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**NOTICE OF ADDITIONAL CHANGES TO THE TEXT OF PROPOSED
REGULATIONS REGARDING**

**DHCS-16-009 – Mental Health Services Act Fiscal Regulations
(California Code of Regulations, Title 9)**

Pursuant to Government Code Section 11346.8, notice is hereby given that the Department of Health Care Services (Department) is making additional changes to the text of the proposed subject regulations. A copy of the regulation text with the additional changes clearly indicated is attached. There are no additional changes to the forms incorporated by reference.

The Department is making the additional changes available for review during a 15-day public comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department. *Only the additional changes to the proposed regulation text, as described in this notice, are subject to comment.*

Please label any comments as pertaining to MHSA Fiscal Regulations, DHCS-16-009 and submit using any of the following methods:

Mail Delivery: Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX: (916) 440-5748

Email: regulations@dhcs.ca.gov

The Department will accept written comments from January 30, 2020 through February 14, 2020. Any written comments, regardless of the method of transmittal must

be received by the Office of Regulations by 5:00 pm on February 14, 2020, for consideration and response by the Department in the Final Statement of Reasons.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

METHOD OF INDICATING CHANGES

The additional changes to the text of the proposed regulations for MHSA Fiscal Regulations, DHCS-16-009, are shown by using double strikeout for deletions (~~double strikeout for deletions~~) and double underline for additions (double underline for additions.)

SUMMARY OF ADDITIONAL CHANGES

Upon further consideration and as a result of public comment the Department received during the 45-day comment period, the Department is proposing additional changes to the regulation text under California Code of Regulations, title 9: These changes and the explanations for these changes are further discussed below.

Section 3420.10

Subsection (c): As a result of public comment, subsection (c) is added to read:

"If in a fiscal year a County's Prudent Reserve falls below the minimum funding level as calculated pursuant to section 3420.30(b), in each subsequent fiscal year in which the conditions in section 3420.35(a)(1) and (a)(2) are not met, the County shall transfer a minimum of twenty percent (20%) of the amount of the County's minimum funding level until the minimum funding level in the County's Prudent Reserve is met. The amount transferred to the Prudent Reserve in each fiscal year pursuant to this subsection shall not exceed the total amount as calculated in subsection (a)(1)."

Following public comment, it was determined that the addition of subsection (c) would support the implementation of Welfare and Institutions (W&I) Code section 5892(b), which authorizes a County to use CSS funds for a Prudent Reserve, and be consistent with W&I Code section 5847(b)(7), which requires Counties to establish and maintain a Prudent Reserve in their Three-Year Program and Expenditure Plan and annual updates.

Subsection (c) is proposed to clearly specify the County requirement to maintain a Prudent Reserve at the minimum level calculated in section 3420.30(b). These provisions specify the process a County shall follow to replenish the Prudent Reserve when economic conditions permit (if the circumstances under section 3420.35(a)(1) and (a)(2) are not met). Including this process within the proposed regulations, instead of via an alternative means, such as a corrective action plan, is the most convenient and comprehensive way to provide this information.

When a County's Prudent Reserve is below the required minimum funding level, the County shall transfer a minimum amount equal to twenty percent (20%) of the County's (Prudent Reserve) minimum funding level, each fiscal year until the Prudent Reserve

reaches the minimum funding level. The Department established a minimum transfer amount of twenty percent (20%) of the County's (Prudent Reserve) minimum funding level to enable the County to meet the minimum funding level within five (5) fiscal years and still have funds available for current fiscal year services. This five-year timetable also correlates with W&I Code section 5892(b)(2), which requires a County to reassess the maximum amount of its Prudent Reserve every five years. Establishing a standard minimum transfer amount provides for administrative simplification, which enables the Department to monitor County compliance through the Annual Mental Health Services Act (MHSA) Revenue and Expenditure Report.

The last sentence of subsection (c) is added for consistency with W&I Code section 5892(b)(1) and to clarify that a County, even when funding the Prudent Reserve to meet the minimum funding level required under section 3420.30(b), may still only transfer up to twenty percent (20%) of the average amount of the total funds, including redistributed funds, which the State Controller distributed to the County's Local Mental Health Services Fund over the previous five (5) fiscal years.

Section 3420.15

This section implements W&I Code section 5892(a)(4), which authorizes a County to increase its PEI expenditures (above 19%) if the Department determines that the increase in PEI expenditures will "decrease the need and cost for additional services" to severely mentally ill persons in that County "by an amount at least commensurate with the proposed increase." The Department requires the County to include in the Three-Year Program and Expenditure Plan, annual update, or updates any information the Department will utilize when determining whether to approve or deny a proposed transfer of funds.

As a result of public comment and upon further consideration, this section is amended to provide an appeal process to the County should the Department deny the request to transfer funds. This appeal process is offered to provide the County due process, which will help to ensure that Department decisions are appropriate. The specific amendments necessary to implement the appeal process are discussed further below.

Subsection (e): Subsection (e) is amended to add "to transfer funds from its CSS Account to its PEI Account" for clarification and the word "receiving" is changed to "receipt of" for grammatical purposes.

Subsection (e) is also amended to add the sentence "A notice denying the County's request to transfer funds from its CSS Account to its PEI Account shall include the reasons for the Department's decision." This amendment is necessary to notify the County that the reason(s) for a denial will be included in the notice so the County is able to assess the denial and determine if the County will seek an appeal.

Subsection (f): As a result of public comment and upon further consideration, subsection (f)(1) and (2) are added to read:

“(f)(1) A County may appeal the Department’s denial of a request to transfer funds from its CSS Account to its PEI Account. The appeal shall include an explanation stating the basis for the appeal and supporting documentation. The appeal shall be submitted by the County to the Department, by email to MHSA@dhcs.ca.gov, within thirty (30) calendar days of the date on the notice specified in subsection (e).

(2) The Department shall only consider the original request as specified in subsection (d) during the review of the County’s appeal.”

These additions are necessary to provide Counties with an opportunity to appeal the Department’s denial of a transfer of CSS funds to the PEI Account.

Subsection (f)(1): This subsection specifies the County’s ability to appeal the Department’s denial decision. Additionally, subsection (f)(1) describes the appeal process by specifying the required information a County shall submit to the Department as part to of the appeal. This is necessary to ensure the Department receives the appropriate information to consider during its review. The County is required to submit the appeal within 30 calendar days of the denial notice. The 30-calendar day timeframe is necessary to establish a defined and timely appeal process and it provides sufficient time for the County to develop and submit the appeal.

Subsection (f)(2): This subsection specifies that the Department will not consider information that changes the County’s original request because approval of such a plan would be inconsistent with its Three Year Program and Expenditure Plan, annual update, or updates. This is necessary to clarify that the County cannot use the appeal process to edit or amend the County’s original transfer proposal.

Subsection (g): As a result of public comment and upon further consideration, subsection (g) is added to read:

“(g) The Department shall provide written notice to a County either approving or denying a County’s appeal within forty-five (45) calendar days of receipt of the appeal. A notice denying the County’s appeal shall include the reasons for the Department’s decision.”

This subsection requires the Department to complete its review of an appeal and provide written notice of its decision to a County within forty-five (45) calendar days of receipt of the appeal. The forty-five (45) day timeframe is necessary to establish a defined and timely appeal process and provides the Department sufficient time to carefully review the explanation and supporting documentation provided in the appeal. This subsection also requires the Department to notify a County of the reasons the Department denies an appeal, which is necessary for transparency and so the County has complete information regarding the appeal.

Existing Subsections (f), (g) and (h)

As a result of adding new provisions under subsections (f) and (g), existing subsection (f) is re-designated (h), existing subsection (g) is re-designated (i), and existing subsection (h) is re-designated (j).

Section 3420.20

Subsection (a): The addition of “et seq.” is used to reference Government Code section 6500 and the proceeding sections of Chapter 5 that pertain to formation of joint powers authorities.

Section 3420.25

As a result of public comment and upon further consideration, this section is deleted because the California Housing and Finance Agency (CalHFA) is no longer accepting funds from Counties for new projects under either the MHSA Housing Program or the Special Needs Housing Program. CalHFA will continue to administer previously developed MHSA Housing Program projects and Special Needs Housing Program projects. Since CalHFA no longer accepts transfers of MHSA funds from the Counties, the Department determined that this proposed section is no longer necessary.

Section 3420.30

Subsections (b) and (b)(3): As a result of public comment and upon further consideration, the minimum Prudent Reserve level is amended to replace “twenty-three (23)” with “five (5)” percent. The Department initially determined that a 23% Prudent Reserve minimum funding level was a sufficient amount based on the average decline (in MHSA funding)—for fiscal years in which declines occurred. Requiring a County to maintain a minimum Prudent Reserve level of five (5) percent meets the intent of W&I Code section 5847(b)(7), which requires a County to establish and maintain a Prudent Reserve. Lowering the Prudent Reserve minimum funding level to five (5) percent allows a County to determine the appropriate level of funding necessary to continue providing the same level of service should there be a downturn in the economy, based on a County’s level of unspent funds and current expenditure level.

Subsection (c): Upon further review, this subsection is amended to remove “the maximum amount of” and add “funding level.” The sentence now reads, “A County shall assess its Prudent Reserve funding level as of July 1, 2019 and include the assessment in the County’s Three-Year Program and Expenditure Plan or annual update for the 2019-20 Fiscal Year pursuant to sections 3310 and 3315.” In the second sentence, “minimum and” is deleted to signify only the maximum funding level is required in the 2019-20 assessment. This is necessary because these regulations will become effective after July 1, 2019, so a County could not provide an assessment of its minimum Prudent Reserve funding level as of July 1, 2019. Counties have already submitted assessments of their maximum funding levels as of July 1, 2019 pursuant to MHSUDS Information Notice No. 19-017. It is necessary to include a date in the regulations because Counties are required to reassess their Prudent Reserve funding levels every five years from that date. The “s” in the term “levels” is deleted to signify the singular maximum level.

Subsections (d) and (e): As a result of public comment and upon further consideration, these subsections are amended to provide Counties with the opportunity to reassess their Prudent Reserve levels more frequently than every five years. Subsection (d) is

amended to add the language “A County may reassess its Prudent Reserve funding levels more frequently.” Subsection (e) is amended to add the language, “and during any other fiscal year a County assesses its Prudent Reserve levels” to inform Counties they must submit their assessment to the Department. These changes are consistent with W&I Code section 5892(b)(2). While section 5892(b)(2) requires a County to reassess its Prudent Reserve level every five years, it does not prohibit a County from assessing this level on a more frequent basis. A County may wish to make this assessment more frequently so as to maintain a Prudent Reserve level that reflects their annual CSS revenue allocations. However, if this assessment is made by a County, the County is required to comply with subsection (e) to meet the requirements of W&I Code section 5892(b)(2) for a County to certify the reassessment of its Prudent Reserve funding levels.

Subsection (g): As a result of public comment and upon further consideration, this subsection is amended to add the language “A County may transfer funds from its CSS Account to its CFTN Account, WET Account, PEI Account or JPA, pursuant to sections 3420.10, 3420.15 and 3420.20 during the same fiscal year in which the County transfers funds from its Prudent Reserve to its CSS Account pursuant to this subsection.” W&I Code section 5892(b)(2) requires Counties to maintain a Prudent Reserve maximum funding level of 33%. As statute is not prescriptive regarding use of excess funds in the Prudent Reserve, and proposed subsections under 3420.35 do not apply, the Department determined that the use of these funds is consistent with the use of funds allocated to the CSS Account from the Local Mental Health Services Fund. This addition is necessary to clarify how a County can use funds in its Prudent Reserve that are in excess of its maximum funding level. The cross references to sections 3420.10, 3420.15 and 3420.20 are included for purposes of clarity and convenience.

Subsection (h): As a result of public comment and upon further consideration, the Department added a new subsection, as follows: “A County that transferred funds from its PEI Account to its Prudent Reserve in fiscal year 2007-08 may transfer funds in excess of the County’s maximum funding level into its PEI Account during fiscal year 2019-20, and during each subsequent fiscal year in which the County reassesses its Prudent Reserve funding level pursuant to subsection (d). A County may transfer funds from its Prudent Reserve to its PEI Account until the amount transferred equals the amount the County transferred from its PEI Account to its Prudent Reserve in fiscal year 2007-08.” The addition of this subsection is necessary to clarify that funds in the Prudent Reserve may be transferred to the County’s PEI Account under the specified conditions. In fiscal year 2007-08, Counties were permitted to transfer PEI funds into their Prudent Reserve. To accommodate a County that transferred PEI funds into its Prudent Reserve in fiscal year 2007-08 and continues to have PEI funds in its Prudent Reserve, the Department determined that it is appropriate to authorize the County to transfer these funds out of its Prudent Reserve and back into its PEI Account to further support prevention and early intervention programs, which was the original intent for these funds.

Existing Subsection (h): As a result of adding a new subsection (h), existing subsection (h) is re-designated (i).

Subsection (i): Upon further review, this subsection is amended to add section “3420.60,” which specifies the reversion for CFTN and WET Account monies. This amendment is necessary since subsection (g) now allows Counties to transfer funds from the CSS Account to the CFTN and WET Accounts, in the same fiscal year that a County transfers excess funds from the Prudent Reserve to the CSS Account.

Section 3420.35

Subsection (a): As a result of public comment and upon further consideration, this subsection is amended to add the language “These transfers shall be permissible even when it results in a County’s Prudent Reserve falling below the minimum funding level as calculated pursuant to section 3420.30(b).” The Department’s intention in establishing a Prudent Reserve minimum funding level is to ensure that a County has the appropriate funds available to meet the requirements of W&I Code sections 5847(b)(7) and (f). However, when the conditions specified under subsections (a)(1) and (2) are met, a County is authorized to transfer funds from its Prudent Reserve as necessary in accordance with this section. This amendment acknowledges that these transfers may result in the Prudent Reserve falling below the minimum funding level and clarifies that these transfers are allowable under these specified conditions.

Subsection (c): Upon further review, this subsection is amended to exclude the phrase “or to CalHFA” and relocate the term “or” for grammatical purposes. The removal of this phrase is necessary because the CalHFA is no longer accepting funds from Counties for new projects under either the MHSA Housing Program or the Special Needs Housing Program.

This subsection is also amended to include the phrase, “pursuant to this section.” This addition clarifies that the restriction of CSS transfers to the PEI Account, CFTN Account or WET Account are applicable only when funds from the Prudent Reserve are transferred to the CSS Account pursuant to section 3420.35. This amendment differentiates the other permissible transfers of funds from the Prudent Reserve as specified under section 3420.30, where the transfer is based on an excess amount of funds that exceeds the Prudent Reserve maximum funding level.

Section 3420.45

Subsection (a): Upon further consideration, the clause “and a joint powers authority that receives funds from a County pursuant to section 3420.20” is added.

A joint powers authority administering MHSA funds is included to implement W&I Code section 5899(a). In order for a County that provides MHSA funds to a joint powers authority to prepare its annual revenue and expenditure report in compliance with section 5899(a), the joint powers authority must maintain its records consistent with the accounting standards set forth in this subsection. This amendment is also necessary to facilitate Department fiscal audits of County expenditures made through a joint powers authority.

This subsection is also amended to remove the term “reported” and replace it with “maintained.” This change is consistent with the intent of the section, which specifies the maintenance of records for Counties.

Section 3420.50

Subsection (b): Upon further consideration, the language “, or within three (3) fiscal years of transferring funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35.” is added to account for the reversion period for funds transferred to the CSS Account from the Prudent Reserve. In the second sentence, “those” is replaced with “CSS” to clarify the reference to the term “funds.” The language “, or the fiscal year in which the County transfers funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35,” is added to clarify the start of the three (3) fiscal year period which determines reversion for these funds. These amendments are necessary to implement the three (3) fiscal year reversion period for funds that are transferred into the CSS Account from the Prudent Reserve. The cross references to sections 3420.30(g) and 3420.35 are included for purposes of clarity and convenience.

Subsection (d): Upon further consideration, in the first sentence, the term “those” is replaced with “funds a County” to clarify the reference is to “monies.” Also in the first sentence, the language “, or within three (3) fiscal years of transferring funds from the Prudent Reserve to its PEI Account pursuant to sections 3420.30(h) or 3420.35(a)(1).” is added to account for the reversion period for funds transferred to the PEI Account from the Prudent Reserve. In the second sentence, “those” is replaced with “PEI” to clarify the reference is to “funds.” The language “, or the fiscal year in which the County transfers funds from the Prudent Reserve to its PEI Account pursuant to sections 3420.30(h) or 3420.35(a)(1),” is added to clarify the start of the three (3) fiscal year period which determines reversion for these funds. These amendments are necessary to implement the three (3) fiscal year reversion period for funds that are transferred into the PEI Account from the Prudent Reserve. The cross references to sections 3420.30(h) and 3420.35(a)(1) are included for purposes of clarity and convenience.

Subsections (e) and (f): Upon further review, these subsections are proposed to be amended or replaced to implement INN reversion requirements specified in W&I Code section 5892(h)(2) as amended by Senate Bill (SB) 79 (Chapter 26, Statutes of 2019). SB 79 amended W&I Code section 5892(h)(2) to read as follows:

(2)(A) If a county receives approval from the Mental Health Services Oversight and Accountability Commission of a plan for innovative programs, pursuant to subdivision (e) of Section 5830, the county's funds identified in that plan for innovative programs shall not revert to the state pursuant to paragraph (1) so long as they are encumbered under the terms of the approved project plan, including any subsequent amendments approved by the commission, or until three years after the date of approval, whichever is later.

The notice for these proposed regulations was published on March 22, 2019. SB 79 went into effect on June 27, 2019, after the regulations were out for public comment, so the Department is now proposing the changes as outlined below.

Subsection (e): For ease of review, subsection (e) as originally proposed is deleted in its entirety and replaced with a newly proposed subsection (e). The differences between the original and newly proposed subsection (e), are described below. W&I Code section 5892(h)(2)(A) requires a County to (1) identify funds in a plan for innovative programs and (2) obtain approval of that plan from the Mental Health Services Oversight and Accountability Commission (MHSOAC) to extend the reversion period for the funds identified in the plan beyond three years. The clause in the first sentence of the originally proposed language “within three (3) fiscal years of receiving the INN Account monies from the State Controller” is moved to the beginning of the sentence and the phrase “a County shall identify the INN Account monies in the budget of an Innovative Project Plan as specified in Section 3930(d),” is added to implement the requirement that INN funds be identified as part of a Plan for innovative programs. The cross reference to Section 3930(d) is included for purposes of clarity and convenience.

The last sentence is included to specify that INN monies that are not identified in the budget of an Innovative (INN) Project Plan and approved by the MHSOAC within three (3) fiscal years, shall be subject to reversion. The Department replaced the concept of a County “dedicating” funds to an INN Project Plan with the more specific requirement that the County identify the funds in the budget of an INN Project Plan for purposes of clarity and to be more consistent with W&I Code section 5892(h)(2)(A).

Subsection (f)(1): This subsection was originally designated as subsection (f) and is re-designated as (f)(1).

The first sentence is revised to specify that a County must spend INN Account monies during the period the funds are encumbered under an approved Plan or within three (3) fiscal years of approval, whichever is later. This amendment is necessary to implement W&I Code section 5892(h)(2)(A), which specifies that INN Account funds identified in an approved INN Project Plan shall not revert “so long as they are encumbered under the terms of the approved project plan, including any subsequent amendments approved by the commission, or until three years after the date of approval, whichever is later.”

The phrase “within three (3) fiscal years” in the last sentence is replaced with “by the later of these two periods.” This change is necessary to be consistent with the first provision under subsection (f)(1) and to be consistent with W&I Code section 5892(h)(2)(A).

Subsection (f)(2): This subsection is added to specify when INN Account monies are considered “encumbered,” which is important because encumbered funds are not subject to reversion. The first sentence states “INN Account monies identified in the budget of an Innovative Plan shall be considered encumbered.” This provision is

necessary to clarify that estimated expenditures for an INN Project specified in the budget are considered encumbered.

The second sentence states “INN Account monies shall remain encumbered for the fiscal years and in the amounts identified in the budget of the Innovative Project Plan.” This provision is necessary to implement W&I Code section 5892(h)(2)(A), which specifies that INN funds included in an INN Plan shall not revert “so long as they are encumbered under the terms of the approved project plan.” The Department chose to use the information provided in the budget of an approved INN Project Plan to determine the amount of funds and the timeframe INN Account funds would be encumbered because a County is required to spend its INN Account funds consistent with its INN Project Plans.

The third sentence states “Any amendment to an Innovative Project Plan that extends the time period of the Innovative Project, or changes the amount of funds in the budget of the Innovative Project, which is approved by the Mental Health Services Oversight Accountability Commission, shall extend the period or change the amount of funds encumbered under the Innovative Project Plan.” This language is necessary to implement W&I Code section 5892(h)(2)(A), which provides that an amendment to an INN Project Plan, which is approved by the MHSOAC, can change the amount of funds encumbered under an INN Project Plan and the length of the encumbrance. Modifications to the period or the amount of the encumbered funds will affect the reversion timeframe and the amounts subject to reversion for INN Account monies, accordingly.

The fourth sentence states “INN Account monies shall no longer be encumbered under an Innovative Project Plan effective the date a County terminates the Innovative Project pursuant to Section 3910.020.” This provision is necessary to specify the impact to encumbered funds when a County terminates an INN Project early. In the context of W&I Code section 5892(h)(2)(A) the term “encumber” means that a County has committed itself to use the funds identified in an INN Project Plan for that INN Project. Accordingly, the Department considers funds identified in the budget of an INN Project Plan that has been terminated prior to the planned end date to no longer be encumbered to that Plan. The cross reference to section 3910.020 is included for purposes of clarity and convenience.

Subsection (f)(3):

The intent of subsection (f)(3) is to specify what a County can do with funds that are no longer encumbered under a Plan because the Plan is terminated in accordance with section 3910.020 or ends before the conclusion of the three (3) fiscal year period.

W&I Code section 5892(h)(2)(A) provides that INN Account monies included in an INN Project Plan (that has been approved by the MHSOAC) will not revert until the later of (1) the end of the period the funds are encumbered under the Plan or (2) three years from the date the MHSOAC approved the Plan.

The phrase “If the period of time INN Account monies are encumbered, under an approved Innovative Project, concludes before the end of the three (3) fiscal year period,” is necessary to capture the scenario where a County’s INN Project ends before three (3) fiscal years from the date the MHSOAC approved the Plan, such as a Plan intended to last only two years.

The phrase “or the County terminates an Innovative Project pursuant to section 3910.020 before the end of the three (3) fiscal year period,” is necessary to clearly state that this subsection also applies to funds in a Plan that is terminated early, which is permissible pursuant to section 3910.020. The cross reference to section 3910.020 is included for purposes of clarity and convenience.

The next phrase “a County may reassign any unspent funds to another Innovative Project pursuant to Article 9,” is necessary to authorize a County to reassign such unspent INN funds to another INN Project since the funds are not yet subject to reversion. This is intended to offer a County flexibility in regard to project planning and spending. The cross reference to Article 9, which governs INN Project Plans, is included for purposes of clarity and easy reference.

The second sentence states “The County shall spend reassigned funds within three (3) fiscal years.” This provision is necessary to specify the timeframe within which a County has this flexibility and can spend these funds.

The third sentence states “In determining the three (3) fiscal year period, the fiscal year in which the Mental Health Services Oversight and Accountability Commission approved the initial Innovative Project Plan shall be the first fiscal year.” This provision is added to clarify the start of the three (3) fiscal year period, which determines the reversion period for these funds. Although funds can be reassigned to a different or new project, the reversion period is based upon the approval of the initial Innovative Project Plan, which is consistent with W&I Code section 5892(h)(2)(A).

The last sentence states “If a County fails to spend reassigned funds within these three (3) fiscal years, the funds shall revert to the Mental Health Services Fund for deposit into the Reversion Account.” This sentence is necessary to specify that funds not spent for their authorized purpose within the three (3) fiscal years are subject to reversion, which is consistent with W&I Code section 5892(h)(1).

Section 3420.55

Subsection (b): Upon further consideration, the language “, or within five (5) fiscal years of transferring funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35” is added to account for the reversion period for Counties with populations of less than 200,000 that transferred funds in excess of the Counties’ maximum funding level to the CSS Account from the Prudent Reserve. In the second sentence, “those” is replaced with “CSS” to clarify the reference to the term “funds.” The language “, or the fiscal year in which the County transfers funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35,” is

added to clarify the start of the five (5) fiscal year period which determines reversion for these funds. These amendments are necessary to implement the five (5) fiscal year reversion period for funds that are transferred into the CSS Account from the Prudent Reserve. The cross references to sections 3420.30(g) and 3420.35 are included for purposes of clarity and convenience.

Subsection (d): Upon further consideration, in the first sentence, the term “transfers” is changed to “transferred” for grammatical purposes. The phrase “to its PEI Account” was included to clarify the relationship between the CSS Account and the PEI Account. Also in the first sentence the language “, or within five (5) fiscal years of transferring funds from the Prudent Reserve to its PEI Account pursuant to sections 3420.30(h) or 3420.35(a)(1).” is added to account for the reversion period for Counties with populations of less than 200,000 that transferred funds to the PEI Account from the Prudent Reserve. In the second sentence, “those” is replaced with “PEI” to clarify the reference to the “funds.” The language “, or the fiscal year in which the County transfers funds from the Prudent Reserve to its PEI Account pursuant to sections 3420.30(h) or 3420.35(a)(1),” is added to clarify the start of the five (5) fiscal year period which determines reversion for these funds. The amendments are necessary to implement the five (5) fiscal year reversion period for funds that are transferred into the PEI Account from the Prudent Reserve.

Subsections (e) and (f): Upon further review, these subsections are proposed to be amended or replaced to implement INN reversion requirements specified in W&I Code section 5892(h)(4)(A) as amended by Senate Bill (SB) 79 (Chapter 26, Statutes of 2019). SB 79 amended W&I Code section 5892(h)(4)(A) to read as follows:

(4)(A) [I]f a county with a population of less than 200,000 receives approval from the Mental Health Services Oversight and Accountability Commission of a plan for innovative programs, pursuant to subdivision (e) of Section 5830, the county's funds identified in that plan for innovative programs shall not revert to the state pursuant to paragraph (1) so long as they are encumbered under the terms of the approved project plan, including any subsequent amendments approved by the commission, or until five years after the date of approval, whichever is later.

The notice for these proposed regulations was published on March 22, 2019. SB 79 went into effect on June 27, 2019, after the regulations were out for public comment, so the Department is now proposing the changes as outlined below.

Subsection (e): For ease of review, subsection (e) as originally proposed is deleted in its entirety and replaced with a newly proposed subsection (e). The differences between the original and newly proposed subsection (e), are described below. W&I Code section 5892(h)(4)(A) requires a County to (1) identify funds in a plan for innovative programs and (2) obtain approval of that plan from the MHSOAC to extend the reversion period for the funds identified in the plan beyond five years. The clause in the first sentence of the originally proposed language “within five (5) fiscal years of receiving the INN Account monies from the State Controller” is moved to the beginning of the sentence and the phrase “a County shall identify the INN Account monies in the budget of an

Innovative Project Plan as specified in Section 3930(d),” is added to implement the requirement that INN funds be identified as part of a Plan for innovative programs. The cross reference to Section 3930(d) is included for purposes of clarity and convenience.

The last sentence is included to specify that INN monies that are not identified in the budget of an Innovative Project Plan and approved by the MHSOAC within five (5) fiscal years, shall be subject to reversion. The Department replaced the concept of a County “dedicating” funds to an INN Project Plan with the more specific requirement that the County identify the funds in the budget of an INN Project Plan for the purpose of clarity and to be more consistent with W&I Code section 5892(h)(4)(A).

Subsection (f)(1): This subsection was originally designated as subsection (f) and is re-designated as (f)(1).

The first sentence is revised to specify that a County must spend INN Account monies during the period the funds are encumbered under an approved Plan or within five (5) fiscal years of approval, whichever is later. This amendment is necessary to implement W&I Code section 5892(h)(4)(A), which specifies that INN Account funds identified in an approved INN Project Plan shall not revert “so long as they are encumbered under the terms of the approved project plan, including any subsequent amendments approved by the commission, or until five years after the date of approval, whichever is later.”

The phrase “within five (5) fiscal years” in the last sentence is replaced with “by the later of these two periods.” This change is necessary to be consistent with the first provision under subsection (f)(1) and to be consistent with W&I Code section 5892(h)(4)(A).

Subsection (f)(2): This subsection is added to specify when INN Account monies are considered “encumbered,” which is important because encumbered funds are not subject to reversion. The first sentence states “INN Account monies identified in the budget of an Innovative Plan shall be considered encumbered.” This provision is necessary to clarify that estimated expenditures for an INN Project specified in the budget are considered encumbered.

The second sentence states “INN Account monies shall remain encumbered for the fiscal years and in the amounts identified in the budget of the Innovative Project Plan.” This provision is necessary to implement W&I Code section 5892(h)(4)(A), which specifies that INN funds included in an INN Plan shall not revert “so long as they are encumbered under the terms of the approved project plan.” The Department chose to use the information provided in the budget of an approved INN Project Plan to determine the amount of funds and the timeframe INN Account funds would be encumbered because a County is required to spend its INN Account funds consistent with its INN Project Plans.

The third sentence states “Any amendment to an Innovative Project Plan that extends the time period of the Innovative Project, or changes the amount of funds in the budget of the Innovative Project, which is approved by the Mental Health Services Oversight

Accountability Commission, shall extend the period or change the amount of funds encumbered under the Innovative Project Plan.” This language is necessary to implement W&I Code section 5892(h)(4)(A), which provides that an amendment to an INN Project Plan, which is approved by the MHSOAC, can change the amount of funds encumbered under an INN Project Plan and the length of the encumbrance. Modifications to the period or the amount of the encumbered funds will affect the reversion timeframe and the amounts subject to reversion for INN Account monies, accordingly.

The fourth sentence states “INN Account monies shall no longer be encumbered under an Innovative Project Plan effective the date a County terminates the Innovative Project pursuant to Section 3910.020.” This provision is necessary to specify the impact to encumbered funds when a County terminates an INN Project early. In the context of W&I Code section 5892(h)(4)(A) the term “encumber” means that a County has committed itself to use the funds identified in an INN Project Plan for that INN Project. Accordingly, the Department considers funds identified in the budget of an INN Project Plan that has been terminated prior to the planned end date to no longer be encumbered to that Plan. The cross reference to section 3910.020 is included for purposes of clarity and convenience.

Subsection (f)(3):

The intent of subsection (f)(3) is to specify what a County can do with funds that are no longer encumbered under a Plan because the Plan is terminated in accordance with section 3910.020 or ends before the conclusion of the five (5) fiscal year period.

W&I Code section 5892(h)(4)(A) provides that INN Account monies included in an INN Project Plan (that has been approved by the MHSOAC) will not revert until the later of (1) the end of the period the funds are encumbered under the Plan or (2) five years from the date the MHSOAC approved the Plan.

The phrase “If the period of time INN Account monies are encumbered, under an approved Innovative Project, concludes before the end of the five (5) fiscal year period,” is necessary to capture the scenario where a County’s INN Project ends before five (5) fiscal years from the date the MHSOAC approved the Plan, such as a Plan intended to last only two years.

The phrase “or the County terminates an Innovative Project pursuant to section 3910.020 before the end of the five (5) fiscal year period,” is necessary to clearly state that this subsection also applies to funds in a Plan that is terminated early, which is permissible pursuant to section 3910.020. The cross reference to section 3910.020 is included for the purposes of clarity and convenience.

The next phrase “a County may reassign any unspent funds to another Innovative Project pursuant to Article 9,” is necessary to authorize a County to reassign such unspent INN funds to another INN Project since the funds are not yet subject to reversion. This is intended to offer a County flexibility in regard to project planning and

spending. The cross reference to Article 9, which governs INN Project Plans, is included for the purposes of clarity and easy reference.

The second sentence states “The County shall spend reassigned funds within five (5) fiscal years.” This provision is necessary to specify the timeframe within which a County has this flexibility and can spend these funds.

The third sentence states “In determining the five (5) fiscal year period, the fiscal year in which the Mental Health Services Oversight and Accountability Commission approved the initial Innovative Project Plan shall be the first fiscal year.” This provision is added to clarify the start of the five (5) fiscal year period, which determines the reversion period for these funds. Although funds can be reassigned to a different or new project, the reversion period is based upon the approval of the initial Innovative Project Plan, which is consistent with W&I Code section 5892(h)(4)(A).

The last sentence states “If a County fails to spend reassigned funds within these five (5) fiscal years, the funds shall revert to the Mental Health Services Fund for deposit into the Reversion Account.” This sentence is necessary to specify that funds not spent for their authorized purpose within the five (5) fiscal years are subject to reversion, which is consistent with W&I Code section 5892(h)(4)(A).

Section 3420.60

Subsection (a): Upon further review, the language “, including funds transferred from its CSS Account to its CFTN Account or WET Account pursuant to Section 3420.10” is added to clarify that the reversion period for funds a County transfers from its CSS Account to its CFTN Account or WET Account pursuant to Section 3420.10 begins when the State Controller distributes the funds to the County. The language “or within ten (10) fiscal years of transferring funds from the Prudent Reserve to its CSS Account pursuant to section 3420.30(g),” is added to account for the reversion period for Counties that transfer funds in excess of their maximum funding level from their Prudent Reserve to their CSS Account. This amendment is necessary to clarify the reversion timeline associated with changes made to section 3420.30(g), which provide Counties with the ability to transfer funds from their CSS Account to the CFTN and WET Accounts during the same fiscal year in which the County transfers funds from its Prudent Reserve into its CSS Account. This amendment is also necessary to be consistent with W&I Code section 5892(h)(1), which specifies “that funds, including interest accrued on those funds, for capital facilities, technological needs, or education and training may be retained for up to 10 years before reverting to the Reversion Account.” In the second sentence, “those” is replaced with “CSS” to clarify the reference to the “funds.” Also in the second sentence, to capture the start of the ten-year period for the funds transferred from the Prudent Reserve to the County’s CSS Account, the following language was added to read “, or the fiscal year in which the County transfers funds from the Prudent Reserve to its CSS Account pursuant to section 3420.30(g),”.

Section 3510

Subsection (a): As a result of public comment and upon further consideration, this subsection is amended to remove the word “December” and replace it with “January.” This subsection is necessary to implement W&I Code section 5899, which requires Counties to submit their Annual MHSA Revenue and Expenditure Report (ARER) electronically to the Department and to the MHSOAC. The Department is amending this subsection to provide Counties sufficient time to submit a complete and accurate ARER. The January 31 due date may assist Counties in finalizing their ARER inclusive of non-MHSA costs, such as Federal Financial Participation costs.

Section 3510.005

Subsections (a) and (b): Upon further review, these subsections include technical changes to remove “December” and replace it with “January” to ensure the due dates referenced in these subsections are consistent with section 3510(a), which amends the due date for the ARER to January 31.

Section 3510.030: As a result of public comment and upon further consideration, this subsection is amended to add “and accurate” to clarify for Counties the requirement to send a complete and “accurate” ARER. The addition reflects the Department’s intention that the County submit a complete Annual MHSA Revenue and Expenditure and Adjustment Worksheet County Certification form DHCS 1820 (02/19) that is also accurate.

Annual MHSA Revenue and Expenditure Report Forms and Instructions

There are no additional changes to the Annual MHSA Revenue and Expenditure Report Forms and Instructions that were incorporated by reference.

CONTACT PERSONS

Inquiries regarding the proposed changes to the regulations described in this notice may be directed to Donna Ures, Community Services Division, at (916) 713-8802.

All other inquiries concerning the regulatory action described in this notice may be directed to Greg Rodriguez of the Office of Regulations, at (916) 345-8396, or to the designated backup contact person, Jasmin Delacruz, at (916) 440-7695.

ASSISTIVE SERVICES

The Department can also provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, or computer disk. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email – regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.

AVAILABILITY OF MATERIAL REGARDING THE REGULATORY ACTION

Materials regarding the regulatory action described in this notice (including this public notice and the additional changes to the text of the proposed regulations) are posted to the Department’s Internet site at:

<https://www.dhcs.ca.gov/formsandpubs/laws/regs/Pages/DHCS-16-009.aspx>