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August 30, 2022

Amy Whiting, Staff Counsel
Legislation, Regulations and Public Affairs
Department of Developmental Services
1215 O Street
Sacramento, CA 95814

Re: Community Crisis Homes and Enhanced Behavioral Support Homes - Proposed Regulations Notice File Number: Z2022-0524-07 (15-Day Comment Period)

Dear Ms. Whiting:

Disability Rights California (DRC) submits these comments in response to the proposed regulations related to Community Crisis Homes and Enhanced Behavioral Support Homes, as modified on August 15, 2022. These comments will supplement our July 18, 2022 submission and only address the modified text.

DRC is California's protection and advocacy agency and the nation's largest non-profit disability rights law firm, mandated under state and federal law to protect and advance the rights of people with disabilities. 42 U.S.C. § 15001 et seq., 29 U.S.C. § 794e et seq.; 42 U.S.C. § 10801 et seq., Welf. & Inst. Code §4900 et seq. Our work includes advocating for the rights of people with disabilities to live in inclusive, integrated settings and investigating the use of abusive practices such as the inappropriate or excessive use of restraints. Disability Rights California contracts with the Department of Developmental Services (DDS) to provide clients' rights advocacy services to over 400,000 individuals served by regional centers, including children and adults placed in Community Crisis Homes and Enhanced Behavioral Support Homes.

We appreciate DDS's efforts to address some of DRC's previous comments underscoring the need for additional safeguards to reduce the risk of dangerous outcomes when restraints are used and to ensure that people served have the ability to meaningfully participate in the debriefing process.

Below is a summary of the modified text and our additional recommendations.

- *Modified Text:* Prohibited emergency interventions now includes any “physical restraint or containment technique that obstructs a person’s respiratory airway or impairs the person’s breathing or respiratory capacity.” 17 CCR §§ 59010.1; 59060.1.

Recommendation: For clarity, include a non-exhaustive list of techniques that are prohibited under this new provision. These techniques could include, but not be limited to, supine restraints where a staff member places their body weight against a person’s torso.

- *Modified Text:* The maximum consecutive time physical restraints can be used is now 30 minutes; there are now additional protocols if a physical restraint is applied within two minutes of release. 17 CCR §§ 59010.2(e)-(f); 59060.2(e)-(f).

Recommendation: Reduce the maximum time restraints can be used from 30 consecutive minutes to 10 consecutive minutes. Because the regulations now outline a process for staff to reinitiate a physical restraint within two minutes of release, the use of restraints as an extended procedure should no longer be necessary. This recommendation is also supported by testimony at the public hearing from a Crisis Prevention Institute (CPI) trainer and Board Certified Behavioral Analyst, who stated that her trainings require staff to release the person after 10 minutes. See Testimony from Gilda Panales at 02:00:01.

- *Modified Text:* A second debriefing meeting must now be offered within 72 hours of a physical restraint if the person “voluntarily declined” to attend the first “24-hour” meeting. 17 CCR §§ 59010.4(g); 59060.4(g).

Recommendation: We appreciate that a person can now participate in a debriefing meeting within 72 hours of the restraint instead of 24 hours. However, we continue to recommend that if the person does not

want to or is unable to participate in the debriefing because they are experiencing trauma from the event, the facility should be required to make every effort to at least obtain the person's input in some alternative manner (e.g. in writing, by Zoom, or by a separate interview) before a refusal to participate can be considered truly voluntary.

Thank you for the opportunity to submit these comments. We also look forward to the discussing and addressing these and related issues as part of the updated safety net plan that DDS will be submitting to the Legislature by January 10, 2023.

If you have any questions or would like to further discuss, please reach out to William Leiner at william.leiner@disabilityrightsca.org or (510) 267-1237.