

EXPLANATION FOR CHANGES WITHOUT REGULATORY EFFECT

The Department of Health Care Services (Department) proposes changes without regulatory effect that would amend Title 9, California Code of Regulations (CCR) Section 10701.

The proposed amendments contained in the accompanying regulation text are changes without regulatory effect because the changes would not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provisions.

The proposed amendments, as discussed in further detail below, are pursuant to the following:

- Title 1 CCR, Section 100(a)(5), which allows for changing “authority” or “reference” citations.
- Title 1 CCR, Section 100(a)(6), which allows for making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
 - (A) the regulatory provision is inconsistent with and superseded by a changed statute, and,
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

BACKGROUND

Health and Safety (H&S) Code section 11750 transferred the duties and responsibilities of the former Department of Alcohol and Drug Programs (DADP) to the Department. H&S Code section 11847 establishes Legislative intent to assign responsibility and grant authority for planning narcotic and alcoholic and other drug abuse prevention, care, treatment, and rehabilitation programs to the Department. Chapter 7.5 (commencing with Section 11834.01) of Part 2 of Division 10.5 of the H&S Code provides the Department’s authority and establishes requirements for licensing adult alcoholism or drug abuse recovery or treatment facilities.

As part of the Department’s duties and responsibilities for Substance Use Disorder (SUD) Programs, it sets policy and administers the licensing and certification of substance use disorder services and facilities that are used by all California residents. As part of this administration, the Department sets fees and publishes those fees pursuant to H&S Code sections 11833.02 and 11833.04 to pay for the cost of the Department’s licensing and certification activities.

SPECIFIC REGULATORY CHANGES TO SECTION 10701

1) Title 1 CCR, Section 100(a)(5)

H&S Code section 11750 and Welfare and Institutions (W&I) Code section 10725 are added to the “Authority” section of the Note as they provide statutory authority for the Department to

promulgate regulations that administer substance use disorder programs for California residents.

2) Title 1 CCR, Section 100(a)(6)

Subsection (a)

1. The reference to the Department of Health Care Services is included to clearly identify the department that issues licenses and certifications needed by SUD facilities to operate specific SUD programs. This revision is made because this duty was transferred to the Department pursuant to H&S Code section 11750. The Department must update this regulation in conformity with the statute. This revision has no regulatory effect as the SUD duties and responsibilities that were transfer to the Department were communicated to the regulated public at the time they were made in July of 2013 and the Department is now updating this regulation to reflect the statutory change.

2. The regulatory language after the term “certification” is deleted through Subsection (a)(4) related to the setting of the licensure and certification fees. This regulatory language is inconsistent with the latest amendments to H&S Code section 11833.02 that are implemented by this regulation. Subdivision (e) of this statute provides that:

“[t]he department shall issue a provider bulletin pursuant to subdivision (a) of Section 11833.04 setting forth the approved fee structure. The department shall, on an annual basis, publish the current fee structure on the department’s Internet Web site.”

The Department has a mandatory duty to issue the fees in a form other than a regulation pursuant to this statute and Section 11833.04 provides a statutory exemption from implementing the new fees or fee changes through the rulemaking provisions of the Administrative Procedure Act. As required, the Department published the new fees in Information Notice Number 14-022 on July 16, 2014 on its internet website and these fees now supersede those published in Section 10701. The Department has no discretion in this area; the fees in this regulation must be deleted because the fees are no longer accurate. There is not regulatory effect to the deletion of these outdated fees because the regulated public was notified about the increase in fees in July of 2014.

Subsection (b)

The department designation “of Alcohol and Drug Programs” was deleted as that state department no longer exists in California. Additionally, the former department’s address was deleted as the Department’s SUD division that collects these licensure and certification fees is no longer located at the listed address. The Department has no discretion in this area; this information must be deleted because this information is inaccurate and would likely confuse the regulated public. The regulated public was notified about the name and address changes at the time the Department implemented them and this information is readily available on the Department’s website.