

DEPARTMENT OF MENTAL HEALTH NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Department of Mental Health proposes to take regulatory action to adopt regulations pertaining to psychiatric health facilities and specifically to establish a system for the imposition of civil sanctions against psychiatric health facilities in violation of laws and regulations pertaining to psychiatric health facilities. These regulations which establish, implement, interpret or make specific Section 1275 of the Health and Safety Code and Section 4080 (j)(1) and (2) of the Welfare and Institutions Code which requires the Department of Mental Health to promulgate regulations to establish a system for the imposition of civil sanctions against psychiatric health facilities in violation of the laws and regulations pertaining to psychiatric health facilities. This action is taken pursuant to the authority vested in the Department by Section 4080(j)(2) of the Welfare and Institutions Code and Section 1275 of the Health and Safety Code.

AUTHORITY:

Section 4080(j)(2) of the Welfare and Institutions Code and Section 1275 of the Health and Safety Code.

REFERENCE:

Section 4080(j) of the Welfare and Institutions Code.

PROPOSED REGULATORY ACTION:

The Department of Mental Health proposes to adopt the regulatory action described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

PUBLIC HEARING:

NOTICE IS HEREBY GIVEN that the Department of Mental Health will hold a public hearing on December 22, 1997 in Sacramento, California. The hearing will begin at 10:00 a.m. at the following location: Auditorium, 744 P Street, Room 102, Sacramento, California at which time any person may present oral or written comment relevant to the proposed regulatory actions summarized below in the informative digest of this notice of the public hearing. The hearing will be adjourned immediately following the completion of oral testimony. Any written statements or arguments must be received by the Office of Legal Services, Department of Mental Health, 1600 Ninth Street, Room 153, Sacramento, CA 95814 by 5:00 p.m. December 22, 1997 which is hereby designated as the close of the written comment period.

AVAILABILITY OF MODIFIED TEXT:

Following the hearing, the Department of Mental Health may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Department of Mental Health adopts the regulations. Requests for copies of any modified regulations should be sent to the Office of Legal Services at the address indicated below. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

SUBMISSION OF COMMENTS. REQUEST FOR DOCUMENTS AND ADDITIONAL INFORMATION AND CONTACT PERSON:

The Department of Mental Health has prepared and has available for public review, at the address shown below, the entire rulemaking file. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations and the initial statement of reasons. Copies of these items are enclosed and additional copies are available upon request from the Department contact person at the following address:

Evon Dixon-Montgomery
Department of Mental Health
Office of Legal Services
1600 Ninth Street, Room 153
Sacramento, CA 95814

Written comments should be addressed to the Office of Legal Services at the above address. Inquiries concerning the proposed regulatory action by the Department of Mental Health should be made to Delores Spahnn, Ph.D. of Licensing and Certification at (916) 654-2308.

INFORMATIVE DIGEST

Section 4080 (j)(2) of the Welfare and Institutions Code requires the Department of Mental Health (DMH) to promulgate regulations to establish a system for the imposition of civil sanctions against psychiatric health facilities in violation of the laws and regulations pertaining to psychiatric health facilities. Under the authority of these statutes, the DMH proposes to adopt regulations that will define the circumstances under which sanctions may be levied against psychiatric health facilities and the proposed sanctions to which a psychiatric health facility may be subject.

The statute also provides that the Department of Mental Health may issue a special permit to a psychiatric health facility for it to provide Structured Outpatient Services. There are no existing regulations that address this issue. These proposed regulations delineate the procedure for applying and obtaining a special permit for Structured Outpatient Services. The proposed regulations will describe the circumstance under which a program may be offered as a service by a facility with a special permit issued by the DMH. Structured outpatient services are services offered to patients who are not admitted to the facility on a 24 hour basis; rather, patients receive treatment during daytime hours and return to their homes in the evening. The proposed regulations will describe how a psychiatric health facility may apply for a special permit to offer these services, including permit fees to be charged the applicant, program hours and content, and staffing, including the appointment of program coordinator.

Existing law requires the DMH to adopt regulations for the review and approval of programs and facilities requesting licensure, and for being in compliance with program standards. A number of technical changes are proposed to existing regulations in order to clarify regulatory intent. Where such lack of clarity existed, it has been difficult for psychiatric health facilities to know whether they have been in compliance with regulations.

The regulatory changes intended to meet the statutory requirements are proposed for the following articles of Title 22, Division 5 of the California Code of Regulations:

Article 1 - Definitions

Section 77028 is added to define the term “sanction”.

Section 77030 is added to define the term “structured outpatient services.”

Article 2 - Licensing and Inspection

Section 77039 (a)(l)(2) is added to clarify the process of obtaining an inspection for fire and life safety by psychiatric health facilities.

Section 77043 (c)(d) is added to clarify scope of licensure for psychiatric health facilities.

Section 77045 is amended to provide psychiatric health facilities with an alternative method of providing site review information to the public.

Section 77052 is added to describe the circumstances under which the Director may impose sanctions against psychiatric health facilities.

Article 3 - Services

Section 77061 is amended to clarify the circumstances under which an individual with a mental disorder and with a concomitant physical illness, may be admitted to a psychiatric health facility.

Section 77065 is amended to clarify the mechanisms for the development and dissemination of nursing care plans and policies.

Section 77069 is amended to ensure that rehabilitation services provided in a psychiatric health facility are designed to meet the particular needs of acute psychiatric inpatients.

Section 77070 is added to define the application process and programmatic requirements of “structured outpatient services”.

Section 77079.5 is amended to require prescribers of service to enter the time in which an order is written into the clinical record.

Section 77079.11 is amended to allow an alternative system in psychiatric health facilities with regard to the administration and storage of medications.

Article 4 - Administration

Section 77083 is amended to require that the pharmacist's review of patient records be included in the medication monitoring activity in the psychiatric health facility.

Section 77091 is amended to define the relationship between a psychiatric health facility's clinical director and administrator.

Section 77093 is amended to define the relationship between the organization of a county government that owns and operates a psychiatric health facility and the facility's clinical director.

Section 77103 is amended to regular range of motion exercise to secluded patients and to restrict the application of seclusion and restraint to involuntary patients.

Section 77111 is amended to comply with the Americans with Disabilities Act.

Section 77113 is amended to define the population psychiatric health facilities are licensed to treat, and the limits of licensure.

Section 77117 is amended to require psychiatric health facilities to conduct background investigations that include previous employment and criminal records of prospective employees and to define the types and amount of inservice training psychiatric health facility employees are required to obtain.

Section 77125 is amended to prevent a psychiatric health facility from allowing a third party to make false or misleading claims regarding services provided in the psychiatric health facility.

Section 77135 is amended to define the circumstances under which a facility must arrange alternative treatment for patients with communicable diseases.

Section 77139 is amended to update the requirements that would necessitate a facility adopting a unit health record system.

FISCAL IMPACT STATEMENT:

A. Fiscal Effect on Local Government: None

B. Fiscal Effect on State Government: None.

C. Fiscal Effect on Federal Funding of State Programs: None

D. Fiscal Effect on Private Persons or Businesses Directly Affected: Potential minor impact to businesses directly affected based on the proposed adoption of a provision which would allow the State to levy monetary penalties.

DETERMINATIONS:

IMPACT AND COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations would not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed regulations will not impact housing costs.

IMPACT ON THE REGULATED COMMUNITY

The proposed regulations impose no additional costs on the regulated community.

IMPACT ON SMALL BUSINESS

The Department has determined that the proposed regulations will not affect small businesses in California because the businesses directly affected by these proposed regulations do not come within the definition of small businesses.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ABILITY TO COMPETE WITH BUSINESSES IN OTHER STATES

The adoption of the proposed regulations will not have an adverse economic impact on businesses, including the ability of Californian businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(12), the Department must determine that no alternative considered by it would either be more effective in carrying out the purpose for which the regulatory action is proposed or would be as effective and less burdensome on affected private persons than the proposal described in this notice.

The location for the public hearing is accessible for the physically handicapped in accordance with Civil Code Section 54.1