

FINDING OF EMERGENCY

The Department finds that the readoption of Section 3400(b) is necessary for the immediate preservation of the public peace, health and safety and/or general welfare.

California voters approved Proposition 63 in the November 2004 General Election. Proposition 63, now known as the Mental Health Services Act (MHSA), became effective on January 1, 2005. Through imposition of a 1% tax on personal income in excess of \$1 million, the MHSA provides the opportunity for the State Department of Mental Health (DMH) to provide increased funding, personnel, and other resources to support county mental health programs and monitor progress toward statewide goals for children, youth, adults, older adults, and families. The MHSA addresses a broad continuum of prevention, early intervention, and services that are designed to work together to reduce the suffering of individuals, as well as the harm to society, which results from untreated mental illness.

The MHSA recognizes the **emergent** nature of the need for new and expanded mental health services in California.

- (a) Failure to provide timely treatment can destroy individuals and families. No parent should have to give up custody of a child and no adult or senior should have to become disabled or homeless to get mental health services as too often happens now. No individual or family should have to suffer inadequate or insufficient treatment due to language or cultural barriers to care. Lives can be devastated and families can be financially ruined by the costs of care. Yet, for too many Californians with mental illness, the mental health services and supports they need remain fragmented, disconnected and often inadequate, frustrating the opportunity for recovery.
- (b) Untreated mental illness is the leading cause of disability and suicide and imposes high costs on state and local government. Many people left untreated or with insufficient care see their mental illness worsen. Children left untreated often become unable to learn or participate in a normal school environment. Adults lose their ability to work and be independent; many become homeless and are subject to frequent hospitalizations or jail. State and county governments are forced to pay billions of dollars each year in emergency medical care, long-term nursing home care, unemployment, housing, and law enforcement, including juvenile justice, jail and prison costs.

Welfare and Institutions Code Section 5898 (added with the passage of the MHSA) deems regulations, adopted in 2005, necessary for the immediate preservation of the public peace, health and safety, or general welfare, and therefore, to be filed as emergency regulations not subject to review and approval by the Office of Administrative Law (OAL) nor subject to automatic repeal until final regulations take effect. Accordingly, at the end of 2005, DMH adopted an abbreviated set of emergency regulations, most of which addressed the community services and supports aspect of the MHSA. Section 3400(b), as filed with the Secretary of State, contained an error of omission. The error needed to be corrected to ensure **Allowable Costs and Expenditures** was implemented by the counties in accordance with current rules governing allowable expenditures of MHSA funding.

On January 13, 2006, DMH submitted an amendment to Section 3400(b) to correct the error of omission. OAL determined that the amended regulation did not meet the exemption in WIC Section 5898. Therefore, DMH filed the modification as an emergency with full OAL review. OAL approved the January 13, 2006 amendment and a subsequent readoption effective May 24, 2006. During this time, DMH observed a 45-day public comment period, ending with a public hearing June 5, 2006.

DMH is still engaged in the rulemaking process, and therefore, require a second readoption of Section 3400(b). DMH has crafted new language based on the extensive public testimony DMH received during the public comment period. The new language is submitted for readoption. Below is the justification for urgency.

Section 3400(b) provides three requirements that must be met by any programs and/or services that are funded with MHSA funds. DMH cannot enter into contracts for services with the counties until these requirements are restored. Without this text, the regulations governing its policies and procedures are vague. Accordingly, large sums of funding, which are needed by the counties in order to provide mental health services in a severely under-funded system, cannot be properly disbursed.

1. Subsection (b)(1) states that the services and supports must be to individuals with severe mental illness and/or severe mental disorders. This subsection is necessary to ensure that the use of the funds is consistent with the Findings and Declaration as stated in the MHSA, which recognizes the issues that arise when mental illness/mental disorders are not treated. The passage of Proposition 63, MHSA, provides funding specifically for the treatment of individuals with severe mental illness/disorders.
2. Subsection (b) states: "Programs and/or services provided with MHSA funds shall:" Subdivision (2) of subsection (b) formerly stated: "Be voluntary in nature." The Department proposes changing the language in (2)(b) to: "Be designed for voluntary participation. No person shall be denied access based solely on his/her voluntary or involuntary legal status." This change is necessary to ensure that MHSA funds are used to establish and/or expand the array of voluntary programs/services offered by the county, but that these programs/services are accessible to qualifying individuals, regardless of their voluntary or involuntary legal status. The requirement that programs/services be designed for voluntary participation is in accord with the "Recovery Vision" embedded in the MHSA. In Section 2, Findings and Declarations, the MHSA states that with effective treatment and supports, recovery from mental illness is feasible for most people. Further, section 2 identifies "successful programs," which include, "prevention, [emphasis] on client-centered, family focused and community-based programs that are culturally and linguistically competent and are provided in an integrated services system. WIC Section 5813.5 also states that "[p]lanning for services shall be consistent with the philosophy, principles, and practices of the Recovery Vision for mental health consumers: [¶] (1) To promote concepts key to the recovery for individuals who have mental illness: hope, personal empowerment, respect, social connections, self-responsibility, and self-determination. [¶] (2) To promote consumer-operated services as a way to support recovery. [¶] (3) To reflect the cultural, ethnic and racial diversity of mental health consumers. [¶] (4) To plan for each consumer's individual needs." DMH has determined

that in order to advance the “Recovery Vision” envisioned in the MHSA, programs/services must be designed for voluntary participation.

Furthermore, involuntary services are not prohibited by the language of the MHSA. According to section 5813.5, “[e]ach county mental health programs [sic] plan shall provide for services in accordance with the system of care for adults and seniors who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3.” (Welf. and Inst. Code § 5813.5, subd. (c).) Section 5600.3, subdivision (c), permits funding for adults or older adults “who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality, or violence.” Services under the MHSA must be provided in accordance with the systems of care set forth in sections 5801, 5802 and 5806. (Welf. and Inst. Code § 5813.5.) Section 5801, which sets forth the philosophy of the adult and older adult system of care, states: “The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment.” (subd. (b)(5).) Accordingly, involuntary treatment can be provided on a temporary basis, if the individual is a danger to self or others, or is gravely disabled. Therefore, DMH has determined that programs/services must be accessible to qualifying individuals regardless of their voluntary or involuntary legal status.

3. Subsection (b)(3) states the funds cannot supplant existing state or county funds utilized to provide mental health services. This subsection is necessary to inform the county that the MHSA funds cannot be used to fund an existing program or service, unless such program or service is being expanded as specified in Section 3400(a) above. This requirement to comply with the non-supplant requirements of Section 3410 is in keeping with specific language contained in Section 5891 of the WIC Code.

AUTHORITY: Section 5898, Welfare and Institutions Code.

REFERENCE: Sections 5813.5(b), 5840, *et seq.*, 5847(a)(1) through (6) and (d), 5848(a), 5878.3(a), 5891, 5892, 5897, and 5898, Welfare and Institutions Code.

The original Economic and Fiscal Impact Statement (STD. 399) signed on December 30, 2005, reflects the modifications. This document is incorporated by reference.

DMH has determined that the proposed regulatory action imposes mandates on county government when County Mental Health Programs apply for funds pursuant to these regulations. However, funds are available through the Mental Health Services Fund created by the MHSA and codified in Welfare and Institutions Code, Section 5890 to finance the mandates as required by Part 7(commencing with Section 17500) of Division 4 of the Government Code.