

Matrix of Public Comments with Staff's Recommended Responses
Prevention and Early Intervention Proposed Regulations
15-Day Public Comment Period Phase VI (7/24/15 – 8/09/15)
Presented at August 27, 2015 MHSOAC Meeting

15-Day Notice from July 24, 2015 – August 9, 2015 (Phase VI)					
Section #	Comment Author	Comment Summary	Response	Action	Rationale
3701	Commenter #3	<p>Comment 3.70 MHSOAC's Proposed Changes Exacerbate Discrepancies Between The Regulation And The Statute</p> <p>In responding to the OAL Decision of Disapproval of Regulatory Action dated July 24, MHSOAC has made matters worse, increasing the discrepancy between the language of the statute and that of the regulation. OAL should reject the proposed language and again demand that MHSOAC follow the law.</p> <p>As the OAL Decision of Disapproval indicates, the MHSOAC incorporates by reference, in the PEI provisions and numerous other places, the definition of "severe mental illness" contained in Welfare and Institutions Code 5600.3. That definition differs significantly between adults and children.</p>	Reject	Retain existing language with no change	<p>According to the Office of Administrative Law's Decision of Disapproval of Regulatory Action, the MHSOAC's proposed regulation was disapproved because section 3701, subdivision (e)(1) was inconsistent with Welfare and Institutions Code section 5600.3, subdivision (a)(2).</p> <p>The changes made by the Commission at the July 23, 2015 meeting, which were the subject of the 15-day notice, resolve the inconsistency noted by the Office of Administrative Law in its Decision of Disapproval.</p> <p>The Decision states:</p> <p style="padding-left: 40px;">The term "seriously emotionally disturbed children or adolescents" is already clearly defined in Welfare and Institutions Code section 5600.3, subdivision (a)(2). The definition references the term "mental disorder" as defined in the DSM-5. Proposed regulation section 3701, subdivision (e)(1) references subdivision (e) which defines the terms "serious mental illness," "serious mental disorder," and "severe mental</p>

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		<p>Instead of simply incorporating W.I.C. Section 5600.3 by reference in its regulatory definitions, MHSOAC initially chose to incorporate only part of the definition of “severe mental illness” in adults—the vaguest part—and then apply it to children, completely ignoring the significant and contrasting qualifiers applying to each statutory definition. OAL rightly objected.</p> <p>The agency’s most recent 15 day notice does not meet OAL objections. Instead, the newly-proposed language, by shifting subsection “e” to subsection “d”, simply equates the MHSOAC’s unacceptably vague definition of “mental illness” with “<i>severe</i> mental illness” for children:</p> <p><u>(f) (1) The definition in subdivision (d) (e) (a) includes, is applicable to serious emotional disturbance for individuals under the age of 18, serious emotional disturbance, which is defined as a mental</u></p>			<p>illness.” Thus, the language in subdivision (e) and (e)(1) is inconsistent with Welfare and Institutions Code section 5600.3, subdivision (a)(2).</p> <p>The proposed changes to section 3701, subdivision (e)(1) modifies the definition so that the term “seriously emotionally disturbed children or adolescents” references subdivision (d) which defines “mental illness” and “mental disorder” instead of subdivision (e) which defines “serious mental illness, serious mental disorder, and severe mental illness.</p> <p>As mentioned above, Welfare and Institutions Code section 5600.3, subdivision (a)(2) references the definition of “mental illness” as defined in the DSM-5. The definition of “mental illness” and “mental disorder” in section 3701, subdivision (d) is taken directly from the DSM-5. Therefore, the definition of “seriously emotionally disturbed children or adolescents” in section 3701 is consistent with section 5600.3, subdivision (a)(2).</p> <p>The commenter’s proposal that section 3701(e) should just reference subdivisions (a) and (b) of Welfare and Institutions Code section 5600.3 is not accepted because these subdivisions contains provisions that are not applicable to the Prevention and Early Intervention (PEI) component of the</p>

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		<p><u>disorder as identified in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the individual's age according to expected developmental norms.</u></p> <p>Far from bringing the definitions in line with the statute, as OAL requested, the newly-proposed language equates apples and oranges. It makes the carefully-crafted statutory distinctions in 5600.3 meaningless by labelling children who meet the overbroad definition of “mental illness” as children with “serious emotional disturbance.” The plain meaning of the statute and the OAL directive have both been ignored. Because the MHSOAC definition of “mental illness” is overbroad, children who are not even sick are now labelled as children with “serious emotional disturbance.” Once again, MHSOAC is undermining the</p>			<p>Mental Health Services Act, which is the statute that the regulations are implementing. The purpose of section 5600.3 is to define target populations and priority eligibility for the use of funds deposited in the mental health account of the local health and welfare trust fund. For the PEI component, the relevant part of section 5600.3 is the definition of serious mental disorder for adults and the definition of seriously emotionally disturbed children or adolescents.</p> <p>The MHSOAC has previously addressed suggestions similar to those made in this comment. Please see the response to comments 3.54, 3.55, pages 58 and 46 of the Matrix of Public Comments presented at the December 18, 2014 Commission meeting.</p>

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		<p>statute it was created to oversee and enforce.</p> <p>The solution is simple: OAL should direct MHSOAC to stop trying to rewrite the MHSA, and instead to incorporate by reference the very precise definitions it already contains. To comply with the OAL Decision of Disapproval of Regulatory Action dated July 24 and with the MHSA, the definition of “serious” and “severe” mental illness should be as follows:</p> <p>(e) “Serious mental illness,” “serious mental disorder” and “severe mental illness” as used in the Prevention and Early Intervention regulations <u>means, for adults, the definition in Welfare and Institutions Code Section 5600.3(b) et seq., and for persons under 18, the definition in Welfare and Institutions Code Section 5600.3(a) et seq.</u> a mental illness that is severe in degree and persistent in duration, which may cause behavioral functioning which interferes substantially with the primary activities of daily living, and which may result in an inability to maintain stable</p>			

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		<p>adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period of time. These mental illnesses include, but are not limited to, schizophrenia, bipolar disorder, post-traumatic stress disorder, as well as major affective disorders or other severely disabling mental disorders.</p> <p>(f) (1) The definition in subdivision (d) (e) (a) includes, is applicable to serious emotional disturbance for individuals under the age of 18, serious emotional disturbance, which is defined as a mental disorder as identified in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the individual's age according to expected developmental norms.</p> <p>The counties, who administer PEI funds, are intimate with the definitions in 5600.3 and will immediately understand what is meant.</p>			

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No Specified Section	Commenter #76	<p><u>Comment 76.06</u></p> <p>Principal parties set out to generate MHSa success story statistics by serving only FIVE PERCENT of public mental health clients--and ONLY NEW CLIENTS in NEW PROGRAMS. The calculated purpose of excluding all underserved clients in the existing system was to generate those deceptive statistics. They are irrelevant and a cruel insult to consumers and their families and friends suffering the tragedy of untreated serious mental illnesses, and the despair leading to increased suicides and incarceration.</p> <p>State employees, lobbyists, oversight commissioners agreed that they would get better "performance data" by serving new clients in new programs. The strategy also produced a bonanza of new grants for Rusty Selix clients such as the Mental Health Associations and contract providers, and the California Institute of Mental Health, the premier grant consumer and producer of conferences, trainings, reports of unknown utility, and employer of legions of</p>	No specific action suggested	Retain existing language with no change	<p>The comment is outside the scope of the 15-day Notice and need not be addressed. However, please see response below:</p> <p>The comment is not relevant to any specific proposed changes to the regulations.</p>

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		<p>consultants with the proper special interest connections. "Stakeholders" who claim to represent major constituencies such as mental health consumers, family members, and children shared in the largesse with major grants to conduct programs for which there is minimal audience or questionable benefit. Entrepreneurs in every conceivable service for "stakeholders" and unwanted and unknown products got aboard the same gravy train.</p> <p>I agree with all of the critics above and Mr Jaffe's analysis. They are absolutely accurate -- but only lack appropriate emphasis on the 500,000 people diagnosed with serious mental illnesses and in the public mental health system who are not "treatment-refusers" but demeaned "treatment-seekers." No one gets into the system -- and past the ACCESS gatekeepers--without a diagnosis. But that is about all they get if they are lucky--no authentic evaluation, no respectable standard of medicine, no ethical health</p>			

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		<p>treatment for their serious illnesses. If they have a warm body related to them, who may be identified by the mental health staff, they get even less service. My teenage family members have been prescribed first-time, heavy-duty psychotropic medications, with potentially lethal side effects, and then scheduled for a return visit four months later.</p> <p>After ten years and \$12 Billion, clinics in Senator Steinberg's district serve thousands of people who are seriously mentally ill and seeking treatment, trying desperately to maintain some dignity and independence, hopelessly unable to access recovery services, and under treated/misdiagnosed/inappropriately treated by case workers with a caseload of 150 consumers, psychiatrists with a caseload of 600 clients, and service personnel with minimal training and capacity for relating to their clients.</p> <p>This is the standard of care in Senator Steinberg's district, where one would expect a model</p>			

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		<p>service system after \$220 million + in Prop 63 allocations.</p> <p>The money is stolen, critically ill people are cheated and left to die, and there is no limit to the tolerance for inhumanity by the shameless thieves, some of whom attempt to deceive themselves as well as the public. I filed a whistleblower complaint on the anniversary of the fifth year of passage. California Progress Report carried the related story. Nothing has changed except the magnitude of waste and compounding conflicts of interest.</p>			