

INITIAL STATEMENT OF REASONS

a) **Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations are Intended to Address**

Senate Bill 1608, Chapter 403, Statutes of 1996 added Sections 4080 (j)(1) and (2) to the Welfare and Institutions Code. The addition requires the State Department of Mental Health (SDMH) 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.

b) **Specific Purpose of the Regulations and Factual Basis for Determination that Regulations are Necessary.**

The narratives included in Articles I through IV describe and support the specific purpose and the factual basis for each proposed regulatory action.

The narratives of specific purpose state specifically why each regulation is being adopted or amended.

The narratives of factual basis describe the circumstances that necessitate the adoption or amendment of each affected regulation and are based on the SDMH's licensing and monitoring experience with psychiatric health facilities.

ARTICLE 1 - DEFINITIONS

Section 77028 Sanction

Specific Purpose:

This section is established to define the meaning of the term sanction.

Factual Basis:

Defining the term sanction is necessary for clarity because the Department has previously not levied any type of sanction in the licensing and monitoring of psychiatric health facilities. Without defining the term, the public and facilities would not understand the meaning of sanctions.

Section 77030 Structured Outpatient Services

Specific Purpose:

This section is established to define the meaning of the term “Structured Outpatient Services”.

Factual Basis:

Defining the term “Structured Outpatient Services” is necessary because it describes a level of care that may be provided in a psychiatric health facility with a special permit.

ARTICLE 2 - LICENSING and INSPECTION

Section 77039 (a)(1)(2) Safety, Zoning and Building Clearance

Specific Purpose:

These sections are added to describe the process of requesting and obtaining a fire clearance in a psychiatric health facility and what the fire clearance must include with regard to seclusion and restraint.

Factual Basis:

These requirements are necessary because there has been considerable confusion among facilities with regard to how a fire clearance is initiated, what authority conducts the clearance inspection and what the inspection must include with regard to seclusion and restraint capability in each facility.

Section 77043 (c)(d) Separate License

Specific Purpose:

These sections are added to define the autonomous nature of the psychiatric health facility license.

Factual Basis:

These descriptions are necessary because psychiatric health facilities have increasingly become part of a continuum of care in which a single site may offer multiple levels of mental health care under the authority of licenses or certifications issued by different agencies. Many psychiatric health facilities offer service as part of campus within

which many levels of mental health services are provided. Such other services may include outpatient treatment, medication clinics and lower levels of inpatient services. Without specifically requiring programmatic autonomy, psychiatric health facilities are at risk of diluting their level of care requirements by depending on the resources of contiguous programs.

Section 77045 Posting of License and Consumer Information

Specific Purpose:

Section 77045 (c)(3) is amended to provide psychiatric health facilities with an alternative method of providing site review information to the public. Section 77045 (c)(4) is amended to accurately refer to the SDMH as the licensing authority for psychiatric health facilities.

Factual Basis:

Licensing visit reports and their follow-up plans of correction can become voluminous and awkward to post, as is required by existing regulation. By posting a statement that such documents are available for public review, the public can continue to have ready access and the facility can maintain the integrity of the documents.

Amending Section 77045(c)(4) is necessary because existing regulations erroneously refer the public to the state department previously having licensing authority. The authority for licensing psychiatric health facilities was transferred to the SDMH in 1987.

Section 77052 Imposition of Sanctions

Specific Purpose:

This section is amended to describe the circumstances under which the Director of the SDMH may impose sanctions against psychiatric health facilities.

Factual Basis:

This amendment is necessary because such regulation is mandated by Welfare and Institutions Code 4080 (j).

ARTICLE 3 - SERVICES

Section 77061 (d) Staffing

Specific Purpose:

This section is amended in order to define more clearly the circumstances under which an individual with a mental disorder and with a concomitant physical illness, may be admitted to a psychiatric health facility.

Factual Basis:

Psychiatric health facility staffing levels were developed based on the premise that individuals with mental disorders and were physically healthy, would be appropriately admitted for treatment. Psychiatric health facilities owned and operated by local governments have come under increasing pressure to provide care to individuals with multiple problems, including physical illness. This amendment is necessary to clearly define the limits of a psychiatric health facility with regard to admitting and treating individuals with mental and physical illnesses.

Section 77065 (c), (e) and (h) Psychiatric Nursing Services

Specific Purpose:

Section 77065 (c) is amended in order to allow the incorporation of nursing care plans into the general interdisciplinary treatment plans of psychiatric health facility inpatients. This incorporation will facilitate continuity of care.

Subsections 77065 (e) and (h) are amended in order to clearly establish a mechanism for developing nursing policies that will serve as reference documents for nursing staff in psychiatric health facilities.

Factual Basis:

These amendments are necessary because they clarify the ambiguous responsibility and role nursing care plans and nursing services now have in psychiatric health facilities because of the facility's nonmedical licensure.

Section 77069 (a) Rehabilitation Services

Specific Purpose:

This section is amended in order to ensure that rehabilitation services provided in a psychiatric health facility are designed to meet the particular needs of psychiatric inpatients who will be admitted for relatively short periods of time.

Factual Basis:

This amendment is necessary because the acute patients served in psychiatric health facilities are not the typical recipients of rehabilitation services who tend to be long term patients. Rehabilitation services not specifically designed for acute inpatients would provide little or no therapeutic benefit to the patients.

Section 77070 (a) through (d) Structured Outpatient Services

Specific Purpose:

This section is added in order to comply with Section 1266.1 (f), Health and Safety Code that established “Structured Outpatient Services” as a level of care that may be provided in a psychiatric health facility with a special permit. These sections describe the application procedure and the programmatic requirements referenced in statute.

Factual Basis:

These requirements are necessary because, pursuant to Chapter 241, Statutes of 1991 (AB 404, Murray) the SDMH was mandated to develop regulations governing the application procedure, program and issuance of a special permit to psychiatric health facilities wishing to offer “structured outpatient services.”

Specific staffing ratios or levels are not included in these proposed regulations because “structured outpatient services” were conceived to allow patients to participate in the existing psychiatric health facility program. Because a separate program with dedicated staff was not necessary, the existing psychiatric health facility staffing levels remained the standard for “structured outpatient services”.

Section 77079.5 (b) Pharmaceutical Services - Orders for Drugs

Specific Purpose:

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

Factual Basis:

This requirement is necessary because, in the experience of SDMH surveyors, the time an order is given becomes critical in determining the start time for the duration of time limited events such as seclusion and restraint, and in determining whether a nursing error has occurred with regard to administering medications. Entering the time an order is written is a standard of practice in the community; however, it is not universally followed, and where it is not followed, the quality of clinical record continuity declines.

Section 77079.11.(b) Pharmaceutical Services - Unit Dose Medication System

Specific Purpose:

This section is amended to allow what has been an acceptable alternative practice in psychiatric health facilities with regard to the administration of a medication room system.

Factual Basis:

This amendment is necessary because psychiatric health facilities have long been allowed by the SDMH to utilize the alternative medication room system of floor stock and the lack of an explicit regulation to that effect, has historically caused confusion between surveyors and facilities as to the legitimacy of the practice. By including this amendment, ambiguity regarding the legitimacy of using a floor stock method will be eliminated. The section's title is also amended to make it accurately reflect the revised content of the section.

ARTICLE 4 - ADMINISTRATION

Section 77083.(a)(2) Organized Clinical Staff

Specific Purpose:

This section is amended to include the requirement that the pharmacist's review of patient records will be included in the medication monitoring committee meeting.

Factual Basis:

This requirement is necessary to facilitate the sharing of critical clinical information regarding prescribing practices, which may fall outside the parameters of clinical standards, among facility professionals charged with ensuring the best clinical practice is followed in the facility. The experience of the SDMH in monitoring psychiatric

health facilities has been that those facilities that include the pharmacist's review within the medication monitoring committee are the most efficient in identifying and correcting medication and prescription errors and, thereby, providing improved clinical treatment with regard to pharmaceutical services.

Section 77091 (b) Administrator of Business and Support Services

Specific Purpose:

This section is amended to regulate the relationship between a psychiatric health facility's clinical director and administrator.

Factual Basis:

This amendment is necessary because, at their inception, all psychiatric health facilities were owned and operated by local county governments. Consequently, the organization structure of the facilities was homogenous with administrators reporting directly to clinical directors. Prior to the private sector entering the psychiatric health facility arena, the organizational structure of the psychiatric health facilities changed to reflect the structure of the parent organization. Frequently in the private sector, the individual responsible for the overall business of the psychiatric health facility became the administrator with the clinical director only responsible for the clinical program. This amendment allows for the varying relationship of either public or private facilities while maintaining maximum communication.

Section 77093 (b) Clinical Director

Specific Purpose:

This section is amended to specify the relationship between the organization of a local county government that owns and operates a psychiatric health facility and the psychiatric health facility's clinical director.

Factual Basis:

This amendment is necessary because, in the experience of the SDMH, psychiatric health facilities that are owned and operated by county governments have a layer of administration between a facility's clinical director and the governing body that is most commonly identified as the Board of Supervisors. To insist by regulation that the clinical director is administratively accountable to the governing body, is to circumvent the organizational structure of the local government generally, and the authority of the local mental health director.

Section 77103 (h) Behavioral Restraint and Seclusion

Specific Purpose:

This section is amended to require regular range of motion exercise to restrained patients and to restrict the application of seclusion and restraint to inpatients who are being involuntarily treated consistent with sections 5150 et seq.

Factual Basis:

This amendment is necessary because the provision of range of motion exercise to restrained patients is a health and safety issue which provides added attention and protection to restrained patients.

This amendment is also necessary because of the lack of specificity with regard to whether voluntary patients may be restrained has caused frequent confusion in psychiatric health facilities. The circumstances under which a patient may be restrained are limited to issues of dangerousness and the need for immediate protection of the patient or others from the patient. The application of seclusion and restraint is a denial of a basic patient right. Under no other circumstances is a patient asked to voluntarily give up a right. A mentally disordered individual who is an immediate danger to himself or others must be considered less capable of voluntarily surrendering the right of liberty in service of protecting himself or others than any voluntary patient is capable surrendering rights.

Section 77111(a)(1) and (c) Nondiscrimination Policies

Specific Purpose:

This section is amended to bring current regulations into compliance with the Americans with Disabilities Act while continuing to provide protection to minors for whom inpatient services are required.

Factual Basis:

These amendments are necessary because the current body of regulations governing psychiatric health facilities were promulgated prior to the enactment of the Americans with Disabilities Act (ADA), Public Law 101-336 of 1990 (42 U.S.C. §12101 et seq.) and do not offer the protection against discrimination because of age. However, special requirements for the treatment of minors exist and those requirements are added in order to ensure protection of minor while maintaining compliance with federal law.

Section 77113 (a)(1) through (5) Admission Policies

Specific Purpose:

This section is amended to clearly define the population psychiatric health facilities are licensed to treat, and the limits of licensure.

Factual Basis:

At their inception, psychiatric health facilities were designed to be acute psychiatric inpatient units for individuals with major mental disorders without concomitant medical illness, or serious physical sequela. The treatment of individuals with disorders that are organic in nature has historically been considered beyond the scope of licensure for psychiatric health facilities as well. As public resources for individuals usually considered inappropriate for psychiatric health facility admission have become limited, psychiatric health facilities have come under increasing pressure from their communities to provide services to individuals for whom they are not adequately staffed or for whom they do not have appropriate therapeutic programs. These amendments are necessary to ensure that only those patients for whom a psychiatric health facility is licensed may be admitted for treatment.

Section 77117(a)(4) and (b) Personnel Policies

Specific Purpose:

Section 77117(a)(4) is added to require that psychiatric health facilities conduct a background investigation on prospective employees that include previous employment and criminal record.

Section 77117 (b) is amended to clearly define the types and amount of inservice training psychiatric health facility employees are required to obtain.

Factual Basis:

These amendments are necessary because the nature of the population served in psychiatric health facilities makes them particularly vulnerable. Providing services in a psychiatric health facility is as much an act of public trust as it is a clinical activity, and only those individuals who meet the most stringent standards are appropriate for employment in a psychiatric health facility.

Section 77125 (a) and (b) Advertising

Specific Purpose:

These sections are added 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.

Factual Basis:

These amendments are necessary because of the increasing practice by some psychiatric health facilities to utilize telephone hotlines as case finding methods. The hotlines may be separate entities, not accountable in any way to the psychiatric health facility and, therefore, do not fall under the authority of psychiatric health facility laws or regulations. Nevertheless, some psychiatric health facilities have allowed the use of their name and logo in hotline advertising. The result has been the inappropriate solicitation of prospective patients who frequently are transported across state lines under false pretenses. These amendments will hold psychiatric health facilities accountable for the practices of hotlines if the name and/or logo of the psychiatric health facility is used to find patients.

Section 77135 Patients with Reportable Communicable Disease

Specific Purpose:

This section is amended to define the circumstances under which psychiatric health facilities must arrange for alternative treatment for patients with communicable diseases.

Factual Basis:

This amendment is necessary because psychiatric health facilities are more frequently asked to provide care to individuals with psychiatric disorders and concomitant physical illnesses. Because psychiatric health facilities are licensed as psychiatric inpatient units that are non-medical in nature, they are not adequately equipped to provide adequate care to physically ill patients who require general acute hospital care.

Section 77139 (c) Health Record Service

Specific Purpose:

This section is amended to in order to include “structured outpatient services” as a service in addition to inpatient service that would necessitate a facility adopting a unit health record system. This section is also amended in order to delete outpatient or day treatment services for a unit health record system.

Factual Basis:

These amendments are necessary because the enabling legislation for structured outpatient services was passed long after psychiatric health facility regulations were promulgated. Consequently, structured outpatient services could not be included in the original regulations and must now be included in order to be considered as a service that requires a facility to adopt a unit health record system.

Psychiatric health facilities are not licensed or allowed under special permit to provide outpatient or day treatment services. To include these services as examples of services provided in a psychiatric health facility, that would require the facility to adopt unit health record system, is misleading.