

**State of California
Department of Developmental Services**

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

**Amendments to the Regulations for Community Crisis Homes and
Enhanced Behavioral Supports Homes**

GENERAL

On June 3, 2022, the Department of Developmental Services (Department or DDS) released to the public for comment the Notice of Proposed Rulemaking and Public Comment Period for Proposed Amendments to the Children's Community Crisis Homes (CCH) and Enhanced Behavior Supports Homes (EBSH), the Initial Statement of Reasons for Rulemaking (ISOR), which is incorporated by reference herein and contained a description of the rationale for proposed amendments to the regulations, and the Proposed Regulation Text.

On July 18, 2022, the Department conducted a public hearing to consider amendments to the CCH and EBSH regulations, after receiving a request for a public hearing.

On August 15, 2022, the Department released a Notice of Public Availability of Modified Text and Availability of Additional Documents and Information added to the Rulemaking Record (First 15-Day Notice), Modifications to the original proposed regulations (First 15-Day Text), and Additional Documents and Information (References) for the proposed amendments to the CCH and EBSH regulations for a 15-day public comment period. The First 15-Day Notice, First 15-Day Modified Text, and References were made available for public comment from August 15, 2022, through August 30, 2022.

On November 30, 2022, the Department withdrew the final regulation package in response to feedback from the Office of Administrative Law. On April 14, 2023, the Department released for a Second 15-Day comment period and public review the Second 15-Day Notice of Public Availability of Modified Text (Second 15-Day Notice), Second 15-Day Modified Text, and Addendum to the Initial Statement of Reasons (ISOR)(Addendum) to be added to the CCH/EBSH File. The Second 15-Day Notice, Second 15-Day Modified Text, and Addendum were made available for public comment from April 14, 2023, through April 29, 2023.

This Final Statement of Reasons (FSOR) for Rulemaking summarizes the written and oral comments received during the rulemaking process and contains the Department's responses to those comments.

MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS

Under Government Code Section 11346.5(a)(5), The Department has determined that the amendments to the regulations do not impose a mandate on any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with Section 17500), Division 4, Title 2 of the Government Code.

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

STATEMENT OF ALTERNATIVES CONSIDERED

During the written comment period, DDS invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. The alternatives evaluated by DDS are discussed in the “Summary of Comments and Agency Response” section of this document. As required by Government Code Section 11346.9(a)(4), DDS reviewed all comments received and has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of DDS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the action taken by DDS.

FIRST 15-DAY MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

On August 15, 2022, the Department released the First 15-Day Notice of Public Availability of Modified Text and Availability of Additional Documents, and Information Added to the Rulemaking File for Proposed Amendments to the Regulations for CCH and EBSH, First 15-Day Modified Text, and a list of references added to the rulemaking record for the interest of completeness and to address feedback received from stakeholders during the 45-day comment period and at the July 18, 2022, public hearing. Furthermore, in the interest of completeness, the Department added references to the record to support the regulations and rulemaking file.

PURPOSE AND RATIONALE FOR THE FIRST 15-DAY MODIFIED TEXT

The following is the purpose and rationale for the changes that were made to the originally proposed text and made available to the public for a 15-day comment period.

Section 59004(c)

This amendment adds requirements for the licensee to ensure that all administrators receive hands-on training in first aid and cardiopulmonary resuscitation by a certified instructor, in addition to the training required by Section 59007(a) and (b). This amendment adds a new provision to clarify that the licensee must ensure administrators acquire the specified training and is necessary for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59004(c)(1)

This amendment adds a requirement for the licensee to ensure that all administrators maintain current certifications in first aid and cardiopulmonary resuscitation. The new provision is necessary to specify the requirement that administrators must maintain current certification requirements for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent changes were made to this subsection and moved this provision to new Subsection (d). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59004(c)(2)

This amendment adds a requirement for the licensee to maintain the certifications in the facility personnel records. The new provision is necessary to clarify and add specificity that the licensee is required to maintain certifications in the facility's personnel records for oversight agencies to provide adequate monitoring and oversight of the facilities.

Subsequent nonsubstantive changes were made to this subsection and moved this provision to new Subsection (f). The changes are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59004(c)(3)

This amendment adds a requirement that cardiopulmonary resuscitation (CPR) certification must be renewed annually. The new provision is necessary to ensure that the skills and knowledge in CPR are retained. According to the American Red Cross Scientific Advisory Council, CPR skill retention declines within a few months of initial training and continues to decline as time goes by. In addition,

the council found that less than half of course participants can pass a skills test one year after training. This means that just one year into a two-year CPR certification, the certified personnel may not recall how to help when it is needed most. This requirement is for the health, protection, safety, and well-being of staff and consumers.

Subsequent changes were made to this subsection which moved this provision to new Subsection (e). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59005(c)

This amendment adds a requirement for the licensee to ensure that prior to providing direct consumer care, that all direct care staff receive hands-on training in first aid and cardiopulmonary resuscitation by a certified instructor in addition to the training required by Section 59007(a) and (b). The new provision is necessary to clarify that it is the licensee's responsibility to ensure that prior to any direct consumer care by direct care staff, that direct care staff acquire the specified training for direct consumer care for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59005(c)(1)

This amendment adds a requirement for the licensee to ensure that all direct care staff maintain current certifications in first aid and cardiopulmonary resuscitation. The new provision is necessary to specify the requirement that direct care staff must maintain current certification requirements for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent nonsubstantive changes were made to this subsection which moved this provision to new Subsection (d). The changes are reflected in the Second 15-Day Modified text released to the public on April 14, 2023.

Section 59005(c)(2)

This amendment adds a requirement for the licensee to maintain the certifications in the facility personnel records. The new provision is necessary to clarify and add specificity that the licensee is required to maintain certifications in the facility's personnel records for oversight agencies to provide adequate monitoring and oversight of the facilities.

Subsequent nonsubstantive changes were made to this subsection which moved this provision to new Subsection (f). The changes are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59005(c)(3)

This amendment adds a requirement that cardiopulmonary resuscitation (CPR) certification must be renewed annually. The new provision is necessary to ensure that the skills and knowledge in CPR are retained. According to the American Red Cross Scientific Advisory Council, CPR skill retention declines within a few months of initial training and continues to decline as time goes by. In addition, the council found that less than half of course participants can pass a skills test one year after training. This means that just one year into a two-year CPR certification, the certified personnel may not recall how to help when it is needed most. This requirement is for the health, protection, safety, and well-being of staff and consumers.

Subsequent nonsubstantive changes were made to this subsection which moved this provision to new Subsection (e). The changes are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59007(b)

This amendment adds a requirement for the intervention training to be conducted by a qualified instructor. The modifications to the originally proposed text are necessary to ensure that the instructor is qualified in emergency intervention techniques for the health, protection, safety, and well-being of staff and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59007(f)

This amendment adds a requirement for licensees to ensure direct care staff who use, participate in, approve, or provide visual checks of physical restraint only use techniques specified in the Emergency Intervention Plan and which are not prohibited in Section 59010.1. The new provision is necessary to clarify the staff training requirements for the implementation of emergency intervention techniques by the licensee which will be used by direct care staff with each specific consumer to diffuse and safely resolve emerging crisis situations and strategies and to minimize time spent in behavioral restraints. This requirement is necessary so that consumers who are in 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 59007(g)

This amendment adds staff training requirements for direct care staff who use, participate in, approve, or provide visual checks of physical restraint shall have a minimum of sixteen hours of emergency intervention training, including, for group home direct care staff, training on the emergency intervention requirements of Title 17, California Code of Regulations (CCR), Sections 59010.1 – 59010.5, and be certified for having successfully completed the training. The new provision is necessary to provide a clear understanding of the direct care staff emergency intervention training requirements which aligns and is consistent with the Department of Social Services regulations set forth in Title 22. The clarification and specificity will ensure the staff caring for consumers are prepared in the event of an emergency or crisis and for the health, protection, safety, and well-being of themselves and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59007(g)(1)

This amendment adds a training requirement consistent with the Department of Social Services regulations set forth in Title 22, that direct care staff who use, participate in, approve, or provide visual checks of physical restraints shall be trained in the physical technique utilized. The new provision is necessary to clarify and add specificity to staff training requirements to ensure the staff caring for consumers are prepared in the event of an emergency or crisis and for the health, protection, safety, and well-being of themselves and consumers.

Section 59007(g)(2)

This amendment adds a new requirement for direct care staff to maintain valid certification of their trainings. The modification to the originally proposed text is necessary to clarify and add specificity to staff training requirements to ensure the staff caring for consumers maintain their training certifications and are well trained and prepared in the event of an emergency or crisis and for the health, protection, safety, and well-being of themselves and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59008(g)

This amendment adds requirements for the emergency intervention refresher staff training to be conducted by a qualified instructor, pursuant to the

Department of Social Services regulations set forth in Title 22, Section 85165(c). The amendment is necessary to ensure that the instructor is qualified to provide the monthly emergency intervention refresher staff training for the health, protection, safety, and well-being of staff and consumers.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010(d)(11)(A)2.

This amendment adds the requirement that at it is the administrator's responsibility, not the facility's, to ensure corrections to the Individual Behavior Supports Plan, including the Individualized Emergency Intervention Plan, are made by the Qualified Behavior Modification Professional with input from the Individual Behavior Supports Team. The amendment is necessary to ensure will ensure that the administrator is responsible for ensuring the corrections to the Individual Behavior Supports Plan, including the Individualized Emergency Intervention Plan, when the need for revision is determined by the regional center or Department to ensure the revisions are appropriate for each consumer based on their health, individual needs and historical information as required by Health and Safety Code (H&SC), Section 1180.4, and for the health, protection, safety, and well-being of staff and the consumer.

Subsequent changes were made to this subsection and moved this provision to new Subsection(f). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.1(b)

This amendment adds an additional prohibited emergency intervention that any physical restraint or containment technique that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity pursuant to H&SC, Section 1180.4(c)(1). The modification to the originally proposed text addresses a public comment received during the 45-day public comment period and emphasizes the requirement in H&SC, Section 1180.4(c)(1). The modification is necessary to provide clarity and specify a physical restraint or containment technique that is prohibited as an emergency intervention for the health, protection, safety, and well-being of staff and the consumer.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(a)

This amendment adds the term “physical” to specify the type of restraint. The modification to the originally proposed text is necessary to provide clarity that the type of restraint being used is understood to be “physical” restraint, as defined in Section 59000(a)(33).

Section 59010.2(c)(1)

This amendment rearranges the originally proposed regulation in order to provide clarity for the time limits for the use of physical restraint. The requirement to add “the consumer in a physical restraint must be visually checked to ensure the consumer is not injured, that consumer’s personal needs, such as access to toilet facilities, are being met” was originally added as Subsection (c)(2) but has been moved up to new Subsection (c)(1). The modification to the originally proposed text’s reorganization and clean-up is necessary to ensure the language is clear for the health and safety of the consumer and to align and provide consistency with H&SC, Section 1180.4, and the Department of Social Services regulations set forth in Title 22, CCR, Section 85122. The requirement is necessary because it was determined to be the best practice after collaboration with the appropriate professionals and the protection and advocacy agency as described in Welfare and Institutions (W&I) Code, Section 4900(i) regarding the use of restraint or containment in community crisis homes, and for the protection of clients’ rights pursuant to W&I Code, Section 4698 (d).

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(c)(1)(A)

This amendment adds that staff who use, participate in, approve, or provide visual checks of physical restraints shall be trained in the physical restraint technique utilized. The modification to the originally proposed text is necessary to ensure that staff who use, participate in, approve, or provide visual checks of physical restraints shall be trained in the physical restraint technique utilized as required by Section 59007 for the health and safety of the consumer.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(c)(1)(B)

This amendment reorganizes the originally proposed text “visual checks must be documented in the consumer’s file at the time of each visual check,” and

moved it from Subsection (e)(1) up to new Subsection (c)(1)(B) to clarify the requirements to continue the use of physical restraint beyond 15 minutes. The modification to the originally proposed text is necessary to clarify the requirements of the person conducting the visual check can verify that the visual observation and assessment occurs every 15 minutes to ensure the protection, safety, and health of the consumer. It is also necessary to document immediately at the time of the visual check to ensure there is an accurate recording of the facts. Documentation is vital to provide a safe environment and helps provide historical information necessary for both planning and accountability. The time factor to visually observe every 15 minutes is consistent with the Department of Social Services regulations, Title 22, CCR, Section 84322(f)(2)(A), which have proven to be successful.

Section 59010.2(c)(1)(C)

This amendment reorganizes the originally proposed text “the person conducting the check must not be the individual who restrained the consumer,” and moved it from Subsection (e)(2) to (c)(1)(C) to clarify the requirements to continue the use of physical restraint beyond 15 minutes. The modification to the originally proposed text is necessary to clarify the requirements of the person conducting the visual check so that they can objectively and 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 consumer’s requests for assistance or repositioning. The regulation aligns and is consistent with the Department of Social Services regulations, Title 22, CCR, Section 84322(f)(2)(C)2., which have proven to be successful.

Subsequent nonsubstantive changes were made in this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(c)(2)

This amendment reorganizes the originally proposed language and renumbers the former Subsection (c)(1) to Subsection (c)(2), and the language in (c)(2) was moved up to (C)(1). The modification to originally proposed language is necessary to ensure the correct numerical order for the new provisions in order to provide clarity for the health and safety of the consumer and to align and provide consistency with H&SC, Section 1180.4 and the Department of Social Services regulations set forth in Title 22, CCR, Section 85122.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(c)(3)

This amendment adds “before approving,” and removed “Every consecutive 15 minutes, until the physical restraint is terminated, the person who approves” the continuation of the physical restraint, and added “beyond 15 consecutive minutes, the person approving” 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 Subsection (a). The modifications to the originally proposed regulation text are necessary to clarify and add specificity to the requirements for the use of physical restraint beyond 15 minutes for the health, protection, safety, and well-being of staff and the consumer. The time limit of 15 consecutive minutes is necessary and consistent with the Department of Social Services regulations in Title 22, CCR, Section 85122(e)(6)(A)1., which has proven to be successful.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(e)

This amendment removes the originally proposed language and adds “A physical restraint shall not exceed 30 consecutive minutes. The modifications removing the originally proposed language are necessary to clarify and add specificity to the time limits for physical restraint specifying that physical restraint shall not exceed 30 consecutive minutes. Thirty consecutive minutes is more stringent than the statute requires and is necessary because of the specific population of consumers that reside in CCH homes.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(e)(1) and (e)(2)

This amendment removes the originally proposed language in Subsections (e)(1) and (e)(2), because it was added to Subsections (c)(1)(A) and (c)(1)(B) above. The modification to the originally proposed text is necessary to remove language that was rearranged to clarify the requirements for continuing the use of physical restraint beyond 15 consecutive minutes.

Section 59010.2(f)

This amendment removes the originally proposed language in Subsection (f) that described the requirements if a physical restraint lasted longer than 60 minutes. The modification to the originally proposed text is necessary to remove language that described the requirements if a physical restraint lasted

longer than 60 minutes. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health and well-being of the consumer.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(f)(1)

This amendment removes the originally proposed language in Subsection (f)(1) that specified if a physical restraint lasts longer than 60 minutes, the administrator must evaluate whether the facility has adequate resources to meet the consumer's needs and reevaluate at 30-minute intervals thereafter. The modification to the originally proposed text is necessary to remove language that described the requirements if a physical restraint lasts longer than 60 minutes, the administrator must evaluate whether the facility has adequate resources to meet the consumer's needs and reevaluate at 30-minute intervals thereafter. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health and well-being of the consumer.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(f)(2)

This amendment removes the originally proposed language in Subsection (f)(2) to specify that physical restraint used in excess of 60 consecutive minutes, must be approved in writing every 30 minutes, by the administrator or their designee. The modification to the originally proposed text is necessary to remove language that described the requirements if physical restraint is used in excess of 60 consecutive minutes, must be approved in writing every 30 minutes, by the administrator or their designee. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health, and well-being of the consumer.

Section 59010.2(f)(3)

This amendment removes the originally proposed language in Subsection (f)(3) to specify that the authorized consumer representative must be notified, and if the consumer is a child, the child's authorized consumer representative must approve of the extended physical restraint. The authorized consumer representative's approval must be documented in the consumer's file at the time of the approval. The modification to the originally proposed text is necessary to remove language that described the requirements that the authorized consumer representative must be notified, and if the consumer is a child, the child's authorized consumer representative must approve of the extended physical restraint. The authorized consumer representative's approval must be documented in the consumer's file at the time of the approval. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health, and well-being of the consumer.

Section 59010.2(f)(3)(A)

This amendment removes the originally proposed language in Subsection (f)(3)(A) to specify that if the administrator or their designee is not able to obtain approval from the child's authorized consumer representative to continue the extended use of restraint, staff shall maintain the physical restraint when there is an imminent risk of serious physical injury and immediately call local law enforcement. The modification to the originally proposed text is necessary to remove language that described the requirements if the administrator or their designee is not able to obtain approval from the child's authorized consumer representative to continue the extended use of restraint, staff shall maintain the physical restraint when there is an imminent risk of serious physical injury and immediately call local law enforcement. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health, and well-being of the consumer.

Section 59010.2 new Subsection (f)

This amendment adds a new Subsection (f) to specify the requirements if physical restraint is reapplied within two (2) minutes of a physical restraint release. The modification to the originally proposed text is necessary to add language that describes the requirements for reapplying a physical restraint within two (2) minutes of the physical restraint release. The time factor to release the consumer for two (2) minutes prior to reapplying physical restraint is necessary because it has been determined by the Department to be a

reasonable amount of time to allow the consumer to compose themselves and allow the staff to stop the emergency intervention technique. If the consumer does not compose themselves, the physical restraint is reapplied to ensure the protection, safety, health, and well-being of the consumer.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2 new Subsection (f)(1)

This amendment adds a new Subsection (f)(1) to specify that the administrator or their designee must provide the documentation outlined in Subsections (c)(4)(A)-(C) in the consumer's file within 24 hours if the physical restraint is reapplied within two (2) minutes of a physical restraint release. The modification to the originally proposed text is necessary to document in the consumer's file within 24 hours is necessary to ensure timely documentation of the consumer's behavior that warranted the consumer was in imminent danger of serious injury to self or others is available for review by the Individual Behavioral Supports Team in order to ensure the health and safety of the consumer. The regulations are also necessary and consistent with the requirements set forth in Title 22, CCR, Section 85122(e)(6)(A)1., which has proven to be successful. Furthermore, documentation of the reapplication of restraint within 24 hours will help to ensure there is an accurate recording of the facts. Documentation is vital to provide a safe environment and helps provide accountability and historical information necessary for both planning and debriefing.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2 new Subsection (f)(2)

This amendment adds a new Subsection (f)(2) to specify the requirements if physical restraint is reapplied within two (2) minutes of a physical restraint release that the person who approves the continuation of physical restraint must be a person other than the person who restrained the consumer. The modification to the originally proposed text is necessary to ensure that the person conducting the visual check can objectively and 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 consumer's requests for assistance or repositioning. The proposed regulations are also necessary in order to comply with Subsection (e)(1); the person doing the restraint would not be able to visually check or document at the time of the visual check. The proposed regulation also aligns and is consistent with the Department of Social Services

regulations, Title 22, CCR, Section 84322(f)(2)(C)2., which have proven to be successful.

Section 59010.2(g)

This amendment removes language that states “if a physical restraint exceeds two (2) consecutive hours, the consumer must be allowed to access liquids, meals, and toileting and range of motion exercises at regular intervals not exceeding two (2) consecutive hours” and add the requirements for every subsequent reapplication of physical restraint within two (2) minutes of a physical restraint release. The modification to remove the originally proposed text is necessary because the information removed and added into a different subsection to aid in clarity. The modification to add requirements for every subsequent reapplication of physical restraint within two (2) minutes of the physical restraint release is necessary to ensure proper protocol is followed in case stabilization has not occurred for the health and safety of the consumer and staff.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(g)(1)

This amendment adds the requirement for the administrator or their designee to observe the consumer's behavior while the consumer is being restrained to determine whether continued use of the physical restraint is justified pursuant to Subsection (a), in order for subsequent reapplication of physical restraint to occur within two (2) minutes of a physical restraint release. The modification to the originally proposed text is necessary to adequately assess the consumer's health and safety and to ensure the protection, safety, and health of the consumer.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(g)(1)(A)

This amendment adds a requirement that the consumer in a physical restraint must be allowed to access liquids, meals, and toileting and range of motion exercises. The modification to the originally proposed text is necessary to ensure the consumer is able to remain comfortable in physical restraint and decrease the risk of injury from the physical restraint.

Subsequent nonsubstantive changes were made to this subsection which includes being renumbered to Subsection (g)(2). The changes are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(g)(2)

This amendment adds requirements that the administrator or their designee, other than the person restraining the consumer, must approve each reapplication of physical restraint. The modification to the originally proposed text is necessary to clarify and add specificity to the regulations that it is the administrator or their designee's responsibility to approve each reapplication of physical restraint by adequately assessing the consumer's health and safety and to ensure the protection, safety and health of the consumer and staff.

Subsequent changes were made to this subsection and moved this provision to new Subsection (g)(4). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(g)(3)

This amendment requires for every subsequent reapplication of physical restraint within two (2) minutes of a physical restraint release that the administrator or their designee provide the documentation outlined in Subsections (c)(4)(A) – (C), in the consumer's file within 24 hours. The modification to the originally proposed text is necessary to document in the consumer's file within the time factor of 24 hours to ensure there is an accurate recording of the facts. Documentation is vital to provide a safe environment and helps provide historical information necessary for both planning and accountability. Documentation is necessary to allow for ongoing evaluation and careful consideration of the outcomes from the use of restraint. This information is invaluable and can inform the subsequent selection of alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.2(g)(4)

This amendment requires that the administrator or their designee must evaluate whether the facility has adequate resources to meet the consumer's needs in the moment. The modification to the originally proposed text is necessary to clarify that it is the responsibility of the administrator or their designee to have the foresight to see and determine if additional emergency services may be

required and to be aware of outside emergency services or resources that are available when emergency interventions are not effective for the protection, health, safety, and well-being of all participants.

Subsequent changes were made to this subsection which moved this provision to new Subsection (g)(5). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(g)(5)

This amendment requires that the authorized consumer representative must be notified, and if the consumer is a child, the child's authorized consumer representative must approve of the third and every subsequent reapplication of physical restraint within two (2) minutes of a physical restraint release. The authorized consumer representative's approval must be documented in the consumer's file at the time of the approval. The modification to the originally proposed text is necessary to ensure the consumer's authorized representative is aware of the extended duration of the physical restraint. The factor for approving the third and every subsequent reapplication of physical restraint must be approved by the authorized consumer representative if the consumer is a child is necessary to inform and assist in making ongoing decisions about the child's care and safety, and any needed input to the Individual Behavioral Supports Team (IBST). Documentation in the consumer's file at the time of the approval is necessary and vital to provide a safe environment and helps provide historical information necessary for both planning and accountability. Documentation is necessary to allow for ongoing evaluation and careful consideration of the outcomes from the use of restraint. This information is invaluable and can inform the subsequent selection of alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Subsequent changes were made to this subsection and moved this provision to new Subsection (g)(6). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.2(g)(5)(A)

This amendment specifies a caveat that if the administrator or their designee is not able to obtain approval from the child's authorized consumer representative to continue the extended use of restraint, staff shall maintain the physical restraint when there is an imminent risk of serious physical injury and immediately call local law enforcement. The modification to the originally

proposed text is necessary for the protection, health, safety, and well-being of all participants.

Subsequent changes were made to this subsection and moved this provision to new Subsection (g)(6)(A). The changes are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.4(g)

This amendment requires if the consumer who was physically restrained voluntarily declines to participate in the debriefing meeting as described in Subsections (a) – (e) above, the administrator shall offer an opportunity to meet with the team described in Subsection (b) above within 72 hours of the physical restraint. The modification to the originally proposed text addresses comments received during the 45-day comment period which states that consumers may not be ready to debrief at the originally scheduled time due to the trauma of the event and that there should be an additional opportunity for the consumer who was involved in the event to be a participant at a later date. The proposed modification is necessary to clarify and allow for an additional opportunity for the consumer who was involved in the event to participate in the debriefing and share their experience. The debriefing provides insight for future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of debriefing activities. The time required for the second debriefing to occur within 72 hours of the incident is necessary so that the recollection of the events can be discussed in a timely manner while the events of the incident are still fresh in the memories of the participants.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.4(g)(1)

This amendment 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. The modification to the originally proposed text is necessary to clarify and 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.

Subsequent nonsubstantive changes were made in this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59010.4(g)(2)

This amendment requires the review with the consumer the debriefing information required by Section 59010.4(e)(2) – (12). The modification to the originally proposed text 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; to review precipitating factors leading to the use of physical restraint, which might include poor treatment integrity and/or the need to make modification to the Individual Behavior Supports Plan, which might prevent the use of physical restraint in the future; 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; to ensure an evaluation of treatment integrity which helps the team identify if there was a breakdown in implementation and/or if modifications to the Emergency Intervention Plan and/or Individual Behavior Supports Plan or additional staff training are necessary; to address the root cause incident and its consequences in order 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; to address the duration of physical restraint and ways to reduce time in physical restraint and to ensure the requirements have been followed for the health, safety, protection and well-being of consumers; to ensure staff attempted to utilize de-escalation techniques and fidelity of implementation is evaluated, which may lead to modification of the Individual Behavior Supports Plan and/or Individual Emergency Intervention Plan; to specify that the debriefing must include considering treatment for any trauma that may have been experienced by the consumer as a result of the incident. The proposed regulation is also necessary to ensure the requirements have been followed for the health, safety, protection, and well-being of consumers; to utilize trauma-informed care in the debriefing and identify any trauma-informed treatments or plans needed, if indicated; to ensure adequate identification and evaluation of functionally equivalent replacement behaviors detailed in the Individual Behavior Supports Plan and inform modifications needed; and requires the team to determine if additional or updated assessments or plan revisions are necessary and/or if there is a need to provide additional staff training following debriefing activities; and the team is required to ensure these activities are completed to ensure the health, safety, protection and well-being of consumers.

Section 59010.4(h)

This amendment adds documentation requirements for the debriefing meeting. The modification to the originally proposed text is necessary to address comments received during the 45-day comment period which state that some consumers may not be ready to participate in a debriefing meeting immediately after being physically restrained and should be offered the opportunity at a later time to participate in the debriefing meeting. The modifications are also necessary to ensure that administrators and their designees understand the required elements for documentation of the debriefing.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59010.4(h)(1)

This amendment requires documentation of the date(s) the second debriefing meeting was offered if the consumer voluntarily declines to participate within 72 hours of the physical restraint. The modification to the originally proposed text is necessary to address comments received during the 45-day comment period which state that some consumers may not be ready to participate in a debriefing meeting immediately after a physical restraint and should be offered the opportunity at a later time to participate. Documentation is necessary so that there is transparency and evidence that a second debriefing meeting was offered within 72 hours of the physical restraint.

Section 59010.4(h)(2)

This amendment adds requirements for the documentation of the date and time the meeting occurred. The modification to the originally proposed text is necessary to provide accurate documentation for record-keeping purposes and the improvement of supports and services that may be necessary to ensure the continued safety of the consumer.

Section 59010.4(h)(3)

This amendment requires documentation of the participants involved in the debriefing. The modification is necessary to clarify that the attendance of the staff involved in the debriefing so that they may be involved in the future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of the debriefing.

Section 59010.4(h)(4)

This amendment requires documentation of the findings from assisting the consumer with identifying the precipitant of the incident and suggesting

methods of more safely and constructively responding to the incident as required in Section 59010.4(e)(1). The modification to the originally proposed text 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.

Section 59010.4(h)(5)

This amendment requires documentation of any consumer input on the activities in Section 59010.4(e)(2) – (12). The modifications to the originally proposed text are necessary to ensure the consumer fully participates in the debriefing activities and that their input is documented for the consumer to help with the future development, implementation, and modification of their Individual Behavior Supports Plan that is likely to occur as a result of the debriefing and to help deescalate the situation and reduce the likelihood of future physical restraint.

Section 59010.5(a)(7)(M)

This amendment adds requirements for the licensee to maintain a monthly log of information for each consumer related to the use of physical restraint and if there are no physical restraints used, the monthly report shall indicate zero restraints used. The modifications to the originally proposed text address a comment received during the 45-day comment period and are necessary to clarify how to document in the monthly report that no restraints were used. The clarifying requirement is necessary to ensure there is accurate and specific documentation for each use of physical restraint and if there is no physical restraint used. The required documentation allows for ongoing evaluation and careful consideration of the factors contributing to the use of restraint and data trends. This information is invaluable and can inform the subsequent selection of alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Section 59010.5(b)(1)

This amendment adds requirements for a monthly log to be submitted even if no restraints are used. The modifications to the originally proposed text address a comment received during the 45-day comment period and are necessary to clarify that each consumer must have a monthly log submitted to the regional center's designee and the Department even if no restraints were used. The clarifying requirement is necessary to ensure there is accurate and specific documentation for each use of physical restraint and if there is no physical restraint used. The required documentation allows for ongoing evaluation and careful consideration of the factors contributing to the use of restraint and data trends. This information is invaluable and can inform the subsequent selection of

alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Section 59013(d)(1)

This amendment adds a requirement that within 30 days of receipt of the Department's written findings and recommendations, unless otherwise specified by the Department, the Regional Center shall submit to the Department a letter detailing how the findings and recommendations have been completed, including a timeline for addressing any outstanding findings. The modifications to the originally proposed text are necessary to clarify the details on how the Department's findings and recommendations have been completed, including a timeline for addressing any outstanding findings.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59013(d)(1)(A)

This amendment adds the specific email address for where to send the written responses to the Department, which is at EBSHCCHMonitoring@dds.ca.gov. The modifications to the originally proposed text are necessary as it clarifies and specifies where and how the regional center may send written responses to the Department.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59054(c)

This amendment adds requirements for the licensee to ensure that all administrators receive hands-on training in first aid and cardiopulmonary resuscitation by a certified instructor, as well as receive the training requirements within Section 59057(a) and (b). The addition to the originally proposed text is necessary to clarify that the licensee must ensure that administrators acquire the specified training requirements for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59054(c)(1)

This amendment adds requirements for the licensee to ensure that all administrators maintain current certifications. The addition to the originally proposed text is necessary to specify the requirement that administrators must maintain current certification requirements for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59054(c)(2)

This amendment adds that the licensee shall maintain the certifications in the facility personnel records. The addition to the originally proposed text is necessary to clarify and add specificity that the licensee is required to maintain certifications in the facility's personnel records in order for oversight agencies to provide adequate monitoring and oversight of the facilities.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59054(c)(3)

This amendment adds requirements that cardiopulmonary resuscitation (CPR) certification must be renewed annually. The addition to the originally proposed text is necessary to ensure that the skills and knowledge in CPR are retained. According to the American Red Cross Scientific Advisory Council, CPR skill retention declines within a few months of initial training – and continues to decline as time goes by. In addition, the council found that less than half of course participants can pass a skills test one year after training. This means that just one year into a two-year CPR certification, the certified personnel may not recall how to help when it is needed most. This requirement is for the health, protection, safety, and well-being of staff and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59055(c)

This amendment adds requirements for the licensee to ensure that all administrators receive hands-on training in first aid and cardiopulmonary

resuscitation by a certified instructor, as well as receive the training requirements within Section 59057(a) and (b). The addition to the originally proposed text is necessary to clarify that the licensee must ensure that administrators acquire the specified training requirements for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59055(c)(1)

This amendment adds requirements for the licensee to ensure that all administrators maintain current certifications in first aid and cardiopulmonary resuscitation. The addition to the originally proposed text is necessary to specify the requirement that administrators must maintain current certification requirements for the health, protection, safety, and well-being of themselves, staff, and consumers.

Subsequent changes were made to this subsection which also moved this provision to new Subsection (d). The changes are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59055(c)(2)

This amendment adds a requirement for the licensee to maintain certifications in the facility personnel records. The addition to the originally proposed text is necessary to clarify and add specificity that the licensee is required to maintain certifications in the facility's personnel records in order for oversight agencies to provide adequate monitoring and oversight of the facilities.

Subsequent changes were made to this subsection which also moved this provision to new Subsection (f). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59055(c)(3)

This amendment adds requirements that cardiopulmonary resuscitation (CPR) certification must be renewed annually. The addition to the originally proposed text is necessary to ensure that the skills and knowledge in CPR are retained. According to the American Red Cross Scientific Advisory Council, CPR skill retention declines within a few months of initial training – and continues to decline as time goes by. In addition, the council found that less than half of course participants can pass a skills test one year after training. This means that

just one year into a two-year CPR certification, the certified personnel may not recall how to help when it is needed most. This requirement is for the health, protection, safety, and well-being of staff and consumers.

Subsequent changes were made to this subsection which also moved this provision to new Subsection (f). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59056(d)

This amendment corrects the regulation to reflect that the time an administrator must be present and on duty shall be documented in the facility file, not the consumer file. The modification to the originally proposed text is in response to a 45-day public comment whereby it was noted that it would not be appropriate for the administrator time to be documented in consumer files. This error was an inadvertent oversight by the Department and the appropriate location for the administrator's time to be documented is in the facility file.

Section 59057(b)

This amendment adds requirements for the intervention training to be conducted by a qualified instructor. The modification to the originally proposed text is necessary to ensure that the instructor is qualified in emergency intervention techniques pursuant to Title 22, Sections 85165(c) and 85122(f) for the health, protection, safety, and well-being of staff and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59057(f)

This adds requirements for licensees to ensure direct care staff who use, participate in, approve, or provide visual checks of physical restraint only use techniques specified in the Emergency Intervention Plan and which are not prohibited in Section 59060.1. The modification to the originally proposed text is necessary to clarify the staff training requirements for the implementation of emergency intervention techniques by the licensee which will be used by direct care staff with each specific consumer to diffuse and safely resolve emerging crisis situations and strategies and to minimize time spent in behavioral restraints. This requirement is necessary so that consumers who are in 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 59057(g)

This adds staff training requirements for direct care staff who use, participate in, approve, or provide visual checks of physical restraint shall have a minimum of sixteen hours of emergency intervention training, including, for group home direct care staff, training on the emergency intervention requirements of Title 17, CCR, Sections 59060.1 – 59060.5, and be certified for having successfully completed the training. The modifications to the originally proposed text are necessary to provide a clear understanding of the direct care staff emergency intervention training requirements which aligns and is consistent with the Department of Social Services regulations set forth in Title 22. The clarification and specificity will ensure the staff caring for consumers are prepared in the event of an emergency or crisis and for the health, protection, safety, and well-being of themselves and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59057(g)(1)

This amendment adds training requirements consistent with the Department of Social Services regulations set forth in Title 22, that direct care staff who use, participate in, approve or provide visual checks of physical restraints shall be trained in the physical technique utilized. The modification to the originally proposed text is necessary to clarify and add specificity to staff training requirements to ensure the staff caring for consumers are prepared in the event of an emergency or crisis and for the health, protection, safety, and well-being of themselves and consumers.

Section 59057(g)(2)

This amendment adds the requirement for direct care staff to maintain valid certification of their training. The modification to the originally proposed text is necessary to clarify and add specificity to staff training requirements to ensure the staff caring for consumers maintain their training certifications and are well trained and prepared in the event of an emergency or crisis and for the health, protection, safety, and well-being of themselves and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59058(g)

This amendment adds requirements for the emergency intervention refresher staff training to be conducted by a qualified instructor, pursuant to the Department of Social Services regulations set forth in Title 22, Section 85165(c). The modification to the originally proposed text is necessary to ensure that the instructor is qualified to provide the monthly emergency intervention refresher staff training for the health, protection, safety, and well-being of staff and consumers.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060(d)(11)(A)2.

This amendment specifies that it is the administrator's responsibility, not the facility's, to ensure corrections to the Individual Behavior Supports Plan, including the Individualized Emergency Intervention Plan, are made by the Qualified Behavior Modification Professional with input from the Individual Behavior Supports Team. The modifications to the originally proposed text are necessary and will ensure that the administrator is responsible for ensuring the corrections to the Individual Behavior Supports Plan, including the Individualized Emergency Intervention Plan, when the need for revision is determined by the regional center or Department to ensure the revisions are appropriate for each consumer based on their health, individual needs and historical information as required by H&SC, Section 1180.4, and for the health, protection, safety, and well-being of staff and the consumer.

Subsequent changes were made to this subsection which also moved this provision to new Subsection (f). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.1(b)

This amendment adds an additional prohibited emergency intervention that any physical restraint or containment technique that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity pursuant to H&SC, Section 1180.4(c)(1). The modification to the originally proposed text addresses a public comment received during the 45-day public comment period and emphasizes the requirement in H&SC, Section 1180.4(c)(1). The modification is necessary to provide clarity and specify a physical restraint or containment technique that is prohibited as an emergency intervention for the health, protection, safety, and well-being of staff and the consumer.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.2(a)

This amendment adds the term physical as the type of restraint. The modification is necessary to provide clarity that the type of restraint being used is understood to be “physical” restraint, as defined in Section 59050(a)(32).

Section 59060.2(c)(1)

This amendment rearranges the originally proposed regulation in order to provide clarity for the time limits for the use of physical restraint. The requirement to add “the consumer in a physical restraint must be visually checked to ensure the consumer is not injured, that consumer’s personal needs, such as access to toilet facilities, are being met” was originally added as Subsection (c)(2) but has been moved up to new Subsection (c)(1). The modification to the originally proposed text to reorganize and clean-up the is necessary to ensure the language is clear for the health and safety of the consumer and to align and provide consistency with H&SC, Section 1180.4, and the Department of Social Services regulations set forth in Title 22, CCR, Section 85122. The requirement is necessary because it was determined to be the best practice after collaboration with the appropriate professionals and the protection and advocacy agency as described in W&I Code, Section 4900(i) regarding the use of restraint or containment in community crisis homes, and for the protection of clients’ rights pursuant to W&I Code, Section 4698 (d).

Section 59060.2(c)(1)(A)

This amendment adds that staff who use, participate in, approve or provide visual checks of physical restraints shall be trained in the physical restraint technique utilized. The modification to the originally proposed text is necessary to ensure that staff who use, participate in, approve or provide visual checks of physical restraints shall be trained in the physical restraint technique utilized as required by Section 59057 for the health and safety of the consumer.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review the necessity for those changes and the rationale for necessity.

Section 59060.2(c)(1)(B)

This amendment reorganizes the originally proposed text “visual checks must be documented in the consumer’s file at the time of each visual check,” and

moved it from Subsection (e)(1) up to new Subsection (c)(1)(B) to clarify the requirements to continue the use of physical restraint beyond 15 minutes. The modification to the originally proposed text is necessary to clarify the requirements of the person conducting the visual check can verify that the visual observation and assessment occurs every 15 minutes to ensure the protection, safety, and health of the consumer. It is also necessary to document immediately at the time of the visual check to ensure there is an accurate recording of the facts. Documentation is vital to provide a safe environment and helps provide historical information necessary for both planning and accountability. The time factor to visually observe every 15 minutes is consistent with the Department of Social Services regulations, Title 22, CCR, Section 84322(f)(2)(A), which have proven to be successful.

Section 59060.2(c)(1)(C)

This amendment reorganizes the originally proposed text “the person conducting the check must not be the individual who restrained the consumer,” and moved it from Subsection (e)(2) to (c)(1)(C) to clarify the requirements to continue the use of physical restraint beyond 15 minutes. The modification to the originally proposed regulation text is necessary to clarify the requirements of the person conducting the visual check so that they can objectively and 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 consumer’s requests for assistance or repositioning. The proposed regulation aligns and is consistent with the Department of Social Services regulations, Title 22, CCR, Section 84322(f)(2)(C)2., which have proven to be successful.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.2(c)(2)

This amendment reorganizes the originally proposed language and renumber the former Subsection (c)(1) to Subsection (c)(2). The modification to the originally proposed language is necessary to ensure the correct numerical order for the new provisions in order to provide clarity for the health and safety of the consumer and to align and provide consistency with H&SC, Section 1180.4 and the Department of Social Services regulations set forth in Title 22, CCR, Section 85122.

Section 59060.2(c)(3)

This amendment adds “before approving,” removed “Every consecutive 15 minutes, until the physical restraint is terminated, the person who approves” the continuation of the physical restraint, and added “beyond 15 consecutive minutes, the person approving” 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 Subsection (a). The modifications to the originally proposed regulation text are necessary to clarify and add specificity to the requirements for the use of physical restraint beyond 15 minutes for the health, protection, safety, and well-being of staff and the consumer. The time limit of 15 consecutive minutes is necessary and consistent with the Department of Social Services regulations in Title 22, CCR, Section 85122(e)(6)(A)1., which has proven to be successful.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.2(e)

This amendment removes the originally proposed language and add to Subsection (e) to specify that physical restraint shall not exceed 30 consecutive minutes. The modifications remove the originally proposed language and are necessary to clarify and add specificity to the time limits for physical restraint specifying that physical restraint shall not exceed 30 consecutive minutes. Thirty consecutive minutes is more stringent than the statute requires and is necessary because of the specific population of consumers that reside in EBSH homes.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.2(e)(1) and (e)(2)

This amendment removes the originally proposed language in Subsections (e)(1) and (e)(2), which was added to Subsections (c)(1)(A) and (c)(1)(B) above. The modification to the originally proposed text is necessary to remove language rearranged to clarify the requirements for continuing the use of physical restraint beyond 15 consecutive minutes.

Section 59060.2(f)

This amendment removes the originally proposed language in Subsection (f) that described the requirements if a physical restraint lasted longer than 60 minutes. The modification to the originally proposed text is necessary to remove language that described the requirements if a physical restraint lasted longer than 60 minutes. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health and well-being of the consumer.

Section 59060.2(f)(1)

This amendment removes the originally proposed language in Subsection (f)(1) that specified if a physical restraint lasts longer than 60 minutes, the administrator must evaluate whether the facility has adequate resources to meet the consumer's needs and reevaluate at 30-minute intervals thereafter. The modification to the originally proposed text is necessary to remove language that described the requirements if a physical restraint lasts longer than 60 minutes, the administrator must evaluate whether the facility has adequate resources to meet the consumer's needs and reevaluate at 30-minute intervals thereafter. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health and well-being of the consumer.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.2(f)(2) Deleted Originally Proposed Subsection

This amendment removes the originally proposed language in Subsection (f)(2) to specify that physical restraint used in excess of 60 consecutive minutes, must be approved in writing every 30 minutes, by the administrator or their designee. The modification to the originally proposed text is necessary to remove language that described the requirements if a physical restraint is used in excess of 60 consecutive minutes, and must be approved in writing every 30 minutes, by the administrator or their designee. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health and well-being of the consumer.

Section 59060.2(f)(3) Deleted Originally Proposed Subsection

This amendment removes the originally proposed language in Subsection (f)(3) to specify that the authorized consumer representative must be notified, and if the consumer is a child, the child's authorized consumer representative must approve of the extended physical restraint. The authorized consumer representative's approval must be documented in the consumer's file at the time of the approval. The modification to the originally proposed text is necessary to remove language that described the requirements that the authorized consumer representative must be notified, and if the consumer is a child, the child's authorized consumer representative must approve of the

extended physical restraint. The authorized consumer representative's approval must be documented in the consumer's file at the time of the approval. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health and well-being of the consumer.

Section 59060.2(f)(3)(A) Deleted Originally Proposed Subsection

This amendment removes the originally proposed language in Subsection (f)(3)(A) to specify that if the administrator or their designee is not able to obtain approval from the child's authorized consumer representative to continue the extended use of restraint, staff shall maintain the physical restraint when there is an imminent risk of serious physical injury and immediately call local law enforcement. The modification to the originally proposed text is necessary to remove language that described the requirements if the administrator or their designee is not able to obtain approval from the child's authorized consumer representative to continue the extended use of restraint, staff shall maintain the physical restraint when there is an imminent risk of serious physical injury and immediately call local law enforcement. The Department has determined that even though the time factor for 60 minutes is consistent with the Department of Social Services regulations set forth in Title 22, CCR, Section 84322, and has been proven to be successful, anything exceeding 30 consecutive minutes could be harmful and may not ensure the protection, safety, health and well-being of the consumer.

Section 59060.2(f)

This amendment adds new Subsection (f) to specify the requirements if physical restraint is reapplied within two (2) minutes of a physical restraint release. The modification to the originally proposed text is necessary to add language that describes the requirements for reapplying a physical restraint within two (2) minutes of the physical restraint release. The time factor to release the consumer for two (2) minutes prior to reapplying physical restraint is necessary because it has been determined by the Department to be a reasonable amount of time to allow the consumer to compose themselves and allow the staff to stop the emergency intervention technique. If the consumer does not compose themselves, the physical restraint is reapplied to ensure the protection, safety, health, and well-being of the consumer.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.2(f)(1)

This amendment adds new Subsection (f)(1) to specify that the administrator or their designee must provide the documentation outlined in Subsections (c)(4)(A) – (C) in the consumer’s file within 24 hours if the physical restraint is reapplied within two (2) minutes of a physical restraint release. The proposed modification is necessary to document in the consumer’s file within 24 hours is necessary to ensure timely documentation of the consumer’s behavior that warranted the consumer was in imminent danger of serious injury to self or others is available for review by the Individual Behavioral Supports Team in order to ensure the health and safety of the consumer. The regulations are also necessary and consistent with the requirements set forth in Title 22, CCR, Section 85122(e)(6)(A)1., which has proven to be successful. Furthermore, documentation of the reapplication of restraint within 24 hours will help to ensure there is an accurate recording of the facts. Documentation is vital to provide a safe environment and helps provide accountability and historical information necessary for both planning and debriefing.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.2(f)(2)

This amendment adds new Subsection (f)(2) to specify the requirements if physical restraint is reapplied within two (2) minutes of a physical restraint release that the person who approves the continuation of physical restraint must be a person other than the person who restrained the consumer. The modification to the originally proposed text is necessary to ensure that the person conducting the visual check can objectively and 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 consumer’s requests for assistance or repositioning. The proposed regulations are also necessary because the person doing the restraint would not be able to visually check or document at the time of the visual check. The proposed regulation also aligns and is consistent with the Department of Social Services regulations, Title 22, CCR, Section 84322(f)(2)(C)2., which have proven to be successful.

Section 59060.2(g)

This amendment removes language that states “if a physical restraint exceeds two (2) consecutive hours, the consumer must be allowed to access liquids, meals, and toileting and range of motion exercises at regular intervals not exceeding two (2) consecutive hours” and add the requirements for every subsequent reapplication of physical restraint within two (2) minutes of a physical restraint release. The modification to remove the originally proposed

text is necessary because the information was removed and added into a different subsection to aid in clarity. The modification to add requirements for every subsequent reapplication of physical restraint within two (2) minutes of the physical restraint release is necessary to ensure proper protocol is followed in case stabilization of the consumer has not occurred for the health and safety of the consumer and staff.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.2 (g)(1)

This amendment requires that the administrator or their designee 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 Subsection (a), in order for subsequent reapplication of physical restraint to occur within two (2) minutes of a physical restraint release. The modification to the originally proposed text is necessary to adequately assess the consumer's health and safety and to ensure the protection, safety, and health of the consumer.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.2(g)(1)(A)

This adds the requirement that the consumer in a physical restraint must be allowed to access liquids, meals, and toileting and range of motion exercises. The modification to the originally proposed text is necessary to ensure the consumer is able to remain comfortable in physical restraint and decrease the risk of injury from the physical restraint.

Subsequent nonsubstantive changes were made to this subsection and moved this provision to new Subsection (g)(2). The changes are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.2(g)(2)

This amendment adds the requirements that the administrator or their designee must approve each reapplication of physical restraint. The modification to the originally proposed text is necessary to clarify and add specificity to the regulations that it is the administrator or their designee's responsibility to approve each reapplication of physical restraint by adequately assessing the consumer's

health and safety and to ensure the protection, safety and health of the consumer and staff.

Subsequent changes were made to this subsection and moved this provision to new Subsection (g)(4). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.2 (g)(3)

This amendment requires for every subsequent reapplication of physical restraint within two (2) minutes of a physical restraint release that the administrator or their designee provide the documentation outlined in Subsections (c)(4)(A) – (C), in the consumer's file within 24 hours. The modification to the originally proposed text is necessary to document in the consumer's file within the time factor of 24 hours to ensure there is an accurate recording of the facts. Documentation is vital to provide a safe environment and helps provide historical information necessary for both planning and accountability. Documentation is necessary to allow for ongoing evaluation and careful consideration of the outcomes from the use of restraint. This information is invaluable and can inform the subsequent selection of alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.2(g)(4)

This amendment requires that the administrator or their designee must evaluate whether the facility has adequate resources to meet the consumer's needs. The modification to the originally proposed text is necessary to clarify that it is the responsibility of the administrator or their designee to have the foresight to see and determine if additional emergency services may be required and to be aware of outside emergency services or resources that are available when emergency interventions are not effective for the protection, health, safety, and well-being of all participants.

Subsequent changes were made to this subsection and moved this provision to new Subsection (g)(5). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.2(g)(5)

This amendment requires that the authorized consumer representative must be notified, and if the consumer is a child, the child's authorized consumer representative must approve of the third and every subsequent reapplication of physical restraint within two (2) minutes of a physical restraint release. The authorized consumer representative's approval must be documented in the consumer's file at the time of the approval. The modifications to the originally proposed text are necessary to ensure the consumer's authorized representative is aware of the extended duration of the physical restraint. If the consumer is a child, the child's authorized consumer representative must approve of the third and every subsequent reapplication of physical restraint within two (2) minutes of a physical restraint release. The factor for approving the third and every subsequent reapplication of physical restraint must be approved by the authorized consumer representative if the consumer is a child is necessary to inform and assist in making ongoing decisions about the child's care and safety, and any needed input to the IBST. Documentation in the consumer's file at the time of the approval is necessary and vital to provide a safe environment and helps provide historical information necessary for both planning and accountability. Documentation is necessary to allow for ongoing evaluation and careful consideration of the outcomes from the use of restraint. This information is invaluable and can inform the subsequent selection of alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Subsequent changes were made to this subsection and moved this provision to new Subsection (g)(6). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.2(g)(5)(A)

This amendment specifies a caveat that if the administrator or their designee is not able to obtain approval from the child's authorized consumer representative to continue the extended use of restraint, staff shall maintain the physical restraint when there is an imminent risk of serious physical injury and immediately call local law enforcement. The modification to the originally proposed text is necessary for the protection, health, safety, and well-being of all participants when there is an imminent risk of serious injury.

Subsequent changes were made to this subsection and moved this provision to new Subsection (g)(6)(A). The changes are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.4(g)

This amendment adds new Subsection (g) to require if the consumer who was physically restrained voluntarily declines to participate in the debriefing meeting as described in Subsections (a) – (e) above, the administrator shall offer to meet with the team described in Subsection (b) within 72 hours of the physical restraint. The proposed modification addresses comments received during the 45-day comment period which states that consumers may not be ready to debrief at the originally scheduled time due to the trauma of the event and that there should be an additional opportunity for the consumer who was involved in the event to be a participant at a later date. The proposed modification is necessary to clarify and allow for an additional opportunity for the consumer who was involved in the event to participate in the debriefing and share their experience. The debriefing provides insight for future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of debriefing activities. The time required for the second debriefing to occur within 72 hours of the incident is necessary so that the recollection of the events can be discussed in a timely manner while the events of the incident are still fresh in the memories of the participants.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59060.4(g)(1)

This amendment adds new Subsection (g)(1) to specify 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. The modification to the originally proposed text is necessary to clarify that the team is required 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.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.4(g)(2)

This amendment requires the review with the consumer of the debriefing information required by Section 59010.4(e)(2) – (12). The modification to the originally proposed text 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; to review precipitating factors leading to the use of physical restraint, which might include poor treatment integrity and/or the need to make modification to the Individual Behavior Supports Plan, which might prevent the use of physical restraint in the future; 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; to ensure an evaluation of treatment integrity which helps the team identify if there was a breakdown in implementation and/or if modifications to the Emergency Intervention Plan and/or Individual Behavior Supports Plan or additional staff training are necessary; to address the root cause incident and its consequences in order 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; to address the duration of physical restraint and ways to reduce time in physical restraint and to ensure the requirements have been followed for the health, safety, protection and well-being of consumers; to ensure staff attempted to utilize de-escalation techniques and fidelity of implementation is evaluated, which may lead to modification of the Individual Behavior Supports Plan and/or Individual Emergency Intervention Plan; to specify that the debriefing must include considering treatment for any trauma that may have been experienced by the consumer as a result of the incident. The proposed regulation is also necessary to ensure the requirements have been followed for the health, safety, protection, and well-being of consumers; to utilize trauma-informed care in the debriefing and identify any trauma-informed treatments or plans needed, if indicated; to ensure adequate identification and evaluation of functionally equivalent replacement behaviors detailed in the Individual Behavior Supports Plan and inform modifications needed; and requires the team to determine if additional or updated assessments or plan revisions are necessary and/or if there is a need to provide additional staff training following debriefing activities; and the team is required to ensure these activities are completed to ensure the health, safety, protection and well-being of consumers.

Subsequent nonsubstantive changes were made to this subsection and are reflected in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.4(h)

This amendment adds documentation requirements for the debriefing meeting. The modification to the originally proposed text is necessary to address comments received during the 45-day comment period which state that some consumers may not be ready to participate in a debriefing meeting immediately after being physically restrained and should be offered the

opportunity at a later time to participate in the debriefing meeting. The proposed regulatory action is also necessary to ensure that administrators and their designees understand the required elements for documentation of the debriefing.

Subsequent nonsubstantive changes were made and are necessary to ensure that the required documentation is captured for the subsequent meeting as initially intended. This change can be reviewed in the Second 15-Day Modified Text released to the public on April 14, 2023.

Section 59060.4(h)(1)

This amendment requires documentation of the date(s) the second debriefing meeting was offered if the consumer voluntarily declines to participate within 72 hours of the physical restraint. The modification to the originally proposed text is necessary to address comments received during the 45-day comment period which state that some consumers may not be ready to participate in a debriefing meeting immediately after a physical restraint and should be offered the opportunity at a later time to participate. Documentation is necessary so that there is transparency and evidence that a second debriefing meeting was offered within 72 hours of the physical restraint.

Section 59060.4(h)(2)

This amendment adds requirements for the documentation of the date and time the meeting occurred. The modification to the originally proposed text is necessary to provide accurate documentation for record-keeping purposes and the improvement of supports and services that may be necessary to ensure the continued safety of the consumer.

Section 59060.4(h)(3)

This amendment requires documentation of the participants involved in the debriefing. The modification to the originally proposed text is necessary to clarify the attendance of the staff involved in the debriefing so that they may be involved in the future development, implementation, and modification of the Individual Behavior Supports Plan that is likely to occur as a result of the debriefing.

Section 59060.4(h)(4)

This amendment requires documentation of the findings from assisting the consumer with identifying the precipitant of the incident and suggesting methods of more safely and constructively responding to the incident as required in Section 59060.4(e)(1). The modification to the originally proposed text 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.

Section 59010.4(h)(5)

This amendment requires documentation of any consumer input on the activities in Section 59060.4(e)(2) – (12). The proposed modification is necessary to ensure the consumer fully participates in the debriefing activities and that their input is documented for the consumer to help with the future development, implementation, and modification of their Individual Behavior Supports Plan that is likely to occur as a result of the debriefing and to help deescalate the situation and reduce the likelihood of future physical restraint.

Section 59060.5(a)(2)(B)

This amendment removes the pronouns “he or she” and replace with the correct gender-neutral specified term “the licensee” to avoid the use of gender pronouns. The modification to the originally proposed text is necessary in order to replace gendered pronouns with gender-neutral language to reflect changing societal norms and make the regulation more inclusive and respect those that don't identify as male or female.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose rationale for necessity.

Section 59060.5(a)(7)(M)

This amendment adds the requirement for the licensee to maintain a monthly log of information for each consumer related to the use of physical restraint and if there are no physical restraints used, the monthly report shall indicate zero restraints used. The modification to the originally proposed text addresses a comment received during the 45-day comment period and is necessary to clarify how to document in the monthly report that no restraints were used. The clarifying requirement is necessary to ensure there is accurate and specific documentation for each use of physical restraint and if there is no physical restraint used. The required documentation allows for ongoing evaluation and careful consideration of the factors contributing to the use of restraint and data trends. This information is invaluable and can inform the subsequent selection of alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Section 59060.5(b)(1)

This amendment adds a requirement for a monthly log to be submitted even if no restraints are used. The modification to the originally proposed text addresses

a comment received during the 45-day comment period and is necessary to clarify that each consumer must have a monthly log submitted to the regional center's designee and the Department even if no restraints were used. The clarifying requirement is necessary to ensure there is accurate and specific documentation for each use of physical restraint and if there is no physical restraint used. The required documentation allows for ongoing evaluation and careful consideration of the factors contributing to the use of restraint and data trends. This information is invaluable and can inform the subsequent selection of alternative support strategies or modifications to the Individual Behavior Supports Plan and Individualized Emergency Intervention Plan that may be necessary.

Section 59063(d)(1)

This amendment adds a requirement that within 30 days of receipt of the Department's written findings and recommendations, the Regional Center shall submit to the Department a letter detailing how the findings and recommendations have been completed, including a timeline for addressing any outstanding findings. The modification to the originally proposed text is necessary to clarify the details on how the Department's findings and recommendations have been completed, including a timeline for addressing any outstanding findings.

Subsequent changes were made to this subsection and are reflected in the Second 15-Day Modified Text; please refer to the Addendum to the Initial Statement of Reasons released to the public on April 14, 2023 to review those changes and the purpose and rationale for necessity.

Section 59063(d)(1)(A)

This amendment adds the specific email address for where to send the written responses to the Department, which is at ESHCCHMonitoring@dds.ca.gov. The proposed modification is necessary as it clarifies and specifies where and how the regional center shall send written responses to the Department.

The following references were added to the record and made available to the public during the First 15-Day Comment Period

1. Behavior Support Guidelines – For Support Workers Paid with Developmental Services Funds-Vermont (October 2004). State of Vermont Department of Disabilities, Aging and Independent Living: Division of Disability and Aging Services.
2. LaVigna, G. & Willis, T. (2002). Counter-intuitive strategies for crisis management within a non-aversive framework, in D. Allen (ED), *Ethical*

approaches to physical interventions. Ch 6, pgs. 89-103, British Institute of Learning Disabilities (BILD) Publishing, Plymouth, United Kingdom.

3. LaVigna, G. & Willis, T. (2004). *Emergency Management Guidelines*. Institute for Applied Behavior Analysis, Los Angeles, CA.
4. LaVigna, G. & Willis, T. (2005). Episodic Severity: An Overlooked Dependent Variable in the Application of Behavior Analysis to Challenging Behavior, *Journal of Positive Behavior Interventions*, Volume 7, Number 1, pgs. 47-54.
5. LaVigna, G. & Willis, T. (2012). The efficacy of positive behavioural support with the most challenging behaviour: The evidence and its implications, *Journal of Intellectual and Developmental Disability*, 37(3), pgs.185-195.
6. LaVigna, G. & Willis, T. (2016). Opening editorial: Special issue on reactive strategies for situational management, *International Journal of Positive Behavioural Support*, 6(1), pgs.4-5.
7. New York Office of Mental Health. (2017). *Implementation Guidelines: 14 NYCRR §526.4 Restraint and Seclusion*.
8. Pitonyak, D. & O'Brien, J. (2011). Effective Behavior Support: Values and Beliefs That A Specialist Demonstrates in Action, Version 1.1.
9. Pitonyak, D. (2005). 10 Things You Can Do to Support A Person With Difficult Behaviors, Version 1.
10. Pitonyak, D. (2008). Jumping Into the Chaos of Things, Version 25.
11. Pitonyak, D. (2009). upside down and inside out, Version 21.
12. Potter, G. (2016). The impact of situational management strategies on episodic severity, *International Journal of Positive Behavioural Support*, 6(1), 17-23.
13. Protection and Advocacy Inc. (2002). *The Lethal Hazard of Prone Restraint: Positional Asphyxiation*. Publication #7081.01. (NOTE: Protection & Advocacy, Inc. changed their name to Disability Rights California in 2008).
14. Services Alternative Inc. (2012). *De-escalate Anyone, Anywhere, Anytime: Unplug the Power Struggle with Principle-Based De-escalation*. E-book:

Service Alternatives, Inc. Training Institute. Available from:
<https://rightresponse.org/my/>.

15. Slocum, S. & Vollmer, T. (2015). A Comparison of Positive and Negative Reinforcement for Compliance to Treat Problem Behavior Maintained by Escape. *Journal of Applied Behavior Analysis*, 4(3), pgs.563-574.
16. Smull, M. (2000). A Crisis is Not an Excuse, In Hanson, R. Wiesel, N., & Lakin, C. (2000). *Impact: Feature Issue on Behavior Support for Crisis and Response*, 14(1).
17. The Pennsylvania Department of Public Welfare, Office of Mental Health and Substance Abuse Services. (2000). *Leading the way Toward a Seclusion and Restraint – Free Environment – Pennsylvania's Seclusion and Restraint Reduction Initiative*. Harrisburg, PA: Office of Mental Health and Substance Abuse Services.
18. VanHouten, R., Axelrod, S., Bailey, J., Favell, J., Foxx, R., Iwata, B., & Lovaas, I. (1988). The right to effective behavioral treatment. *Journal of Applied Behavior Analysis*, 21, pgs. 381-384.
19. Vollmer, T., Hagopian, L., Bailey, J., Dorsey, M., Hanley, G., Lennox, D., Riordan, M., & Spreat, S. (2011). The Association for Behavior Analysis International Position Statement on Restraint and Seclusion, *The Behavior Analyst*, 34, pgs. 103-110.

DOCUMENTS INCORPORATED BY REFERENCE

The regulation and the incorporated documents adopted by the Department incorporate by reference the following documents:

- Department Form DS 6024 (Revised 9/2021) entitled "Rate Development - Individual Costs Associated with Residency"
- Department Form DS 6023 (Revised 9/2021) entitled Rate Development – Facility Costs

These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations. Also, the incorporated documents were made available by the Department upon request during the rulemaking action and will continue to be available in the future. The incorporated forms are also available on the Department website at <https://www.dds.ca.gov/transparency/dds-forms/> or upon request to the Department via email to: RegulationsMailing@dds.ca.gov.

NONSUBSTANTIVE CHANGES MADE AFTER THE SECOND 15-DAY MODIFIED TEXT

The Department made additional nonsubstantive modifications to the regulatory text that was released to the public on April 14, 2023. A majority of these new changes were made to align verbiage between CCH and EBSH subsections and include the following:

Section 59001(f)

This nonsubstantive amendment adds “pursuant to Section 56003” which is necessary to provide an appropriate cross-reference. This amendment does not change any requirements for the Community Crisis Home as the residential service orientation section referenced in the added text was an existing requirement prior to this change.

Section 59057(a)

This nonsubstantive amendment adds “person” to describe direct care staff and is necessary for grammatical clarity and to mirror the language from CCH. This amendment does not alter any content or requirements for EBSH.

Section 59060.2(c)(4)(B)

This nonsubstantive amendment replaces “An” with “Written” which is necessary to match CCH and provide additional clarity within the subsection. This amendment does not alter any requirement as Subsection (c)(4) speaks to the listed items as “documentation” that must be included in the consumer file.

Section 59061(i)

This nonsubstantive amendment adds “including the requirements of Section 4659.2 of the Welfare and Institutions Code” which is necessary to mirror the language in CCH and provide the appropriate cross-reference. Welfare and Institutions Code Section 4659.2 became effective June 30, 2022, and requires emergency intervention data reporting requirements. Adding this specification to this section of the regulation text does not alter the requirements of the facility and merely provides an appropriate cross-reference.

Section 59062

This nonsubstantive amendment adds “and shall be made available” which is necessary to mirror the language in CCH and provide grammatical clarity. This amendment does not alter any requirements as this subsection's existing text requires the records to be available.

CCH and EBSH ALIGNMENT CLARIFICATIONS

The Department wishes to highlight that while the intent is to align regulatory text between CCH and EBSH homes, there are differences between the two types of homes which requires some variance between the regulation text based on the specific needs of each home type (i.e., CCH and EBSH). Any specific reference to the type of home (CCH or EBSH) or regulatory reference specific to that type of home may be different between Subchapters 23 and 24 and will not be explicitly identified herein for reference. The following sections are intentionally unidentical to meet the needs of the specific type of home in reference:

- **Sections 59000 and 59050** do not align exactly because the necessary definitions are different based on the specific type of home.
- **Section 59001(e)** is specific to CCH and is not reflected in Section 59051 of the EBSH text.
- **Sections 59002(a)(3) and 59052(a)(3)** do not align exactly because the facility program plans differ for each type of home.
- **Section 59002(a)(4)** is specific to CCH and is not reflected in Section 59052 of the EBSH text.
- **Section 59002(a)(14)** is specific to CCH and is not reflected in Section 59052 of the EBSH text.
- **Sections 59005(a)(2), 59055(a)(2)(A), 59005(b)(2) and 59055(b)(2)** do not align exactly because the direct care staff qualifications are different for each type of home.
- **Sections 59009 and 59059** reflect the specifics for consumer admission to each type of home and will not be identical.
- **Sections 59009.5(a-d) and 59059.5(a-b)** reflect the specifics for consumer transition and discharge from each type of home and will not be identical.
- **Sections 59010(b) – (c), (d)(10), and (d)(10)(A) – (D); and 59060(b) – (c) and (d)(10)** specify the requirements for the Individual Behavior Supports Plan. These requirements are different based on the type of home and will not be identical.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day comment period from June 3, 2022, through July 18, 2022, in response to the notice of proposed rulemaking published on June 3, 2022. Comments were also received at the hearing on July 18, 2022, during the First 15-day comment period August 15, 2022, through August 30, 2022, and during the Second 15-day comment period April 14, 2023, through April 29, 2023.

Listed below are the organizations and individuals that provided written comments during the **45-Day Comment Period**:

Commenter/Affiliation (date of letter)	Comment Letter Code
Westling, Amy Association of Regional Center Agencies, ARCA (7/12/22)	ARCA-1
Kircher, Debra (7/13/22)	DK-1
Watson, Mary E., EBSH Administrator (7/17/22)	MW-1
Leiner, William, Managing Attorney, Disability Rights California (7/18/2022)	DRC-1
Myers, Stephen, PhD BCBA-d (7/18/22)	SM-1
Neward, Julie, The Natalie Project (7/18/22)	TNP-1
Carson, Diana (7/18/22)	DC-1
Watson, Mary E., EBSH Administrator (7/18/22)	MW-2
Watson, Mary E., EBSH Administrator (7/18/22)	MW-3
California State University, Fullerton (Emeritus) (7/18/22)	CSU-1

Listed below are the organizations and individuals that provided **45-Day** oral testimony and or written comments during the July 18, 2022, public hearing:

Commenter/Affiliation (date of letter)	Oral Comment Code
Carson, Diana, Beyond Awareness (7/18/22)	DC-1
Neward, Julie, The Natalie Project (7/18/22)	TNP-1
Leiner, William, Disability Rights California (7/17/2022)	DRC-2
Meyers, Ruth, MD <i>on behalf of</i> Myers, Stephen, PhD BCBA-d (7/18/22)	SM-1
Meyers, Ruth, MD (7/18/22)	RM-1
Haun, Vivian, Disability Rights California (7/18/22)	DRC-2
Spiegelman, Nina, Disability Voices United (7/18/22)	DVU-1
Mark, Judy, Disability Voices United (7/18/22)	DVU-2
Mark, Judy, Disability Voices United <i>on behalf of</i> Lapin, Connie, Disability Voices United (7/18/22)	DVU-3
Panales, Gilda, BCBA and CPI trainer (7/18/22)	GP-1
Watson, Mary E., EBSH Administrator (7/18/22)	MW-4
Barmache, Tami (7/18/22)	TB-1
Melanson, Mark (7/18/22)	MM-1

Below is a summary of each objection or recommendation made regarding the specific regulatory actions proposed, together with an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. The comments have been grouped by topic wherever possible. Comments not involving objections or recommendations specifically towards the proposed regulations in this rulemaking are not summarized below.

45-DAY COMMENTS

Comment: Commenter states that there are significant concerns about the use of restraints in these settings, and especially the addition of supine restraints as an acceptable “emergency intervention.” (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department would like to clarify that the use of “supine” restraints was not an addition to the rulemaking as the use of supine restraints already exists in the current regulation text as an emergency intervention technique when an imminent threat to health and safety exists. The Department does not intend the use of supine restraint to be the preferred method of de-escalation or physical intervention to maintain safety when there is an imminent threat to health and safety. Supine restraint is only used as a last resort in cases where the health and safety of the consumer and/or others are in jeopardy. Based on several comments and concerns regarding the use of restraints, the Department did make clarifying modifications in Sections 59010.1 and 59060.1, which prohibits physical restraint or containment techniques that obstruct a person's respiratory airway or impairs the person's breathing or respiratory capacity, pursuant to H&SC, Section 1180.4(c)(1). Furthermore, the Department added to Sections 59010.2 and 59060.1, additional requirements which limit the duration(s) of physical restraints and specifies requirements if restraint is reapplied within two minutes of a physical restraint release, and with parameters for each reapplication to a maximum of 4 cumulative hours in a 24-hour period.

Upon further review, the Department also added requirements during the Second 15-Day comment period released on April 14, 2023, for the Individualized Emergency Intervention Plan to identify alternative de-escalation strategies in Sections 59010(e)(1)(B) and 59060(e)(1)(B), addressed quarterly refresher trainings regarding supine restraint in Sections 59008(h) and 59058(h), and included annual emergency intervention training in Sections 59007(b) and 59057(b). Additionally, the Department included in the Second 15-Day Text the addition of inadvertently omitted text “without undue force” in the definition of “physical restraint” in Sections 59000(a)(33) and 59050(a)(32) to ensure consistency with H&SC, Section 1180.1, as explained in the Initial Statement of Reasons released to the public on June 3, 2022.

Comment: Commenter states all restraints, and especially restraints used as an extended procedure or where people are forcibly held to the ground, are harmful and traumatic to the people subjected to these practices and the staff who implement them. This is contrary to the recognition of trauma-informed care throughout the regulatory structure. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: Trauma-informed care is utilized prior to admission to the facility for each consumer by conducting an assessment as required by H&SC, Section 1180.4 which requires identification of preferred de-escalation strategies and potential contraindications for the use of physical restraint based on medical and/or trauma history. If physical restraint is used as a last resort when there is an imminent threat to health and safety, Sections 59010.3 and 59060.3 which require immediate assessment of the consumer's psychological well-being and emotional support needs and subsequent initiation for trauma treatment, if applicable. Additionally, debriefing activities required by Sections 59010.4 and 59060.4, require further evaluation of trauma-informed care, treatment, and revisions to the treatment plan that may be necessary to aid in preventing the event from occurring again in the future. The Department does not intend the use of physical restraint to be the preferred method of de-escalation. Physical restraint is only used in cases where immediate health and safety are in jeopardy for the consumer and/or others. Based on several comments and concerns regarding the use of physical restraints, the Department did make clarifying modifications in Sections 59010.1 and 59060.1 prohibiting physical restraint or containment techniques that obstruct a person's respiratory airway or impair the person's breathing or respiratory capacity pursuant to H&SC, Section 1180.4(c)(1). The Department also added language in Sections 59010.2(b) and 59060.2(b) to state that physical restraint used as an extended procedure requires the approval of the administrator or their designee. Furthermore, the Department added the requirement to limit the duration(s) of physical restraints and require a two-minute release between each physical restraint hold that reaches 30 consecutive minutes, with parameters for each reapplication to a maximum of 4 cumulative hours in a 24-hour period.

Comment: Commenter states necessary safeguards are needed to reduce the risk of dangerous outcomes when restraints are used, to ensure that people served have the ability to meaningfully participate in the debriefing process, and as well as other comments to bring greater consistency and clarity to the regulations. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department has included safeguards for the use of physical restraint to reduce the risk of dangerous outcomes. These additions include requirements of time limits on the use of physical restraint and restraint as an extended procedure, assessment of potential physical injury after each use of restraint, and restraint data reporting. Additionally, the Department made clarifying modifications during the Second 15-Day comment period to staff training requirements in Sections 59007 and 59057, Individual Behavior Supports Plan requirements when supine restraint is included in Sections 59010 and 59060 which requires a review of the plan by the regional center and the Department,

and the debriefing process in Sections 59010.4 and 59060.4. The debriefing process now includes procedures that require an additional opportunity to be offered to the consumer to debrief within 72 hours of the incident if the consumer voluntarily declined to participate in the debriefing meeting that is required to occur within 24 hours of the incident.

Comment: Commenter states that there are new requirements for facility administrators to report supine restraint usage to DDS, but no clarity or requirements about how or in what way DDS will review or act on this information. (DRC-1) (MM-1)

DDS Response: These proposed regulatory changes are specific to the requirements for facilities to report all instances of restraint use to ensure the health and safety of consumers and report incidents as they occur for reference and accountability. These data allow for objective monitoring and trend analysis in service provision.

Comment: Commenter recommends that DDS take the same approach to supine restraint that it has taken with other dangerous interventions such as prone restraint and seclusion: prohibit them. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: Although it may be necessary to employ emergency intervention techniques when an imminent threat to health and safety exists, the Department does not intend the use of supine restraint to be the preferred method of de-escalation or physical intervention to maintain safety when there is an imminent threat to health and safety. Supine restraint is only used as a last resort in cases where the health and safety of the consumer and/or others are in jeopardy. Based on several comments and concerns regarding the use of restraints, the Department did make clarifying modifications in Sections 59010.1 and 59060.1, prohibiting physical restraint or containment techniques that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity, pursuant to H&SC, Section 1180.4(c)(1). Furthermore, the Department added to Sections 59010.2 and 59060.1, additional requirements which limit the duration(s) of physical restraints and specifies requirements if a restraint is reapplied within two minutes of a physical restraint release, and with parameters for each reapplication to a maximum of 4 cumulative hours in a 24-hour period.

Upon further review, the Department also added during the Second 15-Day comment period a requirement for the Individualized Emergency Intervention Plan to identify alternative de-escalation strategies [Sections 59010(e)(1)(B) and 59060(e)(1)(B)] and addressed quarterly refresher trainings regarding supine restraint in Sections 59008(h) and 59058(h).

Comment: Commenter recommends that DDS adopt the approach to restraint used in H&SC, Section 1180.4(c)(1): rather than focus on the name or position of the restraint, focus on the action. Under this framework, any physical restraint or containment technique that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity is prohibited, which would include supine restraints where a staff member places their body weight against a person's torso. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department made clarifying modifications to Sections 59010.1 and 59060.1 to address this comment by adding the existing statutory language to clarify that the use of physical restraint techniques or containment is prohibited if it obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity as specified in H&SC, Section 1180.4(c)(1).

Comment: Commenter states that while the Department requires a plan to fade the use and inclusion of supine restraint, there is no requirement to actually ensure that supine restraints will be faded. Nor do the regulations provide clarity about what DDS will do with the information it receives, or if it will ensure that the facility follows the fading plan. (DRC-1) (MM-1)

DDS Response: No changes were made to the regulation in response to this comment. Review of the Individual Behavior Supports Plan is required by the regional center and the Department when supine restraint is included in the Individualized Emergency Intervention Plan pursuant to Sections 59010(e) and 59060(e). The Individual Behavioral Supports Team is responsible for the development, revision, and monitoring of the individual Behavior Supports Plan, including any fade plan developed when supine restraint is included in the Individualized Emergency Intervention Plan pursuant to Sections 59000(a)(28) and 59060(a)(27).

Comment: Commenter states that the Department has an opportunity to embrace trauma-informed care by similarly requiring Individualized Emergency Intervention Plans to include a plan to systematically fade the use of all restraints, not just supine restraints. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department made clarifying modifications in Sections 59007, 59008, 59057 and 59058 to include continued staff training requirements that emphasize trauma-informed positive behavioral supports and techniques that are alternatives to physical restraint. The Department does not intend the use of restraint to be the preferred method of de-escalation. Restraint is only used in

cases where the health and safety are in jeopardy for the consumer and or others.

Comment: Commenter states that the regulations do not clearly outline how and under what circumstances the person can participate in the debriefing process, or the implications if they are experiencing trauma that prevents their ability to attend a debriefing session under the prescribed timelines. (TNP-1) (DRC-1) (DRC-2) (DVU-1) (DVU-3) (MW-4) (TB-1)

DDS Response: The Department made clarifying modifications to the originally proposed text, Sections 59010.4 and 59060.4 regarding the debriefing procedures to include an additional opportunity for the consumer to attend a debriefing meeting within 72 hours of the incident if the initial debriefing meeting had been declined by the consumer.

Comment: Commenter suggests that the debriefing regulations lack clarity about what triggers an invitation to the debriefing meeting and who holds the authority to make the request. (TNP-1) (DRC-1) (DRC-2) (DVU-1) (DVU-3) (MW-4) (TB-1)

DDS Response: No changes were made to the regulation in response to this comment. The regulation Sections 59010.4(b)(1) – (5) and (c) as well as Sections 59060.4 (b)(1) – (5) and (c) clearly state that the facility must conduct the debriefing as quickly as possible but no later than 24 hours following every incident involving the use of physical restraint and list the required individuals that must attend in Sections 59010.4(b) and 59060.4(b). Additional attendees are specified in Sections 59010.4(c) – (d) and 59060(c) – (d). It is the facility's responsibility to facilitate coordination of attendees to engage in the debriefing activities.

Comment: Commenter stated that additional safeguards are needed to prevent short-term community crisis homes from becoming long-term placements. Recommend amendments that create a higher level of “scrutiny” for subsequent extensions that exceed a certain period of time, such as 6 or 9 months. This could come in the form of additional requirements that different approaches or interventions be attempted, or new assessments are tried. (DRC-1) (MM-1)

DDS Response: Section 59002, Facility Program Plan provides language that supports duration limitations [Section 59002(a)(15)]. Following the Department's initial approval for additional days in a Community Crisis Home beyond 18 months, each additional request for additional days must be accompanied by historical and current graphed data of consumers' target behaviors(s) and a summary of progress since the last written request, an updated Individual

Behavior Supports Plan, including transition plan, with an explanation of barriers that have prevented stabilization and/or transition out of the facility and an explanation of why continuing to reside in the facility is necessary to protect the consumer's health and safety. This information allows the Department to review approaches and interventions that have been attempted, provide technical assistance with alternatives or new assessments to be tried, address the potential cause(s) for the transition delay, and work towards how to overcome those barriers so the consumer can transition out of the home. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter recommended a requirement that the person in a restraint have their vitals checked in addition to the visual checks during a physical restraint. (DRC-1) (MM-1)

DDS Response: No changes were made to the regulation in response to this comment. Attempting to check vitals during a physical restraint can further escalate the situation which can increase the risk of an imminent threat to health and safety. Direct care staff receive training to recognize signs and symptoms of illness or injury and determine appropriate responses based on their observations and individual needs.

Comment: Commenter stated that the use of law enforcement as a "Community Emergency Service" should be prohibited. The regulations specify that facilities must make every effort to avoid bringing residents in crisis into contact with law enforcement. Facilities should instead employ all their expertise in de-escalation and utilize alternative crisis response teams where available. (DRC-1) (DVU-1) (DVU-2)(MM-1)

DDS Response: No changes were made to the regulation in response to this comment. Law enforcement involvement may be an appropriate option for de-escalation in certain circumstances.

Comment: Commenter stated Health and Safety Code Section 1180.4(h) prohibits restraints as an extended procedure (anything over 15 minutes). While DDS has the authority to provide exceptions to the maximum 15-minutes, these regulations authorize eight times that maximum which is not consistent with the intent of the legislature when granting DDS the regulatory authority. (DRC-1)

DDS Response: Health and Safety Code Section 1180.4, provides, in part that the Department may, by regulation, authorize an exception to the 15-minute maximum duration if necessary to protect the immediate health and safety of residents or others from risk of imminent serious physical harm and the use of physical restraint or containment conforms to the facility program plan approved by the Department of Developmental Services. Furthermore, the

Department added to Sections 59010.2 and 59060.2, additional requirements which limit the duration(s) of physical restraints and specifies requirements if restraint is reapplied within two minutes of a physical restraint release, and with parameters for each reapplication to a maximum of 4 cumulative hours in a 24-hour period for the health and safety of consumers and or others.

Comment: Commenter supports increasing continuing education from 20 to 25 to enhance the services that are provided to consumers however, these changes will require an investment of time and money. Service providers should not be expected to absorb the additional financial burden of compensating staff for non-direct service time this change would necessitate. ARCA recommends that the Department provide regional centers with a methodology to offset the increased financial burden this change would have on service providers. (ARCA-1)

DDS Response: No changes were made to the regulation in response to this comment. The Department performed a review of the fiscal impacts and determined that service providers would not be financially burdened by the additional training requirements as the costs may be included in the monthly Rate Development - Facility Costs form DS 6023 for the Department's approval if increased costs are warranted. The cost of training is incorporated and accounted for in the monthly Rate Development – Facility Costs form DS 6023.

Comment: Commenter recommends that Service Code 889 and Form DS6028, which help establish a rate for transition support for Community Crisis Homes (CCH), be expanded to include Enhanced Behavioral Support Homes (EBSH). As is the case with Community Crisis Homes, the commenter recommends this rate only be used to fund additional services and supports for the consumer during times of transition into or out of the EBSH, and that the funding is used for staff training, cross-training, or needs specifically related to the consumer's transition. (ARCA-1)

DDS Response: No changes were made to the regulation in response to this comment. The Department would like to clarify that Service Code (SC) 899 is to be utilized for Community Crisis Homes (CCH) transition support. The regulation text does not currently specify the SC and Forms to be utilized during the discharge and transition events. The Department advises that Enhanced Behavioral Support Homes utilize one of the following SCs during transition events: 020 (Transition/Set Up Expenses); 026 (Intensive Transition Services); 089 (Housing Access Services).

Comment: Commenter recommends modifying the proposed Section 59060(d)(11)(A)(2) as follows: If the regional center and or Department determines the need for revision of the Individual Behavior Supports Plan

including the Individualized Emergency Intervention Plan, ~~an facility~~ Individual Behavior Supports Team shall make the corrections and within 72 hours resubmit the revised plan to both the regional center's designee and the Department. (ARCA-1)

DDS Response: The Department made modifications to the originally proposed text to clarify that the administrator is responsible to ensure corrections are made by the qualified behavior modification professional with input from the individual behavior Supports Team. These updates are now reflected in the revised hierarchy under Section 59060(f).

Comment: Commenter requests clarification on the definition of aging out. That can be interpreted to be 1, 2, 3, or 4 years, or the point of entrance into a children's home. (MW-3)

DDS Response: No changes were initially made to the regulatory text in response to this comment. However, the Department ultimately revised the proposed regulatory text in Section 59059.5 which no longer includes the verbiage "aging out."

Comment: Commenter suggests a discharge plan should start with admission and in that case would not necessarily need to be reviewed monthly and a true Transition Plan should be determined by the IBST including the frequency of review and criteria for frequency of review. (MW-3)

DDS Response: No changes were made to the regulation in response to this comment. Transition planning is initiated at admission in a Community Crisis Home pursuant to 59009.5(a) or under circumstances described in 59059.5(a) in an Enhanced Behavioral Supports Home. In both circumstances, the transition plan must be reviewed by the Individual Behavior Supports Team at least monthly to ensure accuracy and completeness and that transition activities occur as described.

Comment: Commenter requests clarification of Section 59060.5 Restraint Reporting Data (7)(b) – If the consumer has no physical restraints, does a log need to be submitted for each consumer, or could the facility submit the Zero physical restraints on a facility log, similar to Disability Rights Reporting done monthly. (MW-3)

DDS Response: The Department made clarifying modifications to Section 59060.5 as part of the 15-Day Notice Package to indicate that a facility log shall be submitted monthly and indicate zero if no restraints were used.

Comment: Commenter proposed changes to Section 59056- (d) Staffing Requirements – Each EBSH must have an administrator present and on duty a minimum of 20 hours per week per facility to ensure the effective operation of the facility. *Proposed change* – This time must be documented in the consumer file. Documenting in the consumer file does not make sense, it is not documenting per consumer. An administrator is to ensure the effective operation of the facility which includes many activities. Documentation in the facility file would be more appropriate. (MW-1)

DDS Response: The Department made clarifying modifications in the 15-Day Notice Package to Section 59056. The modifications corrected the inadvertent oversight and changed the term “consumer” to “facility” to indicate that documentation should be in the facility file.

Comment: Commenter stated that the debriefing is very important but sometimes our children need the time to settle down. Sometimes they do not want to participate right away but it's important and so I'm asking my MFT and my BCBA, even if they don't participate in the full debriefing within 24 hours that they do it afterward, at least. There should be a certain allowance on time and that it still be required to have the consumer's information and debriefing done with someone on the team that makes sense even if it's not within the 24 hours. (MW-4)

DDS Response: The Department made modifications in the 15-Day Notice Package in Sections 59010.4 and 59060.4 for the debriefing procedures to include an additional opportunity be offered to the consumer to debrief within 72 hours of the incident if the initial debrief meeting is declined by the consumer.

Comment: Commenter stated that the use of restraints has been researched for almost 50 years now and that the data consistently indicates a more positive pro-active means of preventing severe challenging behavior (building relationships, developing effective means of communication, and respecting those, using de-escalating conflict resolution) are far more effective in remediating challenges. (CSU-1)

DDS Response: No changes were made to the regulation in response to this comment. The Department supports and emphasizes trauma-informed positive behavioral supports and techniques that are alternatives to physical restraint and included verbiage relative to staff training specifically targeting these topics. Existing and newly proposed regulatory text relative to alternatives to physical restraint are outlined in Sections 59007, 59008, 59010.4, 59057, 59058, and 59060.4.

Comment: Commenter states that restraint is an archaic form of human rights violation that is outdated and often leads to more severe problems, injury, and even death. It's shocking that this is even a consideration. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: No changes were made to the regulation in response to this specific comment. The Department does not intend the use of restraint to be the preferred method of de-escalation. Restraint is only used in cases where the health and safety are in jeopardy for the consumer and or others. Based on several comments and concerns regarding the use of restraints, the Department did make clarifying modifications in Sections 59010.1 and 59060.1 to prohibit physical restraint or containment techniques that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity pursuant to H&SC, Section 1180.4(c)(1) as well limit the duration(s) of restraints.

Comment: Commenter states that staff do not feel the need to restrain, and they do not have the desire to restrain, because his environment is designed to keep him and his team members safe. For example, there are no things hanging on walls that can be thrown, his appliances are bolted to the floor, his toilet tank is embedded within the wall so that the lid of the tank cannot be removed by him, and his windows are shatter-proof. We thought ahead and designed his home around his individual support needs. (DC-1)

DDS Response: No changes were made to the regulation in response to this comment. The regulations are written to clarify and specify the requirements for the safety, protection, and guidance for consumers and staff in Community Crisis Homes and Enhanced Behavioral Supports Homes.

Comment: Commenter states that when we focus on congregate settings as the only safety nets for people and ignore other options that exist, we cannot envision and create environments that support people in humane, inclusive, and dignifying ways. So much more is possible. We have seen other options work. And we must do better. (DC-1)

DDS Response: No changes were made to the regulation in response to this comment as there were no proposed changes.

Comment: Commenter urges DDS to consider the comments made by Will Leiner, Dr. Ruth Myers, Vivian Haun, Nina Spiegelman, and Julie Neward here, and avoid taking backward steps. (DRC-1) (DRC-2) (RM-1) (MM-1) (DC-1)

DDS Response: No changes were made to the regulation in response to this comment.

Comment: Commenter states that oftentimes restraints are used to manage behavior, which may be the result of sexual abuse. We need trauma-informed care/person-centered planning, and a debriefing meeting is key. A circle of support is key when there is trauma and securing/protecting that circle. (TNP-1) (DRC-2) (DVU-1) (MW-4)

DDS Response: No changes were made to the regulation in response to this comment. The Department supports and emphasizes trauma-informed positive behavioral supports and techniques that are alternatives to physical restraint and already included proposed regulatory text relative to staff training in trauma-informed care in Sections 59007, 59008, 59057 and 59058. Proposed regulatory text regarding debriefing is included in Sections 59010.4 and 59060.4.

Comment: Commenter stated that science supporting the replacement of course of procedures with comfort procedures has actually been in the scientific literature since 1835 so there's a lot of experience, a lot of knowledge, and a lot of procedures that are easier and safer for individuals and the people who support them. (RM-1)

DDS Response: No changes were made to the regulation in response to this comment. The Department supports and emphasizes trauma-informed positive behavioral supports and techniques that are alternatives to physical restraint and included verbiage relative to staff training specifically targeting these topics. Existing and newly proposed regulatory text relative to alternatives to physical restraint are outlined in Sections 59007, 59008, 59010.4, 59057, 59058, and 59060.4.

Comment: Commenter states that the use of restraints is not necessary. An alternative is Extra Ordinary Blocking. We developed these procedures for the Grafton Schools in Winchester, VA. These procedures can be summed up simply as dressing up as the Michelin Tire Man and letting the individual in crisis bang away at all that padding. For self-injury examples would be, putting a padded arm between mouth and hand or between fist and head. Extra Ordinary Blocking has been used successfully at the Grafton Schools and at Strategies to Empower People or STEP in Sacramento, CA. (SM-1) (CSU-1) (DC-1) (TNP-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department does not intend the use of supine restraint to be the preferred method of de-escalation. Supine restraint is only used in cases where the health and safety are in jeopardy for the consumer and or others. Based on several comments and concerns regarding the use of restraints, the Department did make clarifying modifications in Sections 59010.1 and 59060.1, prohibiting physical restraint or containment techniques that obstructs a person's respiratory airway or impairs the person's breathing or respiratory

capacity, pursuant to H&SC, Section 1180.4(c)(1). Furthermore, the Department added to Sections 59010.2 and 59060.1, additional requirements which limit the duration(s) of physical restraints and specifies requirements if a restraint is reapplied within two minutes of a physical restraint release, and with parameters for each reapplication to a maximum of 4 cumulative hours in a 24-hour period.

Comment: Commenter suggested ensuring the Crisis Homes and EBSH homes with clients that have High Intensity and Dangerous type Behaviors only be located in rural areas. It is very difficult for the staff in the homes, to keep clients quiet enough, and calm enough in order to avoid difficulties with the neighbors. Once neighbors are upset they tend to join together and it becomes hard to continue a harmonious experience for our clients in the community. (DK-1)

DDS Response No changes were made to the regulation in response to this comment as home development may depend on a number of variables.

Comment: Commenter stated the person who was restrained should be an essential part of the debriefing and is concerned that the regulations make it far too easy for the person's perspective to not be included in the debriefing if they are experiencing trauma that prevents their ability to attend a debriefing session within the prescribed timelines. Under the proposed regulations, the facility has to conduct the debriefing within 24 hours after each use of restraint. And the language says that the debriefing shall include the consumer quote "unless the consumer voluntarily declines". But if the person says that they don't want to participate hours after they've been restrained, because there are too traumatized or because the debriefing is being held in person, and they cannot or will not be in the same room as the staff where the individual restrain them that is not the same thing as saying that they don't want their story to be told, or that they don't want their version of events to be shared and considered as part of the debriefing. The facility should be required to make every effort to at least obtain the consumer's input in some alternative manner, such as through a separate interview, through a written report, or via Zoom, where possible, before a refusal to participate can be considered truly voluntary and therefore excluded. (TNP-1) (DRC-2) (DVU-1) (MW-4) (TB-1)

DDS Response: The Department made clarifying modifications to the originally proposed text, Sections 59010.4 and 59060.4 regarding the debriefing procedures to include an additional opportunity for the consumer to attend a debriefing meeting within 72 hours of the incident if the initial debriefing meeting had been declined by the consumer.

Comment: Commenter states that the regulations do not guarantee or require that the person who is restrained can have the people that they want to have at the debriefing there at the debriefing session. And that's the language on this

is vague and unclear. The language says that the debriefing “shall” include individuals requested by the consumer but continues on to say that such individuals “are not required to attend”. When exactly may a debriefing proceed without the participation of people that the disabled person wants to have at that debriefing? The language of the proposed regulations provides no specifics on that and does not make it clear. The regulations say that the debriefing may also include the client's rights advocate and a regional center representative with approval from the consumer. (DRC-2)

DDS Response: The Department nor the facility is authorized to mandate any individual to attend the debriefing process except for those described in Section 59010.4(b)(1) – (5) and Section 59060.4(b)(1) – (5). The Department ultimately added language in Sections 59010.4(c) and 59060.4(c) to clarify that those requested by the consumer to participate in the debriefing shall be invited, but the Department has no authority to require participation for anyone other than those outlined in Subsections (b)(1) – (5).

Comment: Commenter states that the language making any individuals deemed necessary by the consumer an optional member instead of a required member of the individual behavior supports team is entirely inconsistent with person-centered planning and trauma-informed care. Currently under the regulations, if the consumer wants to have someone to be part of their behavior support team, that person has to be part of that team, and under the proposed regulations that would now be optional. This is troubling because it has the impact of removing essential protections in the aftermath of the use of the restraint. For the consumer, having a supporter, or another trusted person is part of these discussions, and especially as a witness to the debriefing. In the immediate aftermath of an incident is critical, without the presence of individuals deemed necessary by the person. The narrative of what happened will exclusively be told from the perspective of the facility, or rather, staff who did the restraining making individuals deemed necessary by the consumer an optional rather than a required number means that at a debriefing there may well be no one from outside the facility, who could observe firsthand signs of trauma or potential injury. People are the experts on their own lives, disabled people are the experts on their own lives and regardless of what supports or interventions we might think are necessary to address moments of crisis, disabled people deserve to have their stories told. To tell their own stories. They deserve to be able to share what they've experienced in their own words. They deserve to have their family, their loved ones, and people they trust, who may know and who know them to be part of their behavioral supports team and to be present to witness discussions that take place about these critical incidents and moments in their lives. (DRC-2)

DDS Response: The Department added language in Sections 59010.4(c) and 59060.4(c) to clarify that those requested by the consumer to participate in the debriefing shall be invited, but the Department has no authority to require participation for anyone other than those outlined in Subsections (b)(1) – (5).

Comment: Commenter states that supine restraints and any restraints that prohibit breathing are dangerous and should not be allowed. (DVU-1) (DVU-2) (DVU-3) (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (GP-1) (TB-1) (MM-1)

DDS Response: The Department does not intend the use of supine restraint to be the preferred method of de-escalation. Supine restraint is only used in cases where the health and safety are in jeopardy for the consumer and or others. Based on several comments and concerns regarding the use of restraints, the Department did make clarifying modifications in Sections 59010.1 and 59060.1, prohibiting physical restraint or containment techniques that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity, pursuant to H&SC, Section 1180.4(c)(1). Furthermore, the Department added to Sections 59010.2 and 59060.2, additional requirements which limit the duration(s) of physical restraints and specifies requirements if restraint is reapplied within two minutes of a physical restraint release, and with parameters for each reapplication to a maximum of 4 cumulative hours in a 24-hour period.

Comment: Commenter states that allowing any kind of restraint, including restraints performed with trained staff and safety procedures in place, restraints performed face up as opposed to face down is problematic. DDS is the expert to understand alternatives to seclusion and restraint. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department does not intend the use of restraint to be the preferred method of de-escalation. Restraint is only used in cases where the health and safety are in jeopardy for the consumer and or others. Based on several comments and concerns regarding the use of restraints, the Department did make clarifying modifications in Sections 59010.1 and 59060.1, prohibiting physical restraint or containment techniques that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity pursuant to H&SC, Section 1180.4(c)(1). Furthermore, the Department added to Sections 59010.2 and 59060.12, additional requirements which limit the duration(s) of restraints in a 24-hour period.

Comment: Commenter suggests that non-verbal consumers have the right to communicate and are provided with a communication method, person-centered planning, and the right to self-determination. (DVU-2)

DDS Response: The Department did not make any changes to the regulation in response to this comment as the comment did not suggest any changes or corrections to the proposed regulation text.

Comment: Commenter states that Law enforcement should not be called under any circumstances, especially now that we have a 988 system. Please remove the entire section from the regulations regarding calling law enforcement as well as 988 as those numbers are for individuals in a crisis. Each person has an individual plan to manage their crisis which includes a contact list and does not include law enforcement. (DVU-1)(DVU-2)

DDS Response: No changes were made to the regulation as law enforcement involvement may be an appropriate option for de-escalation in certain circumstances; however, the Department did amend the regulations in Sections 59007(a)(2) and 59057(a)(2) to include staff training requirements for concepts, including but not limited to trauma-informed care, person-centered practices, positive behavioral supports, and cultural competency.

Comment: Commenter states that staff need to be trained to understand de-escalation techniques. (DVU-2)

DDS Response: The Department agrees that staff need to be trained to understand de-escalation techniques and proposed amendments [in Sections 59008(g) and 59058(g)] to add to the Continuing Education requirements monthly a minimum of 20 minutes of emergency intervention refresher staff training, which specifically focuses on one of the emergency intervention and de-escalation strategies, including techniques the staff will use to prevent injury and maintain the safety of consumers who are a danger to self or others.

Comment: Commenter states that restraining people diminishes the person who is being restrained as well as the staff performing the restraining procedures. Performing restraints leads to more aggressive behaviors as opposed to less aggressive behaviors. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department does not intend the use of restraint to be the preferred method of de-escalation. Restraint is only used in cases where health and safety are in jeopardy for the consumer and/or others. The proposed text already identified requirements for staff training that emphasize alternatives to physical restraint [Sections 59008(g)(2) and 59058(g)(2)] and that those alternatives must be identified in the Individualized Emergency Intervention Plan [Sections 59010(e)(1)(b) and 59060(e)(1)(b)].

Comment: Commenter states that CPI requires intense training and is often utilized as a last resort. (DP-1)

DDS Response: The Department did not make any changes to the regulation in response to this comment as the comment did not suggest any changes or corrections to the regulation text but rather clarifying the nature of CPI training.

Comment: Commenter states that as a CPI trainer, they train staff to hold the CPI for 10 minutes, not 15 minutes. After 10 minutes, staff are trained to disengage. Interested in having further discussions regarding the consistency of CPI training as some trainers are requiring 15-minute holds and others 10-minute holds. (DP-1)

DDS Response: The Department has decided to maintain the language regarding duration of restraint to no more than 15 minutes in accordance with Health and Safety Code 1180.4(h) as a standard for facilities referenced therein. While CPI (one of many emergency intervention training programs) may limit the use of restraint to 10 minutes, other emergency intervention training programs have varying or no specific time limits for the duration of restraint, so it is necessary for clarity that the Department maintain the time limit established by HSC 1180.4(h).

Comment: Commenter stated that Consumers may lack the verbal ability to communicate their frustrations and impulses which result in unsafe body movements for consumers and those around them. I would like the Department to prohibit the use of restraints especially how it is used as being a default strategy for de-escalation and look to alternative ways to support consumers through conversation and input to determine their underlying emotions and frustrations. Communication is often at the root of why dysregulation occurs, and the use of restraints can lead to daily traumatic experiences to the consumer. Consumers are often not supported to communicate their needs, nor are they included in their plans for support. (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The consumer is an integral member of the Individual Behavior Supports Team who is responsible for the development, revision, and monitoring of the Individual Behavior Supports Plan, including emergency interventions that may be necessary. Their input must be sought and included to support their behavior, including preferred communication and de-escalation methods. Individual Behavior Supports Plans regularly incorporate strategies to teach, improve, or facilitate consumer communication in a variety of methods including spoken language, sign language, photographic icons, gestures, and more. These alternative forms of communication are often Functionally

Equivalent Replacement Behaviors (FERBs). Consumers are supported to use communication in a manner that is functional to them. DDS does not intend for the use of restraint to be the preferred method of de-escalation. Restraint is only used in cases where the health and safety are in jeopardy for the consumer and or others.

Comment: Commenter stated they are in agreement with William Leiner's comment (see William Leiner's comment above). (CSU-1) (DC-1) (TNP-1) (SM-1) (DRC-1) (RM-1) (DRC-2) (DVU-1) (DVU-2) (DVU-3) (GP-1) (TB-1) (MM-1)

DDS Response: The Department did not make any changes to the regulation in response to this comment as the comment did not suggest any changes or corrections to the regulation text but rather agreed with another individual's comment.

Listed below are the organizations and individuals that provided comments during the **First 15-Day Comment Period:**

Commenter/Affiliation (date of letter)	Comment Letter Code
Aldrich, Rhonda (8/23/22)	RA-1
Westling, Amy Association of Regional Center Agencies, (8/25/22)	ARCA-2
Director, Stanford I/DD Law and Policy Project (8/26/22)	SPP-1
Leiner, William, Disability Rights California (8/30/2022)	DRC-3
CSU Northridge, Avenues SLS (8/30/22)_	CSU-N
Disability Voices United (8/30/22)	DVU-4

Summary of First 15-Day Comments and Responses

Comment: Commenter states their disagreement regarding lockdowns and believes they create more mental health issues and behavioral issues. The commenter also believes that staff disappear, which makes it unsafe for the Homes. (RA-1)

DDS Response: The Department did not make any changes to the regulation in response to this comment as it is outside of the scope of the CCH/EBSH regulations.

Comment: Commenter states that the proposed language would require Enhanced Behavioral Support Homes to provide five (5) hours of competency-based continuing education in the areas of person-centered practices, positive behavioral support, trauma-informed care, and cultural competency. This adds

five (5) hours of training, requiring direct care staff to complete a minimum of 25 hours of continuing education on an annual basis. ARCA supports increasing continuing education from 20 to 25 to enhance the services that are provided to consumers however, these changes will require an investment of time and money. Service providers should not be expected to absorb the additional financial burden of compensating staff for non-direct service time this change would necessitate. ARCA recommends the Department provide regional centers with a methodology to offset the increased financial burden this change would have on service providers. (ARCA-2)

DDS Response: The Department performed a review of the fiscal impacts and determined that service providers would not be financially burdened by the additional training requirements as the costs may be included in the monthly Rate Development - Facility Costs form DS 6023 for the Department's approval if increased costs are warranted. The cost of training is incorporated and accounted for in the monthly Rate Development – Facility Costs form DS 6023. Therefore, no changes were necessary to the regulation in response to this comment.

Comment: Commenter states that the proposed language specifies when a transition plan must be developed for consumers residing in an Enhanced Behavioral Supports Home and that transition plans must be reviewed monthly by the Individual Behavior Supports Team. To support the transition process and improve the quality of transition efforts, ARCA recommends that Service Code 889 and Form DS6028, which help establish a rate for transition support for Community Crisis Homes (CCH), be expanded to include Enhanced Behavioral Support Homes (EBSH). As is the case with Community Crisis Homes, ARCA recommends this rate only be used to fund additional services and supports for the consumer during times of transition into or out of the EBSH, and that the funding is used for staff training, cross-training, or needs specifically related to the consumer's transition. (ARCA-2)

DDS Response: The Department would like to clarify that Service Code (SC) 899 is to be utilized for Community Crisis Homes (CCH) transition support. The regulation text does not currently specify the SC and Forms to be utilized during the discharge and transition events. The Department advises that Enhanced Behavioral Support Homes utilize one of the following SC during transition events: 020 (Transition/Set Up Expenses); 026 (Intensive Transition Services); 089 (Housing Access Services). Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter states that implementing physical holds correctly can be the major factor determining whether a client (or staff member) emerges

safely from an episode of high-intensity aggression or property destruction. As the statute recognizes, intensive initial and ongoing training is required to ensure that appropriate holds are used and that they are implemented correctly. The statute should explicitly require that the 16 mandated hours of training must be provided through a nationally recognized vendor of empirically validated physical intervention/de-escalation techniques (such as ProAct, QBS SafetyCare, or CPI) that uses a "train the trainer" model in which trainers are trained for 32-40 hours by experienced, dedicated trainers, unless the EBSH/CCH can provide a compelling reason why these programs are not suitable for its clients. Otherwise, vendors may create their own ad hoc, in-house physical de-escalation programs simply to cut costs, which may put highly behavioral individuals (and staff) at risk. Any home that uses an in-house (not nationally recognized) program should be required to demonstrate that using an ad hoc "in-house" physical restraint protocol is at least as safe and effective as nationally recognized protocols, and not simply a way to cut costs. (To achieve this goal, perhaps the words "nationally recognized" could be inserted before the phrase "program for preventing and safely managing dangerous behavior.") (SPP-1) (CSU-N) (DVU-4)

DDS Response: The regulation text does include references to Title 22, Section 85165 beginning with Subsection (c) as well as Section 85122 beginning with Subsection (f) that outline the staff training requirements. The regulation text also requires staff training be led by a qualified trainer. The Department made further modifications in Sections 59007(b) and 59057(b) to include language that the 16 hours of emergency intervention training is completed annually. Additionally, Section 59007(g) and 59057(g) now includes language that direct care staff are to comply with requirements referenced in Title 22, CCR, Section 85365(i) and (j). Section 59058(h) now requires quarterly refresher trainings of supine restraint holds.

Comment: Commenter states that the statute should specify that the use of 1:1 physical restraint should not be used except in emergency situations. All the physical restraint procedures sanctioned by the nationally recognized certification programs mentioned above require a minimum of 2 staff; the use of 1:1 restraint is only allowed if there is imminent danger of bodily harm to the client or others. (SPP-1) (DVU-4)

DDS Response: No changes were made to the regulation in response to this comment. Some nationally recognized certification programs do instruct the use of 1:1 physical restraint where appropriate. The Department does not prescribe the use of a specific emergency intervention training program or curricula.

Comment: Commenter states that the definition of “physical restraint” as excluding “physical contact intended to gently assist a consumer in performing tasks or to guide or assist a consumer from one area to another” could be construed as excluding a physical escort procedure (such as a situation in which a consumer drops weight), even though such an escort procedure does require rigorous training to be carried out safely. (SPP-1) (DVU-4)

DDS Response: Staff are not permitted to use physical interventions that they are not specifically trained for or permitted to perform by their program design. The Department made clarifying modifications to the definition of “physical restraint” in Sections 59000(a)(32) and 59050(a)(33) to now include “without undue force”.

Comment: Commenter states that reference should be made to the use of blocking pads (such as ukeru) as an alternative to restraint since they are much safer and less restrictive. For example, homes could be required to demonstrate that they have tried to use blocking pads before resorting to physical restraint or to demonstrate that blocking pad techniques are not suitable for their clients. (SPP-1) (DVU-4)

DDS Response: The Department does not have the authority to prescribe which emergency interventions are utilized. Ukeru is a non-physical emergency intervention technique which is often used in de-escalation that homes may choose to implement. The regulation text includes specific requirements for the use of non-physical de-escalation strategies prior to the use of physical restraint. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter states that far more extensive measures are required to deter underreporting. These might include: (1) financial penalties for failure to report instances of restraint; (2) random audits that include interviews of staff; and most importantly, (3) whistleblower provisions that incentivize staff to report, anonymously if they choose, instances in which a home failed to report all instances of restraint. (SPP-1) (DVU-4)

DDS Response: The Department does not have the authority to pursue financial penalties for homes that fail to report instances of physical restraint. The Department performs regular monitoring of all facilities, during which we often speak with staff. Furthermore, there are protections currently in place for whistleblowers to freely report homes that fail to abide by facility operating procedures which includes failing to report on restraints. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter states that there is an urgent need for greater data collection and information sharing on best practices in this area. The Department should play a role in facilitating free information exchange among the administrators of CCH and EBSH homes, and any other DDS-funded programs that frequently manage severe behavioral challenges in community-based settings. Creating a permanent forum in which administrators/managers could frankly discuss concrete challenges they are facing, share tips and strategies, and refine best practices would greatly improve client safety. (SPP-1) (DVU-4)

DDS Response: The Department hosts quarterly provider workshops for both CCH and EBSH facilities that includes the sharing of resources, best practices, strategies, tips, etc. which are intended to increase networking, knowledge, collaboration, sharing resources, etc. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter proposes that the 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. (DRC-3) (DVU-4)

DDS Response: The 15-Day changes made to Sections 59010.1 and 59060.1 included “any physical restraint or containment technique that obstructs a person’s respiratory airway or impairs the person’s breathing or respiratory capacity pursuant to Health and Safety Code Section 1180.4(c)(1).” Supine restraints would be included in “any” restraint intended to obstruct a person’s respiratory airway or impair the person’s breathing or respiratory capacity. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter proposes that the 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. (DRC-3) (DVU-4)

DDS Response: The Department will maintain allowing restraint for up to 30 consecutive minutes to comply with the safeguards currently in place. Although CPI trainer Gilda Panalas did confirm her staff training strategies during the July 18, 2022, public hearing, the 10-minute restraint limit she referenced was not a requirement but rather a standard operating procedure included in her staff training curriculum. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter proposes changes to the 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. (DRC-3) (DVU-4)

DDS Response: The Department revised the original regulation text based on public comment to now include an additional opportunity for the consumer to participate in a debriefing meeting. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter states that the proposed plan allows and suggests the emergency response of “prone” and “supine” containment but does not list what specific training requirements and certifications are required by staff to implement such procedures. Most community support agencies require ALL of their direct care staff who implement crisis intervention to be trained and certified in a specific discipline (Mandt Training www.mandtsystems.com), NCPI or PRO-ACT. (CSU-N) (SPP-1)

DDS Response: The Department made modifications in Sections 59007(g) and 59057(g) to include language that direct care staff are to comply with requirements referenced in Title 22, CCR, Section 85365(i) and (j). The Department would like to clarify that prone restraints are prohibited. The regulation text does include the specific training requirements regarding restraints as they are referenced in Title 22, CCR, Sections 85165 and 85122, and Title 22, CCR, Sections 55365 and 85322 for group homes. The Department does not prescribe which emergency intervention training curriculum providers are to select. Providers are to select the training curriculum that is most appropriate based on the needs of the individual and facility operations.

Comment: Commenter states that it is also important to share my concern that "prone" and "supine" containments are suggested or allowed in the proposal. Prone containment is more likely to lead to serious injury (and even death) to both the people being restrained and the people restraining them and due to this, these techniques have been eliminated from trained certification in the disciplines listed above. I have been a certified trainer in these disciplines for over 30 years and would NEVER advocate for prone or supine containment being allowed in such regs; especially without a formalized training program and certification for staff. I believe that this language may have mistakenly been copied from older state behavior regulations from decades ago, which are outdated and no longer practiced. (CSU-N)

DDS Response: The Department would like to clarify that prone restraints are prohibited. Supine restraints require specific safeguards put in place for use as well as documentation and reporting. The Department regularly audits staff to make certain that they are continually trained and certified in emergency protocols. The regulation text does include the specific training requirements regarding restraints as they are referenced in Title 22, Sections 85165 and 85122, and Title 22, Sections 55365 and 85322 for group homes. The Department does not prescribe which emergency intervention training curriculum providers are to select. Providers are to select the training curriculum that is most appropriate based on the needs of the individual and facility operations.

Comment: Disability Voices United (DVU) strongly supports the comments and suggestions of Disability Rights California (DRC) on the Department's August 15, 2022 modifications to the proposed regulations for Community Crisis Homes and Enhanced Behavioral Support Homes. DVU also strongly supports the August 26, 2022 comments submitted by Alison Morantz, Director of the Stanford I/DD Law and Policy Project (SIDDLAPP). Addressing the issues raised by DRC and SIDDLAPP would significantly strengthen the regulations, help minimize risk

when restraints are used, and ensure that people served can meaningfully participate in the important debriefing process. DVU appreciates the Department's efforts to respond, with these modifications, to the comments raised by the community in writing and at the public hearing on the proposed regulations. Thank you for listening. (DVU-4) (DRC-4) (SPP-1)

DDS Response: The Department did not make any changes to the regulation in response to this comment as the comment did not suggest any changes or corrections to the regulation text.

Listed below are the organizations and individuals that provided comments during the **Second 15-Day Comment Period:**

Commenter/Affiliation (date of letter)	Comment Letter Code
Westling, Amy Association of Regional Center Agencies, ARCA (04/20/23)	ARC-1

Summary of Second 15-Day Comments and Responses

Comment: Commenter supports increasing continuing education from 20 to 25 to enhance the services that are provided to consumers however, these changes will require an investment of time and money. Service providers should not be expected to absorb the additional financial burden of compensating staff for non-direct service time this change would necessitate. ARCA recommends that the Department provide regional centers with a methodology to offset the increased financial burden this change would have on service providers. (ARCA-1)

DDS Response: The Department performed a review of the fiscal impacts and determined that service providers would not be financially burdened by the additional training requirements as the costs may be included in the monthly Rate Development - Facility Costs form DS 6023 for the Department's approval if increased costs are warranted. The cost of training is incorporated and accounted for in the monthly Rate Development – Facility Costs form DS 6023. Therefore, no changes were made to the regulation in response to this comment.

Comment: Commenter recommends that Service Code 889 and Form DS6028, which help establish a rate for transition support for Community Crisis Homes (CCH), be expanded to include Enhanced Behavioral Support Homes (EBSH). As is the case with Community Crisis Homes, the commenter recommends this rate

only be used to fund additional services and supports for the consumer during times of transition into or out of the EBSH, and that the funding is used for staff training, cross-training, or needs specifically related to the consumer's transition. (ARCA-1)

DDS Response: The Department would like to clarify that Service Code (SC) 899 is to be utilized for Community Crisis Homes (CCH) transition support. The regulation text does not currently specify the SC and Forms to be utilized during the discharge and transition events. Therefore, no changes were made to the regulation in response to this comment. The Department advises that Enhanced Behavioral Support Homes utilize one of the following SCs during transition events: 020 (Transition/Set Up Expenses); 026 (Intensive Transition Services); 089 (Housing Access Services).