

X INFORMATION

TAB SECTION: 9

___ ACTION REQUIRED

DATE OF MEETING: 5/26/11

PREPARED BY: Yeroshek

DATE MATERIAL PREPARED: 5/12/11

AGENDA ITEM: Adopt Annual Amendments to Rules of Procedure – First Read

ENCLOSURES: • None

OTHER MATERIAL RELATED TO ITEM: None

ISSUE

Priority No. 6 of the Mental Health Services Oversight and Accountability Commission (MHSOAC) 2011 Work Plan is to review MHSOAC processes in an effort to provide continuous quality improvement. As part of this internal quality review process legal counsel submits the following proposed amendments to the MHSOAC Rules of Procedure for a first read.

BACKGROUND

The Commission adopted the MHSOAC Rules of Procedure on June 25, 2009. The Rules of Procedure were amended by the Commission in July and August of 2009 and in February 2010.

The proposed changes are divided into the following four categories: (1) non-substantive; (2) conforming to statutes; (3) conforming to practice; and (4) clarifications.

Below are the proposed rules. Strikeout text is proposed language to be deleted and underlined text is proposed language to be added.

Non-substantive Amendments: Rules 1.9, 4.8, 4.9, 4.16, and 5.4

The California law defining conflict of interest of public officials including the Commissioners is contained in statute, regulations, and case law. The proposed non-substantive amendment to Rule 1.9 reflects this fact.

As a result of Assembly Bill 5 of the Third Extraordinary Session of 2009 (AB 5xxx) the MHSOAC became separate and apart from the Department of Mental Health (DMH). In accordance with this independence the MHSOAC now has its own website. The proposed amendments to Rules 4.8, 4.9, 4.16, and 5.4 delete the DMH website address and replaces it with the new MHSOAC website address.

Rule 1.9 Conflict of Interest

Presence of a conflict of interest prohibits Commissioners (as public officials) from participating in discussion about or taking action on an item. Provisions in **California statutes, regulations, the California Government Code and Public Contract Code** and case law define and provide guidelines related to conflict of interest. A Commissioner shall not make, participate in making, or in any way attempt to use his or her official position to influence a Commission decision in which he or she knows or has reason to know he or she has a financial interest (Government Code Section 87100).

Commissioners must be guided solely by the public interest, rather than by personal interest, when dealing with contracting in an official capacity (Government Code Section 1090 et seq.).

Rule 1.9 Conflict of Interest (Continued)

A Commissioner who has a financial conflict of interest must do the following:

- Notify the Executive Director as soon as possible if any agenda item presents a potential conflict of interest. This will prepare the Chair to announce the Commissioner’s nonparticipation in any discussion, deliberation or vote when the item comes up.
- Publicly identify, in enough detail to be understood by the public, the financial interest that causes the conflict of interest or potential conflict of interest.
- Recuse himself or herself from discussing or voting on the matter or from attempting to use his or her position to influence the decision

The Commission will adopt for itself and adhere to an Incompatible Activities Policy.

Rule 4.8 Public Agenda Notice (PAN)

A Notice of any Commission meeting must be given and made available on the MHSOAC website at www.MHSOAC.ca.gov, www.dmh.ca.gov/MHSOAC, at least ten (10) calendar days before the meeting. The PAN will also be emailed to the MHSOAC list-serve. Any person who requests a PAN in writing must be sent a copy. The notice must include:

- Name, address, and telephone number of the individual who can provide additional information prior to the meeting
- Address of the internet site where notices are posted
- Specific agenda for the meeting containing a brief description of the items of business to be transacted or discussed in either open or closed session. No agenda items may be added after the ten-day period begins **unless permitted by the -with** specific exceptions set forth in the Bagley-Keene Open Meeting Act. (Government Code Section 11125)

Upon request by a person with a disability the PAN shall also be made available in appropriate alternative formats as required by Section 202 of the American with Disabilities Act of 1990 and the federal rules and regulations adopted in implementation thereof. The PAN shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

Rule 4.9 Availability of Commission Meeting Materials

PANs and all other materials distributed to the Commissioners for discussion or consideration prior to or at a Commission meeting are public records and as such are subject to disclosure, unless a recognized exemption applies (California Public Records Act, set forth in Government Code Sections 6250 et seq.). Commission meeting materials are available to the public at www.MHSOAC.ca.gov, www.dmh.ca.gov/MHSOAC as attachments to the PAN. The materials are also available in printed format on the day of the meeting.

The Bagley-Keene Open Meeting Act specifically provides that before taking final action on any item, writings pertaining to the item that are public records and have been distributed by staff or individual Commissioners to the Commission prior to or during the meeting must be:

- Made available for public inspection at the meeting
- Distributed to all persons who request or have requested copies of these writings
- Available on the internet

Rule 4.16 Minutes and Motion Summaries

Minutes and motion summaries of each open session meeting are distributed to Commissioners, the Executive Director, Chief Counsel, and selected staff for review. After review and Commission approval, the minutes and motion summaries are published on the MHSOAC website at: www.MHSOAC.ca.gov, www.dmh.ca.gov/MHSOAC.

Rule 5.4 Public Agenda Notice (PAN)

A Notice of any Committee meeting must be given and made available on the MHSOAC website at www.MHSOAC.ca.gov, www.dmh.ca.gov/MHSOAC, at least ten (10) calendar days before the meeting. The PAN will also be emailed to the MHSOAC list-serve. Any person who requests a PAN in writing must be sent a copy. The notice must include:

- Name, address, and telephone number of the individual who can provide additional information prior to the meeting
- Address of the internet site where notices are posted
- Specific agenda for the meeting containing a brief description of the items of business to be transacted or discussed.

Upon request by a person with a disability the PAN shall also be made available in appropriate alternative formats as required by Section 202 of the American with Disabilities Act of 1990 and the federal rules and regulations adopted in implementation thereof. The PAN shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

Amendments Conforming to Statute: Rules 1.8, 4.4, 4.13, and 5.1

The amendment to Rule 1.8 clarifies that under the California Political Reform Act and the corresponding regulations each Commissioner is required to submit three types of Statement of Economic Interest Form 700.

The amendment to Rule 4.4 clarifies that the Bagley-Keene Open Meeting Act also prohibits serial meetings.

As a result of the enactment of Assembly Bill 100 of 2011 (AB 100) the Commission no longer approves county MHSAs PEI and Innovation Plans. The amendment to Rule 4.13 reflects this change in the Commission’s role by deleting language related to county plan approval. Changes in the Commission’s role and responsibilities made by AB 100 will be reflected in changes to the roles and responsibilities of the current MHSOAC standing committees. To increase efficiency and flexibility Rule 5.1 is amended to delete the list of the current standing committees. This amendment eliminates the need to amend Rule 5.1 every time there is a change in committees or committee names.

Rule 1.8 Statement of Economic Interest – Form 700

Each Commissioner is required by the California Political Reform Act and the corresponding regulations to file a Statement of Economic Interests, Form 700: (1) within thirty days of being appointed; (2) on a yearly basis as prescribed by law; and (3) within thirty days of ending Commission membership.

~~Each Commissioner is required to file an annual Statement of Economic Interests, Form 700, which must be filed with the Fair Political Practices Commission (FPPC) by April 1 of each year.~~

Rule 4.4 Serial Meetings

The Bagley-Keene Open Meeting Act prohibits the MHSOAC from using direct communication, personal intermediaries, or technological devices to take action outside of an open meeting (Government Code Section 11122.5 (b)). Serial meetings are also prohibited. A serial meeting is a series of communications, each of which involves less than a quorum of the Commission, but which taken as a whole involves a majority of the Commission’s members (Government Code Section 11121).

Rule 4.13 Voting

After a motion is made, seconded, and public comment has been heard, the Commission may vote. A Commissioner must be present to vote.

A Commission member who is disqualified in a matter because of financial contributions, financial interest, or another conflict is not entitled to vote. The Commissioner is required to announce at the meeting that he or she “will not participate” and disclose the reasons for the disqualification on the record. This information is noted in the meeting minutes.

Rule 4.13 Voting (Continued)

A Commissioner may “abstain” from voting, if he or she is entitled to participate, but chooses not to. The reason for not participating need not be disclosed on the record.

Any proposed policy item on the agenda, along with its corresponding language/documents, shall be presented for discussion at a Commission meeting at least one (1) meeting prior to the meeting at which the vote on the issue is taken. (Add 7/2009)

The Commission may take action, by a simple majority, on an agenda item at the same meeting that the item is presented if the Commission deems that there exists a need to take action. (Add 7/2009)

~~Approval of county MHSAs PEI and Innovation Plans is exempt from this review schedule and may be voted upon at the Commission meeting at which they are first presented by staff and need not be posted 30 days before the meeting.~~ (Add 7/2009)

Rule 5.1 Committee Structure

The MHSOAC shall establish one or more standing Committees as necessary to provide technical and professional expertise pursuant to Welfare and Institutions Code Section 5845 (d)(2). Such Committees provide guidance, review materials, and make recommendations to the MHSOAC, and, in rare instances, when given delegated authority by the MHSOAC, make decisions on behalf of the MHSOAC. (Amd. 8/2009)

The Commission Chair shall appoint a Chair and Vice Chair for each standing Committee from among the Commission’s membership. Each year the Commission Chair may reappoint a Committee Chair and Vice Chair. (Amd. 8/2009)

Ideally each standing Committee shall have a maximum of 15 members and shall include public membership. Of this public membership, at least two shall be consumers, at least two shall be family members or care givers of consumers, and at least two shall be members of underserved ethnic and cultural communities. Public membership of each Committee shall be selected by the Committee Chair and Vice Chair. In their recruitment and appointment, Committee Chair and Vice Chair shall pay special attention to issues related to cultural diversity and competency. Commission staff and/or consultants will staff each Committee. (Amd. 8/2009)

The membership of each Committee will be confirmed every other year **in odd numbered years** at the January MHSOAC meeting. In the intervening time each Committee Chair has discretion to modify the Committee membership based upon the needs of the Committee. (Added 2/2010)

Rule 5.1 Committee Structure (Continued)

If a Committee member cannot attend a Committee meeting the member will notify the Committee Chair and the Committee staff member of such absence in advance of the Committee meeting. If a Committee member misses more than one (1) Committee meeting without notice or three (3) Committee meetings in a calendar year with notice the Committee Chair has discretion to decide whether it is in the best interest of the Committee to have that Committee member replaced. (Added 2/2010)

~~The MHSOAC currently has the following standing Committees:~~

- ~~Client & Family Leadership~~
- ~~Cultural and Linguistic Competence~~
- ~~Mental Health Funding & Policy~~
- ~~Mental Health Services~~
- ~~Evaluation~~

~~In addition to the above listed standing Committees~~ The MHSOAC may establish ~~currently also has~~ an Operations Committee that is composed of the Chair or the Vice Chair of each standing Committee. The Commission Chair and Vice Chair are the Chair and Vice Chair of the Operations Committee. The Operations Committee is exempt from the public membership listed above and it is not authorized to take policy positions on behalf of the Commission unless the Commission specifically delegates such authority. (Add 8/2009)

Amendments Conforming to Practice: Rules 1.2, 1.3, 1.4, 1.7, 2.4, and 4.6

The MHSOAC for the last several years has adopted a yearly Work Plan that sets forth the Commission’s priorities and activities. The amendment to Rule 1.2 adds the yearly Work Plan as a document in which the Commission’s goals are set forth.

The amendments to Rules 1.3 and 1.4 are identical and provide flexibility regarding the timing of the Chair and Vice Chair elections by allowing the elections to occur at a Commission meeting held during the last quarter of the calendar year instead of a specific month.

Rule 1.7 is amended to specify that the training and orientation of new Commissioners occur within 30 days of appointment. The amendment to Rule 4.6 provides that the Operations Committee will work with the Commission Chair and the Executive Director in developing and setting the Commission agendas.

The new Rule 2.4 documents the contract authority which the Commission on March 24, 2011 delegated to the Executive Director.

Rule 1.2 The Role of Commissioners

- Represent the MHSOAC outside Commission meetings
- Provide knowledge and expertise to guide Commission policy-making
- Attend Commission meetings throughout the state
- Serve as a member of at least one MHSOAC Committee
- Attend, in person or via teleconference, meetings of any MHSOAC Committee of which they are a member
- Work collectively to accomplish the goals of the MHSOAC as set forth in its Multi-Year Strategic Plan and/or the yearly Work Plan.

The best decisions come out of unpressured collegial deliberations and the MHSOAC seeks to maintain an atmosphere where the Commission or Committee members can speak freely, explore ideas before becoming committed to positions and seek information from staff and other members. To the extent possible the MHSOAC encourages members to come to meetings without having fixed or committed their positions in advance.

Rule 1.3 Chair

The Chair shall be elected at the October a MHSOAC meeting held during the last quarter of the calendar year by a majority of the voting members of the MHSOAC. The Chair shall assume all duties and preside at all MHSOAC meetings starting the following January. The term of the Chair shall be one year. (Amd. 2/2010)

In the event of resignation or death of the Chair the Vice Chair shall assume all of the responsibilities of the Chair until a successor is elected. The election shall be held within sixty (60) days after such resignation or death.

Rule 1.4 Vice Chair

The Vice Chair shall be elected at the October a MHSOAC meeting held during the last quarter of the calendar year by a majority of the voting members of the MHSOAC. The Vice Chair shall assume all duties starting the following January. The term of the Vice Chair shall be one year. The Vice Chair fulfills the role of Chair and presides at meetings in the absence of the Chair. (Amd. 2/2010)

When neither the Chair nor Vice Chair is available to run all or part of the meeting, e.g., both officers may be absent, need to leave the room, or are disqualified from discussion and action on an item due to conflict of interest the most senior Commissioner shall preside at the meeting.

Rule 1.7 Training and Orientation

New members shall **within 30 days of being appointed**, receive training and orientation in: (1) Commission governance, policies and procedures; (2) Commission strategic directives; (3) MSHA programs and issues; and (4) relevant laws and statutes.

At or before the orientation session, the new Commission member will receive the following documents:

1. Listing of names, addresses, and contact information for the Commission members;
2. Listing of names and contact information for MHSOAC Staff
3. Copy of the Rules of Procedure
4. Brief history and overview of MHSOAC including mission, purpose statement, and Proposition 63
5. Information about the Political Reform Act and how it affects the Commissioners
6. Information about the travel reimbursement procedures
7. List of meeting dates and locations
8. Copy of the Bagley-Keene Open Meeting Act
9. Summary of Robert’s Rules of Order
10. Copy of the following documents:
 - a. Mental Health Services Act Prevention and Early Intervention: County and State Level Policy Direction;
 - b. Recommendation to the MHSOAC for funding for Innovative Programs;
 - c. Eliminating Stigma and Discrimination Against Persons with Mental Health Disabilities;
 - d. Mental Health Services Oversight and Accountability Commission Report on Co-Occurring Disorders;
 - e. Mental Health Services Oversight and Accountability Commission Position Paper on Training and Education;
 - f) **Any other policy paper adopted by the Commission**

As required by Government Code Sections 11146 through 11146.4 within six months of beginning service as a member of the Commission and at least every two years thereafter, members of the Commission shall receive training on laws related to ethics, conflict of interest requirements, governmental transparency, open government, and fair government processes.

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DATE OF MEETING: 5/26/11

PREPARED BY: Yeroshek

DATE MATERIAL PREPARED: 5/12/11

Rule 2.4 Contract Authority

Pursuant to the MHSOAC Resolution adopted on March 24, 2011 the Executive Director has authority to take all actions necessary to enter into contracts on behalf of the MHSOAC in the amount of \$100,000 or less and to enter into Interagency Agreements in the amount of \$200,000 or less. The Executive Director may delegate to subordinates any of the authority delegated to the Executive Director by the MHSOAC. Within 24 hours of such delegation the Executive Director shall notify the MHSOAC Chair and Vice Chair.

Rule 4.6 Request for Item to be Placed on the Agenda

Agenda items shall only be placed on the Commission's agenda at the request of (1) a Committee of the MHSOAC; (2) a member of the MHSOAC; or (3) MHSOAC staff with the approval of the Executive Director. Members of the public wishing to place items on the agenda must go through one of the above.

Before agenda and meeting packets are finalized they shall be reviewed by the Chair of the Commission, the Executive Director, and Chief Counsel. The Chair of the Commission, and the Executive Director, and the Operations Committee shall work together to develop and set the Commission agendas.