

**Subcommittee on Prevention and Early Intervention
And Innovation Regulations
June 1, 2017**

BACKGROUND

In October 2016 the Mental Health Services Oversight and Accountability Commission (OAC or Commission) adopted recommendations to amend the Prevention and Early Intervention (PEI) and Innovation regulations. Those recommendations, part of the MHSOAC report, *Finding Solutions Helping Counties Comply with Regulations Governing Innovation Projects and Prevention and Early Intervention Programs under the Mental Health Services Act* (“*Finding Solutions* report”), are listed below.

The Subcommittee met on March 7 and April 12, 2017 to discuss and obtain input on implementing the recommendations to amend the regulations contained in the *Finding Solutions Report*. The focus of the June 1, 2017 Subcommittee meeting is to consider draft proposed language to amend the regulations that will be submitted to the full Commission.

THE PROCESS TO AMEND THE REGULATIONS

In addition to the 45-day public comment period required by the Administrative Procedure Act stakeholders will have further opportunities to provide input on the Commission’s proposed amendments to the PEI and Innovation regulations. Public comments will be received during the Subcommittee and the full Commission meetings. Below is a list of the next steps in the Commission’s process to amend the regulations.

- ❖ June 1, 2017: The Subcommittee will consider draft proposed amendments to the regulations.
- ❖ July 27, 2017: The Commission will consider adopting proposed amendments to the regulations.
- ❖ August – September 2017: Official regulatory 45-day public comment period.
- ❖ October or November 2017: The Commission will consider the public comments received during the 45-day period and decide whether to make changes to the proposed amendments in response to the public comment received. If changes are made there will be an additional public comment period.
- ❖ December 2017 – January 2018: The Office of Administrative Law (OAL), the state entity in charge of ensuring that amendments to the regulations are consistent with the law reviews the Rulemaking file and makes a determination whether to approve the regulations.
- ❖ April 1 or July 1, 2018: The effective date of the amendments depending upon OAL approval.

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OAC-RECOMMENDED AMENDMENTS TO THE PEI AND INNOVATION REGULATIONS

The draft proposed amendments to the regulations implement the following recommendations in the *Finding Solutions* report.

- ❖ The Commission should amend the Prevention and Early Intervention regulations to align counties annual and periodic reporting deadlines with their budget-making timetables to maximize the value of the reports to local policymakers.
 - The Commission should provide a waiver for the initial Annual Report, which is due not later than December 30, 2017. Under the waiver, a county would report whatever data it had collected this far, would explain the obstacles to meeting its reporting deadline, and would provide an implementation plan and timeline for complying fully with future Annual Reports.
 - For subsequent Annual Reports and the initial and subsequent Three-year Evaluation Reports, the Commission should amend the regulations to modify due dates, aligning them with the county budgeting process. These reports would be due within 30 days of Board of Supervisor approval but no later than June 30. (*Finding Solutions* report page 30)
- ❖ The Commission should specify that a county is only responsible for reporting referrals made to other county programs, whether such programs are operated by counties or providers. (*Finding Solutions* report page 24)
- ❖ The Commission should clarify the meaning of “referral,” and specify when referrals must be documented for non-clinical and/or outreach-oriented programs and clinical programs. (*Finding Solutions* report page 24)
- ❖ For programs serving children and youth, the Commission should amend the regulations to clarify that data on youth shall be collected and reported to the extent permissible by federal and state law, including the California Education Code. The Commission should also specify an age threshold for data collection. (*Finding Solutions* report page 15)
- ❖ The Commission should amend the regulations to allow very small counties to report data on a countywide level instead of by program. (*Finding Solutions* report page 21)
- ❖ Recognizing the unique needs of very small counties, the Commission may want to consider a broader discussion, including possible amendments to the Act, to explore other ways in which such counties can work to achieve the transformational change envisioned by the Act. (*Finding Solutions* report page 21)
- ❖ The Commission should consider amending the PEI regulations to allow a county to pay for Access and Linkage to Treatment Program through another Mental Health Services Act funding stream, such as Community Services and Supports, as long as the other requirements in the PEI regulations are met. (*Finding Solutions* report page 27)

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DRAFT PROPOSED AMENDMENTS

The suggested changes to the current regulations are shown in underline (new language) and strikeout (deleted language).

Recommendation: Modify the reporting deadlines to align with county budget-making timeline

This recommendation to modify the reporting deadlines requires amendments to two sections of the regulations: §3560.010 (Annual PEI Report) and §3560.020 (Three-year PEI Report). The suggested amendments also include non-substantive renaming of these two reports.

Amend subdivision (a) of §3560.010 (Annual PEI Report) as follows:

- (a) The requirements set forth in this section shall apply to the Annual Prevention and Early Intervention ~~Program and Evaluation~~ Report.
- (1) The first Annual Prevention and Early Intervention ~~Program and Evaluation~~ Report is due to the Mental Health Services Oversight and Accountability Commission on or before December 30, 2017 as part of the Annual Update or Three Year Program and Expenditure Plan. ~~and no later than December 30th every year thereafter except for years in which the Three Year Program and Evaluation Report is due.~~ Each Annual Prevention and Early Intervention Report thereafter is due to the Mental Health Services Oversight and Accountability Commission within 30 calendar days of Board of Supervisor approval but no later than June 30 of the current fiscal year whichever occurs first.
- (2) The Annual Prevention and Early Intervention ~~Program and Evaluation~~ Report shall report on the required data for the fiscal year prior to the due date. For example, the Report that is due no later than June 30, 2020 is to report the required data from fiscal year 2018-19 (i.e. July 1, 2018 through June 30, 2019).

Amend subdivision (a)(1) of §3560.020 (Three-year PEI Evaluation Report) as follows:

- (a) The County shall submit the Three-Year Prevention and Early Intervention ~~Program and Evaluation~~ Report to the Mental Health Services Oversight and Accountability Commission every three years as part of the Three-Year Program and Expenditure Plan or Annual Update. The Three-Year Prevention and Early Intervention ~~Program and Evaluation~~ Report answers questions about the impacts of Prevention and Early Intervention Component Programs on individuals with risk or early onset of serious mental illness and on the mental health and related systems.
- (1) The first Three-Year Prevention and Early Intervention ~~Program and Evaluation~~ Report is due to the Mental Health Services Oversight and Accountability Commission on or before ~~December 30, 2018~~ June 30, 2019 as part of the Annual Update or Three-Year Program and Expenditure Plan for fiscal years 2017-18 through 2019-20. ~~The Three-Year Program and Evaluation Report shall be due no later than 30th every three years thereafter and shall report on the evaluation(s) for the three fiscal years prior to the due date.~~ The first Three-Year Prevention and Early Intervention Evaluation Report shall report the required data from fiscal year 2017-2018 and from the prior fiscal year if available.

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Recommendation: Specify that a county is only responsible for reporting referrals made to other county programs

This recommendation requires amendments to several sections of the current PEI regulations: §3560.010(b) that lists the requirements for the Annual PEI Report, §3726 that defines Access and Linkage to Treatment Program, and §3735 that defines Access and Linkage to Treatment Strategy.

Amend subdivision (b)(3)(B) of §3560.010 (Annual PEI Report) as follows:

(3) For each Access and Linkage to Treatment Strategy or Program the county shall report:

- (A) The Program name
- (B) Number of individuals with serious mental illness referred to treatment that is provided, funded, administered, or overseen by county mental health, and the kind of treatment to which the individual was referred.

Amend subdivision (b) of §3726 (Access and Linkage to Treatment Program) as follows:

(b) "Access and Linkage to Treatment Program" means a set of related activities to connect children with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, and adults and seniors with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, as early in the onset of these conditions as practicable to medically necessary care and treatment, ~~including but not limited to care provided, funded, administered, or overseen~~ by county mental health programs.

Amend subdivision (a)(1)(A) of §3735 (Access and Linkage to Treatment Strategy) as follows:

(A) "Access and Linkage to Treatment" means connecting children with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, and adults and seniors with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, as early in the onset of these conditions as practicable to medically necessary care and treatment, ~~including but not limited to care provided, funded, administered, or overseen~~ by county mental health programs.

Recommendation: The Commission should clarify the meaning of "referral," and specify when referrals must be documented for non-clinical and/or outreach-oriented programs and clinical programs.

This recommendation affects §3560.010(b) that lists the reporting requirements for the Annual PEI Report and §3750 that lists the evaluation requirements for the Three-year PEI Report.

Add subdivision (F) to (b)(3) of §3560.010 (Annual PEI Report) as follows:

- (3) For each Access and Linkage to Treatment Strategy or Program the County shall report:
- (A) The Program name

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- (B) Number of individuals with serious mental illness referred to treatment, and the kind of treatment to which the individual was referred.
- (C) Number of individuals who followed through on the referral and engaged in treatment, defined as the number of individuals who participated at least once in the Program to which they were referred.
- (D) Average duration of untreated mental illness as defined in Section 3750, subdivision (f)(3)(A) and standard deviation.
- (E) Average interval between the referral and participation in treatment, defined as participating at least once in the treatment to which referred, and standard deviation
- (F) “Referral” as used in this subdivision means the process by which an individual is given a recommendation in writing to one or more specific service providers for a higher level of care and treatment. Distributing a list of community resources to an individual at a community event, including but not limited to, a health fair, does not constitute a referral under this subdivision.

Add subdivision (G) to (b)(4) of §3560.010 (Annual PEI Report) as follows:

- (4) For each Improve Timely Access to Services for Underserved Populations Strategy or Program the County shall report:
 - (A) The program name
 - (B) Identify the specific underserved populations for whom the County intended to increase timely access to services.
 - (C) Number of referrals of members of underserved populations to a Prevention Program, an Early Intervention Program and/or to treatment beyond early onset.
 - (D) Number of individuals who followed through on the referral, defined as the number of individuals who participated at least once in the Program to which they were referred.
 - (E) Average interval between referral and participation in services to which referred, defined as participating at least once in the service to which referred, and standard deviation.
 - (F) Description of ways the County encouraged access to services and follow-through on referrals.
 - (G) “Referral” as used in this subdivision means the process by which a member of an underserved population is given a recommendation in writing to one or more specific service providers for a Prevention Program, an Early Intervention Program and/or a program providing treatment beyond early onset. Distributing a list of community resources to an individual at a community event, including but not limited to, a health fair, does not constitute a referral under this subdivision.

Amend subdivisions (f) and (g) of §3750 (Evaluation Requirements) to add the cross reference to the above definitions as follows:

- (f) For each Strategy or Program to provide Access and Linkage to Treatment the County shall track:
 - (1) Number of referrals as defined in subdivision (b)(3)(F) of section 3560.010 to treatment, and kind of treatment to which person was referred.

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- (2) Number of persons who followed through on the referral as defined in subdivision (b)(3)(F) of section 3560.010 and engaged in treatment, defined as the number of individuals who participated at least once in the Program to which the person was referred.
 - (A) The County may use a methodologically sound random sampling method to satisfy this requirement. The sample must be statistically generalizable to the larger population and representative of all relevant demographic groups included in the larger population.
- (3) Duration of untreated mental illness.
 - (A) Duration of untreated mental illness shall be measured for persons who are referred as defined in subdivision (b)(3)(F) of section 3560.010 to treatment and who have not previously received treatment as follows:
 - 1. The time between the self-reported and/or parent-or-family-reported onset of symptoms of mental illness and entry into treatment, defined as participating at least once in treatment to which the person was referred.
 - (B) The County may use a methodologically sound random sampling method to satisfy this requirement. The sample must be statistically generalizable to the larger population and representative of all relevant demographic groups included in the larger population.
- (4) The interval between the referral as defined in subdivision (b)(3)(F) of section 3560.010 and engagement in treatment, defined as participating at least once in the treatment to which referred
 - (A) The County may use a methodologically sound random sampling method to satisfy this requirement. The sample must be statistically generalizable to the larger population and representative of all relevant demographic groups included in the larger population.
- (g) For each Strategy or Program to Improve Timely Access to Services for Underserved Populations the County shall measure:
 - (1) Number of referrals as defined in subdivision (b)(4)(G) of section 3560.010 of members of underserved populations to a Prevention Program, an Early Intervention Program, and/or treatment beyond early onset.
 - (2) Number of persons who followed through on the referral as defined in subdivision (b)(4)(G) of section 3560.010 and engaged in services, defined as the number of individuals who participated at least once in the Program to which the person was referred.
 - (A) The County may use a methodologically sound random sampling method to satisfy this requirement. The sample must be statistically generalizable to the larger population and representative of all relevant demographic groups included in the larger population.
 - (3) Timeliness of care.

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- (A) Timeliness of care for individuals from underserved populations with a mental illness is measured by the interval between referral as defined in subdivision (b)(4)(G) of section 3560.010 and engagement in services, defined as participating at least once in the service to which referred.

Recommendation: For programs serving children/youth, clarify that data on youth shall be collected and reported to the extent permissible by federal and state law and specify an age threshold for data collection

This recommendation affects both the PEI and Innovation regulations because the demographic reporting requirements are identical in both sets of regulations.

Add subdivisions (c) and (d) to §3560.010 (Annual PEI Report) of the PEI regulations as follows:

- (c) For a program serving children or youth younger than 18 years of age, the demographic information required under subdivision (b)(5) of section 3560.010 relating to children or youth younger than 18 years of age shall be collected and reported only to the extent permissible by California Education Code, Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act of 1996 (HIPAA), California Information Practices Act, and other applicable state and federal privacy laws.
- (d) A county is not required to collect demographic information required under subdivision (b)(5) of section 3560.010 from a minor younger than 12 years of age.

Add subdivisions (b) and (c) to §3580.010 (Annual Innovative Project Report) of the Innovation regulations as follows:

- (b) For a program serving children or youth younger than 18 years of age, the demographic information required under subdivision (a)(4) of section 3580.010 relating to children or youth younger than 18 years of age shall be collected and reported only to the extent permissible by California Education Code, Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act of 1996 (HIPAA), California Information Practices Act, and other applicable state and federal privacy laws.
- (c) A county is not required to collect the demographic information required under subdivision (a)(4) of section 3580.010 from a minor younger than 12 years of age.

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Recommendation: Amend the regulations to allow very small counties to report data on a countywide level instead of by program.

This recommendation affects §3560.010 (Annual PEI Report).

Add subdivision (e) to §3560.010 (Annual PEI Report) as follows:

(e) A County with a population under 100,000, according to the most recent projection by the California State Department of Finance, may report the demographic information required under subdivision (b)(5) of this section for the County's entire Prevention and Early Intervention Component instead of by each Program or Strategy.

Recommendation: Recognizing the unique needs of very small counties provide flexibility to those counties on ways they can achieve the MHSA goals.

The suggested amendments are a part of a broader discussion exploring ways in which very small counties can work to achieve the transformational change envisioned by the MHSA.

Amend §3705 (PEI General Requirements) as follows:

- (a) The County shall include in its Prevention and Early Intervention Component:
- (1) At least one Early Intervention Program as defined in Section 3710.
 - (2) At least one Outreach for Increasing Recognition of Early Signs of Mental Illness Program as defined in Section 3715.
 - (3) At least one Prevention Program as defined in Section 3720
 - (A) Small counties may opt out of the requirement to have at least one Prevention Program if:
 1. The Small County obtains a declaration from the Board of Supervisors that the County cannot meet this requirement.
 - (B) A Small County that opts out of the requirement in (a)(3) above shall include in its Three-year Program and Expenditure Plan and/or Annual Update documentation describing the rationale for the County's decision and how the County ensured meaningful stakeholder involvement in the decision to opt out.
 - (4) At least one Access and Linkage to Treatment Program as defined in Section 3726
 - (A) A County with a population under 100,000, according to the most recent projection by the California State Department of Finance, may opt out of the requirement to have at least one Access and Linkage to Treatment Program if:

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1. The County obtains a declaration from the Board of Supervisors that the County cannot meet this requirement.
- (B) A County that opts out of the requirement in (a)(4) above shall include in its Three-year Program and Expenditure Plan and/or Annual Update documentation describing the rationale for the County's decision and how the County ensured meaningful stakeholder involvement in the decision to opt out.
- (5) At least one Stigma and Discrimination Reduction Program as defined in Section 3725
- (6) The Strategies defined in Section 3735.
- (b) The County may include in its Prevention and Early Intervention Component:
 - (1) One or more Suicide Prevention Programs as defined in Section 3730.
- (c) A County with a population under 50,000, according to the most recent projection by the California State Department of Finance, may satisfy the requirements in subdivisions (a)(1) through (a)(5) of this Section by combining and/or integrating the Early Intervention Program, the Outreach for Increasing Recognition of Early Signs of Mental Illness Program, the Prevention Program, the Access and Linkage to Treatment Program, and the Stigma and Discrimination Reduction Program.

Add subdivision (k) to §3750 (Evaluation requirements) as follows:

- (k) A County with a population under 50,000, according to the most recent projection by the California State Department of Finance, electing to follow subdivision (c) of section 3705 may satisfy the requirements of subdivisions (a) through (g) of this section by selecting, defining, and measuring appropriate indicators that the County selects to evaluate the negative outcomes referenced in Welfare and Institutions Code section 5840, subdivision (d), identified in the County's Three-year Program and Expenditure Plan and/or Annual Update pursuant to subdivision (o)(2) of section 3755.

Add subdivision (o) of §3755 (PEI part of the Three-year Plan and Annual Update) as follows:

- (o) A County with a population under 50,000, according to the most recent projection by the California State Department of Finance, electing to follow subdivision (c) of section 3705 shall include in the Prevention and Early Intervention Component of the Three-Year Program and Expenditure Plan and Annual Update the following information:
 - (1) Description of how it has combined and/or integrated the programs.
 - (2) Identification of the negative outcomes referenced in Welfare and Institutions Code Section 5840, subdivision (d) the combined and/or integrated program is intended to reduce.
 - (3) Description of how the combined and/or integrated program is likely to reduce the outcomes identified in part (2) above.
 - (4) Identification of the indicators that the County will use to measure the intended outcomes identified in part (2) above.

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- (5) Explanation of how the combined and/or integrated program will be implemented to help Improve Access to Services for Underserved Population, as required in Section 3735, subdivision (a)(2).
- (6) Explanation of how the combined and/or integrated program will use Strategies that are Non-Stigmatizing and Non-Discriminatory, as required in Section 3735, subdivision (a)(3).
- (7) Estimated number of children, adults, and seniors to be served in the combined and/or integrated program.
- (8) List of the projected expenditures for the combined and/or integrated program funded with Prevention and Early Intervention funds by fiscal year and by the following sources of funding:
 - (A) Estimated total mental health expenditures
 - (B) Prevention and Early Intervention funds
 - (C) Medi-Cal Federal Financial Participation
 - (D) 1991 Realignment
 - (E) Behavioral Subaccount
 - (F) Any other funding
- (9) Estimated amount of Prevention and Early Intervention funds budgeted for Administration of the Prevention and Early Intervention Component.

Recommendation: Clarify funding options for Access and Linkage to Treatment Program

This recommendation affects §3726 that defines Access and Linkage to Treatment Program. The proposed language is modeled after a similar provision in §3715.

Add subdivision (e) to §3726 (Access and Linkage to Treatment Program) as follows:

(e) Access and Linkage to Treatment Programs may be provided through other Mental Health Services Act components as long as they meet all of the requirements in this section.