

Mental Health Services Oversight and Accountability Commission
Innovative Projects
FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Below is an update of the information in the Initial Statement of Reasons published on July 11, 2014.

SECTION(S) AFFECTED: 3200.182, 3200.183, 3200.184, 3510.020, 3580, 3580.010, 3580.020, 3900, 3905, 3910, 3910.010, 3910.015, 3910.020, 3915, 3925, 3930, 3935.

SECTION 3200.182.

The word order was changed in this section to clarify the sentence. The title of the section added the word “component” to be consistent with the definition of “Innovation Component” within the text of the regulation.

SECTION 3200.183.

No changes to the originally proposed text were made in this section.

SECTION 3200.184.

No changes to the originally proposed text were made in this section.

SECTION 3510.020.

Subdivision (b) of section 3510.020 was added to require the County to provide a copy of the Annual Revenue and Expenditure Report to the local Mental Health Board and post on the County web site within 30 days of submission to the State to support local decision-making and oversight and accountability.

SECTION 3580.

In subdivision (a)(1)(A) language was added to specify the due date of the Annual Innovative Project Report.

Subdivision (a)(1)(B) was added as a way to address the need for information for state and local oversight and evaluation and also to protect potentially personally identifiable health information. Even though the regulations require only program-level aggregated information and do not request or require any individual patient-level information, this subdivision was added because the program-level data could reflect a small number of participants. To protect any possible personally identifiable information that could inadvertently result from the small number of individuals for whom data were reported, this subdivision provides that upon the County’s determination that information is personally identifiable under state or federal law, the County shall exclude such information from the public version of the Annual Innovative Project Report. The Mental Health Services Oversight and Accountability Commission will receive separately and securely the confidential information that had been excluded from the public reports. The section gives the County the option to provide one of the following: (1) a confidential supplement

that contains only the information that had been excluded; or (2) a confidential version of the report that contains all of the information including the information excluded from the public report.

Subdivision (a)(2)(B) was modified as a way to address the need for information for state and local oversight and evaluation and also to protect potentially personally identifiable health information. Even though the regulations require only program-level aggregated information and do not request or require any individual patient-level information, this subdivision was added because the program-level data could reflect a small number of participants. To protect any possible personally identifiable information that could inadvertently result from the small number of individuals for whom data were reported, this subdivision provides that upon the County's determination that information is personally identifiable under state or federal law, the County shall exclude such information from the public version of the Final Innovative Project Report. The Mental Health Services Oversight and Accountability Commission will receive separately and securely the confidential information that had been excluded from the public reports. The section gives the County the option to provide one of the following: (1) a confidential supplement that contains only the information that had been excluded; or (2) a confidential version of the report that contains all of the information including the information excluded from the public report.

SECTION 3580.010

In section 3580.010, a new (a)(1) was added as required information for the Annual Innovative Project Report. Specifying the Project name is necessary for clarity, especially if a County is implementing and reporting on more than one Innovative Project.

In section 3580.010, subdivision (a)(4) several changes were made from the text as originally proposed. These changes are:

- Additional race and ethnicity demographic categories were added to the subdivision. The listed demographic reporting categories are included in one or more Federal reporting requirements and each demographic category has a population in California above 100,000 according to 2010 census data. This addition is necessary to provide disaggregated data regarding individuals from underserved communities served by Innovative Projects and to determine if there are demographic variations in outcomes. Such a determination is a critical component of assessing the viability of new and changed mental health approaches.
- The option to select more than one race was added to the subdivision. These changes to the text were necessary because in California, five percent of the population identifies as being of more than one race, approximately twice the rate as in the rest of the United States.
- Subcategories for sexual orientation were added to the subdivision. Sexual orientation reporting categories were further broken out to Gay or Lesbian, Heterosexual or Straight, Bisexual, Questioning or unsure of sexual orientation, Queer, or Another sexual orientation. The first three of these subcategories are recommended by the Williams Institute, UCLA School of Law, Sexual Minority Assessment Research Team, *Best Practices for Asking Questions about Sexual Orientation on Surveys* (November 2009). The final three subcategories were added in response to public comment on these regulations that reflect findings from the California Reducing Disparities Project

report, “First Do No Harm: Reducing Disparities for Lesbian, Gay, Bisexual, Transgender; Queer and Questioning Populations in California.” Providing subcategories encourages standardized reporting across counties, increases a sense of inclusion among underserved populations at high risk of a mental illness, reflects best practices in the field of mental health and health surveys, and will facilitate consistent data aggregation statewide.

- Subcategories for kinds of disabilities, to include Communication Domain, Mental Domain (excluding a disability resulting from a mental illness), Physical/Mobility Domain and Chronic Health Condition (including but not limited to chronic pain) were added to this subdivision. Categories are derived from a U.S. Census report, and are intended to balance inclusion of broad categories relevant to risk, manifestation, and recovery from mental illness with ease of reporting for counties. Communication Domain was disaggregated into difficulty seeing; difficulty hearing, or having speech understood; and other (specify) in response to public comment. Providing subcategories encourages standardized reporting across counties including categories of disability with higher than average risk or onset of mental illness, and will facilitate data aggregation statewide.
- “Veteran Status” was amended to provide for a “yes” and “no” response. Providing subcategories allows for standardized reporting across counties and will facilitate data aggregation statewide.
- “Gender identity” was changed to “Gender” and a two-part question for Gender was added to include Assigned Sex at Birth and Current Gender Identify. Additional categories related to current gender identify were added as recommended by the Williams Institute, UCLA School of Law, Gender Identify in U.S. Surveillance group, *Best Practices for Asking Questions to Identify Transgender and other Gender Minority Respondents on Population-based Surveys*. Additional subcategories for current gender identity were added based on public comment. Providing subcategories increases a sense of inclusion among underserved populations at high risk of a mental illness, reflects best practices in the field of mental health and health surveys, encourages standardized reporting across counties, and will facilitate data aggregation statewide.
- The number of respondents who declined to answer the question was added throughout the subdivisions of this section in order to encourage standardized reporting across counties, and will facilitate data aggregation statewide.

SECTION 3580.020.

In newly added subdivision (a)(1) of section 3580.020 the name of the Innovative Project was added as required information for the Final Innovative Project Report. Specifying the Project name is necessary for clarity, especially if a County is implementing and reporting on more than one Innovative Project.

In subdivision (a)(5)(E) [subdivision (a)(4)(E) in the originally proposed regulation text] the term, “culturally appropriate” was replaced with the term “culturally competent.” The change was made for clarity and consistency with the intent set forth in the Initial Statement of Reasons. “Culturally competent” is already defined in the current Mental Health Services Act regulations. The Initial Statement of Reasons states that the intent of this provision is to be consistent with the Mental Health Services Act General Standard of cultural competence as set forth in the

current Mental Health Services Act regulations section 3200.100 of Title 9 of the California Code of Regulations.

In section 3580.020, subdivision (a)(6) [subdivision (a)(5) in the originally proposed regulation text] the text, “and how” was added to the requirement that a County report whether an Innovative Project will continue. This change is necessary to understand how the County will continue a successful Innovative Project: for example, the source of funding to be used, if applicable. This information is important to determine whether and how the Innovation Component of the Mental Health Services Act is impacting the implementation of new effective mental health practices.

Subdivision (b) was amended to add “successful new or changed mental health practices” to the list of communication topics for materials to be included in the report. Specifying this information is necessary so other Counties can replicate the successful new or changed mental health practices developed, piloted, and evaluated through the MHSA Innovation Component.

SECTION 3900.

No changes to the originally proposed text were made in this section.

SECTION 3905.

Minor changes were made to this section to clarify the text. The word, “use” was changed to “expend” in subdivisions (a) and (b) to be consistent with Welfare and Institutions Code section 5830(e).

In subdivision (a), the words, “for a specific Innovative Project” were added to clarify that Innovation Funds must be spent only on the specific Innovative Project for which the MHSOAC authorized the spending.

SECTION 3910.

In section 3910, subdivision (b) was amended and newly added subdivision (b)(1) language was added to clarify that pursuant to the Mental Health Services Act, Innovative Project Funds cannot be used for practices that have already demonstrated their effectiveness unless the County changes the practice and assesses the impact and efficacy of the change. Subdivision (b)(1) defines what constitutes a mental health practice that has demonstrated its effectiveness.

Subdivision (b)(1)(A) was added to provide a definition of the term, “mental health literature” as used in subdivision (b)(1). This modification was made to add clarity to the section.

SECTION 3910.010.

In subdivision (a) of section 3910.010 the language was changed to make it clear that the time limit for Innovative Projects is five years, whether designated originally or requested by the County as an extension.

In subdivision (d) the term “Innovation funding” was changed to “implementation with Innovation Funds” for consistency with the definition of Innovation Funds in section 3200.183.

SECTION 3910.015

In subdivision (a) of section 3910.015, the language was changed to define the term “completion of the evaluation” in response to a public comment indicating that the term was not sufficiently clear. Cross-reference to section 3930(c)(5) was added to show the relationship between the two provisions and to make the subdivision clearer.

SECTION 3910.020.

In subdivision (b)(1)(A) of section 3910.020 an inadvertent inconsistency was corrected between this subdivision and other sections of the proposed Innovative Project regulations, all of which require continuity of services for individuals with serious mental illness at the conclusion of an Innovative Project. Ethical planning for continuity of services is in the best interest of clients with a serious mental illness and is a critical element of designing and conducting a time-limited pilot project. Omitting the requirement for family members removes an unnecessary burden for counties and programs.

The authority was modified to delete the reference to Welfare and Institutions Section 5830(d).

SECTION 3915.

In subdivision (b) of section 3915, language concerning appropriate indicators was moved to a new subdivision (b)(1) for clarity. Some unnecessary language was removed from subdivision (b) to make it more succinct.

In subdivision (e) of section 3915 the word “or” was added to allow a County to use quantitative and/or qualitative methods for Innovative Project, as applicable. While generally both quantitative and qualitative methods are useful for an evaluation of an Innovative Project, both are not necessarily applicable nor feasible for every Innovative Project. This change supports county flexibility for the broad range of Innovative Projects. The word “research” was changed to “evaluation” for consistency with the rest of the section.

In subdivision (f) of section 3915 the words, “and analyze” were added to require data analysis for evaluations of Innovative Projects. Data analysis is a fundamental element of a sound evaluation, necessary to contribute meaningfully to County decisions about whether to continue the Innovative Project without Innovation Funds and about what to recommend to other counties.

In subdivision (g) the term, “culturally appropriate” was replaced with the term, “culturally competent.” The change was made for clarity and consistency with the intent set forth in the Initial Statement of Reasons. “Culturally competent” is already defined in the current Mental Health Services Act regulations. The Initial Statement of Reasons states that the intent of this provision is to be consistent with the Mental Health Services Act General Standard of cultural competence as set forth in the current Mental Health Services Act regulations section 3200.100 of Title 9 of the California Code of Regulations.

The Authority cited was updated to clarify the citation to Uncodified sections 2 and 3 of the Mental Health Services Act.

SECTION 3920.

This section was deleted. The information was mostly duplicated in section 3930, subdivision (d). The text of section 3920 that was not duplicative was added to section 3930(d).

SECTION 3925.

In subdivision (a)(2) the term, “minor change” was not defined nor were there examples provided and thus the term was not sufficiently clear. Subdivision (a)(2)(A) was added to provide examples of minor changes that do not require submission of an Innovative Project Change Request and Commission approval.

SECTION 3930.

In subdivision (a), the language, “for a specific Innovative Project” was added to clarify that the County request to expend Innovation Funds and the Commission’s approval applies to a specific Innovative Project.

In newly added subdivision (c)(1) of section 3930 the name of the Innovative Project was added as required information for the Innovation Component of the Three-Year Program and Expenditure Plan or Annual Update. Specifying the Project name is necessary for clarity, especially if a County’s plan includes and describes more than one Innovative Project.

In subdivision (c)(3)(A) [subdivision (c)(2)(A) in the originally proposed regulation text] the term, “key activities” was not defined and thus not sufficiently clear. The definition of key activities was added to correct this clarity issue.

In subdivision (c)(4)(B) [subdivision (c)(3)(B) in the originally proposed regulation text] the word, “spoken” was replaced with the word, “used” to include non-spoken languages.

In subdivision (c)(4)(D) [subdivision (c)(3)(D) in the originally proposed regulation text] the term, “potentially applicable” was deleted because it was redundant.

In subdivision (c)(6) [subdivision (c)(5) in the originally proposed regulation text] a cross-reference to Section 3910.010(c) was added to show the relationship between the two provisions and to make the subdivision clearer.

Newly added subdivision (d)(1) specifies that the budget for each Innovative Project must specify the total Innovation Funds requested for the total timeframe of each Innovative Project. Sound local and MHSOAC decision-making requires information about the expected total cost of and budget for each Innovative Project. This information is essential because a County may be requesting to expend Innovation Funds for more than one Innovative Project. It is also essential because Innovative Projects are time-limited and frequently anticipate planned use of Innovation Funds that the County has not yet received.

New paragraphs (A) and (B) were added to subdivision (d)(3) [subdivision (d)(2) in the originally proposed regulation text]. The added language had been in Section 3920 as proposed in the original text. The language in section (d)(3)(B) [subdivision (c) of Section 3920 as proposed in the original text] was modified to clarify that the term, “decision-making” refers to “determining whether to continue the Innovative Project without Innovation Funds.”

In newly added subdivision (d)(6) of section 3930, categories were added for projected expenditures for each Innovative Project, by fiscal year, for: personnel expenditures, operating expenditures, non-recurring expenditures; training consultant contracts; and other expenditures. This is necessary for fiscal accountability, to support local and Mental Health Services Oversight and Accountability Commission approval of budgets for Innovative Projects. These categories are consistent with budget categories currently in use pursuant to the 2011-2012 Annual Update instructions for new Innovative Projects.

SECTION 3935.

Subdivision (b)(1) of section 3935 was added to clarify that if a County submits an Innovative Project Change Request as a separate request, not part of an Annual Update or Three-Year Program and Expenditure Plan, all community planning requirements in Title 9 California Code of Regulations sections 3300-3315 apply. This additional language reinforces the requirement in subdivision (a) and provides for the same level of meaningful stakeholder engagement as required for other decisions regarding use of Mental Health Services Funds.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

RESPONSE TO PUBLIC COMMENTS

Summaries of and responses to the public comments received are compiled in three separate documents. Public comment summaries and responses for the initial 45-day public comment period and two of the additional 15-day public comment periods can be found in Binder 4 under tabs "A," "B," and "C" in the rulemaking file. The remaining public comment summaries and responses for the final two 15-day public comment periods can be found in Binder 7. Each of these documents was presented to the Mental Health Services Oversight and Accountability Commission for review and adoption at Commission Meetings held on October 23, 2014, December 18, 2014, January 22, 2015, April 23, 2015, and May 28, 2015. These five separate documents as well as meeting materials from the Commission meetings are all hereby incorporated by reference into this document.

IDENTIFICATION OF EACH TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT, IF ANY, UPON WHICH THE AGENCY RELIES IN PROPOSING THE RULEMAKING ACTION

The MHSOAC has added the following items to the list of material upon which the Commission relies in proposing the rulemaking action:

43. Brault MW. (2012). Americans with disabilities: 2010: Household economic studies. Current Population Reports. United States Census Bureau. U.S. Department of Commerce.
44. The Williams Institute. (2014). Best practices for asking questions about sexual orientation. UCLA School of Law.
45. The Williams Institute. (2009). Best practices for asking questions to identify transgender and other gender minority respondents on population-based surveys. UCLA School of Law.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Mental Health Services Oversight and Accountability Commission that would lessen any adverse economic impact on small business.

ALTERNATIVES DETERMINATION

The Mental Health Services Oversight and Accountability Commission has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The proposed regulations adopted by the Mental Health Services Oversight and Accountability Commission are the only regulatory provisions identified by the Commission that accomplish the goal of establishing regulations for the administration of the Innovation component of the Mental Health Services Act. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Commission's attention.