

State of California
DEPARTMENT OF DEVELOPMENTAL SERVICES

Transcript of Public Hearing
November 13, 2024

DDS Info [Pete Cervinka]

00:00:05: Okay, everybody. Good morning. Thank you very much for taking the time to join us today. We apologize for the technical difficulties in getting going this morning. We appreciate the time and attention that everyone is giving to this regulatory package. I want to shout out to our tech support team for making this happen. Our regulations team at the Department for all the support and guidance that they've provided to make this a reality, and you will hear shortly from Ryan Langen in our risk management team, and he and his team have been instrumental in coordinating the work that that led to this package of regulations we're here to talk about today. My name is Pete Cervinka. I'm the acting director at the department. I should have said that at the beginning and so I just want to echo appreciation as well.

To the entire community that we engaged with before we even entered into the formal rulemaking package. We had many, many discussions with people about, oh, sorry, tech support still going on in the background. We had many, many discussions with groups around the State of California of in their thoughts of what should and should not be included in an update to the special incident reporting regulations. And so I want to thank them. And also our regional center partners in implementing the programs who lent their expertise and experience to the design of this package as well.

I want to make one other unofficial comment, which is that the package of regulations that you see before you is identified as a non-fiscal package. Given the state of the State budget we opted to narrow the scope a little bit of the proposed update to the regulations and so although many in the community and at regional centers saw other iterations that would have other changes things that would have increased costs are not currently included. But I bring that up, not to say that your things are gone, but to thank you for the investment of time and effort, in that. We are retaining all of that potential change packet for future rulemaking when the state budget allows it to proceed. So, I don't want anybody to think that things that they were expecting to see are not included here. They're just not included here yet in a rulemaking package.

So again, I want to thank the many teams of people and to the community and regional centers that made this possible. And without further ado, thanks again for your time and Mr. Ryan Langen behind me, here, has turned his video on, and we'll take it from here. Thanks again. Everybody for your time today.

Ryan Langen, DDS

00:03:26: Great. Thank you, Pete. Appreciate the introduction. So, as Pete mentioned, Hi, everyone welcome. My name is Ryan Langen. I'm the assistant branch chief here in the office of risk management at DDS.

It is now a little bit after 11 AM. On Wednesday, November 13th, 2024. We are together today, both in person and by Zoom to receive public comments on a proposed rulemaking action by the Department of Developmental Services. The Department has proposed changes to the regulations for special incident reporting also referred to as "SIRs". The regulations can be found in title 17, California Code of Regulations, Sections 54327 and 54327.1. The proposed changes also include small changes to sections 56002, 56026, 56038, and 56059, and 56093. These smaller changes do not change the meaning of these sections. Under the rulemaking provisions of the California Administrative Procedures Act, APA. This is the time and place set for DDS to hear any statements in support of or against the proposed changes in the Department's regulations related to special incident reporting. We will accept oral, spoken and written comments here today.

On Friday, September 20, 2024. The notice for proposed regulatory action was published in the California Regulatory Notice Register. This notice was sent by email and US Mail to interested parties and was posted on the department's website.

I will briefly discuss the proposed changes in the rulemaking, and then I will open it up for anyone interested in presenting their comments today. The purpose of today's hearing is only to obtain public comment on the proposed changes. The Department will not respond to any comments made during this hearing or discuss today's comments with participants. The Department can ask a commentator for clarification to help us better understand a comment. The department can also answer any questions about the rulemaking process.

All spoken and written comments received during this hearing will be considered in accordance with the APA. This entire rulemaking hearing is being recorded currently on Zoom. The transcript of the hearing, including all comments submitted through the chat feature, will be made of the official rulemaking record. The Department will respond to all comments in the final statement of reasons which will be posted on the department's website, once completed.

The rulemaking file is made up of several items, including the notice of proposed action. The notice of public hearing issued on September 20th. The notice, the proposed changes to the regulations using underline and strike out to show where the changes are in the regulations. The initial statement of reasons and the standard form 399, an economic and fiscal impact statement.

To summarize the proposed changes. Definitions have been proposed for section 54327, Subsection, A to provide clarification and consistency regarding special incident reporting requirements.

The Department also proposes to reorganize how the information is structured for ease of reading, to add additional examples, to clarify when lists are not exhaustive, to specifically outline reporting requirements required by other entities or contracts, and to update outdated language to be more respectful and inclusive.

If you are presenting oral comments today. We ask that you also submit your comments in writing, but it is not required. Please submit your written comments through the online platform. The link has been provided for you in the chat. This information is also included in the notice of proposed action for this rulemaking and on the department's website. For those who are participating in person and have brought a physical copy of your written comment, please place your comment in the mark box in the front of the room. If you are not making a comment, excuse me in the back of the room, we should clarify. If you are not making a comment today, but would like to be notified of any changes made during the 15 day notice, please subscribe to the DDS regulations email list. You can find the link to subscribe in the chat or on our website.

Anyone participating in person today can use one of our designated laptops to subscribe to the email list, or you can request to be manually added to our mailing list on the sign in sheet. The department will notify anyone subscribed to the regulations list before the final adoption of any changes to this proposal, or about any new material used in proposing these regulations. Notification will be sent to everyone who submits written comments during the written comment period, including those written comments submitted today, to everyone who testifies today, and to everyone who asks to receive such a notification.

You do not have to identify yourself to participate today, however, the names and email addresses or mailing addresses from today's meetings registration or sign in sheet will be used to provide the notice. To keep things organized. We will call on people participating by Zoom, who use Zoom's raise hand feature. You can find the raise hand option on your Zoom toolbar located at the bottom of your computer screen. If you have joined by phone. Please, dial star 9 to raise your hand. Zoom lets us know the order in which hands were raised and who to call on next. All attendees are currently muted to avoid interruption to today's meeting. When you are called on to make your comment, you will be given the ability to unmute yourself, so you can speak. For anyone here in the room who wants to make comments in person, please line up in front of the table, and we will direct you when it is your turn to provide your comment.

When you are called on to speak, we ask that you do certain things so that we can hear you, and accurately add your comments into the official record. First, please state your name and any organization you represent. Second, please tell us the section or numbers of the particular regulation you want to comment on, and please limit your comments to 3 minutes or less to make sure everyone who wants to share comments today is able to. Once you have commented, you can stay in the meeting and listen to other commenters, or you can leave. Again, today's proceedings are being recorded and will be posted on the DDS website. We will stay online and here in the room until 1 PM in order to make sure we hear from anyone who has joined late.

And so we will now take comments on the proposed regulation. Again, please limit your comments to 3 minutes or less. If you agree with comments made by a prior speaker, please state who you agree with and add any new information you feel is important. Thank you.

DDS Info [Amy Wall]

00:10:54: And... can you hear me?

DDS Info [John Knight]:

00:10:59: Yes, we can hear you.

DDS Info [Amy Wall]

00:11:00: All right, perfect. I can see Elizabeth. Okay, we are going to start the public comment portion right now. We're going to alternate between in the room and online. Please raise your hands if you want to make an online comment, and we will call on you in the order that zoom shows us, and we will start with anyone in the room who would like to make a comment. So anyone in the room would like to comment, please raise your hand.

DDS Info [Amy Wall]

00:11:27: Alright. With that I will turn it over to Adinka Glover, please for an online comment.

Adeyinka Glover:

00:11:38: Good morning. My name is Adeyinka Glover, and I am a staff attorney in the Investigations unit at Disability rights California. And DRC's comments today accompany our written comments that we submitted through the department submission portal last week on November 5th.

We appreciate the expansion of the use of physical, mechanical and chemical restraint language in the proposed revised regulation, 17 of CCR, California Code of Regulations 54327(d)(2)(H). By first adding the term mechanical restraints, and then by including four circumstances which would

meet restraint reporting requirements. Given the robust regulatory changes proposed by the Department, DRC believes it is opportune for the Department to design and issue a standard reporting form for all regional centers, vendors, and long-term health care facilities to use when documenting special incident reporting. People with developmental disabilities, their families and advocates often express the challenges they face when regional centers operate in substantively different ways. And this reporting is no different.

We also mention in our letter that the Department could add regulatory language that states that the Department will issue a form to be used to comply with new reporting requirements.

Lastly, in our letter we request that the Department compile and publicly disclose SIR data while still complying with Federal and State privacy laws. Access to such data will help the Department and the Public monitor incidents and review trends which could lead to better oversight and the ability to address reoccurring issues more timely. Thank you.

DDS Info [Amy Wall]

00:13:57: All right. Thank you for your comments.

Shella, Please go ahead and unmute yourself and make your comments.

Shella Comin-DuMong:

00:14:06: Good morning, everyone. My name is Shella Comin-DuMong, and I am the mom of Simone. I'm the executive director of Chance Housing. I'm on the Developmental Services Task Force and the Master Plan for Developmental Services and the disability former Olmstead Committee, Daclac, the Housing Subcommittee. And I,

My public comment today accompanies the written comments that I provided to the Department earlier. And the State special incident reporting process is being updated to better ensure that events that may signify health and safety concerns are consistently reported across vendors and regional centers throughout the State. One of the risk trends emerging that significantly impacts people's health and safety is homelessness. People being at risk of homelessness and failing out of their community placements. It's my proposal that we add a checkbox to the SIR form or special incident reporting form, experiencing or at risk of homelessness.

And I heard loud and clear, Pete's earlier comments about things that were included in this package were going to be non-fiscal, have non-fiscal impacts and I challenge that collecting this information now is critically important. There's no deliverable attached to it other than collecting the data. The

downstream effects of this data can be far reaching and result in the people who receive regional center services having greater access to other resources that support them in community and result in positive health and safety impacts on homelessness is a devastating impact. For example, California housing and community development right now in partnership with the Department of Health care services and DDS have a RFP interest process occurring right now, whereby section Federal section 811 funds would fund up to 600 units of affordable housing and this data collection is the kind of information that we need to be able to make sure that people can receive those resources that are not, you know, DDS funding. So, I urge you to reconsider that the issue of collecting homelessness and at risk housing data would have a fiscal impact. And I urge you to include it in this update. Thank you very much.

DDS Info [Amy Wall]

00:17:28: Thank you, Shella. We appreciate your comments, and they are now part of the record. At this time, I am not showing any hands raised either online or in the room.

00:17:38: So again, I'll make the call. If anyone would like to make public comment, please raise your hand, either virtually or in person. And if we don't have anyone, we will be here for the duration of the hearing time. So, until 1 PM so people can make comments whenever they would like to during that timeframe.

00:18:17: All right again, showing no hands raised and feeling the urge to talk because there is silence. I will make sure that everyone knows that the comment period is open. And I will mute this computer until we have someone in the room or online that would like to speak. Thank you.

DDS Info [Amy Wall]

00:19:00: All right. We have a person who would like to make a comment. Tracwy Tindle. Thank you from for keeping me from talking to myself. Please go ahead and make your comments.

Tracey Tindle

00:19:10: Okay. I'm thinking that it should be., the SIR, should be one universal, but it also goes over into the licensing department. Is that possible where they can combine those two SIR reports into one where you, the provider, is only preparing one Sir.

DDS Info [Amy Wall]

00:19:38: We will note your recommendation for the record, but we don't reply to the comments in in this moment. We just take the suggestions from interested parties to apply to the process. So, thank you for noting that.

DDS Info [Amy Wall]

00:21:42: All right, we have another commenter ready to go. Rubi, please go ahead and unmute yourself and make your comment.

Rubi Saldana

00:21:55: 00:22:04: Si, Buenos dias mi nombre es Rubi Saldana. Soy [inaudible] Soy area manager y custundadora Pero mas importante soy mama de tres hijos con development disabilities. Y mi comentarios es el siguiente. Como de veramos de tener como acceso los padres, amirar quale son los reportes de incidentes ya que la comunidad hispana tienne mucho miedo de reportar esta clase de incidentes ya que muchas de las veces en ves de yudarnos nos perjudican nosotros nun que en contramos ayuda. Al reportar un incidente es mas accountability. No hay ayuda, es mas quien era responsable y la responsabilidad siempre cay en y nosotros a un cuando hemos reportado que no tenemos ayuda de diferentes sistema de todos maneras. La responsibility que nosotros quando a un aemos un reporte como nosotros podemos estar seguros de lo que hay que nosotros reportamos es lo que ellos escrivieron es exactamente lo que nosotros reportamos.

Spanish Translator for English Oral Translation

00:21:59: Yes, good morning. My name is Rubi Saldana. I'm part of ICC which is [inaudible]. And I am a manager and cofounder. More importantly I'm a mother of three children that have developmental disabilities and my comment would be this one right here. How? How should we, or rather how can we view access for parents. Rather what are? What are incident reports? Often times our Hispanic community is very, very afraid to report incidents because many, many times, or many occasions, whenever there is a report made it harms the family more than it helps them. We never, never really find the help that we need whenever we submit a report or when we inform an incident. Really, it comes out to accountability. There's no help. Its rather, who is the responsible one. And the responsibility always, always lands on us as parent. Even when we have reported that we're missing help or we don't have the support over different systems. In either case the responsibility needs to be, rather whenever we submit a report. How is it that we as parents can be sure that whatever it is we are reporting is actually what happened, right? Or how can we be sure that whatever they're writing down is exactly what we reported?

DDS Info [Amy Wall]

00:23:24: Thank you for your comments, Rubi.

DDS Info [Amy Wall]

00:23:26: Marty, you are up next. Please go ahead.

Marty Omoto

00:23:32: Yeah, I don't know. Can you hear me? This is Marty Omoto.

DDS Info [Amy Wall]

00:23:37: Yes, we can hear you.

Marty Omoto

00:23:40: You don't sound happy, though. Anyways, Marty Omoto. I'm a dad, a family member, CDCAN, California disability, aging community action network. First of all appreciate you doing this hearing. I know it's required by law, but the fact that you're also allowing virtual comments is very much appreciated. Shout out again to the interpreters, sign language as well as the Spanish speaking. I just want to make a brief comment on, first of all, support the Department's proposed emergency regs and appreciate the effort in putting this package together.

Just do want to add that regarding the issue of homelessness and the risk of someone losing their home, which is a critical issue for people with developmental disabilities, generally speaking. And my comment differs somewhat from the previous commenter, Shella DuMong in that just that the department issues a directive when these, assuming that these emergency Regs are approved, to the regional centers and to the public that it would it would include that one of the incidences, one of the situations that should be included in a special incident report would be if a person was at risk of being homeless or losing their home. And so that's more like something that would be included in the directive in informing the regional centers and the public regarding the emergency regs, assuming that it does get approved. And that's just my comment. Thank you.

DDS Info [Amy Wall]

00:25:28: Thank you, Marty, that's appreciated and noted for the record.

DDS Info [Amy Wall]

00:25:32: Is there anyone in the room that would like to make a comment? In seeing no hands raised online, either, we will wait until the next person makes themselves available to make comments today. Thank you.

DDS Info [Amy Wall]

00:30:23: Alright. It looks like we have another person who would like to make comments. Mark Melanson, please go ahead and unmute yourself and make your comment.

Mark Melanson:

00:30:32: Thanks so much, Amy. Mark Melanson, executive director of the California Community Living network. Although I put it in chat, would still like to echo comments that Shella made in regards to adding homelessness or at risk of homelessness, to the special incident report form and in addition to that, there was a language that is exempting parent vendors and individual vendors from special incident reporting requirements, and we don't see why anybody should be exempt from special incident report requirements, especially where services are tied to CMS dollars and regulations that that should be an expectation for all. In regards to the report reporting to the regional center regardless of when or where the incident occurred. Wannabe, you know, would like to see language that says, after becoming aware of the incident in cases wherein the incident occurred outside of the supports provided. Certainly, in some services that are intermittent and only billable by the face-to-face interactions that the time that it takes to gather information, coordinate, produce the SIR, outside of that face-to-face service isn't necessarily funded, and it's especially important in intermittent settings, but could be easily applied across the board, that, after becoming aware of the incident, the incident report is then completed and filled out. And then in the treatment provided to the consumer served, if any. Oftentimes somebody may be in prolonged hospital stay, and providers of, let's say, SLS or ILS might not have all of that information as far as medications and the times that they were administered. So, perhaps giving a little bit more flexibility there as well, by saying, when possible, provide a summary of the treatment provided to the individual served, if any and that concludes my comment, thank you.

DDS Info [Amy Wall]

00:33:14: Thank you.

DDS Info [Amy Wall]

00:33:18: Alright. We have a person in the room who would like to make a comment. Could you come up here so that the microphone could catch you, So the people online can hear?

DDS Info [Tamara Degner]

00:33:26: Apologies for that.

DDS Info [Amy Wall]

00:33:27: That's okay.

DDS Info [Tamara Degner]

00:33:33: Hi, I'm Tamara Degner, with home of Guiding Hands in San Diego County. And my comment was looking for some clarification on section 54327(d)(4)(K)1. in talking about reporting must occur for any bruising contusions or hematomas to the head, eyes, or neck, because those may be, those injuries may be indicative of more possible abuse or neglect.

And then, again, section 54327(d)(4)(K)2. also specifies that bruising contusions or hematomas to the breast, genitals, rectal and anal area must be reported for the same reasons—those could also be indicative of possible abuse or neglect. But then, in section 54327(d)(4)(L) talks about regulatory action specifies that bruising contusions or hematomas 2 inches or greater, constitute a type of injury that must be reported. So, I was just curious if we could have some clarity in that. I think there could be confusion if it's stating if we notice bruising that's larger than 2 inches reported, but then these other categories you would report any size of bruise in those specific areas.

And I can see where there could be confusion if somebody said, "Well, there was a bruise on the head, but it wasn't 2 inches." So maybe just clarifying those different sections. Thank you.

DDS Info [Amy Wall]

00:35:25: Alright. Anyone else in the room or online who wish to share their comments right now? We will continue to keep this opportunity open for people in person or online to share comments on the special incident reporting regulations. Thank you.

Ryan Langen, DDS

00:48:44: Okay, looks like we have somebody raised their hand. Yeah? Delilah, you can go ahead and unmute yourself, please.

Delia Valenzuela

00:48:55: Hi. My name is Delia Valenzuela from Ability First, and we have noticed a trend in regional centers varying in the type of incidents they require to be reported as a special incident.

One example is that an injury from a trip and fall that does not require care beyond First Aid may be flagged as a special incident by one regional center and yet not by another. And more specifically requests for SIRs tend to vary from one service coordinator to another.

Another example is that some regional centers require that individual positive COVID-19 cases are reported as special incidents when there is no hospitalization involved, whereas other regional centers have instructed us not

to report unless there is an outbreak. So, we would like there to be some kind of oversight that would discourage the lack of consistency or straying from the requirements of title 17. Thank you.

Ryan Langen, DDS

00:49:55: Thank you. Appreciate your comments, been noted for the record.

DDS Info [Ryan Langen]

01:38:24: Hi Everyone who's still hanging on the public hearing. I appreciate it. Is there anyone else who wishes to speak concerning the Department's proposed regulations?

Hearing no requests in the room, and seeing as there's no hand raised here on Zoom, I hereby close this public hearing. Please note comments may still be submitted in writing through the end of the day today, Wednesday, November 13th, 2024. You can drop comments off at DDS headquarters, located at 1215 O Street, Sacramento, California. Or you can submit comments through the link found on the Department's regulations Webpage, or in the chat feature of this meeting.

Thank you to everyone who has attended this hearing. We appreciate your assistance in developing these regulations.

One last reminder, if you are not currently on the Department's rulemaking email list, or would like to be added, please sign up through the link located in the chat, on our website, or by leaving your email address on the sign in sheet. Thank you for your attendance, and have a great rest of your day.