the team identify if there was a breakdown in implementation or if modifications to the plan are necessary.

New Section 59010.4, Subd (d)(4)

This regulatory action would add new section 59010.4 subdivision (d)(4). The regulatory action specifies that the debriefing must include assessing alternative methods of responding to the incident that may have avoided the use of physical restraint. This requirement is necessary to identify possible alternative methods of responding to the incident that may avoid use of physical restraint that could be included in the review of Individual Behavior Supports Plan and Individualized Emergency Intervention Plan.

New Section 59010.4, Subd (d)(5)

This regulatory action would add new section 59010.4 subdivision (d)(5). The regulatory action specifies that the debriefing must include evaluating whether staff used emergency interventions consistent with the facility Emergency Intervention Plan, the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan, and staff training. This requirement is necessary to ensure evaluation of staff fidelity of implementation of the facility and Individual Emergency Intervention Plans is conducted to identify possible needs for staff training or modification of the plan.

New Section 59010.4, Subd (d)(6)

This regulatory action would add new section 59010.4 subdivision (d)(6). The regulatory action specifies that the debriefing must include devising treatment interventions to address the root cause of the incident, its consequences, and modify the treatment plan accordingly. This requirement is necessary to address the root cause incident and its consequences to better understand the cause of the incident and use this information to lead to modifications in the Individual Behavior Supports Plan or Individualized Emergency Intervention Plan.

New Section 59010.4, Subd (d)(7)

This regulatory action would add new section 59010.4 subdivision (d)(7). The regulatory action specifies that the debriefing must include evaluating whether the consumer was in a physical restraint for the least amount of time necessary. This requirement is necessary to address the duration of physical restraint and ways to reduce time in physical restraint.

New Section 59010.4, Subd (d)(8)

This regulatory action would add new section 59010.4 subdivision (d)(8). The regulatory action specifies that the debriefing must include evaluating the effectiveness of less restrictive de-escalation strategies that were attempted and if they were not effective or were counterproductive that they are discontinued. This requirement is necessary to ensure staff attempted to utilize de-escalation techniques and fidelity of implementation is evaluated, which may lead to modification if the Individual Behavior Supports Plan.

New Section 59010.4, Subd (d)(9)

This regulatory action would add new section 59010.4 subdivision (d)(9). The regulatory action specifies that the debriefing must include determining whether their physical and psychological well-being and right to privacy were addressed appropriately. This requirement is necessary to ensure evaluation of staff meeting the physical and psychological needs of the consumer during the incident and potential need for additional training and/or modification of the Individual Behavior Supports Plan.

New Section 59010.4, Subd (d)(10)

This regulatory action would add new section 59010.4 subdivision (d)(10). The regulatory action specifies that the debriefing must include considering treatment for any trauma that may have been experienced by the consumer as a result of the incident. This requirement is necessary to utilize trauma-informed care in the debriefing and identify any trauma-informed treatments or plans needed, if indicated.

New Section 59010.4, Subd (d)(11)

This regulatory action would add new section 59010.4 subdivision (d)(11). The regulatory action specifies that the debriefing must include identifying alternative ways of helping the consumer avoid or cope with difficult situations such as those that led to the use of physical restraint. This requirement is necessary to ensure adequate identification and evaluation of functionally equivalent replacement behaviors detailed in the Individual Behavior Supports Plan and inform modifications needed.

New Section 59010.4, Subd (d)(12)

This regulatory action would add new section 59010.4 subdivision (d)(12). The regulatory action specifies that the debriefing must include identifying the need to do a new Functional Behavior Assessment, revise or refine the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan, retrain staff, and/or investigate medical variables. This requirement is necessary as debriefing activities may identify the need for further assessment, modification of the current plans, or additional staff training. This requires the debriefing team to identify and ensure performance of these tasks.

New Section 59010.4, Subd (e)

This regulatory action would add new section 59010.4 subdivision (e). The regulatory action specifies the documentation requirements for the debriefing meeting. This requirement is necessary to include required elements in the documentation of the debriefing.



New Section 59010.4, Subd (e)(1)

This regulatory action would add new section 59010.4 subdivision (e)(1). The regulatory action specifies that the debriefing must document the findings of the activities in subsection (d)(1)-(12). This requirement is necessary to ensure required components of the debriefing noted in subsection 59010.4 (d)(1)-(12) are documented.

New Section 59010.4, Subd (e)(2)

This regulatory action would add new section 59010.4 subdivision (e)(2). The regulatory action specifies that the debriefing must document any revisions needed to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan to better serve the consumer. This requirement is necessary to identify steps in the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that could be utilized to avoid the future use of physical restraint.

New Section 59010.4, Subd (e)(3)

This regulatory action would add new section 59010.4 subdivision (e)(3). The regulatory action specifies that the debriefing must document if the consumer refuses to participate in the debriefing activities. This requirement is necessary to document the consumer's choice to decline to attend the debriefing to verify that the choice to attend was offered.

New Section 59010.4, Subd (e)(4)

This regulatory action would add new section 59010.4 subdivision (e)(4). The regulatory action specifies that the debriefing must document the physical and psychological well-being anyone who observed the physical restraint. This requirement is necessary to identify and address the physical and psychological impact on any individual who observed the physical restraint.

New Section 59010.4, Subd (e)(5)

This regulatory action would add new section 59010.4 subdivision (e)(5). The regulatory action specifies that the debriefing must document evidence that less restrictive, nonphysical strategies were attempted first and without success. This requirement is necessary to document that less restrictive measures were attempted and to identify steps in the Individual Behavior Support Plan that was ineffective and may require modifications to the Individual Behavior Support Plan.

New Section 59010.4, Subd (f)

This regulatory action would add new section 59010.4 subdivision (f). The regulatory action specifies that in addition to a review of each incident of physical restraint, if physical restraint is used on more than three occasions within a three-month period and/or the recurrence of the dangerous behavior can be anticipated, the Individual Behavior Supports Team shall meet and discuss the consumer's Individual Behavior Supports Plan, ongoing support and transition needs, and alternatives to physical restraint. This requirement is necessary to ensure multiple uses of physical restraint and any dangerous behavior, such as harm to self and others, is reviewed by the Individual Behavior Supports Team to develop plans to avoid multiple use of physical restraint and dangerous behaviors.

## New Section 59010.5

This regulatory action would add new section 59010.5 entitled Restraint Data Reporting. This regulatory action specifies the requirements for reporting data on a monthly basis to the Department of Developmental Services when behavioral restraint or involuntary medication were used to control behavior. This information is necessary to establish a system of consistent and timely data collection regarding the use of restraint.

### **Incorporation by Reference**

The following documents are incorporated by reference in the regulation:

- DS 6023 Rate Development - Facility Costs, Rev 5/2020; and
- DS 6024 Rate Development - Individual Costs Associated with Residency, Rev. 5/2020.

### Necessity and rationale of changes:

It is necessary to incorporate the DS 6023 and DS 6024 by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations. Furthermore, because these forms are electronic and auto-populate when data is entered, it is unduly burdensome and otherwise impractical for the Department to publish these forms in the regulation text.

Moving “Snacks/Food” costs from the DS 6024 to the DS 6023 and removing “Combined Utilities – Additional” from the DS 6024 are necessary for DDS’ purposes in accurately billing eligible facility costs for federal reimbursement through federal programs, the Home and Community-Based Services Waiver and 1915i State Plan Amendment. Room and board costs (which includes snacks/food and utilities) are categorized as facility costs per federal definition. Additionally, these costs are not eligible for reimbursement through these federal programs. To comply with these requirements, DDS’ billing system adjusts out room and board costs as part of the process of billing for federal reimbursement for facility costs. Making these changes to the DS 6023 and DS 6024 allows DDS to identify and adjust for facility costs not eligible for federal reimbursement consistent with federal programs requirements.

The change from “Additional” to “Individual” on the field titled “Other Costs: Repairs and Maintenance” on the DS 6024 is needed to clarify that the repairs/maintenance were for costs associated specifically for that resident and therefore, would not apply to the other residents of the facility.

The addition of “(e.g. cell phone, individual utilities)” to “Other Costs: Describe in Notes” on the DS 6024 is needed to provide examples of the types of costs that should be captured here because there were instances where costs were being reported in this field that would more appropriately reported in one of the other existing fields.

The incorporated forms are also available on the Department web site at <https://www.dds.ca.gov/transparency/dds-forms/> or upon request to the Department via emailing to: [RegulationsMailing@dds.ca.gov](mailto:RegulationsMailing@dds.ca.gov).

## **Authority and Reference Citations**

The Department is proposing to amend emergency regulations in sections 59000, 59002, 59006, 59007, 59008, 59009, 59010, 59012, 59022 and 59072, and adopt new regulations in sections 59009.5, 59010.1, 59010.2, 59010.3, 59010.4, and 59010.5, title 17, California Code of Regulations under the authority provided in sections 4698, 4698.1, 4684.81, and 4684.86 of the Welfare and Institutions Code and section 1180.2 of the Health and Safety Code. The emergency regulations implement, interpret, and make specific sections 4648, 4695.2, 4698, 4698.1, 4684.81, and 4684.86 of the Welfare and Institutions Code, and sections 1180.1, 1180.4, and 1567.81 of the Health and Safety Code.

## **Benefits:**

Adoption of these proposed emergency regulations is required as a condition of the development of licensed residential facilities authorized by SB 81.

## **Determinations**

*Substantial Difference from Existing Comparable Federal Regulations or Statute:*  
None.

*Incompatibility with Existing Laws and Regulations:*

The amendments are neither inconsistent nor incompatible with existing state laws and regulations.

## **Mandate on local agencies or school districts:**

The Department has determined that the amended regulations would not impose a mandate on any local agency or school district that requires reimbursement by the State under Government Code, division 4, part 7 (commencing with section 17500).

## **Fiscal Impacts:**

*Costs to any local agency or school district that requires reimbursement pursuant to part 7, commencing with Section 17500, of Division 4 of the Government Code:*

The Department anticipates no fiscal impact to local agencies or school districts.

*Costs or savings to any State agency:*

The Department anticipates no additional costs, apart from the costs associated with the implementation and operation of the Children's CCH program, which are included in the annual Budget. The Department estimates a savings of state government in the current State Fiscal Year of \$395,000 to \$900,000.

*Other non-discretionary costs or savings imposed on local agencies:*

The Department has determined that the proposed regulations would not create costs or savings or other nondiscretionary cost or savings to State or local agencies.

*Costs or savings in federal funding to the State:*

The Department has determined that the proposed regulations would not create costs in federal funding to the State. The Department estimates a savings on federal funding of state programs in the current State Fiscal Year of approximately \$197,500 to \$450,000.

*Costs or savings to individuals or businesses:*

The Department is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed regulations.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department has determined that no reasonable alternative which it will consider or that will otherwise be identified and brought to its attention will be more effective in carrying out the purpose for which this action is proposed or will be as effective and less burdensome to affect private persons than the proposed action described in this Notice.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

## **CONSULTATION REQUIREMENT**

Pursuant to WIC sections 4684.86 and 4698.1, emergency regulations shall be developed in consultation with system stakeholders. The Department held two workshop meetings with stakeholders on December 3, 2019, in San Diego and on December 5, 2019, in Sacramento. Both workshops allowed the focused discussion of any proposed amendments to the Community Crisis Home regulations to allow for services to children.

## **AVAILABILITY OF FINDING OF EMERGENCY, TEXT OF PROPOSED EMERGENCY REGULATIONS, AND RULEMAKING FILE**

A copy of the exact language of the proposed emergency regulations including the incorporated documents and this Notice and Finding of Emergency may be viewed and downloaded from the Department's web site at [www.dds.ca.gov](http://www.dds.ca.gov).