

**State of California
Office of Administrative Law**

**In re:
Mental Health Services Oversight and
Accountability Commission**

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections: 3200.245, 3200.246,
3510.010, 3560, 3560.010,
3560.020, 3700, 3701,
3705, 3706, 3710, 3715,
3720, 3725, 3726, 3730,
3735, 3740, 3745, 3750,
3755, 3755.010

Amend sections:

Repeal sections:

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL Matter Number: 2015-0605-04

OAL Matter Type: Regular Resubmittal (SR)

SUMMARY OF REGULATORY ACTION

On June 5, 2015, the Mental Health Services Oversight and Accountability Commission (Commission) submitted to the Office of Administrative Law (OAL) its proposed regulatory action to adopt various sections in Title 9 of the California Code of Regulations (CCR). The proposed action would establish requirements for the Prevention and Early Intervention Component of the Mental Health Services Act, define terms, and require counties to submit reports and plans to the Commission.

On July 17, 2015, OAL notified the Commission that OAL disapproved the proposed regulations because the regulations failed to comply with the consistency standard of Government Code section 11349.1. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the above-referenced regulatory action because the proposed regulations failed to comply with the consistency standard of Government Code section 11349.1, subdivision (a)(4). All APA issues must be resolved prior to OAL's approval of any resubmission.

DISCUSSION

The above regulatory action by the Commission must satisfy requirements established by the part of the California Administrative Procedure Act that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the standards a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

Consistency Standard of the APA

Government Code section 11349, subdivision (d), defines “consistency” to mean “being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” As discussed below, aspects of the proposed regulations are inconsistent with the Welfare and Institutions Code statute being implemented.

The Commission’s proposed regulation section 3701, subdivision (e)(1) is inconsistent with Welfare and Institutions Code section 5600.3, subdivision (a)(2). The proposed section 3701, subdivisions (d) and (e) define the following terms:

3701(d) “Mental illness” and “mental disorder” as used in the Prevention and Early Intervention regulations means, a syndrome characterized by clinically significant disturbance in an individual’s cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological or biological processed underlying mental functioning. Mental illness is usually associated with significant distress or disability in social, occupational, or other important activities. An expected or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental illness. Socially variant behavior (e.g. political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental illness unless the variance or conflict results from a dysfunction in the individual, as described above.

(e) “Serious mental illness,” “serious mental disorder,” and “severe mental illness” as used in the Prevention and Early Intervention regulations means, 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 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.

(1) The definition in subdivision (e) is applicable to serious emotional disturbance for individuals under the age of 18, other than primary substance use disorder or developmental disorder, which results in behavior inappropriate to the individual's age according to expected developmental norms. [Emphasis added.]

Proposed section 3701, subdivision (e)(1) is not consistent with Welfare and Institutions Code section 5600.3, subdivision (a)(2), which states:

5600.3(a)(2) For purposes of this part, "seriously emotionally disturbed children or adolescents" means minors under the age of 18 years who have a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, other than a primary substance use disorder or developmental disorder, which results in behavior inappropriate to the child's age according to expected developmental norms.... [Emphasis added.]

The fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), which is the most recent edition, defines mental disorder as follows:

A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as death of a loved one, is not a mental disorder. Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.

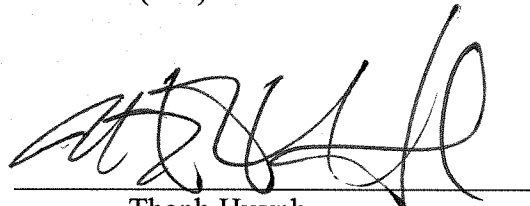
The term "seriously emotionally disturbed children or adolescents" is already clearly defined in Welfare and Institutions Code section 5600.3, subdivision (a)(2). The definition references the term "mental disorder" as defined in the DSM-5. Proposed regulation section 3701, subdivision (e)(1) references subdivision (e) which defines the terms "serious mental illness," "serious mental disorder," and "severe mental illness." Thus, the language in subdivision (e) and (e)(1) is inconsistent with Welfare and Institutions Code section 5600.3, subdivision (a)(2).

The proposed regulation section 3701, subdivision (e)(1), must be modified to be consistent with the statutory provision found in Welfare and Institutions Code section 5600.3, subdivision (a)(2).

CONCLUSION

For the reasons stated above, OAL disapproved this regulatory action proposed by the Commission. If you have any questions, please contact me at (916) 323-6824.

Date: July 24, 2015

A handwritten signature in black ink, appearing to read 'Thanh Huynh', is written over a horizontal line.

Thanh Huynh
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Toby Ewing
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