



February 16, 2021

To: Chair Lynne Ashbeck  
Vice Chair Mara Madrigal-Weiss

From: The County Behavioral Health Directors Association (CBHDA)

Subject: Comments on Proposed Amendments to MHSOAC Rules and Procedures

Submitted via [MHSOAC@mhsoc.gov.ca](mailto:MHSOAC@mhsoc.gov.ca)

The County Behavioral Health Directors Association of California (CBHDA), which represents the public mental health and substance use disorder program authorities in counties throughout California, reviewed the proposed changes to the Rules and Procedures. We are appreciative of the time spent by Commissioners and staff thus far in reviewing stakeholders' comments and concerns, as well as the additions to the Rules and Procedures that promote the values of the Mental Health Services Act (MHSA). We urge the Commission to take sufficient time to respectfully consider and address public comment received at the Rule and Procedures Subcommittee, before holding a vote on proposed amendments, as outlined in a separate joint letter from key stakeholders.

After reviewing the updated proposed amendments, CBHDA is supportive of many of the additions and clarifications to the Rules and Procedures, including identifying the importance of health equity in the Governance Philosophy, and the increased efforts to promote transparency through ensuring that all contract information is available in the Commission's public budget information. However, CBHDA has identified several areas of concern, primarily focusing on ensuring transparency and accountability. We have outlined each area along with recommendations below.

**COMMISSIONERS Rule 1.1 B Terms of Commissioners**

Rule 1.1 outlines the terms of Commissioners including attendance requirements. It is currently proposed to remove the attendance requirements, in order to not be in contradiction with statutory term appointment set forth in WIC § 5845. This paragraph outlines notification procedures if a Commissioner will be missing a meeting, including identifying that the Chair shall notify the Commissioner and that Commissioner's appointing power in writing that the attendance record will need to be improved or the Commissioner will be replaced, if a Commissioner misses three Commission meetings in a calendar year.

CBHDA Recommendation: We recommend keeping the terms of attendance, with a slight adjustment deleting "or that the Commissioner be replaced," in order to be in alignment with terms aligned in statute. Regular attendance is essential for Commissioners to work collectively and meaningfully accomplish goals of the Commission. While it is important for the appointee to be protected from possible political pressure from the appointing power, it is also important that attendance expectations be clearly outlined.

### **COMMISSION MEETINGS Rule 4.8 B Availability of Commission Meeting Materials**

Rule 4.8 outlines that the Bagley-Keene Open Meeting Act provides materials pertaining to agenda items that are public records and have been distributed to the Commission by the staff or individual Commissioners prior to or during the meeting must be made available for public inspection at the meeting.

CBHDA Recommendation: We recommend a slight adjustment to this section. According to the Bagley-Keene Open Meeting Act (the Act), materials distributed to all, or the majority of all, individuals subject to the Act (i.e., Commissioners) for discussion or consideration at a public meeting, these writings must be made available for public inspection *without delay*, subject to the exceptions outlined in the Act. Some state departments, such as the Department of Consumer Affairs, have interpreted the need to have materials available to the public *without delay* as requiring that the information generally be made available at the time of distribution to the agency members (e.g., Commissioners). Consistent with the Act's requirement that material be distributed to the public at the earliest opportunity, we recommend that materials for public meetings be made available to the public at the time these materials are distributed to the Commissioners, which in most instances will be prior to the public meeting.

### **COMMISSION MEETINGS 4.12 Voting**

Rule 4.12 states that the Commission may determine that the timely release of a policy project report is in the public interest and may vote to suspend the rule requiring the policy project report be heard in one committee in order to approve a policy project report in a single meeting.

CBHDA Recommendation: Approving a policy project report in a single meeting may not allow sufficient time for Commissioners to respectfully consider feedback from the public to the report. We recommend that the Commission not be allowed to approve a policy project report in a single meeting unless 1) the agenda notice posted 10 days prior to the meeting clearly states the intent of the Commission to approve a policy project report in a single meeting, 2) the policy project report must be available 10 days prior to the meeting to provide the public with opportunity to review the report; and 3) the presentation of the report at the single meeting must not raise significant concerns or opposition from the public, as indicated by the public comment.

### **COMMISSION MEETINGS Rule 4.13 Public Comment**

To be considered compliant with standards to ensure public comment and thus allowing the Commission to consider an issue without additional public comment at a Commission meeting, Rule 4.13 previously required public comment to be provided to a Committee. The revised Rule 4.13 changes the public comment requirement by allowing the Commission to vote on an issue without additional public comment so long as public comment on the topic was given to a multi-member body. A multi-member body can consist of as few as two Commissioners. There is a substantial difference in providing public testimony to two Commissioners versus providing public testimony to a 15 member Committee.

CBHDA Recommendation: Because changes to Rule 4.13 would allow the Commission to decide an issue without most Commissioners being privy to public comment on that issue, we disagree with the proposed 4.13 rule change and recommend that the original language be reinstated or retained. Commissioners should respectfully consider the position of the public prior to making a decision.

Respectful consideration of public input necessitates more than just two or a handful of Commissioners hearing from the public on a topic.

**COMMITTEES/SUBCOMMITTEES/OTHER MULTI-MEMBER BODIES Rule 6.1 Structure**

The revised version of Rule 6.1 A.2 states “Each committee *should* include at least two consumers, two family members or care givers of consumers, and two experts on reducing disparities.” The prior version of this language stated that each committee *shall* include at least two consumers etc.

CBHDA Recommendation: Reject the change that will allow a committee to strongly consider including at least two consumers, two family member or care givers of consumers, and experts on reducing disparities. Reinstate the prior language that required committees to include at least two consumers, two family member or care givers of consumers, and experts on reducing disparities.

**COMMITTEES/SUBCOMMITTEES/OTHER MULTI-MEMBER BODIES Rule 6.1 Structure**

Rule 6.1 adds provision B. which states, “The Commission may establish any multi-member body (e.g., committee, subcommittee, taskforce) consisting of Commissioners appointed by the Chair as necessary to support the work of the Commission.”

CBHDA Recommendation: We recommend eliminating the newly added provision B. This new provision seems to be added to bypass the requirements outlined for Committees in provision A. If the Commission wishes to create a decision-making body for any reason and are unwilling for any reason to pursue a Committee under provision A, the Commission can create a decision-making body under provision B. The lack of clarity for when provision B should be used versus provision A highlights the inadequacy of this provision, as written. Commissioners have no guidance or clear rationale for when they should create a body, such as a Committee consisting of only Commissioners under provision B, versus creating a Committee consisting of diverse stakeholders under provision A. A Committee created under provision A would need to follow clearly articulated guidelines for participation, while the exact opposite is true for provision B. A Committee under provision B can be of any size, last for any period of time and make decisions on any topic or issue. Additionally, CBHDA is concerned that the vagueness of provision B can result in an “Advisory Body” being created with only two individuals, who could then conduct meetings outside of the requirements of the Act (see §11121(c) of the Government Code).

Thank you for the opportunity to provide public comment regarding the amendments to the Rules and Procedures. If you have any questions, please feel free to contact Elissa Feld, Senior Policy Analyst at [efeld@cbhda.org](mailto:efeld@cbhda.org), or Elia Gallardo, Director of Government Affairs at [egallardo@cbhda.org](mailto:egallardo@cbhda.org).