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NOTICE OF PROPOSED RULEMAKING
Title 22, California Code of Regulations
DPH-14-006 LGBT Training Requirements
Notice Published: December 30, 2016

Notice is hereby given that the California Department of Public Health (Department) has amended the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulation permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The California Department of Public Health (Department) is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement overview section of this notice.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing 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.

WRITTEN COMMENT PERIOD

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on February 13, 2017, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "**DPH-14-006 LGBT Training Requirement**" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission: (916) 440-5747;



3. By Postal Service: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814;
4. Hand-delivered: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier, “**DPH-14-006 LGBT Training Requirements**,” author’s name and mailing address.

AUTHORITY AND REFERENCE

The Department is proposing to amend Title 22, as it relates to LGBT Training Requirements, under the authority provided in California Health and Safety Code sections 1257.5, 1275, and 100275. This proposal implements, interprets and makes specific California Health and Safety Code sections 1257.5, 1276, and 1276.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code section 1257.5 enacted by Senate Bill (SB) 1729 (Migden, Chapter 550, Statutes of 2008) requires the California Department of Public Health to prescribe a training program that focuses on preventing and eliminating discrimination based on sexual orientation and gender identity in skilled nursing facilities and congregate living health facilities. The training will be mandatory for all registered nurses, certified nurse assistants, licensed vocational nurses, and physicians and surgeons working in skilled nursing facilities or congregate living health facilities.

The California Department of Public Health is charged with licensing skilled nursing facilities and congregate living health facilities (see Health and Safety Code sections 131051(b) and 1265.7). The Department also prescribes personnel standards for the healthcare practitioners in these facilities, standards that include trainings to ensure healthcare professionals are duly qualified (see Health and Safety Code section 1276(a)). Congregate living health facilities must adhere to the same regulations, with some exceptions, as skilled nursing facilities under Health and Safety Code section 1267.13(n).

With SB 1729, the Legislature sought to address the lack of cultural-competency training for healthcare providers regarding the needs of lesbian, gay, bisexual, and transgender (LGBT) seniors in long-term healthcare facilities. The Legislature found that to protect LGBT persons it was necessary to mandate training aimed at educating healthcare workers in these facilities about the unique and sometimes unexpected issues surrounding individuals who identify with the LGBT community and the importance of behaving in a nondiscriminatory way.

Older adults are the most frequent users of healthcare services. This is the case among the LGBT population as well; however, this population’s use of health services may be complicated by a fear of discrimination. Discrimination against LGBT persons living in long-term-care facilities is common and leads to a poor quality of life and poor health

outcomes. In a study examining nursing home staff perceptions of LGBT elders, the staff's perceptions were reported as being negative and even hostile. And a 2006 study found that providers who care for the aged were more intolerant toward LGBT persons than were providers within the mainstream healthcare system.

It is estimated that the number of aging and older LGBT persons in the United States is approximately 3 million and could expand to 4 million by 2030. LGBT elders represent a social minority whose members may have experienced lifetimes of social indignities; employment, economic, and housing discrimination; physical and psychological abuse; and, often, substandard healthcare. Many of today's LGBT elders lived their lives in very hostile environments, coming of age in a time when same-sex behaviors were pathologized and criminalized. A large fraction of today's LGBT elders were in their 50s when the full range of homosexuality-related "disorders" was completely removed from the *Diagnostic and Statistical Manual of Mental Disorders*.

In a study of LGBT elders, over 80% of study participants had been victimized at least once in their lives because of their sexual orientation or gender identity, and over 60% had been victimized three or more times. In addition, discrimination is a chronic stressor, and lifetime experiences of discrimination and internalization of heterosexism are significantly associated with poor mental health, physical health, and disability among older LGBT adults.

Therefore, it is not surprising that many LGBT elders are reluctant to seek medical care and, when they do, to hide their sexual identity from healthcare providers. A recent survey found that 17% of LGBT respondents avoided or delayed seeking healthcare because of reasons having to do with their sexual orientation, making them 5 times less likely than heterosexual individuals to access available public and community services.

Additionally, it has been reported that as many as one in five LGBT persons hide his or her sexual identity from his or her primary care physician, and approximately 30% of LGBT elders are not publicly open about their sexuality. LGBT elders fear discrimination in long-term-healthcare facilities, which can lead them to continue or once again hide their sexual orientation. Being able to be publicly open about their sexuality is often cited by older LGBT persons as being central to their satisfaction and safety within adult-care systems. Also, hiding sexual orientation at any age increases the risk of poor mental health outcomes.

LGBT persons not feeling able to be publicly open about their sexuality comes from and contributes to a general lack of exposure of healthcare workers to LGBT issues and experiences and a lack of LGBT-friendly practices and policies in the health arena. The outcome can be a lack of understanding by healthcare workers of the specific needs of this population.

A lack of knowledge about and sensitivity to LGBT issues extends to long-term-healthcare facilities. In a recent study, 73% of LGBT survey respondents believed that LGBT residents of long-term-care facilities are victims of discrimination, and 68% of

heterosexual residents believed this to be true. In this same study, 98% of LGBT individuals believed that a gay-friendly retirement facility would be a positive development for older LGBT people. A study of agencies servicing the elderly showed that agencies with LGBT training were significantly more likely to also have services and outreach to the older LGBT community.

With all this in mind, the Department has drafted a proposed regulatory amendment that prescribes the subject matter of the training course required by statute, the means of taking the training course, and the requisite timeframe for compliance.

Problem Statement: The Department's is legislatively-mandated to prescribe a training program that focuses on addressing the need for cultural-competency training for healthcare providers providing care to lesbian, gay, bisexual and transgender (LGBT) seniors in long-term healthcare facilities. This training is required to protect older LGBT persons from unnecessary discrimination from healthcare providers working in skilled nursing facilities or congregate living health facilities.

Objective: The broad objective of this proposed regulatory action is to effectuate the Department's statutory mandate for training aimed at educating healthcare providers working in long-term care facilities about the unique and sometimes unexpected issues surrounding older individuals who identify with the LGBT community.

Benefit: Approximately 30% of LGBT elders are not publically open about their sexuality. LGBT elders fear discrimination in long-term-healthcare facilities. This often creates a situation where they avoid seeking adequate care, which can result in long-term health complications, and depression. Benefits of the proposed regulation are:

- Improved quality of life for LGBT elders in long-term-healthcare facilities.
- Improved health outcomes for LGBT elders in long-term-healthcare facilities.
- Reduced reluctance by LGBT elders to seek and obtain medical care.
- Increased cultural-competence of staff providing care to elder LGBT persons in long-term-healthcare facilities.

EVALUATION AS TO WHETHER THE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Department has evaluated this proposal as to whether the proposed regulations are inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect the LGBT community, the Department has concluded that no known statute or regulation conflicts with this proposed regulatory action.

MANDATED BY FEDERAL LAW OR REGULATIONS

Currently, there are no existing federal regulations or statutes applicable to the regulations.

DOCUMENTS OR FORMS INCORPORATED BY REFERENCE

None.

OTHER STATUTORY REQUIREMENTS

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Department has made an initial determination that the proposed regulations would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Thus, there will be no significant adverse economic impact on California businesses.

LOCAL MANDATE

The Department has determined that this regulatory action would 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.

FISCAL IMPACT ASSESSMENT

- A. Cost to Any Local Agency or School District:** None.
- B. Cost or Savings to Any State Agency:** The Department anticipates a minimal impact to workload, which includes review of facility training curriculum and personnel files to determine compliance. This task would be performed by existing health facility evaluators as part of their usual workload, and the Department does not anticipate any additional costs associated with the enforcement of the proposed regulation.
- C. Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** None
- D. Cost or Savings in Federal Funding to the State:** None.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

There will be a cost impact for skilled nursing and congregate living health facilities licensed by the Department and governed by these regulations. The total cost is estimated to be \$6580.66 per average-size facility to train all required staff. The amount will vary based on the size of the facility and number of staff employed. The costs would be incurred over an approximate two-year period for facilities to initially comply

with the regulation and recur every two-year period for facilities to comply with the regulation's requirement for biennial re-training of staff.

EFFECT ON HOUSING

None.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses that are legislatively mandated to comply with the proposed regulation, but not significantly. Of the total 1,244 skilled nursing facilities, 1,085 have 150 or fewer beds; however, not all of these qualify as "small business" under the Administrative Procedure Act because many are non-profits. Of the total 113 congregate living facilities, the bed size range is 4 to 25.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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

The creation or elimination of jobs within the State of California: The LGBT-curriculum requirement is introduced in an existing regulation requiring a variety of facility staff training programs.

The creation of new businesses or the elimination of existing businesses within the State of California because there are existing advocacy organizations that train long-term care providers and LGBT organizations on the best ways to support older LGBT persons in long-term-care setting.

The expansion of businesses currently doing business within the State of California. The training requirements may create a business need for training programs.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The regulation will benefit the residents of California by addressing the need for cultural-competency training for healthcare providers providing care to LGBT seniors in long-term healthcare facilities. This training will improve the quality of life of LGBT residents in long-term care facilities and reduce the likelihood of residents experiencing discrimination by care providers.

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 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.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON

A: Fredriksen-Goldsen KI, Hoy-Ellis CP, Goldsen J, Emlet CA, Hooyman NR. Creating a vision for the future: key competencies and strategies for culturally competent practice with lesbian, gay, bisexual, and transgender (LGBT) older adults in the health and human services. *J Gerontol Soc Work*. 2014;57(0):80-107.

B: Institute of Medicine. 2011. “Later Adulthood” in *The Health of Lesbian, Gay, Bisexual and Transgender People: Building a Foundation for Better Understanding*. Washington, DC: The National Academies Press.

C: Kimmel D, Rose T, David S. 2006. *Lesbian, Gay, Bisexual and Transgender Aging: Research and Clinical Perspectives*. New York, NY: Columbia University Press.

D: Hughes AK, Harold RD, Boyer JM. Awareness of LGBT aging issues among aging services network providers. *J Gerontolog Soc Work*. 2011;54:659-677.

E: Fredriksen-Goldsen KI, Kim H-J, Barkan SE, Muraco A, Hoy-Ellis CP. Health disparities among lesbian, gay, and bisexual older adults: results from a population-based study. *Am J Public Health*. 2013;103(10):1802-1809.

F: Jackson NC, Johnson MJ, Roberts R. The potential impact of discrimination fears of older gays, lesbians, bisexuals and transgender individuals living in small- to moderate-sized cities on long-term health care. *J Homosexuality*.2008;54(3): 325-339.

G: Portz JD, Retrum JH, Wright LA, et al. Assessing capacity for providing culturally competent services to LGBT older adults. *J Gerontolog Social Work*. 2014;57: 305-321.

H: Brotman S, Ryan B, Cormier R. The health and social service needs of gay and lesbian elders and their families in Canada. *The Gerontologist*. 2003;43(2):192-202.

I: Hardacker CT, Rubinstein B, Hotton A, Houlberg M. Adding silver to the rainbow: the development of the nurses' health education about LGBT elders (HEALE) cultural competency curriculum. *J Nursing Management*. 2014;22:257-266.

J: National Senior Citizen Law Center. 2011. *LGBT Older Adults in Long-Term Care Facilities: Stories from the Field*. Available at: <http://www.nslc.org/wp-content/uploads/2011/07/LGBT-Stories-from-the-Field.pdf>. Accessed August 11, 2014.

K: Moone RP, Cagle JG, Croghan CF, Smith J. Working with LGBT older adults: an assessment of employee training practices, needs, and preferences of senior service organizations in Minnesota. *J Gerontolog Social Work*. 2014;57:322-334.

CONTACT PERSON

Inquiries regarding the proposed regulatory action can be directed to Dawn Basciano, with the Department's Office of Regulations at (916) 440-7367, or the designated backup contact, Linda Cortez at (916) 440-7367.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

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 order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 558-1710 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the 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.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.