

INITIAL STATEMENT OF REASONS

Background

The California Department of Health Care Services' (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 (CCR). 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 Title 9, CCR 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 (WIC) 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. Section 14700 gives the Department authority to adopt, amend, and repeal regulations pertaining to Medi-Cal Specialty Mental Health Services. (WIC §14700; Assembly Bill 102 (Chapter 29, Statutes of 2011).) In addition WIC 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.

WIC 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, WIC 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 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 (See 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 Title 9, CCR 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.¹ However, medical requirements for MHRC programs are broader and more extensive than SRP medical requirements.² Moreover, while documentation requirements for admission, discharge, treatment and rehabilitation planning are similar for both programs, MHRC documentation requirements are more stringent.³ 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.⁴ Lastly, although SRP regulations specify limits on

¹ Cal. Code Regs., tit. 9, § 1810.203; Compare Cal. Code Regs., tit. 9, §§ 531, 532, 532.4 with Cal. Code Regs., tit. 9, §§ 786.00, 786.10, 786.17, 786.18, providing programmatic standards and services for SRPs and MHRCs respectively.

² Compare Cal. Code Regs., tit. 9, § 532.1 with Cal. Code Regs., tit. 9, §§ 785.00, 785.10, 785.11, 785.12, 785.13, 785.20-785.34, providing medical services requirements for SRPs and MHRCs respectively. Numerous MHRC regulatory requirements for medical directors and physician, nursing, and pharmaceutical services do not exist for SRPs.

³ For example, each MHRC client must have a comprehensive individual mental health evaluation within 30 days of admission, signed by a licensed mental health professional. SRPs do not have such requirements. Compare Cal. Code Regs., tit. 9, §§ 532.2, 532.3 with Cal. Code Regs., tit. 9, §§ 784.26-784.28, 786.11, 786.15, providing admission, treatment and rehabilitation documentation requirements for SRPs and MHRCs respectively.

⁴ For example, MHRCs require 52 hours of in-service training, whereas SRPs require 20 hours of in-service training. Also, MHRCs must have dietetic staff and an activity director who is an occupational therapist, art therapist, music therapist, dance therapist or recreation therapist. SRPs do not have such requirements. Compare Cal. Code Regs., tit. 9, §§ 532.6 with Cal. Code Regs., tit. 9, §§ 783.13, 785.11, 785.15, 785.19,

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.⁵

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. (Title 9, CCR 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. (Title 9, CCR 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.

AUTHORITY STATEMENT

Sections 10725 and 14124.5 of the WIC authorize the Director of the Department to adopt, amend or repeal regulations as necessary and proper to carry out the purpose and intent of the statutes governing the Medi-Cal program.

Proposed changes to CCR, Title 9, are as follows:

Title

This proposed amendment modifies the title of Section 1840.332 to more accurately reflect the content of this section. While Section 1840.332 does specify beneficiary contact and site requirements, the section contains additional provider requirements

785.30, 786.12, 786.14, 786.18-786.19, providing staff in-service training and program staffing requirements for SRPs and MHRCs respectively.

⁵ Compare Cal. Code Regs., tit. 9, §§ 531(b)-(c), 532.2(c)(4) with Cal. Code Regs., tit. 9, §§ 786.15, providing client length of stay standards. Note that MHRCs, in conjunction with the local mental health director, are required to reassess clients for appropriate placement every 4 months. This is in addition to required monthly individual service plan reviews and quarterly individual service plan updates.

related to facility capacity, licensing, and certification. As such, the proposed amendment broadens the title to account for these additional and broader provider requirements.

Section 1840.332(a)

The phrase “Programs that provide” is proposed to be added to the first sentence of this subsection to be consistent with the use of this same phrase in existing subsection (b). The phrase “or licensed” is also proposed to be added to the first sentence because this reference to programs includes MHRCs, which are licensed by the Department. This amendment is also necessary since the regulatory requirement for MHRCs to obtain SRP certification is being eliminated. However, the requirement for MHRCs to obtain and maintain licensure pursuant to Sections 782.00 through 788.14 of Title 9 remains unchanged. These proposed amendments are necessary to clarify that programs providing ARTS shall have a clearly established certified or licensed site for services.

Section 1840.332(b)

The phrase “, except Mental Health Rehabilitation Centers as defined in Section 782.34, Chapter 3.5, Division 1, of Title 9,” is proposed to be added. This amendment will clearly exclude MHRCs (with a maximum of 16 beds – as described in subsection (d) below) from SRP certification requirements as specified in subsection (b).

This proposed amendment is necessary because it eliminates this certification requirement that is not necessary and places an undue burden on these MHRCs, which are currently required to adhere to multiple regulatory schemes. This proposed amendment eliminates this redundant regulatory requirement, thereby facilitating compliance and fostering MHRC program efforts to expand mental health services to unserved and underserved individuals in need of mental health treatment.

The term “must” is proposed to be changed to “shall” to be consistent with the use of this term in subsection (a) as well as its use throughout Title 9, CCR, where the term “shall” represents a mandatory action.

The last sentence under subsection (b), “Facility capacity must be limited to a maximum of 16 beds.” is proposed to be relocated to a new subsection (d); and the phrasing is proposed to be slightly amended (see subsection (d) below) for purposes of clarity.

Section 1840.332(c)

The initial phrase in subsection (c) “In addition to Social Rehabilitation Program certification,” is proposed to be removed because these MHRCs that provide ARTS will not be required to obtain SRP certification. These MHRCs are only required to be licensed by the Department, as described at the end of subsection (c). This proposed amendment is necessary to ensure that only Social Rehabilitation Facilities, Community Care Facilities or MHRC providers, who meet programmatic regulatory requirements, are eligible to provide ARTS. This proposed amendment is also necessary to ensure

that the beneficiaries of these mental health services will be provided appropriate rehabilitation services and specialty mental health care in community-based settings. The term “must” is proposed to be changed to “shall” to be consistent with the use of this term in subsections (a) and (b) as well as its use throughout Title 9, CCR, where the term “shall” represents a mandatory action.

The word “authorized” has been revised to “licensed” to maintain consistency with the Department of Social Services’ licensing language in subsection (a) and also the licensing language found in subsections under Article 3, Chapter 3.5, Division 1, of Title 9.

Non-substantive amendments related to punctuation, grammar and cross references are proposed under this subsection for purposes of clarity. The term “Programs” is capitalized; the term “which” is changed to “that”; and the cross reference to Section 51000 is changed to 781.00, which is where MHRC provisions are located.

Section 1840.332(d)

A new subsection (d) is proposed to be adopted. The substantive content from the last sentence in existing subsection (b) is relocated to newly proposed subsection (d) and amended for clarity. Specifically, the term “must” is proposed to be changed to “shall” to be consistent with the use of this term in subsections (a), (b) and (c) as well as its use throughout Title 9, CCR, where the term “shall” represents a mandatory action. In addition, the phrase “programs that provide Adult Residential Treatment Services” is added for consistent use of this same phrase in subsections (a) through (c).

Maintaining the provision that the facility capacity for programs that provide ARTS shall be limited to a maximum of 16 beds is necessary to distinguish these facilities (including MHRCs) that are eligible to claim FFP, from IMDs which are facilities that exceed 16 beds and are limited to claiming FFP for only persons under age 22 and those over age 64. (42, Code of Federal Regulations, Section 435.1009).

Material Relied Upon

State Medicaid Manual Transmittal No. 65, 4390, Institutions for Mental Diseases, 03-94.

STATEMENTS OF DETERMINATION

ALTERNATIVES CONSIDERED

The Department has determined 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 Title 9, CCR. 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 WIC Sections 14680 and 14718 related to the efficient utilization of Medi-Cal mental health services.

LOCAL MANDATE DETERMINATION

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.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

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.

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.

EFFECT 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.