

STATE OF CALIFORNIA
STATE AND CONSUMER SERVICES AGENCY
CALIFORNIA BUILDING STANDARDS COMMISSION
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Office Use Item No. _____

PARTICIPATION COMMENTS FOR THE NOTICE DATED FEBRUARY 20, 2013.
Written comments are to be sent to the above address.

WRITTEN COMMENT DEADLINE: APRIL 5, 2013

Date: March 26, 2013

From: Elizabeth C. Saviano



Name (Print or type)

(Signature)

-- on behalf of the California Primary Care Association

Agency, jurisdiction, chapter, company, association, individual, etc.

1231 I Street, Suite 400
Street

Sacramento,
City

CA
State

95814
Zip

I/We (do)(do not) agree with:

[X] The Agency proposed modifications As Submitted on Section No. 217.0 as added to Parts 4 and 5 of the California Mechanical and Plumbings Codes; Title 24, Part 4, California Mechanical Code Sections 407.4.1.4, Table 4-A, Table 4-B, 602.1 and 602.3.1; and Title 24, Part 5, California Plumbing Code Sections 604.1, 609.9, 612.0, 612.2, 701.1.2.1 and 906.2.1.

and request that this section or reference provision be recommended:

[X] Approved [] Disapproved [] Held for Further Study [] Approved as Amended

Suggested Revisions to the Text of the Regulations:

Insert after "1226.6" in subsection (1) of Section 217 " and 1226.7" as follows:

217.0

...
OSHPD 3SE. This is a subcategory of OSHPD 3. OSHPD 3SE facilities have exemptions from selected requirements in the California Mechanical Code. Such facilities are often contained within existing commercial or residential buildings as "storefront" units, but they may also be freestanding new or converted structures. The services provided and the size of the units limit use and occupancy, thereby minimizing hazards and allowing for less stringent standards. OSHPD 3SE classification consists of the following facility types:

(1) Primary Care Clinics providing services limited to those listed in California Building Code Section

1226.6 and 1226.7 (i.e. clinics without treatment rooms and that perform procedures limited to those that may be performed in exam rooms as defined in California Building Code Section 1224.3). Outpatient clinical services of a hospital providing services equivalent to a primary care clinic may also be classified as OSHPD 3SE.

Reason: [The reason should be concise if the request is for “Disapproval,” “Further Study,” or “Approve As Amended” and identify at least one of the 9-point criteria (following) of Health and Safety Code §18930.]

See enclosed policy statement and attachments.

HEALTH & SAFETY CODE SECTION 18930

SECTION 18930. APPROVAL OR ADOPTION OF BUILDING STANDARDS; ANALYSIS AND CRITERIA; REVIEW CONSIDERATIONS; FACTUAL DETERMINATIONS

- (a) Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:
- (1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.
 - (2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.
 - (3) The public interest requires the adoption of the building standards.
 - (4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.
 - (5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.
 - (6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.
 - (7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.
 - (A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.
 - (B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.
 - (8) The format of the proposed building standards is consistent with that adopted by the commission.
 - (9) The proposed building standard, if it promotes fire and panic safety as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.

Licensed Primary Care Clinics Support OSHPD 3 SE Amendments to the Plumbing And Mechanical Codes for the 2013 Code Triennial Adoption

Introduction and Background

Beginning in September 2011, the Office of Statewide Health Planning and Development (OSHPD) engaged clinic representative in stakeholder discussions about the triennial amendments to the Building Standard Code (the Code). During these meetings, primary care clinic representatives raised a number of issues with the proposed OSHPD 3 amendments. In attempting to balance the California statutory requirements with model code provisions, OSHPD has been very helpful in finding cost-effective solutions to assist primary care clinics to comply with OSHPD 3. The California Primary Care Association (CPCA) acknowledges the work that OSHPD has done to create several exceptions to the most burdensome building code provisions for primary care clinics.

CPCA is a nonprofit statewide trade association of over 900 community health centers and clinics. CPCA works closely with its members to provide technical assistance on licensing and certification matters, including compliance with OSHPD regulations. CPCA member clinics are committed to providing cost-effective, quality health care services to California's uninsured and underinsured. With California's implementation of the federal Affordable Care Act and Medi-Cal expansion, CPCA member clinics have been working to quickly expand sites and services to serve the growing Medi-Cal population. However, overly burdensome and outdated licensing regulations in conjunction with prohibitively expensive building standards are hampering these efforts at the very time that we are preparing to serve millions of Californians that will soon have health care coverage.

In recognition of this, OSHPD submitted Express Terms for Proposed Building Standards to the Building Standards Commission (BSC) in October 2012. The proposed amendments were largely to adopt model code provisions and to clarify and amend certain existing regulatory requirements for OSHPD 1, 2, 3, and 4. OSHPD's regulatory package proposed Express Terms to amend the Mechanical and Plumbing Codes including a definition for a new subcategory of OSHPD 3- called "OSHPD 3SE." These amendments were in keeping with model code provisions.

However, upon objection by groups, primarily the Joint Committee on Energy and Environmental Policy (JCEEP), OSHPD withdrew the OSHPD 3SE amendments from consideration by the BSC shortly before the November 12, 2012 hearing on OSHPD's regulatory proposals for the triennial code adoption cycle. Because OSHPD deleted these provisions, the BSC never addressed them during that hearing.

At the urging of CPCA and other stakeholder groups, in February 2013, OSHPD resubmitted to the BSC amendments containing a redefinition of the OSHPD 3-SE exemption. CPCA is grateful for the opportunity to comment on these proposed Express Terms and appreciates the efforts that OSHPD and the BSC made to bring these proposed regulations back for consideration.

While CPCA would have preferred an outright exemption from compliance with OSHPD 3 requirements for primary care clinics that convert existing physician office space to licensed primary care clinics, we understand OSHPD's interpretation that there is no statutory authority to support this. While we disagree with OSHPD's narrow interpretation, CPCA believes that the proposed select OSHPD 3SE exemptions from the Mechanical and Plumbing Code provisions for a limited classification of clinics is an acceptable compromise and will be very beneficial to clinics that undertake such conversions.

BSC Is Urged to Adopt the OSHPD SE Exceptions

The February 20, 2012 Express Terms proposed for the Mechanical and Plumbing Codes includes a revised definition of the new OSHPD 3 SE classification. The OSHPD 3SE subcategory is defined in both sections of the Code.

The OSHPD 3SE classification is defined as follows:

“Primary Care Clinics providing services limited to those listed in California Building Code Section 1226.6 (i.e. clinics without treatment rooms and that perform procedures limited to those that may be performed in exam rooms as defined in California Building Code Section 1224.3). Outpatient clinical services of a hospital providing services equivalent to a primary care clinic may also be classified as OSHPD 3SE.

Exception: Primary Care Clinics that include treatment rooms, procedure rooms, or patient treatment spaces that require positive or negative pressure other than airborne infection isolation exam rooms, shall not be classified OSHPD 3SE.

Rehabilitation Clinics providing services limited to those listed in California Building Code Section 1226.10.

Psychology Clinics providing services limited to those listed in California Building Code Section 1226.12.

No other clinics or outpatient clinical services of a hospital, when provided in a freestanding building, considered as OSHPD 3 facilities shall be classified OSHPD 3SE.

CPCA notes that this classification does not include *all* primary care clinics licensed pursuant to Cal. Health and Safety Code § 1204, and as defined in the Building Standards Code § 1226.6 [Final Express Terms, OSHPD Building Standards, 2012 Triennial Code Adoption]. In particular, the OSHPD 3SE exemptions would not apply to any primary care clinics that need either positive or negative pressure in treatment or procedure spaces *or primary care clinics that provide abortion services* as these clinics are defined in newly adopted 2102 Building Standards Code § 1226.7.

CPCA believes that the OSHPD 3SE exemption should apply to all primary care clinics licensed under Health & Safety Code § 1204, including those providing services as defined in both Sections 1226.6 and 1226.7 of the California Building Code.

Proposed Mechanical Code Changes. The Express Terms proposed for the California Mechanical Code as applied to primary care clinics that fall within the newly defined OSHPD 3 SE classification will:

1. Allow primary care clinics to use above ceiling space as plenums for outside-air, relief-air, air supply, and exhaust-air or return-air air-conditioning distribution;
2. Exempt primary care clinics from meeting certain pressure relationship and ventilation requirements for airborne infection isolation;
3. Allow primary care clinics to comply with a lesser standard for air filter efficiencies; and
4. Allow the use of concealed building spaces and flexible ducts of more than 10 feet in length for ventilation.

Proposed Plumbing Code Changes. The Express Terms proposed for the California Plumbing Code as applied to primary care clinics that fall within the newly defined OSHPD 3 SE classification will:

1. Permit the use of CPVC piping in primary care clinics for water supply;
2. Exempt primary care clinics from the requirement to disinfect potable water systems when new or repaired;
3. Exemption for OSHPD 3SE facilities from domestic hot-water distribution systems requirements for two pieces of hot-water-heating equipment and at least two independent storage tanks;

4. Use of ABS and PVC installations for sanitary drainage systems in facilities required to comply with OSHPD 3; and
5. Exemption for OSHPD 3SE facilities from select vent pipe termination requirements.

CPCA urges the Commission to adopt these amendments to the Code as proposed by OSHPD.

The Creation of the OSHPD 3SE Subcategory is Sound Public Policy

In its original opposition JCEEP stated that OSHPD's addition of the 3SE classification did not meet the nine standards for adoption by the Building Standards Commission as set forth in Cal. Health & Safety Code § 18930. Specifically, the JCEEP alleged that the OSHPD3 SE classification was 1) not in the public interest; 2) would be unreasonable, arbitrary and unfair; and 3) would require an Environmental Impact Report (EIR) under California Environmental Quality Act prior to adoption of the proposed amendments.

CPCA firmly believes that without the proposed OSHPD 3 SE exceptions to the Mechanical and Plumbing Codes, it will be significantly more costly for clinic organization to convert existing buildings to licensed primary care clinics. The cost-savings to licensed primary care clinics would result in anywhere from \$100,000 to \$ 250,000 per project. For clinic organizations this substantial reduction in construction cost would likely allow clinics to shift limited resources for the provision of actual care services. Overall CPCA believes that the OSHPD 3SE subcategory is an important step toward facilitating ready access to primary care services.

Further JCEEP provided no credible evidence that use of CPVC and PVC piping in the relatively small number of clinics that will fall under the OSHPD 3SE exemption would create any significant impact on the environment. This is particularly true when a clinic is converting existing space, such as a physician's office where this type of piping may already be in place, for use as a primary care clinic.

The OSHPD 3SE Subcategory Is In The Public Interest

Regulators generally are expected to balance the public interests when taking agency action. In the present case, the BSC must weigh two public health and safety interests-the significant need for improved access to primary care clinic services in light of California's implementation of the federal Affordable Care Act against the alleged environmental impact if the OSHPD 3SE were to be adopted.

CPCA believes that the greater public interest is served by making every effort to ensure that every Californian has access to affordable primary health care services. Any cost savings that a primary care clinic may experience in the construction of the physical plant as a result of the OSHPD 3SE exception is beneficial to the public interest because such cost savings greatly increases the potential for health care services to quickly become operational.

As California's Medi-Cal expansion moves forward, the experts agree that there will not be enough primary care providers in California to meet the anticipated need for services. (*See*, attached, California HealthCare Foundation Center for Health Reporting, "Empty Promise? Experts Question Doctor Supply for California's Newly Insured Poor," March 4, 2013.) The simple fact is that Medi-Cal coverage alone does not guarantee access to care. It is therefore, imperative to expand our existing infrastructure to be able to meet the growing demand for services. As such, every effort to reduce unnecessary obstacles to creating new primary care clinics should be California's first order of business.

The OSHPD 3SE Exceptions Are Generally Not Unreasonable, Arbitrary and Unfair

OSHPD specifically targeted a limited classification of primary care clinics for the application of the OSHPD 3SE exceptions precisely to address the issues addressed herein and in generally keeping with the *Guidelines for the Design and Construction of Health Care Facilities* developed by the Facilities Guidelines Institute for small, neighborhood primary care clinics. Therefore, the application of the OSHPD 3SE exception is not arbitrary.

CPCA continues to believe that it is unfair to exclude primary care clinics that provide abortion services from the OSHPD 3SE exception because there is no reasonable public health and safety reason to do so. Overall, however, the OSHPD 3SE exception is reasonable and fair for the reasons stated in the section above, herein.

No Environmental Impact Report (EIR) Is Necessary

Providing exemptions to a narrowly defined class of health facilities from select provisions of the plumbing and mechanical codes will have no discernible overall impact on the environment. To spend significant resources for an environmental impact study that is not likely to yield substantial evidence of environmental changes as a direct result of the adoption the OSHPD 3SE subcategory is simply not in the public interest.

JCEEP had argued that when it can be fairly argued on the basis of substantial evidence that the project may result in reasonably foreseeable indirect physical change in the environment, a CEQA review is required. JCEEP further argues that it has substantial evidence that the installation of longer lengths of flexible pipe in OSHPD 3SE occupancies may result in such reasonably foreseeable indirect physical changes. However, JCEEP does not consider the limited circumstances in which the use of longer lengths of flexible pipe will occur. For example, in 2011 there were less than 50 primary care clinics newly licensed in California. Even if all were to take advantage of OSHPD 3SE exceptions, this is hardly a number that would foretell significant environmental impact. Further, CPCA was informed that in the past the state had already conducted an analysis of use of PVC piping and the EIR was inconclusive. Considering all of the above, it would be unwarranted to conduct a lengthy and expensive environmental impact analysis.

Conclusion

CPCA supports OSHPD's proposed changes to the Codes to include the OSHPD 3SE exceptions.

Empty Promise? Experts Question Doctor Supply to See California's Newly Insured Poor

By Emily Bazar, [CHCF Center for Health Reporting](#)



Dr. Hasmukh Amin, a Bakersfield pediatrician, accepts Medi-Cal patients but says he has to turn away 25-30 people every day who are seeking a pediatrician who accepts Medi-Cal. Here he examines Marcus and Major Thompson. (Henry A. Barrios/The Californian)

In less than one year — Jan. 1, 2014 — Obamacare's promise to bring health care to perhaps 1 million more poor California residents will be tested. That's when **Medi-Cal**, the publicly funded health program for the poor and disabled, launches a huge statewide expansion.

But making a promise is one thing, and delivering is another.

In some places, it's already tough for many poor California residents to find a doctor who is able — or willing — to see them when they need one.

From the sprawling Los Angeles basin to the sparsely populated rural north, many medical providers who currently see these patients say they are overwhelmed, a situation that could worsen when those newly covered by Medi-Cal arrive for care.

The epicenter is California's Central Valley, where high rates of uninsured residents, **coupled with persistent doctor shortages**, create a potentially combustible brew that could thwart the success of the health care law.

"We're not even talking about 2014," said Carmen Burgos of the Greater Bakersfield Legal Assistance program. Burgos helps low-income Kern County residents access health care and dental services. "Good luck finding a doctor who takes Medi-Cal now."

Program Expansion

More than 7 million Californians are currently covered under Medi-Cal, and expanding the program is a major piece of President Obama's health care overhaul, called the Affordable Care Act.

ENROLLMENT SURGE	
Predicted increase in Californians expected to enroll in Medi-Cal by 2019 under Obamacare	
REGION	NEW ENROLLMENT RANGE
Northern California and Sierra Counties	50,000 - 60,000
Central Coast	50,000 - 70,000
Sacramento Area	60,000 - 80,000
San Joaquin Valley	120,000 - 170,000
Greater Bay Area	130,000 - 170,000
Los Angeles	290,000 - 410,000
Other Southern California Counties	300,000 - 430,000

Source: UC Berkeley / UCLA CalSIM model

(Graphic: CHCF Center for Health Reporting)

Between 2014 and 2019, roughly 1 million to 1.4 million more Californians will enroll in Medi-Cal as a result, according to UCLA and UC Berkeley estimates.

The Medi-Cal expansion will broaden eligibility by allowing applicants with higher incomes and allowing those who were previously ineligible, such as childless adults, to get coverage.

State officials say that there's sufficient access to Medi-Cal services and that they are constantly monitoring to ensure that recipients can get care.

"We do believe that the Medi-Cal provider network provides adequate access in California now," said Norman Williams, spokesman for the state Department of Health Care Services, which administers Medi-Cal. The state also is "adequately preparing for 2014 and the expansion."

But doctors and health care experts across California offer a starkly different portrait of access on the ground.

- "We're experiencing provider shortages right now," said Alex Briscoe, director of the Health Care Services Agency in Alameda County, home to the cities of Oakland and Berkeley. He sees pressure points across the entire county, from less-populated areas to denser communities. "Patients often wait months to get access to care," he said.
- Desperate parents overwhelm phone lines at Riverwalk Pediatric Clinic, a private practice in Bakersfield, searching for doctors who accept Medi-Cal, said pediatrician Hasmukh Amin. About half of the practice's 20,000 patients already have Medi-Cal. "We say no to 25 to 30 callers per day," Amin said. "We cannot handle any more volume. We are maxed out."

- In Los Angeles County, more than 1 million people — about one-third of them on Medi-Cal — were seen at 174 health clinics in 2011, said Louise McCarthy, president of the Community Clinic Association of Los Angeles County. When asked whether there will be enough doctors to serve the growing population of Medi-Cal patients, she replied simply, “No.”

Low Rates

Medi-Cal is California’s version of the federal Medicaid program, and the Golden State ranks poorly in doctor participation compared with other states.

Two studies, including **one published** in *Health Affairs* in August, show that 57 percent of California doctors accept new Medi-Cal patients. That’s the second-lowest rate in the nation after New Jersey. California’s neighbors, Nevada and Oregon, accept 75 percent and 80 percent, respectively. The primary reason doctors don’t participate is financial, doctors themselves say. California has one of the nation’s lowest payment rates, ranking 47th of 50.

Ted Mazer, an ear, nose and throat specialist in San Diego, chairs the **California Medical Association**’s committee that focuses on Medi-Cal policy. He said doctors lose money providing care under Medi-Cal. For example, he said, Medicare, the federal health insurance program for people 65 and older, pays doctors about \$76 for a regular office visit. One private insurance company pays about \$71.

Medi-Cal? It pays \$24, he said.

About six years ago, Mazer began limiting his participation in the program.

These low Medi-Cal rates are being addressed — temporarily at least — by Obamacare.

Starting this past January and lasting two years, reimbursement rates for many primary care services in Medi-Cal will jump to Medicare levels, funded by the federal government. In California, the change is dramatic. On average, fees will increase by 136 percent, according to the **Kaiser Commission on Medicaid and the Uninsured**.

“The payment increase is a significant incentive that we anticipate will help attract new primary care physicians to the Medi-Cal provider network,” said Williams of the Department of Health Care Services.