
AGENDA ITEM 2A

Action

April 23, 2015 Commission Meeting

Recommendations for Changes to Prevention and Early Intervention Regulations

Summary: The Mental Health Services Oversight and Accountability Commission (MHSOAC or Commission) will consider changes to the Prevention and Early Intervention (PEI) regulations at the April 23, 2015 MHSOAC meeting, including changes in response to feedback received from the Office of Administrative Law (OAL). Any changes made at the Commission meeting will go out for a 15-day public comment period.

At its January 22, 2015 meeting, the Commission, after a year and a half-long stakeholder process, approved the proposed PEI regulations and directed that the regulations and all necessary documentation be submitted to the OAL. On January 30, 2015, the PEI regulation packet was submitted to OAL.

Changes Based on OAL Feedback

The OAL reviews the regulation packet to determine whether the regulations are in compliance with the following Administrative Procedures Act requirements: (a) "Authority" – Does the MHSOAC have the authority to issue the regulations; (b) "Reference" – Do the regulations correctly reference the specific statute that the regulations implement, interpret or make specific; (c) "Consistency" – Are the regulations consistent with the law, (d) "Clarity" – Is the text of the regulations clear; (e) "Non-duplication" – Are the regulations duplicative of the statute they implement, interpret or make specific; (f) "Necessity" – Are the regulations necessary; and (g) "Procedural requirements" – Did the MHSOAC follow the procedural requirements.

The OAL provided feedback regarding the "consistency" requirement and the "clarity" requirement.

Consistency: It is the opinion of OAL that the proposed PEI regulations are inconsistent with the Mental Health Services Act, specifically, Welfare and Institutions Code (WIC) Section 5840(b) because Access and Linkage to Treatment and Reduction in Stigma and Discrimination are mandatory "strategies" instead of mandatory "programs". Commission Staff does not necessarily agree with this interpretation of WIC 5840(b); however, Staff recommends making the required changes in the regulations. If the changes are not made, OAL will disapprove the regulations and the Commission's remedy is to appeal the disapproval to the Governor. Staff does not recommend this option.

Clarity: Below is a list of the substantive clarity issues and Commission staff's recommended responses:

Section 3510.010(a)(1)(A)(i):

The term, "element" was not defined and thus not sufficiently clear. Staff recommends changing the term to "program" and rewriting the sentence to read as follows: "If the programs are combined, the County shall estimate the percentage of funds dedicated to each program."

Sections 3701(a), 3702(a), 3703(a), and 3704(a):

- The term, "Prevention and Early Intervention regulations" as used in these four sections was not defined and thus not sufficiently clear. Staff recommends adding the following definition: "Prevention and Early Intervention regulations means section 3200.245 and 3200.246 of Article 2, sections 3510.010, 3560, 3560.010, and 3560.020 of Article 5 and Article 7."
- OAL also suggested that these four sections be consolidated into Section 3701. Staff recommends consolidating the sections as suggested by OAL into Section 3701 as follows: Subdivision (a) is a new definition of the term, "Prevention and Early Intervention regulations"; Subdivision (b) is the definition of "Program" moved from section 3701(a); Subdivision (c) is the definition of "Strategy" moved from section 3702; Subdivision (d) is the definition of "Mental illness" moved from section 3703; and Subdivision (e) is the definition of "Serious mental illness" moved from section 3704.
- Subdivision (b): the phrase, "discreet unit of service delivery" in the last sentence of the definition of "Program" is vague and thus not sufficiently clear. Staff recommends deleting the last sentence and adding the term, "stand-alone" to the first sentence of the definition to convey the same intent.
- Subdivisions (d) and (e): Because WIC Section 5600.3 referred to in the PEI section of the Mental Health Services Act uses the terms, "mental disorder" and "serious mental disorder" these terms should be defined. Staff recommends including these terms in the previously adopted definition of "mental illness" and "serious mental illness" in the newly consolidated Section 3701(d) and (e).

Section 3720:

- The term, "significantly higher than average" is vague and thus not sufficiently clear. Staff recommends using the term, "greater than average".
- Subdivisions (e) and (e)(1) are confusing. Staff recommends simplifying the language consistent with the original intent as follows: "Prevention programs may include universal prevention if there is evidence to suggest that the universal prevention is an effective method for individuals and members of groups or populations whose risk of developing a serious mental illness is greater than average." Because "universal

prevention” is a term of art in the mental health field it does not need to be defined.

Section 3750(h):

The term “culturally appropriate” is not defined and thus not sufficiently clear. Staff recommends changing the term to “culturally competent.” This term is already defined in the current Mental Health Services Act (MHSA) regulations and is consistent with the intent for these two provisions as reflected in the Initial Statement of Reasons (ISOR) that accompanied the proposed regulations. The ISOR states that the intent of these two provisions is for consistency with the MHSA General Standard of cultural competence as set forth in the current MHSA regulations section 3200.100 of Title 9 of the California Code of Regulations.

Other Changes:

Staff recommends the following changes that are not based upon feedback from OAL.

Sections 3560.010 and 3560.020:

To balance the need for public information and protection of personally identifiable information, Staff recommends the regulations provide 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 PEI Program and Evaluation and the Three-Year PEI Program and Evaluation reports which are part of the Annual Update and the Three-Year Program and Expenditure Plan. The MHSOAC would receive separately and securely the confidential information that had been excluded from the public reports. Counties would have the option to provide one of the following: (1) a confidential supplement that contained 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 3560.010(b)(5):

Staff recommends the three changes to the demographic reporting that were proposed at the January 22, 2015 MHSOAC meeting in response to public comment.

- Replace “Questioning” with “Questioning or unsure of sexual orientation”
- Add “another gender identity”
- Disaggregate blind, deaf/hard of hearing, speech-impaired

The enclosed document titled, “Proposed Changes to the Prevention and Early Intervention Regulations Presented at the March 26, 2015 MHSOAC Meeting” shows the recommend changes listed above. The proposed new language is in underlined text and proposed deletions are in strikethrough text.

The MHSOAC will vote on whether to accept Staff’s recommended changes to the PEI regulations.

Enclosures: Proposed Changes to PEI Regulations Presented at the April 23, 2015 MHOSAC Meeting.

Handouts: A PowerPoint will be made available at the meeting.

Recommended Action: Adopt Staff's recommendations.

Presenters:

- Filomena Yeroshek, Chief Counsel
- Dr. Deborah Lee, Consulting Psychologist.

Motion: The Commission adopts Staff's recommended changes to the Prevention and Early Intervention regulations.