

**Subcommittee on Prevention and Early Intervention
And Innovation Regulations
March 7, 2017**

BACKGROUND

In October 2016 the Mental Health Services Oversight and Accountability Commission (OAC or Commission) adopted recommendations to amend the Prevention and Early Intervention (PEI) and Innovation regulations. Those recommendations, part of the MHSOAC report, *Finding Solutions Helping Counties Comply with Regulations Governing Innovation Projects and Prevention and Early Intervention Programs under the Mental Health Services Act* (“*Finding Solutions* report”), are listed below.

The focus of the March 7, 2017 Subcommittee meeting is to obtain input on one of those recommendations - the need to clarify when “referrals” must be documented.

THE PROCESS TO AMEND THE REGULATIONS

The normal process to amend regulations includes an opportunity for the public to comment. Because the OAC is subject to the Bagley-Keene Open Meeting Act, the public has many opportunities to provide input on the Commission’s proposed amendments to the regulations.

Below is a list of the steps in the Commission’s process.

- ❖ Subcommittee meets in March 2017 and possibly in April 2017 to receive input on specific recommended amendments.
- ❖ Full Commission meets in April or May 2017 to consider adopting proposed language to amend the regulations.
- ❖ 45-day public comment period is sometime between May and August 2017.
- ❖ Full Commission meets in September or October 2017 to consider adopting the amendments as initially proposed or changing the language in response to the public comment received. There is an additional public comment period if changes are made.
- ❖ The Office of Administrative Law (OAL), the state entity in charge of ensuring that amendments to the regulations are consistent with the law, are clear and necessary, and adequately meet the legal procedural requirements, reviews the Rulemaking file and makes a determination in November or December 2017. Upon OAL approval, the amendments become effective in January 1, 2018.

LIST OF OAC-RECOMMENDED AMENDMENTS TO THE PEI AND INNOVATION REGULATIONS

- ❖ The Commission should clarify the meaning of “referral,” and specify when referrals must be documented for non-clinical and/or outreach-oriented programs and clinical programs. (*Finding Solutions* report page 24)
- ❖ The Commission should specify that a county is only responsible for reporting referrals made to other county programs, whether such programs are operated by counties or providers. (*Finding Solutions* report page 24)

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- ❖ The Commission should amend the Prevention and Early Intervention regulations to align counties annual and periodic reporting deadlines with their budget-making timetables to maximize the value of the reports to local policymakers.
 - The Commission should provide a waiver for the initial Annual Report, which is due not later than December 30, 2017. Under the waiver, a county would report whatever data it had collected this far, would explain the obstacles to meeting its reporting deadline, and would provide an implementation plan and timeline for complying fully with future Annual Reports.
 - For subsequent Annual Reports and the initial and subsequent Three-year Evaluation Reports, the Commission should amend the regulations to modify due dates, aligning them with the county budgeting process. These reports would be due within 30 days of Board of Supervisor approval but no later than June 30. (*Finding Solutions* report page 30)
- ❖ The Commission should consider amending the PEI regulations to allow a county to pay for Access and Linkage to Treatment Program through another Mental Health Services Act funding stream, such as Community Services and Supports, as long as the other requirements in the PEI regulations are met. (*Finding Solutions* report page 27)
- ❖ For programs serving children and youth, the Commission should amend the regulations to clarify that data on youth shall be collected and reported to the extent permissible by federal and state law, including the California Education Code. The Commission should also specify an age threshold for data collection. (*Finding Solutions* report page 15)
- ❖ The Commission should amend the regulations to allow very small counties to report data on a countywide level instead of by program. (*Finding Solutions* report page 21)
- ❖ As the state puts in place a statewide integrated data collection system, the Commission should amend its regulations to require individual-level and non-aggregated data, allowing it to better monitor who is served by California’s mental health system and determine whether some Californians continue to face barriers to care. (*Finding Solutions* report page 16)

DRAFT PROPOSED AMENDMENTS

Below are draft proposed amendments to implement four of the seven recommendations adopted by the OAC in October 2016. The proposed amendments to implement the remaining three recommendations (i.e. meaning of “referral”, very small county issue, and reporting individual-level data) are not yet drafted. The text below of the suggested changes to the current regulations are shown in underline (new language) and ~~strikeout~~ (deleted language).

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Recommendation: Specify that a county is only responsible for reporting referrals made to other county programs

The intent of this recommendation is to clarify that a county is only responsible for reporting referrals made to programs operated, funded, administered, or overseen by county mental health department. This recommendation affects several sections of the current PEI regulations, including §3560.010(b) that lists the requirements for the annual report, §3726 that defines Access and Linkage to Treatment “Program” and §3735 that defines Access and Linkage to Treatment “Strategy”.

Suggested language:

Amend subdivision (b)(3)(B) of §3560.010 as follows:

(3) For each Access and Linkage to Treatment Strategy or Program the county shall report:

(A) The Program name

(B) Number of individuals with serious mental illness referred to treatment that is provided, funded, administered, or overseen by county mental health and the kind of treatment to which the individual was referred.

Amend subdivision (b) of §3726 as follows:

(b) “Access and Linkage to Treatment Program” means a set of related activities to connect children with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, and adults and seniors with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, as early in the onset of these conditions as practicable to medically necessary care and treatment, ~~including but not limited to care provided,~~ funded, administered, or overseen by county mental health program.

Amend subdivision (a)(1)(A) of §3735 as follows:

“Access and Linkage to Treatment” means connecting children with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, and adults and seniors with severe mental illness, as defined in Welfare and Institutions Code Section 5600.3, as early in the onset of these conditions as practicable to medically necessary care and treatment, ~~including but not limited to care provided,~~ funded, administered, or overseen by county mental health program.

Recommendation: Modify the reporting deadlines to align with county budget-making timeline

This recommendation affects the deadlines for two reports, the Annual PEI Program Report and the Three-year Program and Evaluation Report. §3560.010 deals with the Annual PEI Program Report and §3560.020 deals with Three-Year Program and Evaluation Report.

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Suggested language:

Amend subdivision (a)(1) of §3560.010 as follows:

(a)(1) The first Annual Prevention and Early Intervention Program Report is due to the Mental Health Services Oversight and Accountability Commission on or before December 30, 2017 as part of the Annual Update or Three Year Program and Expenditure Plan. ~~and no later than December 30th every year thereafter except for years in which the Three Year Program and Evaluation Report is due.~~ Each Annual Prevention and Early Intervention Program Report thereafter is due to the Mental Health Services Oversight and Accountability Commission within 30 calendar days of Board of Supervisor approval but no later than June 30 of the current fiscal year whichever occurs first.

(2) The Annual Prevention and Early Intervention Program and Evaluation Report shall report on the required data for the fiscal year prior to the due date. For example, the Report that is due no later than June 30, 2020 is to report the required data from fiscal year 2018-19 (i.e. July 1, 2018 through June 30, 2019)

Amend subdivision (a)(1) of §3560.020 as follows:

(a)The County shall submit the Three-Year Program and Evaluation Report to the Mental Health Services Oversight and Accountability Commission every three years as part of the Three-Year Program and Expenditure Plan or Annual Update. The Three-Year Program and Evaluation Report answers questions about the impacts of Prevention and Early Intervention Component Programs on individuals with risk or early onset of serious mental illness and on the mental health and related systems.

(1)The first Three-Year Program and Evaluation Report is due to the Mental Health Services Oversight and Accountability Commission on or before ~~December 30, 2018~~ June 30, 2019 as part of the Annual Update or Three-Year Program and Expenditure Plan for fiscal years 2017-18 through 2019-20. ~~The Three-Year Program and Evaluation Report shall be due no later than 30th every three years thereafter and shall report on the evaluation(s) for the three fiscal years prior to the due date.~~ The first Three-Year Program and Evaluation Report shall report the required data from fiscal year 2017-2018 and from the prior fiscal year if available.

Recommendation: Clarify funding options for Access and Linkage to Treatment Program

This recommendation affects §3726 that defines Access and Linkage to Treatment Program. The proposed language is modeled after a similar provision in §3715 that defines Outreach for Increasing Recognition of Early Signs of Mental Illness Program.

Suggested language:

Add subdivision (e) to 3726:

(e) Access and Linkage to Treatment Programs may be provided through other Mental Health Services Act components as long as they meet all of the requirements in this section.

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Recommendation: For programs serving children/youth, clarify that data on youth shall be collected and reported to the extent permissible by federal and state law and specify an age threshold for data collection

This recommendation affects the PEI and Innovation regulations because the demographic reporting requirements are identical in both sets of regulations.

Suggested language:

Add the following language to the PEI regulations:

For a program serving children or youth younger than 18 years of age, the demographic information required under subdivision (b)(5) of section 3560.010 relating to children or youth younger than 18 years of age shall be collected and reported only to the extent permissible by California Education Code, Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act of 1996 (HIPAA), California Information Practices Act, and other applicable state and federal privacy laws. A county is not required to collect demographic information required under subdivision (b)(5) of section 3560.010 from a minor younger than 12 years of age.

Add the following language to the Innovation regulations:

For a program serving children or youth younger than 18 years of age, the demographic information required under subdivision (a)(4) of section 3580.010 relating to children or youth younger than 18 years of age shall be collected and reported only to the extent permissible by California Education Code, Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act of 1996 (HIPAA), California Information Practices Act, and other applicable state and federal privacy laws. A county is not required to collect the demographic information required under subdivision (a)(4) of section 3580.010 from a minor younger than 12 years of age.