



**TITLE 9. CALIFORNIA DEPARTMENT OF MENTAL HEALTH**

**ACTION: NOTICE OF PROPOSED RULEMAKING**

**SUBJECT: MENTAL HEALTH SERVICES ACT (2)**

**PUBLIC PROCEEDINGS:** Notice is hereby given that the California Department of Mental Health (DMH) proposes to adopt the regulatory action described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

**WRITTEN COMMENT PERIOD:** Any interested person, or their authorized representative, may submit comments relevant to the action described in this notice. Any written statements, arguments, or contentions must be received by the Office of Regulations, California Department of Mental Health, 1600 Ninth Street, Room 153, Sacramento, CA 95814, by 5:00 p.m. on **April 16, 2007**. It is requested but not required that written statements sent by mail or hand-delivered be submitted in triplicate.

Comments may be transmitted via facsimile 916-651-9919 or electronic mail [DMH.Regulations@dmh.ca.gov](mailto:DMH.Regulations@dmh.ca.gov) and must be received before 5:00 p.m. on the last day of the public comment period. All comments, including electronic mail or facsimile transmissions, should include the author's name and U.S. Postal Service mailing address in order for DMH to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

**PUBLIC HEARING:** DMH will hold a public hearing commencing at 1:30 PM on **April 16, 2007**, in the Auditorium at 744 P Street, Room 102, Sacramento, CA, 95814. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest/Policy Statement Overview. DMH requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Reasonable accommodation or sign language interpreting services at the public hearing will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period.

**WEB SITE:** This public notice, the regulation text, the initial statement of reasons, and other related documents, are available from the DMH world-wide-web site [http://www.dmh.ca.gov/Admin/regulations/rulemaking\\_pkgs.asp](http://www.dmh.ca.gov/Admin/regulations/rulemaking_pkgs.asp).

**CONTACT:** Inquiries concerning the rulemaking process described in this notice may be directed to Steve Appel, Chief, Office of Regulations, by electronic mail [DMH.Regulations@dmh.ca.gov](mailto:DMH.Regulations@dmh.ca.gov), or telephone 916-654-2319. The backup contact person is Gayathri Murthy, Office of Legal Services at 916-653-2319. Inquiries concerning the substance of the rulemaking may be directed to Irene Borgfeldt at 916-654-2617.

Hearing impaired persons wishing to utilize the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 800-735-2929, if you have a TDD; or 800-735-2922, if you do not have a TDD.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:** California voters approved Proposition 63 during the November 2004 General Election. Proposition 63, now known as the Mental Health Services Act (the Act), became effective on January 1, 2005. The Act is intended to expand mental health services to children/youth, adults and older adults who have severe mental illnesses/severe mental disorders and whose service needs are not being met through other funding sources. The Act seeks to establish prevention and early intervention programs as well as to develop innovative programs. Through imposition of a 1% tax on personal income in excess of \$1 million, the Act provides the opportunity for 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 Act directs the county mental health programs to develop and submit a Three-Year Program and Expenditure Plan (Plan) to DMH. The Plan is comprised of five broad components of activities and/or services for which the funding established under the Act can be spent. The components are Community Services and Supports for children, transition-age youth, adults and older adults; Capital Facilities and Technological Needs; Education and Training; Prevention and Early Intervention; and Innovative Programs.

The Act also requires DMH to establish requirements for each component of the Plan. However, clarification of criteria and expansion of program categories within the components are needed to ensure a standardized implementation of the Act by each of the 58 counties within California.

The standardization is being accomplished through the development of regulations whereby the criteria to access funding for each component is delineated. However, given the scale of each component, DMH is implementing each component on a sequential basis and is promulgating regulations accordingly. To this end, Title 9 of the California Code of Regulations (CCR), Chapter 14, is being reserved for the mental health services and supports provisions as provided in the Act.

Title 9, of the CCR, Chapter 14, Articles 1 through 4, were filed with the Office of Administrative Law (OAL) on December 31, 2005. These articles were filed pursuant to Welfare and Institutions Code Section 5898 (added with passage of the Act), which deems these regulations necessary for the immediate preservation of the public peace, health and safety, or general welfare, and therefore, were filed as emergency regulations and not subject to review and approval by OAL nor subject to automatic repeal until final regulations take effect. These regulations were necessarily brief and cursory, concentrating on issues related to funding in order to facilitate timely distribution of MHSA funds to the counties to allow them to initiate service delivery under the Community Services and Supports component of the act.

Soon after those regulations were adopted, it was determined that, due to a typographical error, a significant section of text had been inadvertently omitted from the regulations, and the regulations were subsequently amended to re-insert this language and were readopted on May 24, 2006 and again on September 25, 2006.

In December 2006 this original package of MHSA regulations was repealed in its entirety. In its place a new rulemaking package has been adopted, effective December 29, 2006 and is now in effect. These regulations expand on Title 9, Chapter 14, Articles 1 through 4 and add Article 5, Reporting Requirements and Article 6, Community Services and Supports.

As DMH implements each component of the Plan, it will file additional regulations with the OAL.

**AUTHORITY:** Section 5898, Welfare and Institutions Code.

**REFERENCE:** Sections 11010.5 and 11010.5(a), Government Code; and Sections 4001(a), 5345, 5600.2, 5600.2(d), 5600.3(b) and (b)(4), 5600.3(c), 5610, 5610(a) and (d)(1), 5612(a)-(b), 5613(a), 5664(a), 5681(b), 5689.2, 5714(f), 5801, 5801(b), (b)(6)-(7) and (10)-(11), 5802, 5802(a)(1) and (4) and (d)(4), 5804(c) and (d), 5806, 5806(a)(2)-(3) and (b)-(d), 5813, 5613(a), 5813.5, 5813.5(a), (c), (d), (d)(2)-(4) and (f), 5814(a)(1)-(2), (4)(A), (b), (d) and (f)(2), 5814.5, 5814.5(b)(1) and (c), 5822(h), 5830, 5830(a)(1)-(4), 5840, 5840(a) and (b)(1)-(2), 5846, 5847, 5847(a), (a)(2)-(3) and (c)-(e), 5848, 5848(a)-(c), 5850, 5851, 5851(c)(3), 5852, 5860(b), 5866, 5868, 5868(b) and (b)(2)-(4), 5878(b), 5878.1, 5878.1(a), 5878.2, 5878.3, 5878.3(a), 5890(a) and (c), 5891, 5892, 5892(a)(4)-(5), (c) and (f)-(g), 5897(a)-(b) and (e), 5898, and 5699.4, Welfare and Institutions Code; and Sections 2(b), (c), (e) and (f), 3, 3(a), (c) and (e), MHSA, Proposition 63, November 2004 California General Election; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, *et seq.*

**MATERIALS RELIED UPON IN PROMULGATING THIS RULEMAKING:**

1. [Mental Health Services Act](#)
2. DMH Letter Number [05-08](#): Fiscal Year 2004-05 Funding Required to be used for Mental Health Services under the Mental Health Services Act.
  - a. [Enclosure 1](#) - Resources Required to be used for Mental Health Services under the Mental Health Services Act
  - b. [Enclosure 2](#) - County Operations North & South Regional Listings
3. [Excerpts](#) from *A Guide to the Project Management Body of Knowledge, Third Edition (PMBOK® Guide)—an American National Standard ANSI/PMI 99-001-2004*

**FISCAL IMPACT ESTIMATE:**

- A. Fiscal Effect on Local Government:** Proposition 63, which expands mental health services, was passed by the voters in November 2004. Counties may choose to participate in the program; it is not a mandated program. If a county chooses to participate in these programs, the State will provide funding to the county based on its approved Three-Year Program and Expenditure Plan. For fiscal year 2006-07, approximately \$398,300,000 in the Mental Health Services Fund is estimated to be expended for Community Services and Supports.
- B. Fiscal Effect on State Government:** Expenditures authorized in the MHSA Fund.
- C. Fiscal Effect on Federal Funding of State Programs:** None.
- D. Fiscal Effect on Private Persons or Businesses Directly Affected:** 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.

**E. Effect on Housing Costs:** None

**DETERMINATIONS:** 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 Mental Health Services Act 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.

DMH has determined 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.

DMH has determined that the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.
4. DMH has determined that these regulations would not affect small businesses because they only impact local county government when applying for funds associated with the Mental Health Services Act.

**AVAILABILITY OF STATEMENT OF REASONS AND REGULATION TEXT:** DMH prepared and has available for public review an initial statement of reasons for the regulations, all the information upon which the regulations are based, and the text of the regulations. These documents are posted on the DMH web site. A copy of the initial statement of reasons and the text of the regulations are available upon request to the Office of Regulations at the address noted above. This address will be the location of public records, including reports, documentation, and other material related to the regulations. In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations or from the DMH web site.

**AVAILABILITY OF THE CHANGED OR MODIFIED REGULATION TEXT:** After considering all timely and relevant comments received, DMH may adopt the regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DMH adopts the regulations. Any modifications will also be posted on the DMH web site. Requests for copies of any modified regulations should be directed to Steve Appel, Office of Regulations, at the address indicated above.

**ADDITIONAL STATEMENTS AND COMMENTS:** In accordance with Government Code Section 11346.5(a)(13), DMH must determine that no reasonable alternative considered by the DMH, or that has been otherwise identified and brought to the attention of DMH, would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations during the written comment period.