October 26, 2018

California Building Standards Commission
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Sacramento, CA 95833- 2936
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RE: Office of Statewide Health Planning and Development
2019 California Building Code, California Code of Regulations, Title 24
*1226.4.3.5 Contiguous functions*

Dear Commission,

The California Primary Care Association (CPCA) appreciates the opportunity to submit comment on the abovementioned Office of Statewide Health Planning and Development's (OSHPD) proposed code amendments to Section 1226.4.3.5, relating to "Contiguous functions."

CPCA represents the interests of over 1,300 non-profit community clinics and health centers (CHCs), including Federally Qualified Health Centers (FQHCs) throughout California. CHCs provide integrated primary, dental, and behavioral health care to California's low-income, safety-net population. The backbone of California's health care delivery system, CHCs serve 1 out of every 6 Californians, for over 20 million patient encounters in 2017.

**We write today to formally request that the California Building Standards Commission take a disapprove position on the OSHPD revised proposed amendment, 1226.4.3.5 - Contiguous Functions.**

Before outlining our reasons for this position, we want to emphasize how much we sincerely appreciate the efforts of the OSHPD staff to address our previously expressed concerns with the language initially proposed by OSHPD (see public comments submitted to OSHPD during the Code Advisory Committee from CPCA dated July 19th, 2018, attached as Exhibit A). The revised proposed amendment to Section 1226.4.3.5 goes a long towards addressing those concerns. However, CPCA remains concerned that the revised proposed amendment allows for potentially significant administrative delays and contains ambiguities. Additionally, OSHPD has never explained how the proposed amendment to Section 1226.4.3.5 impacts the existing building standard currently found in this section (relating to "Connections"). These concerns, both by themselves and especially when taken together, lead us to conclude that the proposed code amendments to Section 1226.4.3.5 are likely to impede access to clinic licensure and in turn, would drastically reduce access to care for California's safety-net population.

**Recommendation**

We recommend the Commission disapprove OSHPD's proposed amendment to 1226.4.3.5 and allow an opportunity for CPCA, OSHPD, and other interested stakeholders to convene and consult as a Community Clinics Advisory Committee ("Advisory Committee") as provided for in Section 1226 of California Health and Safety Code, which reads in relevant part:

> OSHPD, in consultation with the Community Clinics Advisory Committee, shall prescribe minimum construction standards of adequacy and safety for the physical plant of clinics as found in the California Building Standards Code.

To the best of our knowledge, OSHPD has not convened an Advisory Committee and did not consult with an Advisory Committee with respect to the proposed amendment to Section 1226.4.3.5. CPCA welcomes the opportunity to engage with and share a mutual learning space with both OSHPD and CDPH on this regulation and potential future changes to clinic building standards.

**Concerns**

As mentioned above, CPCA has three main concerns with the revised proposed changes to Section 1226.4.3.5. These concerns are as follows:

1. **The proposed language contains an exception that, if utilized, would cause considerable administrative delays.**

The revised proposed amendment contains an exception that allows certain clinic areas (such as waiting rooms, a staff lounge, or storage rooms) to be located outside the clinic suite *upon approval from the California Department of Public Health (CDPH).* Specifically, it reads:

> 1226.4.3.5 Contiguous functions.
>
> Basic services of a single licensed clinic may be located in separate suites. Each clinic suite shall be contiguous and include internal circulation to access each of the required functions identified for that specific basic service.
>
> Exceptions:
>
> 1. Various functions including, but not limited to reception, waiting, staff support areas such as toilets, storage, and lounge may located outside of the clinic suite with approval from the California Department of Public Health.
> 2. [ . . . ]

While Exception #1 appears to allow for some flexibility in clinic layout and operation – in practice, it would likely serve to undermine CDPH's ability to issue clinic licenses in a timely manner.

First, CDPH does not possess the staffing levels, institutional knowledge about clinic operations, or resources needed to effectively interpret this exception. Requiring CDPH to approve any exceptions to Section 1226.4.3.5 without detailing the factors or parameters CDPH must consider in rendering its decision could lead to uneven interpretation.

Additionally, Exception #1 gives no indication as to how long CDPH can take to grant an exception. As has been documented repeatedly over the course of the last several years, CDPH has struggled and continues to

struggle to meet statutorily mandated timelines related to clinic licensure.[1][2] Adding additional work for CDPH's clinic licensing staff, without providing clear parameters governing CDPH's discretion or timelines for decision-making, is unlikely to advance CDPH's efforts to resolve those struggles. Indeed, it would likely serve only to exacerbate CDPH's existing workload and backlog.

Additionally, while OSHPD is responsible for proposing building standards for licensed clinics, and CDPH is responsible for licensing these clinics, the authority to review the building standards permits, construction, and inspection of most CHCs is usually under the jurisdiction of local building officials. Imposing an additional step of requiring CDPH approval for certain building standard-related exceptions seems unnecessarily confusing, burdensome, and duplicative – and potentially in violation of paragraph (4), of subdivision (a) of Section 18930 of the California Health and Safety Code.[3]

For these reasons, CPCA believes that the exception contained in the revised proposed amendment to Section 1226.4.3.5 runs the risk of being implemented in a manner that is both arbitrary and unreasonable, and appears to lack any evidence to support the need for an additional approval process.

**2. The revised proposed changes to Section 1226.4.3.5 are ambiguous.**

As proposed, the revised proposed changes to Section 1226.4.3.5 contain ambiguities that could lead to confusion and inconsistent application of clinic building standard across the State. Specifically, the regulation refers to "basic services" in the following way:

> *Basic services* of a single licensed clinic may be located in separate suites. Each clinic suite shall be contiguous and include internal circulation to access each of the required functions identified for that specific basic service.

The proposed regulation does not define "basic services," which leaves it open to interpretation. CPCA is aware that some services, such as dental, podiatric, and certain medical services, are sometimes mischaracterized as something other than basic services by some regulators. This is true even though clinic licensure regulations define the term "basic services" broadly to include these types of services. CPCA is concerned that, if regulators can disagree what "basic services" mean even in the face of a definition in clinic regulations, certainly there is likely to be disagreement if the term is used in the building standards context. In other words, without a clearer definition in Section 1226.4.3.5, there is no reason to believe that local building jurisdictions, licensed architects, CDPH, and OSHPD would all agree on what exactly is meant by the term "basic services" as used in the proposed regulation.

**3. The impact of repealing existing standards in Section 1226.4.3.5 are unknown.**

Finally, OSHPD has not addressed how the revised proposed amendment to Section 1226.4.3.5 changes the *existing* building code standard contained in Section 1226.4.3.5, which currently relates to "Connections." Section 1226.4.3.5 in its current form simply refers to another OSHPD building standard (Section 1224.4.7.5) that reads:

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[1] Hubert Systems Reporting. August 2014. California Department of Public Health Licensing & Certification Program Initial Assessment & Gap Analysis Report.

[2] The Results Group. April 2015. Centralized Application Unit (CAU) Program Assessment and Redesign Project Final Report.

[3] This statute, which relates to the approval or adoption of building standards, reads in part: "The proposed building standard [shall not be] unreasonable, arbitrary, unfair, or capricious, in whole or in part."

Corridor *systems shall connect all patient rooms and basic services.*

***Exception:*** *Covered* pedestrian walkways *connecting separate buildings are permitted for ambulatory, psychiatric or chemical dependency patients.*

By replacing this "Connections" standard with the proposed revised amendment related to "Contiguous functions," OSHPD is essentially repealing the "Connections" standard entirely. However, we have not seen any mention or analysis of this fact in any documentation prepared by OSHPD in connection with the proposed revised amendment to Section 1226.4.3.5. To this end, it remains unclear whether OSHPD even intended to repeal the "Connections" standard building standard for clinics, what the impact of that repeal means for clinic building standards, or whether the exception to the "Connections" standard related to "covered pedestrian walkways" is still permissible under the new revised proposed amendment.

The lack of clarity surrounding the effective repeal of the existing "Connections" building standard for clinics will undoubtedly lead to confusion among health center staff, licensed architects, and local building officials as to whether covered walkways are in fact allowable if the revised proposed amendment is approved.

**Conclusion**

Again, CPCA would like to thank OSHPD for its work and attention to these comments. California's health centers serve as the gateway to the safety-net population of the State. It is imperative that we do not hinder the ability of health centers to serve this high need population by enacting regulations without a full consideration of not only their apparent benefits, but also their impact on patient care, access to health, and health center operations.

If you have any questions about these comments, please feel free to contact Michael Helmick at mhelmick@cpca.org.