

NOTICE OF PROPOSED RULEMAKING

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

Licensed Residential Facilities – Secured Perimeters

The Department of Developmental Services (DDS) proposes to adopt the proposed regulations 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 October 28, 2013**. DDS will consider only comments received at DDS by that time.

CONTACT: Eric Gelber
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PUBLIC HEARING

DDS will hold a public hearing starting at 10:00 a.m. on October 28, 2013 at the following location:

1600 9th Street
Room 360
Sacramento, California

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

Following the public hearing, DDS may thereafter adopt the proposed regulations substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during

the public comment period, and all persons who request notification. Please address requests for regulations as modified to the department contact identified above.

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions Code section 4500 et seq., was enacted to reduce institutionalization of people with developmental disabilities and prevent their dislocation from their home communities. Under the Lanterman Act, people with developmental disabilities have a right to treatment and habilitation services and supports in the least restrictive environment. Toward this end, the Lanterman Act states that “[a]n array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.” With the reduced reliance on restrictive institutional and out-of-state placements, there is a need to increase community capacity and develop new alternatives, particularly for the most difficult-to-serve consumers, including those with challenging behaviors.

Assembly Bill (AB) 1472, Chapter 25, Statutes of 2012, the 2012-13 Budget trailer bill related to developmental services, included a number of measures intended to reduce reliance on institutional living arrangements for, and out-of-state placements of people with developmental disabilities who receive services and supports pursuant to the Lanterman Act but are difficult to serve in the community with available resources and living options.

Among the provisions enacted by AB 1472 were sections 1267.75 and 1531.15 of the Health and Safety (H&S) Code. H&S Code section 1267.75 authorizes specified intermediate care facilities for people with developmental disabilities to install and utilize delayed egress devices of the time delay type in combination with secured perimeters under prescribed conditions. H&S Code section 1531.15 authorizes specified residential community care facilities that are utilizing delayed egress devices of the time delay type pursuant to H&S Code section 1531.1 to install and utilize secured perimeters under similar prescribed conditions.

As required by AB 1472, H&S Code sections 1267.75(k) and 1531.15(k), DDS has promulgated emergency regulations, at Title 17 California Code of Regulations (CCR),

Division 2, Chapter 3, Subchapters 4 and 4.2 (effective June 13, 2013), establishing program standards for homes that include secured perimeters and delayed egress devices, including requirements and timelines for the completion and updating of a comprehensive assessment of each consumer's needs, including the identification through the IPP process of the services and supports needed to transition the consumer to a less restrictive living arrangement, and a timeline for identifying or developing those services and supports. The emergency regulations, as required by AB 1472, also establish a statewide limit on the total number of beds in homes utilizing both delayed egress devices and secured perimeters. As required by statute, the emergency regulations were developed in consultation with stakeholders, including the State Department of Social Services, the State Department of Public Health, consumer advocates, and regional centers. DDS is now undertaking the regular rulemaking process to make the emergency regulations permanent.

The statutory authorization for the limited use of secured perimeters in combination with delayed egress devices benefits individuals with developmental disabilities eligible for services under the Lanterman Act. It furthers the purpose and intent of the Lanterman Act by enabling individuals who would otherwise require placement in more restrictive, locked institutional settings to live in less restrictive, community-based living arrangements. The proposed regulations are intended to ensure that safeguards and procedures are in place consistent with the intent of the governing statutes and the Lanterman Act to protect individuals' rights with respect to procedures for admissions to, residence in, and transitions from residential facilities utilizing delayed egress devices and secured perimeters.

After conducting a search of any other regulations related to the use of delayed egress devices and secured perimeters in Group Homes, Adult Residential Facilities and Intermediate Care Facilities for people with developmental disabilities, we find that these are the only regulations dealing with this subject matter. Therefore, DDS finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 1472, as well as with the Lanterman Act and other existing state statutes and regulations.

DDS has made the following initial determinations:

LOCAL MANDATE STATEMENT

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

FISCAL IMPACT

Cost or savings to any state agency: None.

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

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

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

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

DDS has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulations govern program requirements for the use of delayed egress devices and secured perimeters only by licensed residential care providers, serving no more than 100 individuals statewide, that choose to utilize such measures.

SMALL BUSINESS IMPACT STATEMENT

DDS has determined that there is no impact on small business as a result of filing of these regulations because the regulations only govern program requirements for licensed residential care providers that choose to utilize delayed egress devices and secured perimeters.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The proposed regulations are a continuation of the current emergency regulations. The authorizing statutes permit but do not require a limited number of specified residential service providers to install secured perimeters around adult residential facilities and group homes utilizing delayed egress devices, and to install delayed egress devices and secured perimeters in and around specified intermediate care facilities. The adoption of the proposed amendments will neither create or eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California. These regulations will improve the health and welfare of California residents by filling an unmet need and enabling the development of previously unavailable community living alternatives for among the most difficult-to-serve consumers. AB 1472 and the proposed regulations benefit the general welfare of people with developmental disabilities by furthering the intent of the Lanterman Act—as well as the federal Americans with Disabilities Act—to support their integration into the community.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

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

In developing the regulatory action, DDS did not consider any other alternatives than the one directed by statute because there were no other alternatives proposed.

AUTHORITY AND REFERENCE

Authority: Health & Safety Code sections 1267.75 and 1531.15.

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CONTACT PERSON REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATIONS

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| Contact Person: | Eric Gelber | (916) 654-1844 |
| Backup: | Diana Nicolaou | (916) 654-1760 |