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California's protection and advocacy system

November 5, 2024

Sent via Electronic Portal

Department of Developmental Services
Office of Regulations
RE: **Special Incident Reporting**
1215 O Street, M.S. 9-10
Sacramento, CA 95814

Re: Disability Rights California's Comments on Special Incident Reporting Regulations

To Whom It May Concern:

Disability Rights California (DRC) is the agency designated under federal law to protect and advocate for the rights of Californians with disabilities. As a part of our work, DRC staff regularly reviews special incident reports for advocacy and investigative purposes. We reviewed the Department of Developmental Services' (the "Department's") proposed regulatory changes to special incident reporting (SIR) and submit the following comments.

I. **17 CCR section 54327 and 17 CCR section 56002: "Individual Served" and Pronoun Inclusive Language**

We appreciate the proposed person first and pronoun inclusive language changes to the regulations.

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II. 17 CCR section 54327(d)(2)(H): “Physical, Mechanical, and Chemical Restraint” Language

We laud the Department for enhancing the “use of physical, mechanical, and chemical restraint” language in the proposed revised regulations by specifying key circumstances where the use of restraints reasonably indicate suspected abuse. We also appreciate that the term “mechanical restraints” was added to the regulations and defined. We believe the four circumstances described in 17 CCR § 54327(d)(2)(H) will provide greater guidance to reporters on which incidents must be reported to the regional center and the Department and help them reflect on whether their actions were consistent with their approved plans, curriculum, and policies and in compliance with the law.

a. College Hospital is a key example of why reporting restraint incidents is needed.

Improper use of restraint is a major issue at facilities like College Hospital in Cerritos, as will be demonstrated in DRC's forthcoming public report. The Department's regulatory changes, particularly the four circumstances described in 17 CCR § 54327(d)(2)(H), can help improve College Hospital's reporting on this important topic.

According to our investigation, College Hospital routinely uses restraints when an individual's behavior does not pose an imminent risk of harm. We also found that it keeps people in mechanical restraints at times for close to four hours. Furthermore, the facility does not develop sufficient individualized behavior support plans, incorporate coping skills trainings, or track antecedents which results in poor documentation about the circumstances surrounding the incidents and leads to further behaviors. Lastly, people remain as patients of the hospital for years even after statutory deadlines require discharge and when their planning team agrees they are ready for discharge, which can lead to more restraint incidents and can negatively impact a care provider's decision to serve the individual in the community.

We encourage the Department to carefully train providers and regional centers on the applicability of this subsection and their reporting obligations, and we further encourage the Department to carefully monitor

compliance with this subsection to ensure the safety and dignity of individuals served.

III. DRC requests that the Department creates a standardized reporting form for statewide usage.

Given the robust regulatory changes that the Department proposes, DRC believes it is opportune for the Department to design and issue a uniform reporting form for all regional centers, vendors, and long-term health facilities (LTHFs) to use when documenting SIR pursuant to 17 CCR § 54327 and 17 CCR § 54727.1. A September 2021 U.S. Department of Health and Human Services, Office of the Inspector General report – which the Department references in its notice of proposed rulemaking action – made a similar recommendation.¹

Through DRC's work we hear about the challenges faced by people with intellectual and developmental disabilities, their families, and advocates when each regional center operates in substantively different ways. Existing forms significantly vary in their layout and what is collected.² Since regional centers, vendors, and LTHFs will need to follow the revised adopted regulations, developing and issuing the form in tandem with the regulations can support in their implementation. The Department could also add language to the regulations that specifies that a Department-issued form will be used to comply with reporting requirements.

a. DRC requests that the Department assess all 21 regional centers' SIR forms to develop the standardized reporting form.

In developing a standardized form, the Department should compile the existing SIR forms from all 21 regional centers, to assess and better inform what fields should be on the statewide form. DRC requests that the special

¹ U.S. Dep't Health & Human Servs., Off. Inspector Gen., *California Did Not Fully Comply with Federal and State Requirements For Reporting And Monitoring Critical Incidents Involving Medicaid Beneficiaries With Developmental Disabilities* (Sept. 2021), oig.hhs.gov/documents/audit/9557/A-09-19-02004-Complete-Report.pdf.

² A sample of SIR forms from three regional centers: NLARC, *Special Incident Report* (2006), <https://www.nlacrc.org/wp-content/uploads/2024/06/Special-Incident-Report.pdf>; RCOC, *Special Incident Report, Other Events, and Observations* (2021), https://www.rcocdd.com/wp-content/uploads/pdf/sir/Special_Incident_Report-RCOC.pdf; ACRC, *Special Incident Report* (2023), https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.altaregional.org%2Fsites%2Fmain%2Ffiles%2Ffile-attachments%2Faccr_552x_special_incident_report.doc%3F1686328481&wdOrigin=BROWSELINK.

incident report form include two separate fields for the “incident date” and “report date.” The form should include all incident types defined in the regulations, with the option to check the applicable boxes. For physical, mechanical, and chemical restraints, the form should include space for the reporter to detail the length of restraint in minutes, and the medication and dosages administered. The form should also list commonly notified agencies with adjoining fields that specify who the incident was reported to, their contact information, and the date of contact. Lastly, the Department should also develop an “additional page” form that reporters can attach to the SIR form to expand further as needed.

IV. DRC requests that the Department compile and release SIR data.

DRC requests that the Department aggregate and publicly disclose special incident report data quarterly on a public dashboard in a manner that complies with federal and state privacy laws. The data should be viewable by regional center, facility type, incident type, diagnosis, age range (0-2, 3-21, 22+), and race or ethnicity. The data should also track the timeliness of SIR submissions to both the regional centers and the Department. Access to such data will help the Department and the public monitor incidents and review trends which can lead to better oversight and the ability to address reoccurring issues more timely.

Thank you for the opportunity to submit comments on the proposed regulation changes. DRC is available to meet if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Adeyinka Glover". The signature is written in a cursive, flowing style.

Adeyinka Glover, Esq.