

State of California
Department of Developmental Services

UPDATED INFORMATIVE DIGEST

Children's Community Crisis Homes/Enhanced Behavioral Supports Homes

Sections Affected: Amendments to the California Code of Regulations, Title 17, 59000, 59001, 59002, 59004, 59005, 59006, 59007, 59008, 59009, 59010, 59011, 59012, 59013, 59022, 59050, 59051, 59052, 59054 (renumbered to 59060), 59055 (renumbered to 59063), 59056 (renumbered to 59059), 59057 (renumbered to 59064), 59058 (renumbered to 59065), 59059 (renumbered to 59066), 59060 (renumbered to 59054), 59061 (renumbered to 59055), 59062 (renumbered to 59056), 59063 (renumbered to 59057), 59064 (renumbered to 59058), 59065 (renumbered to 59067), 59066 (renumbered to 59068), 59067 (renumbered to 59069), 59068 (renumbered to 59070), 59069 (renumbered to 59071), 59070 (renumbered to 59061), 59071 (renumbered to 59062), and 59072.

Adoption of new Articles 5.5 and 6.5 and new Sections 59009.5, 59010.1, 59010.2, 59010.3, 59010.4, and 59010.5, Subchapter 23, Title 17, CCR, for CCH.

Adoption of new Articles 5.5 and 6.5 and new Sections 59059.5, 59060.1, 59060.2, 59060.3, 59060.4, and 59060.5, Subchapter 24, Title 17, CCR, for EBSH.

The Department has reorganized the EBSH regulations to mirror the arrangement of the CCH regulations. The Department renumbered Sections 59054 to 59060, 59055 to 59063, 59056 to 59059, 59057 to 59064, 59058 to 59065, 59059 to 59066, 59060 to 59054, 59061 to 59055, 59062 to 59056, 59063 to 59057, 59064 to 59058, 59065 to 59067, 59066 to 59068, 59067 to 59069, 59068 to 59070, 59069 to 59071, 59070 to 59061, 59071 to 59062. Furthermore, the Department renumbered Articles 4 to 6, 5 to 8, 6 to 5, 7 to 9, 8 to 4, 9 to 10, and 10 to 7. The Initial Statement of Reasons includes a crosswalk on page 4, which identifies the rearrangement and allows for a side-by-side comparison of the regulations.

Description of the Regulatory Action

The Department is responsible for administering the Lanterman Act. The Lanterman Act, WIC, Section 4500 et seq., was enacted to reduce the institutionalization of people with developmental disabilities and prevent their dislocation from their home communities. Under the Lanterman Act, people with developmental disabilities have a right to services and supports in the least restrictive environment. With the reduced reliance on restrictive institutional and out-of-state placements, there is a need to increase community capacity and develop new alternatives, particularly for the most difficult-to-serve consumers.

Furthermore, pursuant to the Lanterman Act, WIC, Section 4500 et seq., people with developmental disabilities, as defined in WIC, Section 4512(a), receive, as an entitlement, services and supports based on their individual needs and choices.

2012 Budget Trailer Bill language Assembly Bill (AB) 1472 imposed a moratorium on admissions into state developmental centers and closure plans for the remaining state developmental centers arose from the 2015 Budget Trailer Bill language Senate Bill (SB) 82. With the reduced reliance on costly and restrictive institutional and out-of-state placements, there is a need to increase community capacity and develop new alternatives, particularly for the most difficult-to-serve consumers, including those with challenging behaviors.

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

As part of the 2019-20 State Budget package, SB 81 amended and added numerous sections of law pertaining to Human Services, including amendments that require the Department to develop guidelines around the use of restraint or containment in community crisis homes. The Department is now undertaking the regular rulemaking process to make the Children's Community Crisis Homes emergency regulations permanent and to align the Enhanced Behavioral Supports Homes with the same regulations.

The proposed adoption of these regulations on a permanent basis is necessary to permit the continued availability of the residential options and to establish program standards, consumers' rights protections, and other requirements for these homes, including the guidelines around the use of restraint or containment in Community Crisis Homes and Enhanced Behavioral Supports Homes.

The proposed regulations clarify and interpret WIC Section 4684.86. The authorizing statutes permit but do not require the establishment of Community Crisis Homes and Enhanced Behavioral Supports Homes, as well as the program standards for their development. The amendments proposed in this rulemaking action would add specificity and greater detail regarding the program standards which include program plan requirements, staffing structure, staff qualifications and training, requirements and timelines for the completion and updating of consumers' individual behavior supports plans, admission and continued stay requirements, requirements for ensuring appropriate services and supports are provided at the time of admission, the rate methodology, and assurances of consumer rights and protections.

On June 3, 2022, the Department released for public review and comment the Notice of Public Comment Period (45-Day Notice) and the Initial Statement of Reasons for Rulemaking (ISOR) for proposed amendments to the Children's Community Crisis Homes/Enhanced Behavioral Supports Homes regulation. The proposed amendments added codes to offer flexibility and to improve support to consumers and their families by offering more control over how and by whom some Individual Program Plan (IPP) services are provided. Additionally, the rate regulations for the in-home respite worker, participant-directed respite worker, and participant directed community-based training service are being amended to state the rate's authority. Because these rates have changed over the years, the Department removed the rates and stated the authority so that the Department will not need to amend the regulations each time there are future changes to the rate. The Financial Management Service Fiscal/Employer Agent (FMS FE/A) and Co-Employer rates were also updated to reflect the most current rate.

The NOPA contains an informative digest of the proposed action and policy statement overview which contains a description of the rationale for each amendment. On June 3, 2022, the ISOR was made available to the public. None of the background information or other sections of the Informative Digest have changed since the publication of the 45-Day Notice. During the 45-Day comment period, the Department received ten written comments.

In light of the comments received, the Department made appropriate conforming modifications to the originally proposed text with the changes clearly indicated (Modified Text), available to the public for at least 15 days. The Notice of Public Availability of Modified Text (15-Day Notice) and Modified Text were released to all commenters from August 15, 2022 through August 30, 2022, stakeholders, and interested parties and posted to the Department's website at <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/childrens-community-crisis-homes-enhanced-behavioral-supports-homes/>

During the First 15-Day Notice comment period, six written comments were received. Staff subsequently prepared written responses to all comments received during the 45-Day and First 15-Day public comment periods in the Final Statement of Reasons (FSOR). On October 17, 2022, the Department adopted the regulatory amendments after addressing all appropriate modifications and submitted the final regulations to the Office of Administrative Law.

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 public review and comment the Second 15-Day

Notice of Public Availability of Modified Text and Addendum to the Initial Statement of Reasons (ISOR) added to the Children's Community Crisis Homes/Enhanced Behavioral Supports Homes Rulemaking File for a Second 15-Day comment period (Second 15-Day Notice).

During the Second 15-Day comment period, the Department received two written comments. Staff included written responses to those comments in the Final Statement of Reasons (FSOR).