

Explanation of Changes without Regulatory Effect

Introduction and Purpose

The Department of Health Care Services (Department) proposes changes without regulatory effect to amend California Code of Regulations, title 22, sections 77005, 77009, 77037(a), 77045(c)(4), 77052.5(g) and (h), 77105, and 77143(a) and (h). The amendments to these sections are necessary to update the name of the department, and the name and address of the division of the department responsible for licensing psychiatric health facilities (PHFs) as authorized by statute; update authority and reference citations in the “Note” section of the regulations, as appropriate; and correct two statutory cross-references.

These proposed amendments are changes without regulatory effect because they do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Specifically, the proposed amendments discussed below are in accordance with California Code of Regulations, title 1, sections:

- 100(a)(4), which allows for revising structure, syntax, cross-reference, grammar, or punctuation;
- 100(a)(5), which allows for changing an “authority” or “reference” citation for a regulation;
- 100(a)(6), which allows for making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
 - (A) the regulatory provision is inconsistent with and superseded by a changed statute, and
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

Background

Health and Safety (H&S) Code sections 1250.2 and 1254(e), and Welfare and Institutions (W&I) Code section 4080 specify the Department’s responsibility to license and inspect PHFs. Prior to June 27, 2012, the (former) Department of Mental Health (DMH) was responsible for licensing PHFs. Senate Bill 1009, Statutes of 2012, Chapter 34 effectively eliminated DMH as a state department. DMH’s responsibility for licensing PHFs was thereafter transferred from DMH to the Department of Social Services (DSS), effective June 27, 2012. Assembly Bill 82, Statutes of 2013, Chapter 23, subsequently transferred the responsibility for licensing PHFs from DSS to the Department of Health Care Services, effective June 27, 2013.

The Department’s Licensing and Certification Division (LCD) licenses PHFs. The regulations that govern LCD’s licensing of PHFs are located in California Code of Regulations, title 22, division 5, chapter 9. These regulations still include references to the former DMH and its Licensing and Certification division, previously located at 1600 9th Street, Sacramento, California 95814, as the department and division responsible for licensing PHFs.

Proposed Amendments

Pursuant to California Code of Regulations, title 1, section 100(a)(4):

The Department proposes correcting two cross-references to repealed statutes, as explained below.

- The Department proposes amending California Code of Regulations, title 22, section 77143(a) from H&S Code section “25250 et seq.” to H&S Code section “123100 et seq.” This amendment is necessary since H&S Code section 25250 was repealed and replaced with H&S Code section 1795 by Senate Bill 2637 (Lockyer, Chapter 160, Statutes of 1988). Subsequently, H&S Code section 1795 was later repealed and replaced with the current section 123100 by Senate Bill 1360 (Committee on Health and Human Services, Chapter 415, Statutes of 1995). This proposed amendment is a change without regulatory effect since it corrects the cross-reference to reflect the current re-codified H&S Code section number. However, with each re-codification as discussed above, the intent and language of the provision has remained the same.
- The Department proposes amending California Code of Regulations, title 22, section 77143(h) from Division 7 section “7000” to Division 7 section “7100.” This amendment is necessary because former Chapter 1 of Division 7 of the W&I Code, which included sections 7000 to 7026, was repealed by Senate Bill 1400 (Alquist, Chapter 1148, Statutes of 1972). Division 7 now currently commences with section 7100. This proposed amendment is a change without regulatory effect since it updates the cross-reference to reflect the correct W&I Code section.

Pursuant to California Code of Regulations, title 1, section 100(a)(5):

The Department proposes updating the authority and reference citations within the “Note” section of several regulations. These amendments are necessary to reflect the correct authority and reference citations for these regulatory provisions as explained below:

- H&S Code section 1254, which requires the Department to inspect and license PHFs, and to promulgate regulations thereto, is added as authority and reference, as appropriate, to sections 77005, 77009, 77037, 77045, 77052.5, 77105, and 77143.
- H&S Code section 1275.5, which confirms the Department’s regulatory enforcement authority of PHF licensing regulations previously promulgated by Department of Health Services, is added as authority to sections 77005, 77009, 77037, 77045, 77052.5, 77105, and 77143.
- W&I Code section 4080, which confirms the Department’s authority to promulgate regulations regarding PHFs, is added as authority and reference, as appropriate, to sections 77005, 77009, 77037, 77045, 77052.5, 77105, and 77143. Existing citations to W&I Code section 4080 were amended to delete the specific citation to subdivisions (f), (j) and (j)(2) for consistency with the other authority and reference citations.
- W&I Code section 10725, which grants the Director of the Department general authority to promulgate regulations, is added as authority to sections 77005, 77009, 77037, 77045, 77052.5, 77105, and 77143.
- H&S Code section 208(a) is deleted as authority from sections 77105 and 77143 because that statute has been repealed.

Pursuant to California Code of Regulations, title 1, section 100(a)(6):

The Department proposes the following amendments:

- **Update to Department Name**
References throughout California Code of Regulations, title 22, division 5, chapter 9 to the “Department of Mental Health” are amended to read “Department of Health Care Services.” This amendment is proposed for sections 77005, 77009, 77037(a), 77045(c)(4), 77052.5(g) and (h), and 77105. A reference to the “Department of Mental Health” is also deleted in section 77143(a), leaving only a reference to the “Department.” These amendments are necessary for consistency with H&S Code sections 1250.2 and 1254(e), and W&I Code section 4080, which grant the Department authority to inspect and license PHFs.
- **Update to Division Name and Address**
References in California Code of Regulations, title 22, section 77052.5(h) to “Licensing and Certification, 1600 9th Street, Sacramento, California 95814” are amended to read “Licensing and Certification Division, P.O. Box 997413, MS 2800, Sacramento, California 95899-7413.” These amendments are necessary to update the name and address of the specific division within the Department that is responsible for licensing PHFs.

These proposed amendments are changes without regulatory effect because they meet the conditions specified under California Code of Regulations, title 1, sections 100(a)(6)(A) and (B). Specifically, the current regulatory provisions are inconsistent with and superseded by statute, including by H&S Code sections 1250.2 and 1254(e), and W&I Code section 4080. The Department also does not have discretion to adopt a change, which differs in substance from the one chosen. The Department must comply with the legislative action that explicitly transferred the responsibilities and duties to license PHFs to the Department.