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DIRECTOR

State of California—Health and Human Services Agency  
Department of Health Care Services



GAVIN NEWSOM  
GOVERNOR

**NOTICE OF PROPOSED RULEMAKING**

**SUBJECT: Mental Health Services Act (MHSA) Fiscal Regulations, DHCS-16-009**

**NOTICE IS HEREBY GIVEN** that the Department of Health Care Services (Department) proposes changes to the California Code of Regulations, title 9, as follows:

Article 2. Definitions - Adopting sections 3200.022, 3200.025, 3200.079, 3200.181, 3200.195, 3200.197, 3200.213, 3200.227, 3200.244, 3200.252, 3200.254.1, 3200.257, 3200.258, and 3200.323; and amending sections 3200.080, 3200.110, 3200.251 and 3200.260.

Article 4. Funding Provisions – Adopting sections 3420, 3420.10, 3420.15, 3420.20, 3420.25, 3420.30, 3420.35, 3420.40, 3420.45, 3420.50, 3420.55, 3420.60 and 3420.65.

Article 5. Reporting Requirements – Amending section 3510; and adopting sections 3510.005 and 3510.030.

**WRITTEN COMMENT PERIOD**

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

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](mailto:regulations@dhcs.ca.gov)

The written comment period closes at **5:00 pm on May 8, 2019**, any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 pm** on this date for consideration.

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

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

#### Authority and Reference

These regulations are being proposed under the following authority:

Section 5898, Welfare and Institutions Code.

These proposed regulations implement, interpret, or make specific the following:

Sections 5802, 5806, 5813.5, 5847, 5848, 5878.1, 5890, 5891, 5892, 5892.5, 5897, 5898, 5899 and 5899.1, Welfare and Institutions Code; and Section 30200, Government Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's mission is to provide Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services and long-term care. In support of this mission, the Department administers many health care programs including the MHSA.

In November 2004, California voters approved Proposition 63, a ballot initiative that enacted the MHSA. The MHSA imposes a one (1) percent tax on individuals' incomes over \$1 million to provide funding to counties for designated community based mental health programs, which include Prevention and Early Intervention (PEI), Innovation (INN) and children and adult and older adult systems of care (Community Services and Supports (CSS)), plus the necessary infrastructure, technology, and training programs to support these needs. The State Controller deposits the tax revenue into a State Mental Health Services (MHS) Fund and makes monthly distributions to each County's Local Mental Health Services (LMHS) Fund. The MHSA became effective on January 1, 2005.

The MHSA specifies the percentages that counties are to allocate to each type of program PEI, INN, and CSS and the amount of time that counties have to spend MHSA funds. Historically, counties had three years to spend PEI, INN, and CSS funds and ten years to spend funds dedicated to capital facilities, technological needs, or education and training. If a County fails to spend funds for an authorized purpose within the specified period, the unspent funds revert to the state to be redistributed to other counties. The MHSA also requires counties to invest MHSA funds and to establish a Prudent Reserve, a type of rainy day fund.

### Program History

The former Department of Mental Health (DMH) was the state entity responsible for administering and overseeing county implementation of the MHSA. In June 2012 many of the functions performed by DMH were transferred to the Department pursuant to AB 1467 (Committee on Budget, Chapter 23, Statutes of 2012) and DMH was streamlined to become the California Department of State Hospitals. AB 1467 also added Welfare and Institutions Code (W&I Code) section 5899 that requires the Department to develop and administer instructions for the “Annual Mental Health Services Act Revenue and Expenditure Report” (ARER), a report that counties are to submit to the Department annually. In 2016, the Legislature passed AB 1618 (Committee on Budget, Chapter 343, Statutes of 2016) that amended W&I Code Section 5899 to authorize the Department to withhold MHSA funds from a County that does not submit its ARER as specified by the Department.

In February 2018, the California State Auditor produced Report 2017-117, *The State Could Better Ensure the Effective Use of Mental Health Services Funding* that is available at <https://www.bsa.ca.gov/pdfs/report/2017-117.pdf> (CSA Report) and concerns the funding and fiscal oversight of the MHSA. “To effectively monitor MHSA spending and provide guidance to the local mental health agencies...,” the report recommended the Department, through the promulgation of regulations, develop an MHSA fiscal reversion process to ensure that the State can reallocate any MHSA funds that local mental health agencies do not spend, clarify that interest earned on unspent MHSA funds are subject to reversion, and establish and enforce an MHSA prudent reserve level to allow local mental health agencies to maintain sufficient funds to continue providing crucial services in times of economic hardship.

Senate Bill 192 (Beall, Chapter 328, Statutes of 2018) added W&I Code section 5892(b)(2), which caps the amount a county can hold in its prudent reserve at 33 percent of the average CSS revenue the county received in the preceding five years. The bill also requires each county to calculate the amount of its prudent reserve and reassess and certify that amount every five years. In addition, the bill amends W&I Code section 5892(h)(1) to make interest accrued on MHSA funds subject to reversion.

W&I Code section 5898 directs that “The State Department of Health Care Services, in consultation with the Mental Health Services Oversight and Accountability Commission, shall develop regulations, as necessary, for the State Department of Health Care Services, the Mental Health Services Oversight and Accountability Commission, or

designated state and local agencies to implement this act.” The Department is fulfilling its statutory responsibility in submitting these proposed regulations that will better ensure the effective use of MHSA funds.

#### Related Existing Laws and Regulations

W&I Code section 5890(a) provides that MHS Fund money be continuously appropriated for MHSA programs and related activities. Counties are required to use MHS Fund money to expand mental health services and only to pay for the programs authorized by the MHSA. (W&I Code, § 5891(a).) W&I Code section 5891(c) provides that the State Controller shall distribute funds from the MHS Fund to each County’s LMHS Fund on a monthly basis. W&I Code section 5892(f) requires each County to invest its LMHS Fund balance “consistent with other County funds” and to transfer the interest it earns on the investments back into the LMHS Fund.

W&I Code section 5892(a)(3) directs each County to use twenty (20) percent of the funds distributed to the County from the MHS Fund on PEI programs. W&I Code section 5892(a)(5) directs the County to use the “balance of funds...” for the CSS programs. Section 5892(a)(6) directs the County to use “Five percent of the total funding” for PEI and CSS programs for INN programs. Consistent with this statute, existing California Code of Regulations (Cal. Code Regs.), title 9, section 3930(d)(7) requires each County to document “that the source of Innovation Funds is 5 percent of the County’s PEI allocation and 5 percent of the CSS allocation.”

Each County is required to “prepare and submit a Three-Year Program and Expenditure Plan, and Annual Updates, adopted by the County Board of Supervisors, to the Mental Health Services Oversight and Accountability Commission and the State Department of Health Care Services.” (W&I Code, § 5847(a).) The County must base the Three-Year Program and Expenditure Plan and Annual Updates on “...available unspent funds and estimated revenue allocations provided by the state and in accordance with established stakeholder engagement and planning requirements as required in section 5848.” (W&I Code, § 5847(b); see *also* Cal. Code Regs., tit. 9, §§ 3300, 3310, 3315.) In addition, all county expenditures of Local MHS Fund money must be “consistent with a currently approved plan or updates pursuant to section 5847.” (W&I Code, § 5892(g); see *also* W&I Code § 5891(d).)

W&I Code section 5847(b)(1)-(4) and California Code of Regulations, title 9, section 3310(b) require County “Three-Year Program and Expenditure Plan and Annual Updates...” to include PEI, CSS, INN, and Capital Facilities and Technological Needs (CFTN) programs. The plans and updates must also address workforce, education and training (WET) needs and the County’s Prudent Reserve.

W&I Code section 5892(b)(1) authorizes Counties to fund their CFTN, WET, and Prudent Reserve from CSS funds provided the total allocation “...not exceed 20 percent of the average amount of funds allocated to that County for the previous five years...”

A County may access its Prudent Reserve to “ensure the County program will continue to be able to serve children, adults, and seniors that it is currently serving... during years in which revenues for the Mental Health Services Fund are below recent averages ...” (W&I Code, § 5847(b)(7).) W&I Code section 5847(f) provides a County must include an allocation of funds from its Prudent Reserve for the CSS component “in years in which the allocation of funds... are not adequate to continue to serve the same number of individuals as the County had been serving in the previous fiscal year.”

A County may transfer funds allocated to its CSS component to its PEI component 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.” (W&I Code, § 5892(a)(4).)

One of the CSS component service categories is the Mental Health Services Act Housing Program. (Cal. Code Regs., tit. 9, § 3615(a)(4).) Under the Mental Health Services Act Housing Program, MHSA funds may be used to provide permanent supportive housing for clients with serious mental illness. (Cal. Code Regs., tit. 9, § 3200.225.) W&I Code section 5892.5 authorizes the release of unencumbered Mental Health Services Fund monies dedicated to the Mental Health Services Act housing program upon the written request of the County. The monies released to the County must be used to provide housing assistance as specified in W&I Code section 5892.5.

Two or more counties acting jointly may form or join a joint powers authority to agree “...to deliver or subcontract for the delivery of those (MHSA) mental health services... Any agreement between counties shall delineate each County’s responsibilities and fiscal liability.” (W&I Code, § 5897(b); Gov. Code, § 6500.)

W&I Code section 5899 requires the Department to develop instructions for the ARER and “If a County does not submit the annual revenue and expenditure report...by the required deadline, the department may withhold MHSA funds until the reports are submitted” (W&I Code, § 5899(e)).

#### Statement of Purpose/Problem to be Addressed

The purpose of these regulations is to provide a clear framework for county mental health departments, two or more county mental health departments acting jointly, or a city operated program receiving funds per W&I Code section 5701.5 (each referred to as a “County” [see Cal. Code Regs., tit. 9, § 3200.090), to allocate, transfer, expend, and report the use of, MHSA funds, and to establish rules and processes for reversion of funds. These regulations are necessary because statute does not provide clear guidance. These provisions will also assist the Department with overseeing County compliance with the MHSA.

The proposed regulations amend and add to articles 2, 4, and 5, under title 9, division 1, chapter 14 of the California Code of Regulations. (All section references are to title 9 of the California Code of Regulations, unless otherwise indicated.) Additions and

amendments to article 2 (sections 3200.022 – 3200.323) provide definitions to new concepts such as the CSS Account, define terms, such as Capital Facilities and Technological Needs and revise section numbers to fit new definitions within article 2. Article 4 (sections 3420 – 3420.65) addresses: the allocation and expenditure requirements of MHSA funds, including investment gains; the transfer of MHSA funds from the CSS Account; funding of, and transfers from, the Prudent Reserve; the maintenance of records of such transactions; reversion of unspent MHSA funds and an appeal process. Article 5, section 3510 is amended by revising the ARER to include current data needs and information and to specify the forms in which a County is required to submit expenditure data and information; and section 3510.005 is added to provide a process to withhold MHSA funds from a County for non-submission of a complete and accurate ARER. Section 3510.030 is added to implement statutory requirements that a County certify the accuracy of the ARER pursuant to W&I Code section 5899(a).

#### Anticipated Benefits of the Regulation

The Department anticipates that the proposed regulatory amendments will enhance the fiscal integrity of the MHSA and enhance County compliance with the programmatic requirements of the MHSA. In addition, by allowing the Department to enforce County fiscal reporting requirements the proposed regulations will enable the Department to collect more complete and accurate data regarding the performance of county mental health programs. This data will assist the State, Counties and other interested parties in developing and recognizing best practices, which in turn will result in more effective county mental health services.

#### Stakeholder Involvement in Preparation of the Regulations

In July 2016, the Department conducted several meetings with the MHSOAC and the California Behavioral Health Directors Association of California to discuss proposed fiscal policies and obtain input to be used in the development of these regulations. The meetings centered on the following topics:

1. The tracking of revenue and expenditures by component.
2. The tracking of interest earned on investments.
3. The determination of total revenue allocated to each component.
4. The transferring of funds from the CSS component to CFTN and WET Accounts, and Prudent Reserve.
5. The determination of total expenditures from the LMHS Fund for each component.
6. The calculating of reversion.
7. The method the Department will use to recoup funds that have been reverted.
8. The transfer of only CSS funds to the Prudent Reserve.
9. The determination of the maximum amount that may be held in the local Prudent Reserve and when to access the Prudent Reserve.

#### Consistency and Compatibility with Existing State Regulations

The Department has conducted an evaluation of the related existing state regulations under title 9, California Code of Regulations, division 1 and has determined that the

proposed regulations are consistent with and compatible with those regulations. An automated search of title 9, using the following keywords “Mental Health”, “MHSA”, “Reversion,” and “Prudent Reserve” was conducted via Westlaw and yielded no conflicting state regulations.

#### Annual MHSA Revenue and Expenditure Report Forms and Instructions

This regulatory action will update and expand definitions and program requirements. W&I Code section 5899 requires Counties to submit Annual Revenue and Expenditure Reports to the Department and the Mental Health Services Oversight and Accountability Commission, specifies the purposes of the reports, and requires Counties to certify the accuracy of the reports. It also requires the Department to develop and administer instructions for the Annual MHSA Revenue and Expenditure Reports. The Department is requiring Counties to complete the forms listed below (and follow the corresponding instructions) to implement this requirement. These specified forms allow the Department to gather comprehensive and accurate information from participating Counties related to the Counties’ use of MHS Fund monies. It is critical that the Department obtain all of this information. This information is necessary for the Department to monitor Counties’ compliance with statutory and regulatory requirements and for the MHSOAC to evaluate MHSA programs. These forms will help clearly identify the information that Counties shall report and will streamline and standardize reporting requirements. The following forms are incorporated by reference in this regulatory proposal:

1. Mental Health Services Act Prudent Reserve Assessment/Reassessment, DHCS 1819, (02/19).
2. Annual Mental Health Services Act (MHSA) Revenue and Expenditure Report and Adjustment Worksheet County Certification, DHCS 1820, (02/19).
3. Mental Health Services Act Adjustments to Revenue or Expenditure Summary Worksheet, DHCS 1821, (02/19).
4. Annual Mental Health Services Act (MHSA) Revenue and Expenditure Report. DHCS 1822 A-J as follows:
  - a) Information Worksheet DHCS 1822 A, (02/19).
  - b) Component Summary Worksheet DHCS 1822 B, (02/19).
  - c) Community Services and Supports (CSS) Summary Worksheet, DHCS 1822 C, (02/19).
  - d) Prevention and Early Intervention (PEI) Summary Worksheet, DHCS 1822 D, (02/19).
  - e) Innovation (INN) Summary Worksheet, DHCS 1822 E, (02/19).
  - f) Workforce Education and Training (WET) Summary Worksheet, DHCS 1822 F, (02/19).
  - g) Capital Facility Technological Needs (CFTN) Summary Worksheet, DHCS 1822 G, (02/19).
  - h) MHSA Adjustments Worksheet, DHCS 1822 H, (02/19).
  - i) FFP Revenue Adjustment Worksheet, DHCS 1822 I, (02/19).
  - j) Comments Worksheet, DHCS 1822 J, (02/19).

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

### Fiscal Impact Statement

- A. Costs to any Local Agency or School District that is required to be reimbursed Under Part 7 (commencing with Section 17500), Division 4 of the Government Code: None.

Costs to any Local Agency or School District that is not reimbursable by the State: None.

- B. Costs or Savings to any State Agency: None.
- C. Costs or Savings in Federal Funding to the State: None.
- D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Agencies: None.

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

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

### Mandates on Local Agencies or School Districts

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

### Significant Statewide Adverse Economic Impact Affecting Businesses

The Department has made an initial determination that the 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.

### Results of the Economic Impact Assessment (Analysis)

In accordance with Government Code Section 11346.3(b)(1), the Department has made the following assessments and has determined that the proposed regulations would not significantly affect the following:

1. The creation or elimination of jobs in California.
2. The creation or elimination of businesses in California.
3. The expansion of businesses currently doing business in California.



### Impact on Jobs and Businesses

This regulatory proposal establishes requirements for Counties related to the distribution, allocation, transfer, expending, and reporting of MHSA funds, which will support the effective and efficient use of these funds. The Department has determined that the proposed regulations would not affect small businesses because small businesses are not required to comply with or enforce the proposed regulations, nor would any benefit or detriment be derived from enforcement. This regulatory action will affect only those Counties that administer MHSA programs and therefore it is not anticipated to have an impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California.

### Benefits of the Proposed Regulation

The Department has determined that the proposed regulations will not specifically affect worker safety or the state's environment. However, the proposed regulations will benefit the health and welfare of California residents by implementing fiscal policies that will increase the effective and timely use of MHSA funds.

These regulations will provide uniform standards and use of MHSA funds across all California Counties. The proposed regulations specify an allocation methodology for MHSA funds distributed to each County's Local Mental Health Services Fund, including interest earned on these funds, and provide direction on the use and transfer of such funds to other components, reserves or entities. In addition, the proposed regulations ensure MHSA funds are spent in a timely manner by establishing a reversion and reallocation process for MHSA funds subject to reversion. Lastly, the ARER is integral to identifying County expenditures of MHSA funds and determining reversion amounts for each County. This is important, as funds that are not spent within a given timeframe, as proposed in these regulations, need to be reallocated to other Counties to serve the purpose they were intended to serve. The proposed regulations will provide Counties with a timeline for submittal of ARERs, subsequent withhold of fund distributions for non-submittals and an appeal process of reversion amounts derived from the County's ARER.

These regulations, by providing clear guidance on the allocation, transfer and reversion of MHSA funds, will ensure the effective and efficient use of funds. The proposal will support Counties in their effort to provide effective mental health services and may lead to further transparency in the use of MHSA funds and provide stakeholders, taxpayers and other interested parties with better information that may lead to more meaningful involvement in the development of County expenditure plans. Lastly, these regulations will allow for the consistent use of MHSA funds across all Counties and ensure MHSA funds are spent for their intended purpose by each County and, if not spent timely, spent by other Counties for the intended purpose. The additions to "Article 5. Reporting Requirements," as proposed herein, allow for the effective evaluation of MHSA funded programs and projects for each County and statewide.

### Effect on Small Businesses

The Department has determined that the proposed regulations would not affect small businesses as these regulations only affect County Mental Health Departments.

### Housing Costs Determination

The Department has made the determination that the regulations would have no impact on housing costs.

### CONSIDERATION OF ALTERNATIVES

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

The Mental Health Services Act was passed by voters in November 2004. Since this time, no regulations have been promulgated that address the requirements associated with this regulation package. In 2012, the Department assumed administration of certain MHSA related functions from the former Department of Mental Health. In a report published in February 2018, the California State Auditor found the Department could better ensure the effective use of MHSA funding, in part, by developing regulations as proposed in this regulation package.

### ASSISTIVE SERVICES

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. 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](mailto:regulations@dhcs.ca.gov), or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code Section 11346.6.

### CONTACT PERSONS

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

All other inquiries concerning the 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.

#### AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at:

<http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email [regulations@dhcs.ca.gov](mailto:regulations@dhcs.ca.gov), or write to the Office of Regulations at the address noted above.