



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



EDMUND G. BROWN JR.
GOVERNOR

DATE: November 19, 2018

MHSUDS INFORMATION NOTICE NO.: 18-056

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
CALIFORNIA OPIOID MAINTENANCE PROVIDERS
CALIFORNIA STATE ASSOCIATION OF COUNTIES

SUBJECT: DEPARTMENT OF HEALTH CARE SERVICES OVERSIGHT OF CERTIFYING ORGANIZATIONS

SUPERSEDES: [MHSUDS Information Notice 18-035](#)

Department of Health Care Services (DHCS) issues this Information Notice (IN) to supersede IN 18-035. This updated IN provides additional information regarding the effective dates for the sections included in the previously published IN 18-035.

In accordance with the authority granted to the DHCS by Health and Safety Code (HSC) Section 11833(e). The requirements set forth in this IN implement and make specific HSC Section 11833. These requirements are currently effective unless otherwise specified.

Background

Assembly Bill (AB) 2374 was enacted on September 29, 2014, and amended HSC Section 11833. As amended Section 11833 provides as follows:

- (a) The department¹ shall have the sole authority in state government to determine the qualifications, including the appropriate skills, education, training, and experience of personnel working within alcoholism or drug abuse recovery and treatment programs licensed, certified, or funded under this part.
- (b)
 - (1) Except for licensed professionals, as defined by the department, the department shall require that an individual providing counseling services working within a program described in subdivision (a) be registered with or certified by a certifying organization approved by the department to register and certify counselors.
 - (2) The department shall not approve a certifying organization that does not, prior to registering or certifying an individual, contact other department-approved certifying organizations to determine whether the individual has ever had his or her registration or certification revoked.
- (c) If a counselor's registration or certification has been previously revoked, the certifying organization shall deny the request for registration and shall send the counselor a written notice of denial. The notice shall specify the counselor's right to appeal the denial in accordance with applicable statutes and regulations.
- (d) The department shall have the authority to conduct periodic reviews of certifying organizations to determine compliance with all applicable laws and regulations, including subdivision (c), and to take actions for noncompliance, including revocation of the department's approval.
- (e)
 - (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code (GC), the department, without taking any further regulatory action, shall implement, interpret, or make specific this section by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions until the time that regulations are adopted.
 - (2) The department shall adopt regulations by December 31, 2017, in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the GC.

Removal of Six (6) Month Registration Allowance

HSC 11833 rendered California Code of Regulations (CCR) Title 9, Section 13035(f) inoperative. Section 13035(f) allowed an individual to provide counseling services, within six (6) months of the date of hire, prior to registering with a certifying organization.

¹ References to "the department" in HSC Section 11833 refer to DHCS. (See HSC, Section 11752.)

This six (6) month time-period is no longer permissible. In accordance with HSC Section 11833(b)(1), any individual who provides counseling services in a licensed or certified alcohol and other drug (AOD) program, except for licensed professionals, must be registered or certified with a DHCS approved certifying organization prior to providing counseling services.

Requirement to Conduct Prior Revocation Checks

Pursuant to HSC Sections 11833(b)(2) and (c), all DHCS approved certifying organizations shall, prior to registering or certifying an individual, contact all other DHCS approved certifying organizations and the Department to determine whether the individual has ever had his or her registration or certification revoked. Contacting all other DHCS approved certifying organizations and the Department shall be done via email, telephone, or a review of the respective publically accessible database. The certifying organization shall deny a request for registration, certification, or renewal of certification of any individual whose previous registration or certification as a counselor was revoked. If a certifying organization denies a request for registration or certification, the certifying organization shall send the denied individual a written notice of denial. The notice of denial shall specify the applicant's right to appeal the denial in accordance with CCR, Title 9, Section 13070.

Policies and Procedures Monitoring

Pursuant to HSC Sections 11833(d), DHCS shall have the authority to conduct periodic reviews of certifying organizations to determine compliance with all applicable laws and regulations. DHCS shall review the certifying organization's current Policies and Procedures, and the certifying organization's website for compliance with all applicable laws and regulations effective January 1, 2019.

Documentation Requirements for Certifying Organizations

Beginning January 1, 2019, each certifying organization shall document the following information:

- a. The date an application for registration is received and the date the application is approved, denied, or notification of an incomplete application is sent to the applicant.
- b. The date an application for certification is received and the date is the application approved, denied, or notification of an incomplete application is sent to the applicant.

- c. The date an AOD counselor's application for renewal is received and the date the application is approved, denied, or notification of an incomplete application is sent to the applicant.
- d. The date an AOD counselor's application for reciprocity is received and the date the application is approved, denied, or notification of an incomplete application is sent to the applicant.
- e. The date a registrant's application for hardship extension is received and the date the application is approved, denied, or notification of an incomplete application is sent to the applicant.

Certification Time Period Requirements

Section 13050 of Title 9 of the CCR requires that AOD counselor certifications shall be valid for a period of two (2) years. The certifying organization must provide the AOD counselor with a copy of the counseling certificate pursuant to CCR Title 9 Sections 10345(d) and 13055(j). The copy of the counseling certificate is required for both initial certifications and renewal certifications.

For Initial Certification the two (2) year certification time-period shall begin on the day the certifying organization approves an individual's application for certification.

If an AOD counselor submits an application for certification renewal before the expiration of their certification and if the renewal is approved, the expiration date for the renewed certification shall be two years from the expiration date of the prior certification.

If an AOD counselor submits an application for certification renewal after the expiration of their certification, the counselor's certification shall expire and the counselor shall be prohibited from providing counseling services until and unless their certification is renewed. If a renewal application is approved after a counselor's certification expires, the renewal shall be valid from the date the renewal application was received and for a period of two years thereafter. These certification time period requirements shall be effective January 1, 2019.

Site Visits

DHCS shall conduct site visits of approved certifying organizations to determine compliance with applicable statutes and regulations. Any authorized employee or agent of DHCS may enter and inspect any approved certifying organization, during business hours, upon presentation of proper identification, with or without advance notice. During the site visit, DHCS may interview staff, in private, and inspect records of registrants and certified counselors working in a licensed or certified AOD program.

Notice of Deficiency

If DHCS identifies instances in which the certifying organization is violating any applicable statute or regulation, DHCS shall issue a notice of deficiency. The notice of deficiency shall identify the statute or regulation violated and the facts supporting DHCS' determination that the regulation or statute was violated. The notice of deficiency shall state the date by which each deficiency shall be corrected. The notice of deficiency shall be sent to the certifying organization by email or by first class mail.

If DHCS does not identify any instances in which the certifying organization is violating applicable statute or regulation, DHCS shall issue a notice of completed inspection indicating that no deficiencies were found.

Corrective Action Plans

If DHCS issues a notice of deficiency to a certifying organization, the certifying organization shall submit a corrective action plan to DHCS by no later than the date specified in the notice of deficiency. The corrective action plan shall be sent electronically or mailed to the following address:

Department of Health Care Services
1501 Capitol Avenue, MS 2603
Sacramento, CA 95814

- a. The corrective action plan shall include the following information:
 1. The steps the certifying organization has taken or will take to correct the deficiency.
 2. The additional steps the certifying organization plans to take to ensure each deficiency will not reoccur.
 3. The name of the certifying organization employee responsible for correcting each deficiency.
- b. DHCS shall notify the certifying organization, in writing, whether the corrective action plan is approved within twenty (20) working days.
- c. DHCS shall deny a corrective action plan that fails to provide evidence that the certifying organization has taken, or will take, reasonable steps to correct the deficiencies in a timely manner. If a second corrective action plan is denied, the certifying organization shall have fifteen (15) working days from the date the corrective action plan is rejected to submit an amended corrective action plan.
- d. DHCS shall deny a corrective action plan that fails to provide evidence that the certifying organization has taken, or will take, reasonable steps to correct the deficiencies in a timely manner. If a third corrective action plan is denied, the

certifying organization shall have ten (10) working days from the date the corrective action plan is rejected to submit an amended corrective action plan.

- e. DHCS may conduct follow-up site visits to determine if a certifying organization has corrected all deficiencies specified in the notice of deficiency.

Department Actions for Noncompliance

Suspension

DHCS may suspend its approval of a certifying organization under the following circumstances:

- a. If the certifying organization fails to submit a corrective action plan for deficiencies cited in a notice of deficiency by the due date.
- b. If DHCS denies a certifying organization's third corrective action plan.
- c. If, upon re-inspection, DHCS determines that a certifying organization failed to correct deficiencies in the manner described in an approved corrective action plan.

If DHCS suspends its approval of a certifying organization, DHCS will notify the certifying organization in writing of the suspension. The written notification shall explain the basis for the suspension, the term of the suspension, and will identify what actions the certifying organization shall complete in order to lift the suspension. DHCS may send written notice of suspension to the certifying organization by mail or email.

If DHCS suspends its approval of a certifying organization, the certifying organization shall cease the following:

- a. Accepting new applications for registration
- b. Accepting fees associated with new applications for registration

The certifying organization must cease the above functions within (ten) 10 working days of the date, the Department mails or emails the notice of suspension.

In addition to ceasing the abovementioned functions, the suspended certifying organization will reflect on the homepage of its website that its approval from DHCS is currently suspended and the certifying organization is not currently accepting new applications for registration. The suspended certifying organization must update its website with the abovementioned information within ten (10) working days. The certifying organization shall coordinate with other certifying organizations and DHCS to

avoid a disruption in services among the workforce. Failure to adhere to the terms of suspension may lead to revocation of DHCS approval.

Revocation

DHCS may revoke its approval of a certifying organization under the following circumstances:

- a. If a certifying organization is suspended and within a five (5) year period is subject to another suspension.
- b. If a certifying organization violates the terms of its suspension.
- c. If a certifying organization fails to comply with the Department's Notice of Denial of Corrective Action Plan.
- d. If a certifying organization registers or certifies an individual whose registration or certification was previously revoked.

Appeal of Suspension or Revocation of Departmental Approval

A certifying organization whose departmental approval was denied, suspended, or revoked may appeal the decision by sending a written request to the Director of DHCS.

The written request for appeal shall be postmarked within fifteen (15) working days of the date the written notice of suspension or revocation was sent by the DHCS to the certifying organization. Failure to submit a written request for appeal, pursuant to this paragraph shall be deemed a waiver of the right to appeal.

- a. If the certifying organization submits a timely written request for appeal, the appeal shall consist of an informal conference heard by the Director or the Director's designee. DHCS need not conduct the informal conference in the manner of a judicial hearing pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the GC). DHCS need not conduct the informal conference according to the technical rules relating to evidence and witnesses.
- b. Within fifteen (15) working days of receipt of the request for appeal, the Director or the Director's designee shall schedule and hold an informal conference to review DHCS' determination, unless:
 1. The certifying organization waives the fifteen (15) working day requirement, or
 2. The Director or the Director's designee and the certifying organization agree to settle the matter based upon the information submitted with the request for appeal, or

- c. At the informal conference, the certifying organization shall have the right to:
 - 1. Be represented by legal counsel,
 - 2. Present oral and written evidence, and
 - 3. Explain any mitigating circumstances.
- d. Representatives of DHCS may:
 - 1. Attend the informal conference, and
 - 2. Present oral and/or written evidence and information substantiating the alleged violation.
- e. Neither the certifying organization nor DHCS shall have the right to subpoena any witness to attend the informal conference. However, both the certifying organization and DHCS may call witnesses to present evidence and information at the conference.
- f. The proceedings of the informal conference may be recorded by either party.
- g. The Director or the Director's designee shall have the sole authority for rendering a determination on appeal. The Director or the Director's designee shall mail the decision to affirm, modify, or dismiss the notice of suspension or revocation to the certifying organization. The decision shall:
 - 1. Be postmarked and mailed no later than fifteen (15) working days from the date of the informal conference.
 - 2. Specify the reason for affirming, modifying, or dismissing the suspension or revocation.
 - 3. Include a statement notifying the certifying organization of its right to appeal the decision made at the informal conference in accordance with Chapter 5 (commencing with Section 11500) Part 1, Division 3, Title 2 of the GC.

If you have questions regarding this Information Notice, please contact Crystal Sanchez at (916) 345-7482 or by email at Crystal.Sanchez@dhcs.ca.gov.

Sincerely,

Original signed by

Brenda Grealish, Acting Deputy Director
Mental Health & Substance Use Disorder Services