

## **SUPPLEMENTAL STATEMENT OF REASONS**

The California Department of Public Health (Department) has instituted additional changes to these proposed regulations. Additional discussion to the Initial Statement of Reasons (ISOR), identified below, is added to the rulemaking file.

### **Regulation Text Changes:**

**Section 72901:** Except for the following, no additional changes to this section are proposed.

- **Subdivision (d):** The definition of financial ownership interest was removed due to the duplication of statute which defines a beneficial ownership interest. As applicable, references to this term throughout the text of these regulations have been amended to cross reference HSC section 1253.2(c), which is a more comprehensive definition than the previously proposed term.

**Section 72903:** Except for the following, no additional changes to this section are proposed.

- **Subdivision (a):** Grammatical changes were necessary to clarify that an applicant must submit an application to the Department, along with supporting documentation as specified, to prove their qualification to serve as a temporary manager for the Department's review.
- **Subdivision (a)(5):** Changes were made to improve clarity and make the regulation text consistent with the reasoning in the ISOR. The language is revised to specify the applicant attests they will have the necessary staff available to legally operate the long-term health care facility within 48 hours of appointment. A temporary manager must be able to provide interim staffing within 48 hours for onsite services and operations to bring the facility into operational compliance or safely transfer all residents to another licensed facility within a short period of time. The temporary manager must also comply with the applicable staffing requirements for the facility type. Due to the emergent nature of appointing a temporary manager, and to avoid a lapse in operations or resident care or any other violation of state or federal law, the applicant must have access to a full staff of qualified professionals.
- **Subdivision (a)(6):** Changes were made improve clarity and make the regulation text consistent with the reasoning in the ISOR. The language is revised to specify the applicant attests they will have the necessary legal and accounting professionals available for the operation of the long-term health care facility

within 48 hours of appointment for the reasons provided under subdivision (a)(5) above.

- **Subdivision (a)(7):** The Department has revised language to specify business lines of credit must be identified through the submission of an attestation due to lack of clarity. The Department does not set a minimum threshold for lines of credit due to the varying needs of a facility and instead requires the temporary manager applicant disclose any available credit lines. The Department assesses the needs of the facility when determining appointment of a temporary manager.
- **Subdivision (b):** The Department proposes adopting new subdivision (b) to provide a non-exhaustive list of documentation that could be submitted by the temporary manager applicant along with their application for clarity among the regulated community. The proposed regulation did not specify examples of materials the Department would review to determine the qualification of a temporary manager. Providing this non-exhaustive list serves as guidance to applicants on what the Department looks for in assessing the qualification of a temporary manager. Examples of documents that demonstrate the applicant's background and experience and ability to manage a long-term health care facility were based on a review of temporary manager applications received by the Department after the June 2022 solicitation in All Facilities Letter (AFL) 22-14.
- **Subdivision (b):** The Department proposes to renumber existing subdivision (b) to (c) as indicated due to the addition of the new subdivision (b) concerning application documentation.
- **Subdivision (b)(1):** Has been amended to align with the removal of the definition of "financial ownership interest" and substitutes cross references for statutory definitions. HSC section 1253.2(c) defines "beneficial ownership interest" while HSC section 1253.2(j) defines "ownership interest." Both definitions are more comprehensive than the previously proposed term and provide more clarity to the regulated public.
- **Subdivision (c):** The Department proposes to renumber existing subdivision (c) to (d) as indicated due to the addition of the new subdivision (b) concerning application documentation.
- **Subdivision (d):** The Department proposes to renumber existing subdivision (d) to (e) and further identify when a renewal attestation should be submitted by a temporary manager applicant. The revision specifies that a renewal must be requested no later than thirty (30) days before the expiration of the one year period from the date of the notification to the applicant they were placed on the temporary manager list. This added clarity ensures the Department will have enough time to review and approve the renewal before the applicant is at risk of being removed from the approved temporary manager list.

**Section 72905:** Except for the following, no additional changes to this section are proposed.

- **Subdivision (a):** The Department has added a cross reference to statute due to a lack of clarity regarding when and under what circumstances the Department determines a temporary manager is needed and to avoid duplication of statute. Secondly, the lack of clarity of how a determination is made to send a notice of a need for, and subsequently appointment of, a temporary manager to any of those currently eligible is remedied by noting the Department, in addition to analyzing the needs of the facility, does this on a case-by-case basis along with criteria that includes the capability and availability of temporary manager candidates. These clarifications help the regulated community know how the Department determines who to send the notice to, and ultimately appoint, a prospective assignment as a temporary manager. This added language provides clarity on the process of selecting those prospective applicants to see if they are interested in managing the facility and how the final selection is made.
- **Subdivision (b)(4):** Has been amended to align with the removal of the definition of “financial ownership interest” and substitutes cross references for statutory definitions. HSC section 1253.2(c) defines “beneficial ownership interest” while HSC section 1253.2(j) defines “ownership interest.” Both definitions are more comprehensive than the previously proposed term and provide more clarity to the regulated public.
- **Subdivision (b)(5):** This subdivision lacked clarity without a reference to the statute that provides the authority and specifics of the salary or fee for the temporary manager. The cross reference also ensures there is no conflict with, or duplication of, statute.
- **Subdivision (c):** This subdivision is being stricken as the clarity provided by adding this same statutory reference to subdivision (a) noted above by citing to when and under what circumstances a temporary manager is needed under current law makes citing to this same statute again here in subdivision (c) unnecessary.
- **Subdivision (d):** The Department proposes to renumber existing subdivision (d) to (c) as indicated due to the elimination of subdivision (c). This subdivision is also revised to clarify that the Department will consult with the licensee to appoint a different temporary manager if the selected temporary manager is not acceptable to the licensee. This clarification aligns with HSC section 1325.5(j)(5) but specifies that the licensee, which may or may not be the long-term health care facility, can object to the appointment.

**Section 72909:** Except for the following, no additional changes to this section are proposed.

- **Title of Section 72909:** Aligns the title of the section with language changes indicated in subdivision (a) below.
- **Subdivision (a):** The term “authority” has replaced references to temporary manager “duties” to better align with statutory language in HSC section 1325.5(b). Further, the subdivision has been revised to clarify that the examples of authority listed in (a)(1) through (a)(5) are a non-exhaustive list.
- **Subdivision (a)(6):** The term “capital investments” lacked clarity and thus was ambiguous on the types of repairs or improvements that would require prior Department approval. The revised language has clarified that immediate danger repairs and improvements can be made without prior authorization and cross references HSC section 1325.5(e)(2). This cross reference provides additional specification on the types of facility improvements that require prior authorization by the Department and avoids duplication of statute. This revision aligns more closely with Department’s mission of protecting the health and safety of residents by avoiding undue approval delays.

**Section 72913:** Except for the following, no additional changes to this section are proposed.

- **Subdivision (a):** The Department has revised the term “generally approved accounting principles” to “generally accepted accounting principles” to improve clarity and align with common terminology used in accounting professions.