

State of California
DEPARTMENT OF DEVELOPMENTAL SERVICES

**NOTICE OF PROPOSED RULEMAKING ACTION FOR REGULATIONS CONCERNING
SPECIAL INCIDENT REPORTING**

The Department of Developmental Services (DDS or the Department) proposes to amend the Special Incident Reporting regulations as described below after considering all comments, objections, and recommendations.

PUBLIC HEARING

The Department of Developmental Services (Department or DDS) will conduct a hybrid public hearing to consider proposed amendments to regulations for Special Incident Reporting.

DATE: November 13, 2024
TIME: 11:00 am – 1:00 pm
LOCATION: Zoom or DDS Headquarters

The Department will have limited seating in the California Room at 1215 O St., Ste. 110, Sacramento, CA, 95814 for those wishing to participate in person. To request a reasonable accommodation, please contact Nicole Smith at regulations@dds.ca.gov or 916-654-2287 by 3:30 pm on October 29th, 2024.

Please register using the link below and indicate whether you intend to participate via Zoom or in person.

https://cal-dds.zoom.us/webinar/register/WN_OHKummJESa4_zP3eyPk7w

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or until 1:00 pm, whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via electronic submittal as described below.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

The public comment period for this regulatory action will begin on September 20, 2024, and closes on November 13, 2024. To ensure the Department will consider your comment it must be received by the Department no later than November 13, 2024. When commenting, please indicate the proposed rulemaking action to which your comment refers.

Any interested person or their representative may, orally or in writing, submit comments relevant to the proposed action described in the Informative Digest. The Department requests but does not require that a person who makes an oral comment at the hearing to also prepare and submit a written copy of their testimony. Furthermore, the Department requests but does not require that all written statements on this proposed rulemaking action be submitted at least 10 days prior to the hearing so that Department staff have sufficient time to consider each comment. The Department encourages members of the public to bring any suggestions for modifications to the proposed regulatory action to staff's attention in advance of the hearing.

For consideration, any written comments shall be submitted as follows:

Mail or Hand Delivery: Department of Developmental Services
Office of Regulations
RE: **Special Incident Reporting**
1215 O Street, M.S. 9-10
Sacramento, CA 95814; or

Electronic Submittal: <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>

It is requested that all comments contain the regulation package identifier **"Special Incident Reporting"** in the subject line to facilitate timely identification and review.

"Please note: Public comments should not include any personal or medical information, as your written and oral comments, and attachments become part of the public record and can be released to the public upon request under the California Public Records Act (Gov. Code, § 6250 et seq.)."

AUTHORITY AND REFERENCE

Government Code section 11152 authorizes the Department to implement this regulatory action. This action is proposed to implement, interpret, or make specific Welfare and Institutions Code sections 4427.5, 4436.5, 4502, 4659.2 and 15600; and Penal Code section 11164.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW **(PURSUANT TO GOVERNMENT CODE SECTION 11346.5(a)(3))**

Sections Affected: The Department proposes amendments to sections 54327, 54327.1, 56002, 56026, 56038, 56059 and 56093 title 17, California Code of Regulations (CCR).

Summary of Existing Laws and Regulations and the Effect of the Proposed Regulatory Action:

Special Incident Reporting Requirements under title 17, sections 54327 and 54327.1, will be amended to provide clarity of terms and consistent of reporting procedures across vendors and regional centers. sections 56002, 56026, 56038, 56059 and 56093 will be amended to update any section references for special incident reporting requirements amended through this regulatory action.

Policy Statement Overview

Objectives

Special incidents are critical and unexpected events that happen to an individual, many signifying possible health or safety concerns or the need for additional services and supports.

Regulations require vendors, long-term health care facilities, and regional centers to report certain special incidents. When a provider learns about an incident, they make a report to the individual's regional center. This information is recorded in a secure database at the regional center. The regional center then reports the incident to the Department. Regional center staff will likely contact the individual or their provider to learn more, to ensure that the individual is safe and has the supports and services that they need. Sometimes a special incident report may reveal that the individual needs additional services or supports, even for a short period of time.

Definitions do not currently exist for these reportable events. This has contributed to inconsistency in reporting across vendors and regional centers.

The list of incidents that must be reported has not changed in many years. Given the evolution of the service delivery system in the intervening time, the Department recognizes that revisions are needed.

Special incident reporting requirements must be feasible, useful, and actionable. They should have a nexus to health and safety and to ensuring delivery of necessary, quality services and supports.

The Department has had several months of discussions with stakeholders, for input of how to best amend regulations to ensure health and safety and the delivery of quality services and supports.

Anticipated Benefits of the Proposed Regulations

Consistent terms and clear reporting procedures will provide vendors, long term health care facilities and regional centers with the clarity necessary to report special incidents appropriately and enhance the Department's ability to analyze incident trends and develop statewide risk mitigation for critical events. Appropriate special incident reporting allows for review of those incidents to evaluate if the individual served needs additional services or supports and may also help prevent future incidents of abuse and neglect.

The Department received feedback from the Office of Inspector General on which reportable incidents were not appropriately reported or captured. The Department has used information from the Office of Inspector General, the abuse reporting act, and existing SIR data to identify the amendments necessary to the SIR regulations.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5(a)(3)(D)):

During the process of developing the proposed regulatory action, DDS conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS (Gov. Code, §§ 11346.2(c) and 11346.9)

Not Applicable.

OTHER STATUTORY REQUIREMENTS: (Gov. Code, § 11346.5(a)(4))

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Local Mandate (Gov. Code, § 11346.5(a)(5))

Under Government Code sections 11346.5, subdivision (a)(5), DDS has determined that the proposed regulatory action would not impose a mandate on any local agency or school district that requires reimbursable by the state under Government Code, title 2, division 4, part 7 (commencing with § 17500).

Fiscal Impacts (Gov. Code, § 11346.5(a)(6)):

Under Government Code section 11346.5(a)(5), DDS has determined that the proposed regulatory action would not impose a mandate on any local agency or school district that requires reimbursement by the state under Government Code, title 2, division 4, part 7 (commencing with § 17500).

Cost to any local agency or school district requiring reimbursement under section 17500 et seq.:

DDS has determined that the proposed regulatory action would not create costs or savings to any local agency or school district.

Cost or savings to any state agency:

DDS has determined that the proposed regulatory action would not create costs or savings to any state agency.

Other non-discretionary costs or savings on local agencies:

DDS has determined that the proposed regulatory action would not create costs or savings to any other nondiscretionary cost or savings to state or local agencies.

Cost or savings in federal funding to the state:

DDS has determined that the proposed regulatory action would not create costs or savings in federal funding to the state.

Housing Costs (Gov. Code, § 11346.5(a)(12)):

In accordance with Government Code section 11346.5(a)(12), the Department has made the initial determination that the proposed regulatory action will not have a significant effect on housing costs. These proposed regulations do not impact housing since they only affect individuals committed to the Department and in Department custody.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (Gov. Code, §§ 11346.3(a), 11346.5(a)(7), and 11346.5(a)(8)):

DDS has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (Gov. Code, § 11346.5(a)(10)):

- (A) The creation of jobs within the State of California. The Department does not anticipate that this regulatory action would have an impact on the creation of jobs within the State of California.

- (B) The elimination of jobs within the State of California. The Department does not anticipate that this regulatory action would have an impact on the elimination of jobs within the State of California.
- (C) The creation of new business within the State of California. The Department does not anticipate that this regulatory action would have an impact on the creation of new business within the State of California.
- (D) The elimination of existing businesses within the State of California. The Department does not anticipate that this regulatory action would have an impact on the elimination of existing businesses within the State of California.
- (E) The expansion of businesses currently doing business within the State of California. The Department does not anticipate that this regulatory action would have an impact on the expansion of business within the State of California.
- (F) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. The Department anticipates that this regulatory action would contribute to the health and welfare of California residents receiving regional center services.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES
(Gov. Code, § 11346.5(a)(9))

In developing this regulatory proposal, DDS staff evaluated the potential economic impacts on representative private persons or businesses. DDS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORT (Gov. Code, §§ 11346.5(a)(11) and 11346.3(d))

In accordance with Government Code sections 11346.5(a)(11) and 11346.3(d), the Department finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California. The Department does not anticipate the proposal to result in any additional reporting requirements, because special incident reporting already exists. The additional reporting added to the proposal are incidents that should already be reporting and have been added to clarify the regulations. The clarification to the regulations will likely reduce reporting that is not necessary.

EFFECT ON SMALL BUSINESS (Cal. Code Regs., Tit. 1, § 4(a) and (b)):

DDS has determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because these are primarily changes to clarify and add definitions with minimal changes to current expectations for vendors, long term healthcare facilities, and regional centers.

CONSIDERATION OF ALTERNATIVES (Gov. Code, § 11346.5(a)(13)):

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

During the public hearing and written comment period, DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation.

AGENCY CONTACT PERSONS (Gov. Code, § 11346.5(a)(14)):

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Aaron Christian, Deputy Director, (951) 405-0214 or Ryan Langen, Staff Services Manager III, 916-651-8189.

AVAILABILITY OF DOCUMENTS (Gov. Code, § 11346.5(a)(16)):

The Department has compiled a record for this rulemaking action which includes all the information upon which the proposal is based, including an Initial Statement of Reasons (ISOR) for the proposed regulatory action and the proposed regulation text.

Copies of the proposed ISOR and the full text of the proposed regulatory language, may be accessed on the Department's website listed below, or may be obtained upon request to Nicole Smith, Regulations Analyst, (916) 654-2287, 1215 O Street, M.S. 9-10, Sacramento, California, 95814.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action, including requests for inspecting the rulemaking record, may be directed is Nicole Smith, Regulations Analyst, (916) 654-2287.

The Department has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

AVAILABILITY OF CHANGED OR MODIFIED TEXT (Gov. Code, § 11346.5(a)(18))

The Department may adopt or make modifications to the proposed regulatory action as described in this notice after considering all timely and relevant comments received during the 45-day comment period. If modifications that are substantially related are made by the Department, the notice of modified text and modified text with the changes clearly indicated will be made available to the public for at least 15 days before the Department adopts the regulation as revised. Copies of any modified text will be sent to anyone who commented on the first 45-day package or who otherwise has filed a request for notice of regulatory actions with the Department pursuant to Government Code section 11346.4(a)(1). You may request to receive copies of any modified regulations from the contact person indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made publicly available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, Final Statement of Reasons (FSOR) shall be available, and copies may be requested from the agency contact persons in this notice or may be accessed on the Department's website listed below.

INTERNET ACCESS

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the Department's website for this rulemaking

<https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>