

**TITLE 9, CALIFORNIA CODE OF REGULATIONS**  
**Mental Health Services Act Prevention and Early Intervention**  
**Notice published August 11, 2017**

**NOTICE OF PROPOSED RULEMAKING ACTION**

NOTICE IS HEREBY GIVEN that the Mental Health Services Oversight and Accountability Commission (Commission) is proposing to amend regulations in Division 1 of Title 9 of the California Code of Regulations pertaining to Mental Health Services Act Prevention and Early Intervention as described in the Informative Digest.

**PUBLIC HEARING**

The Commission will hold a public hearing starting at 9:15 a.m. on September 28, 2017, at the Mental Health Services Oversight and Accountability Commission located at 1325 J St, Suite 1700 on the 17th Floor in Sacramento, California. The conference room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The hearing will end when all comments have been received or at 10:15 a.m., whichever comes first.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. Comments may also be submitted by facsimile or by e-mail. The written comment period closes at **5:00 p.m.** on **September 28, 2017**. The Commission will consider only comments received at the Commission office or at the public hearing, by that time.

Submit comments to:

Kayla Landry  
Mental Health Services Oversight and Accountability Commission  
1325 J St., Suite 1700  
Sacramento, CA 95814  
(916) 445-8696  
FAX: 916-445-4927  
Email: [Kayla.Landry@mhsoac.ca.gov](mailto:Kayla.Landry@mhsoac.ca.gov)

**AUTHORITY AND REFERENCE**

This rulemaking action is made pursuant to the authority vested by Section 5846 of the Welfare and Institutions Code. The Commission is seeking changes to Title 9 of Division 1 of the California Code of Regulations as follows: Amend Sections 3560, 3560.010, 3560.020, 3705, 3726, 3735, 3750 and 3755. This proposal interprets, implements, and makes specific Welfare and Institutions Code Sections 5840, 5845, 5847, 5848, and uncodified Sections 2 and 3 of Proposition 63, the Mental Health Services Act.

## INFORMATIVE DIGEST

The California voters approved Proposition 63 during the November 2004 General Election. Proposition 63 became effective on January 1, 2005 as the Mental Health Services Act (MHSA). The MHSA expands mental health services to children/youth, adults, and older adults who are at risk of or have serious mental illness or serious emotional disturbance and whose service needs are not being met through other funding sources.

Prevention and Early Intervention (PEI) is one of five components of the MHSA and has as its specific purpose to prevent mental illnesses from becoming severe and disabling. (Welfare and Institutions Code Section 5840, subdivision (a)). Regulations for the administration of the PEI component were first issued in 2015 by the Commission.

This rulemaking is initiated as a result of a series of public meetings in 2016 with representatives of California's county behavioral health agencies who raised multiple concerns about their ability to comply with some of the PEI regulations that had been promulgated in 2015. Informed by those public meetings, in October 2016, the Commission adopted recommendations to address the challenges to implementing the PEI regulations. Some of those recommendations included amending the PEI regulations. Those recommendations are contained in the Commission's report, *Finding Solutions: Helping Counties Comply with Regulations Governing Innovation Projects and Prevention and Early Intervention Programs under the Mental Health Services Act (the Report)*. The Commission convened an advisory subcommittee (subcommittee) to advise on proposed language to implement the recommendation to amend the PEI regulations. At its July 27, 2017 meeting the Commission adopted the proposed amendments to the regulations.

The overall purpose of this rulemaking is to address the identified challenges to the implementation of the PEI regulations that were promulgated in 2015.

A synopsis of the proposed changes is as follows:

### Section 3560

- Existing law requires a county to submit to the Commission two reports: the Annual Prevention and Early Intervention Program and Evaluation report and the Three-Year Program and Evaluation report. The proposed amendments to this section make non-substantive changes by renaming the Annual and Three-Year Prevention and Early Intervention reports to shorten and simplify the names.

### Section 3560.010

- Existing law requires the Annual Prevention and Early Intervention report to be submitted to the Commission on or before December 30<sup>th</sup> as part of the county's Annual Update or Three-Year Program and Expenditure Plan. The first Annual Prevention and Early Intervention Report is due no later than December 30, 2017 and each subsequent report is due no later than December 30<sup>th</sup> every year thereafter. The proposed amendment to subsection (a) changes the due date of the subsequent Annual Prevention and Early Intervention reports to be within 30 calendar days of Board of Supervisors approval but no later than June 30<sup>th</sup> of the same fiscal year whichever occurs first. The amendment also clarifies that the Annual Prevention and Early Intervention Report is not due in years in which a Three-Year Prevention and Early Intervention Evaluation Report is due.

- The proposed amendment to paragraph (D) of subsection (b)(2) corrects an editing error by replacing the word, “principles” with the word, “principals.”
- Existing law requires the Annual Prevention and Early Intervention report to include the number of individuals with serious mental illness who are referred to treatment. The proposed amendment to subsection (b)(3)(B) clarifies the county’s reporting responsibility for the referrals to be referrals to treatment that is provided, funded, administered, or overseen by county mental health. The proposed amendment to subdivisions (b)(3) and (b)(4) also adds a provision that defines “referral”.
- Existing law requires the Annual Prevention and Early Intervention report to include demographic information on individuals served in each Prevention and Early Intervention Program. The proposed new subdivision (c) specifies that for programs that serve children and youth under 18 years of age the demographic information is to be collected and reported only to the extent permitted by federal and state privacy and education laws. The proposed new subdivision (d) specifies that a county is not required to collect demographic information from a minor younger than 12 years of age.
- Existing law requires the Annual Prevention and Early Intervention report to include demographic information on individuals served in each Prevention and Early Intervention Program. The proposed new subdivision (e) authorizes a county with population under 100,000 according to the most recent projection by the California State Department of Finance to report the demographic information for the county’s entire Prevention and Early Intervention Component instead of for each Prevention and Early Intervention Program or Strategy.

#### Section 3560.020

- Existing law requires the Three-Year Prevention and Early Intervention Evaluation report to be submitted to the Commission on or before December 30<sup>th</sup> as part of the county’s Three-Year Program and Expenditure Plan. The first Three-Year Prevention and Early Intervention Evaluation Report is due no later than December 30, 2018 and the subsequent reports are due every third year thereafter. The proposed amendment to subsection (a) authorizes the Three-Year Prevention and Early Intervention Evaluation Report to also be submitted as part of an Annual Update and changes the due date of the first Report to be within 30 calendar days of Board of Supervisors approval but no later than June 30, 2019. The proposed amendment also changes the due date of the subsequent Three-Year Prevention and Early Intervention report to be within 30 calendar days of Board of Supervisors approval but no later than June 30 every third year.

#### Section 3705

- Existing law requires a county to include in its Prevention and Early Intervention Component five specified Programs. The proposed amendment to subdivision (a)(4) provides a procedure for a county with a population under 100,000 according to the most recent projection by the California State Department of Finance to opt out of the requirement to have an Access and Linkage to Treatment Program, one of those five required Programs. The proposed amendment to add subdivision (c) authorizes a county with a population under 100,000 according to the most recent projection by the California State Department of Finance to combine and/or integrate the five required

Programs. The proposed amendment also specifies that a county cannot utilize both the opt out provision and the provision to combine and/or integrate programs.

#### Section 3726

- Existing law defines an Access and Linkage to Treatment Program broadly enough to include referrals to medically necessary care and treatment outside of the county mental health system such as services provided by private insurers. The proposed amendment to subdivision (b), consistent with the proposed amendment to (b)(3)(B) of Section 3560.010, clarifies the county's reporting responsibility for the referrals to care and treatment that is provided, funded, administered, or overseen by county mental health programs.
- Existing law requires an Access and Linkage to Treatment Program to be included in the Prevention and Early Intervention Component. The proposed amendment authorizes a county to fund the Access and Linkage to Treatment Program through other Mental Health Services Act component.

#### Section 3735

- Existing law contains a definition of Access and Linkage to Treatment Strategy that is parallel to the definition of Access and Linkage to Treatment Program. The proposed amendment to subdivision (a)(1) amends the definition of Access and Linkage to Treatment Strategy to conform with the changes in the definition of Access and Linkage to Treatment Program in subdivision (b) of Section 3726.

#### Section 3750

- Existing law requires a county to track and measure specific information regarding referrals made in each Access and Linkage to Treatment Program and Strategy and in each Strategy and Program to Improve Timely Access to Services for Underserved Populations. The proposed amendments to subdivisions (f) and (g) provide a cross-reference to the newly proposed definition of "referral" in Section 3560.010.
- Existing law requires a county to track and measure each of the five specified Programs individually. Existing law requires a county to select, define, and measure appropriate indicators that are applicable to each Program. The proposed amendment adds new subdivision (k) to provide an alternate evaluation requirement for a county that chooses to combine and/or integrate the five Programs under the new proposed amendment to Section 3705. The proposed new subdivision (k) requires the county to select, define, and measure appropriate indicators to evaluate the reduction of the negative outcomes referenced in Welfare and Institutions Code section 5840, subdivision (d).

#### Section 3755

- Existing law requires a county to provide specific information in its Prevention and Early Intervention Component of the Three-Year Program and Expenditure Plan and Annual Update about each of the required five Programs. The proposed amendments provide

an alternate list of information that a county that chooses to combine and/or integrate the five Programs under the new proposed amendment to Section 3705 must include.

This Informative Digest accompanies the proposed regulations to amend 8 regulations located in the California Code of Regulations Title 9, Division 1, Chapter 14, Article 5, Reporting Requirements and Article 7, Prevention and Early Intervention.

## **POLICY STATEMENT OVERVIEW AND ANTICIPATED BENEFITS OF PROPOSAL**

This regulatory proposal, amending sections of the Prevention and Early Interventions regulations, first promulgated in 2015, helps to ensure that California's county behavioral health agencies, the entities responsible to comply with the regulations issued in 2015, are better able to comply with those regulatory requirements. The initial regulations provided for the first time statewide consistency and conformity in the administration and reporting of program data and evaluation that enables the MHSOAC to conduct more effective oversight and evaluation of the programs. Better compliance with the regulations ultimately will help to increase the quality of mental health services programs.

## **CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS**

During the process of developing these amendments the Commission conducted research on other possible related regulations in this area (Mental Health Services Act Prevention and Early Intervention) and has concluded that the Prevention and Early Intervention regulations promulgated in 2015 by the Commission are the only regulations in this area and that these proposed amendments to those regulations are neither inconsistent nor incompatible with any existing state regulations.

## **MATERIAL UPON WHICH THE COMMISSION RELIES IN PROPOSING THE RULEMAKING ACTION**

Mental Health Services and Accountability Commission. (November 2016). *"Finding Solutions: Helping Counties Comply with Regulations Governing Innovation Projects and Prevention and Early Intervention Programs under the Mental Health Services Act"*

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Commission has made the following initial determinations:

Mandate on local agencies and school districts: None.

Proposition 63 created the Mental Health Services Fund, which is directly distributed to California counties to fund the MHSA programs. The county, through a community program planning process, determines, based on available unspent funds, what services to fund with the Mental Health Services Fund.

Costs or savings to any state agency: None.

Cost to any local agency or school district, which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Significant effect on housing costs: None.

Fiscal impact on public agencies including costs or savings to state agencies or costs/savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Results of the economic impact assessment/analysis: The Commission concludes that these amendments to the existing 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 because the regulatory proposal is directed to County Mental Health Departments.
- Would not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or affect the expansion of businesses currently doing business in the State of California because County Mental Health Departments, the entities responsible to comply with this regulatory proposal, already have Prevention and Early Intervention programs in place.
- Would benefit the health and welfare of California residents, worker safety, and the state's environment by increasing the quality of mental health services and thus benefiting the health, safety, and welfare of California residents, including those with unidentified serious mental illness; the larger number with unaddressed risk of or early onset of a potentially serious mental illness; and the still larger number of friends, colleagues, loved ones, and the many service sectors that are adversely affected by unrecognized, unaddressed, and untreated mental illness.

Cost impacts on a representative private person or businesses: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business Determination: The proposed amendments to the Prevention and Early Intervention regulations would not affect small businesses as these amendments only affect County Mental Health Departments and they already have Prevention and Early Intervention programs in place.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative considered by the Commission or brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice, or would be more cost-effective to affected private persons and equally effective at implementing the statutory policy or other provision of law.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed amendments to the regulations at the scheduled hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to Kayla Landry and back-up contact person, Filomena Yeroshek at the Mental Health Oversight and Accountability Commission, 1325 J St., Suite 1700 Sacramento, CA 95814; (916) 445-8696

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the Commission office at 1325 J St., Suite 1700, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of copies of the exact language of the proposed amendments to the regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based. Please direct requests for copies of the proposed text of the amendments to the Prevention and Early Intervention regulations, the Initial Statement of Reasons, or other information upon which the rulemaking is based to Ms. Kayla Landry at the above address.

Following the public comment period the Commission may thereafter adopt the proposed amendments to the regulations substantially as described or may modify the proposed amendments if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposed amendment to the regulations will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony at the public hearing or who have requested notification of any changes to the proposed regulations.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be viewed and downloaded from the Commission's website at [www.mhsoac.ca.gov](http://www.mhsoac.ca.gov) or by contacting Ms. Landry at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the amendments to the PEI regulations in underline and strikeout can be accessed through the Commission's website at [www.mhsoac.ca.gov](http://www.mhsoac.ca.gov).

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