

**Matrix of Public Comments with Staff's Recommended Responses**  
**Innovative Project Proposed Regulations**  
**15-Day Public Comment Period Phase IV (4/24/15 – 5/10/15)**  
**Presented at May 28, 2015 MHSOAC Meeting**

15-Day Notice from April 24, 2015 – May 10, 2015 (Phase IV)					
Section #	Comment Author	Comment Summary	Response	Action	Rationale
3580	Commenter #15	<p><b>Comment 15.01</b>            I have a few questions about the proposed regulations:</p> <ol style="list-style-type: none"> <li>1. I am unclear about the Annual Inn project report that is due Dec 31 “following the end of the fiscal year for which the County is reporting.” Is that a full fiscal year? Or if we start July 1, then we need a report for the partial year?</li> <li>2. It also states that we could submit the report as part of our 3 year plan or update. If we do that in the Spring, will we be considered out of compliance?</li> <li>3. We have never received notice about the due dates for the 3 year plan, or annual update. Has the MHSOAC determined that??</li> <li>4. I am confused about the language about the supplemental Annual Innovative Project Report. What is the difference between (a) and (b)?? This language is repeated twice;</li> </ol>	Reject	Retain existing language with no change	<p><u>Response to No. 1:</u>            The report that is due each December 31 captures Innovative Project data that occurred from July first of the previous year through June 30<sup>th</sup> of the current year, which aligns with the State of California Fiscal Years. This timing allows six months for counties to prepare the report. For example, the Innovative Project report that is due on December 31, 2017 would include Innovative Project data for July 1, 2016 through June 30, 2017.</p> <p><u>Response to No. 2:</u>            The deadline for The Annual Innovative Project Report is December 31. If the Three-Year Program and Expenditure Plan or Annual Update is submitted prior to the December 31 deadline, the Annual Innovative Project Report may be submitted as a part of those reports. If a County submits the Three-Year Program and Expenditure Plan or Annual Update after December 31, the Annual Innovative Project Report must be submitted separately before the December 31 deadline.</p>

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		<p>once in reference to the Annual Inn (sic) report, and in reference to the Final Inn (sic) report.</p> <p>My comment is that I would like the regulations to be more clear about the questions above.</p>			<p><u>Response to No. 3:</u></p> <p>The comment is outside the scope of the 15-day Notice and need not be responded to. However, please see the response below:</p> <p>Instructions for the submittal of the Three-year Program and Expenditure Plan were sent to the Counties on August 2, 2013 and the instructions for the submittal of the Fiscal Year 2015-2016 Annual Update were sent to the counties on April 24, 2015. Both set of instructions are posted on the MHSOAC’s website.</p> <p><u>Response to No. 4:</u></p> <p>Subdivisions (a) and (b) of Section 3580(a)(1)(B)(i) give two different options to the County to provide the MHSOAC with information that was excluded (due to confidentiality) from the Annual Innovative Project Report. Subdivision (a) allows the County to provide a “supplemental” Annual Report that includes all of the information in the originally submitted report plus the information that had been excluded. Subdivision (b) allows the County to submit a “supplement” to the Annual Report that contains ONLY the information that was excluded from the originally submitted report. The language is repeated in reference to the Final Innovation report to give the County the same options as is given for the Annual Innovation Report.</p>

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3580; 3580.010	Commenter #17	<p><b><u>Comment 17.01</u></b> Thank you for the opportunity to comment on these important regulations. The California Psychiatric Association on behalf of over 3,500 psychiatrists in California is pleased to provide the following comments in relation to both of the above referenced proposed regulations. The CPA hopes you will find them useful.</p> <p>The proposed revisions require reports containing “personally identifiable information” of mental health patients to be made to the Commission by recipients of MHSA grant funds who are providing care to those patients. The patients’ personally identifiable information would be disclosed to the MHSOAC in reports by MHSA grant recipients concerning Innovative Projects (9 C.C.R. section 3580 (a)) and in reports by MHSA grant recipients concerning Early Intervention projects (9 C.C.R. sections 3560.010(a)(3) and 3560.02(a)(2)).</p> <p>The CPA believes such disclosure of patient personally identifiable information is</p>	Reject	Retain existing language with no change	<p>The Innovative Project regulations apply only to Counties implementing MHSA-funded Innovative Projects and do not apply to individual “recipients of MHSA grant funds” as stated in the Comment. The Counties are required to report the program-level data as set forth in Section 3580.010. The regulations do not request patient-level information from a provider or contractor. The information that the Counties send to the MHSOAC under the proposed regulations is aggregated information and not patient-level information. The Confidentiality of Medical Information Act applies to patient-level. As such, the proposed regulations do not violate the Confidentiality of Medical Information Act.</p> <p>Because program-level data reported could include a small number of participants, the regulations provide a vehicle for counties to report complete program data for evaluation purposes to the MHSOAC while protecting possible “individually identifiable health information” consistent with HIPAA and California law. MHSOAC is confident that the language in 3580(b) serves this purpose and meets these requirements.</p> <p>The Lanterman, Petris, Short Act applies only to inpatient treatment and is thus, not relevant to the proposed regulations which do not apply to inpatient treatment.</p> <p>Because neither the Confidentiality of Medical Information Act nor the</p>

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		<p>prohibited by California law, notwithstanding an argument that HIPAA permits the disclosure. Furthermore, the public notice of the proposed regulations seems to be deficient and possibly in violation of the California Administrative Procedure Act (APA).</p> <p><b><u>VIOLATION OF CALIFORNIA'S LAWS CONCERNING CONFIDENTIALITY OF MENTAL HEALTH INFORMATION</u></b></p> <p>California law imposes stringent privacy and confidentiality requirements prohibiting the disclosure of personally identifiable information for mental health patients. There is no exception in these laws for the proposed disclosures to the MHSOAC required by the proposed regulations. Specifically, Civil Code section 56.104, which is part of the Confidentiality of Medical Information Act, prohibits such disclosures. Furthermore, Welfare &amp; Institutions Code section 5328, which is part of the Lanterman, Petris, Short</p>			<p>Lanterman, Petris, Short Act are applicable to the proposed regulations, the preemption argument is not relevant.</p>

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		<p>Act and concerns inpatient treatment of mental health patients, prohibits such disclosures.</p> <p>The proposed regulations contain an unexplained implication that HIPAA privacy rules permit the proposed disclosures of personally identifiable information to the MHSOAC. This implication is without merit because HIPAA specifically defers to state laws that are more protective of patient confidentiality. (45 C.F.R. section 160.203). In other words, state laws which are more protective of patient confidentiality preempt HIPAA, with certain limited exceptions which do not apply here.</p>			

**15-Day Notice from April 24, 2015 – May 10, 2015 (Phase IV)**

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No Specified Section	Commenter #16	<p><b><u>Comment 16.01</u></b>                      Keep the spirit and intent of MHPA contract language- Prevention and Early Intervention, Innovation, as written in original MHPA legislation. Currently there is broad (90%) lack of treatment and services for people living with serious mental illness. This crisis in mental health care has tragic and costly consequences in our society, including many suicides and appallingly high numbers of people with serious mental illness who are homeless, in jails and prisons, hospitalized, or seeking crisis care in emergency rooms.</p> <p>The California State Audit and others have documented MHPA funds are not reaching the most seriously ill:                      Principal parties set out to generate those 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</p>	No specific action suggested	Retain existing language with no change	The comment is outside the scope of the 15-day Notice and need not be responded to.

**15-Day Notice from April 24, 2015 – May 10, 2015 (Phase IV)**

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		<p>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. State employees, lobbyists, oversight commissioners agreed that they would get better "performance data" by serving new clients in new programs.</p> <p>Support keeping these contracts as originally designed for MHSA. With increasing and frequent school shootings, it is vital that mental illness is recognized and treated at early stages and not as retroactive disease after a catastrophic incident. Society also needs to be spared the huge expense of institutional and correctional treatment.</p>			
No Specified Section	Commenter #17	<p><b><u>Comment 17.02</u></b>  <b><u>POSSIBLE VIOLATION OF CALIFORNIA'S ADMINISTRATIVE PROCEDURE ACT</u></b></p> <p>The APA requires a public notice process with an opportunity for public comment before regulations, such as these MHSOAC regulations are</p>	Reject	Retain existing language with no change	<p>The Administrative Procedure Act (APA) does not require a 15-day Notice be published in the Regulatory Notice Register. The MHSOAC has followed the Rulemaking process set forth in the APA and its implementing regulations.</p> <p>A summary of the process is described by the Office of Administrative Law on its website and set forth below:</p>

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		<p>adopted. I believe further research may show that the APA was violated in connection with these proposed regulations. The proposed regulations you sent me were proposed on April 24, 2015 by the MHSOAC as revisions to regulations which were first proposed in June and July, 2014 and subsequently revised four or five times. The latest proposed revisions did not appear in the April 24, 2015 Regulatory Notice Register and it remains to be seen if they will appear in the May 1, 2015 Regulatory Notice Register. Furthermore, the explanation of the various revisions is shown by underlines, double underlines, strike outs, bolded words and italics. That presentation is close to incomprehensible at best and may not be appropriate disclosure of the proposed revisions to the proposed regulations.</p> <p><b>CONCLUSION</b></p> <p>CPA wishes to object to the proposed changes in both of the regulations and asks that</p>			<p><a href="http://www.oal.ca.gov/Regular_Rulemaking_Process.htm">http://www.oal.ca.gov/Regular Rulemaking Process.htm</a></p> <p>“After the initial public comment period, a rulemaking agency may decide to change its initial proposal either in response to public comments received or on its own initiative. ... A rulemaking agency must make each substantial, sufficiently related change to its initial proposal available for public comment for at least 15 days before adopting such a change. Thus, before a rulemaking agency adopts such a change, it must mail a notice of opportunity to comment on proposed modifications along with a copy of the text of the new proposed changes to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. The agency must also post the notice on its website. No public hearing is required. The public may comment on the proposed modifications in writing.</p> <p>The agency must then consider comments received during the 15-day comment period which are specifically directed to the proposed modifications. An agency may conduct more than one 15-day opportunity to comment on modifications.”</p> <p>The MHSOAC during its public meeting on April 23, 2015 voted to modify the proposed regulations. On April 24, 2014 the MHSOAC mailed a notice of</p>

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		they be rescinded or withdrawn for the foregoing reasons.			opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. The notice provided an opportunity to comment until 5:00pm on May 10, 2015. The MHSOAC also posted the notice on its website. At the May 28, 2015 the MHSOAC will consider all the comments received, including this comment.