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State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

NOTICE OF PROPOSED RULEMAKING

SUBJECT: Adult Residential Treatment Services (ARTS) Provider Requirements, DHCS-15-009

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) proposes to amend California Code of Regulations, title 9, section 1840.332 after considering all public comments, objections, and recommendations.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to **Adult Residential Treatment Service (ARTS) Provider Requirements, DHCS-15-009** and submit using any of the following methods:

Mail Delivery: Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX: (916) 440-5748

Email: regulations@dhcs.ca.gov

The written comment period closes at **5:00 pm on August 5, 2020**, any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 pm** on this date for consideration.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code section 11346.8.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:
Sections 10725, 14124.5, 14680 and 14700, Welfare and Institutions Code.

These regulations implement, interpret, or make specific the following:
Sections 5671, 5675, 14021.4, 14684 and 14718, Welfare and Institutions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's mission is to provide Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services and long-term care. In support of this mission, the Department is responsible for statewide oversight of community mental health programs and services in California. Within the scope of this oversight and responsibility, the Department has sole monitoring and licensing authority for Mental Health Rehabilitation Centers (MHRCs).

The Department's Licensing and Certification Division licenses MHRCs under sections 781.00 through 788.14 of title 9 of the California Code of Regulations. MHRCs provide community-based, intensive support and rehabilitation services designed to assist persons, 18 years or older, with mental disorders who would otherwise have been placed in a state hospital or other mental health facility to develop skills to become self-sufficient and capable of increasing levels of independent functioning. MHRC program services include, but are not limited to, clinical treatment such as psychiatric and psychological services, learning disability assessment and educational services, pre-vocational and vocational counseling, development of independent living, self-help and social skills, and community outreach to develop linkages with local support systems.

Adult Residential Treatment Services (ARTS) are rehabilitative services that are provided in a non-institutional, residential setting for beneficiaries who would be at risk of hospitalization or other institutional placement if they were not in the residential treatment program. These services include assessment, plan development, therapy, rehabilitation and collateral. MHRCs may provide ARTS to beneficiaries.

Currently, programs that provide ARTS are required to obtain certification as a Social Rehabilitation Program (SRP) and are required to comply with SRP certification standards in order to be eligible to claim Federal Financial Participation (FFP). (Cal. Code Regs., tit. 9, §§ 1840.308, 1840.332.) The proposed regulations carve out an

exception for MHRCs from having to obtain SRP certification. Because current MHRC licensing requirements are similar to, and in most instances, exceed SRP certification standards, the SRP certification requirement is duplicative and unnecessary for MHRCs.

Removing the certification requirement for MHRCs will streamline processes and increase efficiencies for both the Department and MHRC programs by eliminating redundant administrative requirements. If California Code of Regulations, title 9, section 1840.332 is amended, more MHRCs may choose to provide ARTS, which may increase Medi-Cal claims and FFP reimbursement requests. However, the anticipated increase is minimal because the Department does not expect a significant increase in the number of MHRCs providing ARTS. To date, only a small number of MHRCs have expressed an interest in providing ARTS.

RELATED EXISTING LAWS & REGULATIONS

Welfare and Institutions Code section 14700 transferred State administrative functions and applicable functions for Medi-Cal related mental health services, which includes MHRCs, from the former Department of Mental Health to the Department, effective July 1, 2012. Welfare and Institutions Code section 14700 gives the Department authority to adopt, amend, and repeal regulations pertaining to Medi-Cal Specialty Mental Health Services. (Assembly Bill 102 (Chapter 29, Statutes of 2011).) In addition, Welfare and Institutions Code section 10725 authorizes the Director of the Department to adopt, amend, or repeal regulations as necessary to carry out the purposes and intent of the statutes governing the Medi-Cal program.

Welfare and Institutions Code section 14680 authorizes the Department to develop guidelines for mental health plans to ensure the efficient utilization of Medi-Cal mental health services. The Department's guidelines must comply with federal Medicaid requirements, the state plan, and waivers to ensure full and timely federal reimbursement of mental health services provided. In addition, Welfare and Institutions Code section 14718 outlines the scope of the Department's authority over specialty mental health services provided under the Medi-Cal state plan and the Specialty Mental Health Services Waiver. This includes, but is not limited to, reimbursement and claiming procedures, review and oversight, and appeal processes for mental health plans (MHPs) and MHP subcontractors. This regulatory action is proposed to amend California Code of Regulations, title 9, section 1840.332, under this statutory authority, to exclude MHRCs from having to obtain the additional SRP certification.

STATEMENT OF PURPOSE/PROBLEM TO BE ADDRESSED

This regulatory action will modify compliance requirements for MHRCs providing ARTS and will reduce administrative burdens for the Department and MHRC programs. Currently, MHRCs providing ARTS must obtain a license and certification from the Department to claim FFP. This dual licensing and certification requirement stretches the Department's resources and confuses MHRC providers, imposing undue financial, time and compliance burdens on providers. The existing regulations require the Department and MHRCs to follow duplicative regulatory schemes related to: (1) program and

application review; (2) complaint response; (3) monitoring activities; and (4) enforcement activities. Currently, MHRCs providing ARTS must comply with MHRC licensing standards, (Cal. Code Regs., tit. 9, § 781 et seq.), SRP certification standards (Cal. Code Regs., tit. 9, §§ 531-535.), and Medi-Cal certification standards (Cal. Code Regs., tit. 9, §§ 500 et seq., 1810.100 et seq.).

Currently, an MHRC providing ARTS is required to renew its MHRC license and SRP certification annually, and DHCS is required to conduct multiple initial and annual onsite reviews of these MHRCs to ensure compliance with applicable licensing and certification laws and regulations. This mandate results in an inefficient use of MHRC and Department resources. This proposed regulatory change would eliminate duplicative compliance activities, thereby reducing administrative burdens and increasing efficiencies for MHRCs and the Department. This proposed regulatory amendment also responds to multiple requests received from mental health stakeholders requesting that the Department amend California Code of Regulations, title 9, section 1840.332 to exempt MHRCs from SRP certification requirements.

ANTICIPATED BENEFITS OR GOALS OF THE REGULATIONS

The amendments proposed through this regulatory action will specify that MHRCs providing ARTS do not have to obtain SRP certification since MHRC programmatic requirements meet or exceed all SRP programmatic requirements. The existing MHRC regulations are more comprehensive and subsume all SRP certification requirements as follows:

Both MHRCs and SRPs provide rehabilitation services and activity programs that meet the requirements of ARTS as defined under existing regulations. However, medical requirements for MHRC programs are broader and more extensive than SRP medical requirements. Moreover, while documentation requirements for admission, discharge, treatment and rehabilitation planning are similar for both programs, MHRC documentation requirements are more stringent. Staff training requirements for MHRCs are also more extensive, and the number and type of staff required to operate a MHRC exceeds SRP staffing requirements. Lastly, although SRP regulations specify limits on a client's length of stay and MHRC regulations do not, MHRC length of stay requirements are more robust and client-focused. Similar to SRPs, MHRC length of stay regulations involve clients in the development of their treatment and rehabilitation plans, however, MHRCs exceed SRP standards by requiring frequent reviews of client plans and regularly reassessing MHRC clients to determine appropriate placement.

Statewide, the Department currently licenses 6 MHRCs in operation, with 16 beds or fewer that are eligible to provide ARTS. Of these 6 MHRCs, 2 are currently certified as an SRP and claim FFP for ARTS services. Removing the SRP certification requirement would enable all currently licensed MHRCs with 16 beds or fewer to claim FFP, assuming the MHRCs are also Medi-Cal certified. (California Code of Regulations, title 9, sections 1840.308 and 1840.332). The Department anticipates licensing 4 additional MHRCs with 16 beds or fewer in the near future. These 4 additional MHRCs would all be eligible to provide ARTS and claim FFP. Specifically, the Department anticipates

licensing 4 new MHRCs in San Mateo County. The current requirement tying SRP certification to FFP reimbursement is found only under these regulations. (California Code of Regulations, title 9, sections 1840.308 and 1840.332). There is no similar SRP certification requirement under federal law or in the state plan.

This proposed regulatory action ensures the proper and efficient administration of the Medi-Cal program in accordance with the federal and state laws that govern Medi-Cal's rules of participation, funding, and the authorized schedule of mental health services.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department has conducted an evaluation of the related existing state regulations under California Code of Regulations, Title 9, Division 1 and California Code of Regulations, Title 22, Division 3 and has determined that the proposed regulations are consistent with and compatible with those regulations. An automated search of these areas of California Code of Regulations, titles 9 and 22 using the following keywords "mental health rehabilitation center," "social rehabilitation program," "adult residential treatment services," "federal financial participation," and "FFP" was conducted via Westlaw and yielded no conflicting state regulations.

REGULATION SECTION

This proposed regulatory action amends California Code of Regulations, title 9, section 1840.332 to accomplish the following:

- Eliminate the existing requirement, which requires MHRCs that provide ARTS to obtain certification as an SRP.
- Make non-substantive amendments to correct punctuation, a cross reference, and grammar (capitalizations) in an effort to achieve clear and consistent regulatory language.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

FISCAL IMPACT STATEMENT

- A. Costs to any Local Agency or School District that is required to be reimbursed Under Part 7 (commencing with section 17500), Division 4 of the Government Code: None.

Costs to any Local Agency or School District that is not reimbursable by the State: Costs will be fully financed from the fees, revenue, etc. from Local Revenue Fund 2011, Costs would begin FY 2022-23. Authorized by 6 Article 13B/36 of Article 13 of the California Constitution.

- B. Costs or Savings to any State Agency: Other. There may be minor savings of \$6,000 for travel costs for onsite SRP certification reviews that would no longer be necessary.

- C. Costs or Savings in Federal Funding to the State: Other. \$2,786,000 FF, annually beginning FY 2022-23.
- D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Agencies: None.

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

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

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has determined that the proposed regulations do 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.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES

The Department has made an initial determination that the proposed regulations do not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (ANALYSIS)

In accordance with Government Code section 11346.3(b)(1), the Department has determined that the proposed regulations do not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation or elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

IMPACT ON JOBS AND BUSINESSES

This proposed regulatory action will impact only those providers who choose to participate in the Medi-Cal program as MHRCs that provide ARTS. The amendments proposed through this regulatory action eliminate the additional program certification standards that require an MHRC that provides ARTS to be certified as an SRP.

Through this proposed regulatory action, MHRCs will no longer have to obtain the SRP certification to claim FFP for ARTS services. MHRC providers will save administrative costs related to preparing and assisting state surveyors in conducting initial and annual onsite SRP certification reviews. The Department will also save administrative costs related to conducting initial and annual onsite SRP certification reviews. These administrative savings may lead MHRC providers to expand the provision of these mental health services. However, these savings are not anticipated to have an impact that would lead to a significant growth in program services so there is no anticipated

impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California.

BENEFITS OF THE PROPOSED REGULATION

The Department has determined that the proposed regulations will not specifically affect worker safety or the state's environment. However, the proposed regulations will benefit MHRCs that provide ARTS under the Medi-Cal program by removing this additional certification requirement, which imposes undue financial, time and compliance burdens on these providers. Removing this barrier will also benefit the health and welfare of Californians, specifically beneficiaries with mental illnesses, who will be able to receive these medically necessary and vital mental health services in an MHRC setting.

This regulatory proposal also ensures the proper and efficient administration of the Medi-Cal program, in accordance with federal and state laws and establishes licensing requirements that are clear and efficient for MHRC providers.

EFFECTS ON SMALL BUSINESSES

The Department has determined that the proposed amendments would only affect small businesses (MHRCs) that choose to provide ARTS to beneficiaries.

HOUSING COSTS DETERMINATION

The Department has made the determination that the proposed regulation would have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory action is proposed, would be as effective and less burdensome to affected private persons than the regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Existing regulations related to MHRCs and the provision of ARTS, are located in California Code of Regulations, title 9. Using this regulatory proposal to make amendments to existing requirements is the most effective and convenient way to provide (updated) information directly to those impacted (MHRCs; beneficiaries). This regulatory action is consistent with Welfare and Institutions Code sections 14680 and 14718 related to the efficient utilization of Medi-Cal mental health services.

ASSISTIVE SERVICES

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-

2929), email – regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code section 11346.6.

CONTACT PERSONS

Inquiries regarding the proposed regulations described in this notice may be directed to Henry Omoregie of Licensing and Certification Division, at (916) 323-1864.

All other inquiries concerning the action described in this notice may be directed to David Kim of the Office of Regulations, at (916) 345-8399, or to the designated backup contact person, Jasmin Delacruz, at (916) 440-7695.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at:

<http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.