

**ENDORSED
FILED**
In the office of the Secretary of State
of the State of California
NOV 5 - 1986

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW
SACRAMENTO, CALIFORNIA

At 2:25 o'clock P. M.
MARCH FONG EU, Secretary of State

In re:) 1986 OAL Determination No. 9
Request for Regulatory)
Determination filed by) [Docket No. 86-005]
California Association)
of Rehabilitation) November 5, 1986
Facilities concerning)
the Department of)
Developmental Services') Determination Pursuant to
Rate Procedure Manual/1) Government Code Section
11347.5; Title 1, California
Administrative Code, Chapter
1, Article 2

Determination by:



LINDA HURDLE STOCKDALE BREWER, Director

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Rulemaking and Regulatory
Determinations Division

THE ISSUE PRESENTED/2

The California Association of Rehabilitation Facilities (Cal-ARF) has requested the Office of Administrative Law (OAL) to determine whether or not the Department of Developmental Services' (DDS or Department) Rate Procedure Manual (RPM), is a regulation as defined in Government Code section 11342(b) and is therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State in accordance with the California Administrative Procedure Act (APA)./3

THE DECISION/4, 5, 6

The Office of Administrative Law finds that the above noted manual (1) is subject to the requirements of the APA, (2) is a regulation as defined in the APA, and is therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State in accordance with the APA./7, 8

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OUTLINE

I. Agency, Authority, Applicability of APA; Background

A. Agency and Authority

1. The California State Department of Health was divided into ten departments. The Department of Developmental Services (DDS) is one of those ten departments.
2. DDS has been granted general rulemaking power by Welfare and Institutions Code section 4405 and Government Code section 11152; DDS has also been granted specific rulemaking authority in Welfare and Institutions Code section 4691.

B. Applicability of APA to Department's Quasi-Legislative Enactments

1. APA applies to all state agencies, departments, boards and commissions except those "in the judicial or legislative department"; Since DDS is in neither "department," APA rulemaking requirements generally apply to DDS.

C. Background

1. DDS issued the Rate Procedure Manual which was "developed to provide vendors, regional centers, and [DDS] staff with a set of operating policies and procedures relative to the rate setting process in the Developmental Services System. One of the primary objectives of the manual is to assure a clear understanding and consistent application of policies, procedures and methodologies for setting rates for vendored programs and individuals serving regional center clients."
2. California Association of Rehabilitation Facilities (Cal-ARF), the requestor, is "a nonprofit trade association whose members are providers of services . . . for the developmentally disabled of California," and who are subject to the above Rate Procedure Manual.

II. Discussion of Dispositive Issues

- A. Whether the issuance of the challenged manual constitutes an exercise of quasi-legislative power by the department.

Conclusion: The Rate Procedure Manual constitutes an exercise of quasi-legislative power by DDS.

1. The Rate Procedure Manual formulates a general policy oriented toward future decisions, thus meeting the judicial definition of quasi-legislative.
2. The Rate Procedure Manual, by its own terms, applies to all vendors, current and future, throughout the state.

- B. Whether the challenged manual is a "regulation" within the meaning of the key provision of Government Code section 11342.

Conclusion: The Rate Procedure Manual is a "regulation" within the meaning of the key provision of Government Code section 11342.

1. The Rate Procedure Manual meets both prongs of the statutory definition of "regulation": 1) it is a rule of general application; and 2) it implements the specific law enforced or administered by DDS.

- C. Whether the challenged manual falls within any legally established exception to APA requirements.

Conclusion: The Rate Procedure Manual does not fall within any legally established exception to APA requirements.

1. Rules concerning certain activities of state agencies--for example, "internal management"--are not subject to the procedural requirements of the APA. None of the recognized exceptions apply to the Rate Procedure Manual.

III. Conclusion

The Office of Administrative Law finds the DDS Rate Procedure Manual (1) is subject to the requirements of the APA, (2) is

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a regulation as defined in the APA, and is therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State in accordance with the APA.

I. AGENCY, AUTHORITY, APPLICABILITY OF APA; BACKGROUND

Agency

In July 1978, as part of an Executive Branch reorganization, the California State Department of Health was divided into ten departments. The Department of Developmental Services is one of those ten departments.

The California Supreme Court/⁹ described DDS' responsibilities as follows:

"Broadly, DDS, a state agency, 'has jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons' ([Welfare and Institutions Code section] 4416) [Par.] . . . DDS has the authority to promote uniformity and cost-effectiveness in the operations of the regional centers. . . ."

Regional centers are private nonprofit community agencies utilized by the state for the purpose of providing services to developmentally disabled persons./¹⁰ Regional centers "are charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'. . . ."/¹¹

The regional center has a role in rate setting procedures and performs many other key functions in the operation of the developmentally disabled service system./¹² The center provides technical assistance to providers of services in completing all necessary information for rate determination. After reviewing all the information for completeness, accuracy and justification, the regional center submits the information to DDS for a rate determination. The funding for services for the developmentally disabled is funneled by DDS through the 21 regional centers in California to the providers of the services.

Authority

The Department's general rulemaking power is established by Welfare and Institutions Code section 4405 and Government Code section 11152. Welfare and Institutions Code section 4405 provides in part that "the Director of Developmental Services [] shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code"

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Government Code section 11152 states in part: ". . . So far as consistent with law the head of each department may adopt such rules and regulations as are necessary to govern the activities of the department" (Emphasis added.)/13

For purposes of this Determination, Welfare and Institutions Code section 4691 provides DDS with specific rulemaking authority as it applies to community-based day programs for developmentally disabled persons./14 Section 4691(b) states in part:

"For the purpose of ensuring that regional centers may secure high quality services for persons with developmental disabilities, [DDS] shall adopt regulations establishing standards and a mechanism for setting equitable rates" [Emphasis added.]/15

Applicability of the APA to Department's Quasi-Legislative Enactments

Government Code section 11152 provides in part: "So far as consistent with law the head of each department may adopt such rules and regulations as are necessary to govern the activities of the department" (Emphasis added.) We read "So far as consistent with law" to indicate that regulations adopted under this section must be adopted in conformity with the law known as the APA. Therefore, DDS rules and regulations are subject to APA requirements.

In any event, the APA applies by its terms to all state agencies, except those "in the judicial or legislative department."/16 Since DDS is in neither the judicial nor the legislative "department," there can be no doubt that APA rulemaking requirements generally apply to DDS./17

Background

The following undisputed facts and circumstances have given rise to the present Determination.

Cal-ARF, the requestor, defines itself as

"a nonprofit trade association whose members are providers of services who represent 80% of the work activity programs and 60% of the day training and activity centers . . . for the developmentally disabled of California. Cal-ARF serves approximately 13,000 developmentally disabled clients on a daily basis. . . ."/18

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A document titled the Rate Procedure Manual, also known as the Rate Manual, was issued by DDS last year. The Rate Procedure Manual, dated February 1985, describes itself as having been

"developed to provide vendors, regional centers, and [DDS] staff with a set of operating policies and procedures relative to the rate setting process in the Developmental Services System. One of the primary objectives of this manual is to assure a clear understanding and consistent application of policies, procedures and methodologies for setting rates for vendored programs and individuals ["vendors" or "providers"] serving regional center clients." [Emphasis added.]/19

Responding to the above Rate Procedure Manual (the challenged rule in this case), Cal-ARF filed a Request for Determination with OAL on April 17, 1986.

II. DISCUSSION OF DISPOSITIVE ISSUES

There are three main issues before us:/20, 21

- (1) WHETHER THE ISSUANCE OF THE CHALLENGED RULE CONSTITUTES AN EXERCISE OF QUASI-LEGISLATIVE POWER BY THE DEPARTMENT.
- (2) WHETHER THE CHALLENGED RULE IS A REGULATION WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.
- (3) WHETHER THE CHALLENGED RULE FALLS WITHIN ANY LEGALLY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

FIRST, WE INQUIRE WHETHER THE CHALLENGED RULE IS A RESULT OF THE EXERCISE OF THE DEPARTMENT'S QUASI-LEGISLATIVE POWERS./22

The term "quasi-legislative" is not defined in the APA. In determining whether a rule is the result of the exercise of quasi-legislative power, we consider whether the issuance of the challenged rule constitutes an exercise of "quasi-legislative" power as that term has been judicially defined./23

According to the California Supreme Court, a quasi-legislative rule is one formulating a general policy oriented

toward future decisions, rather than the application of a rule to the peculiar facts of an individual case./24

The Rate Procedure Manual, by its own description, provides all vendors with a "set of operating policies and procedures relative to the rate setting process." (Emphasis added.) The manual does not restrict its rate setting process to any one particular vendor, but rather the process applies to all vendors, current and future, throughout the State of California.

The Rate Procedure Manual clearly meets the judicial definition of "quasi-legislative." Therefore, the issuance of the manual is a result of the exercise of DDS' quasi-legislative powers.

SECOND, WE INQUIRE WHETHER THE CHALLENGED RULE IS A "REGULATION" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.

In pertinent part, Government Code section 11342(b) defines "regulation" as:

". . . every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure" [Emphasis added.]

Government Code section 11347.5, authorizing OAL to determine whether or not agency rules are "regulations," provides in part:

"No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, . . . instruction [or] . . . standard of general application which is a regulation as defined in subdivision (b) of section 11342, unless the guideline, criterion, . . . instruction [or] . . . standard of general application . . . has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter. . . ." [Emphasis added.]

Applying the definition found in Government Code section 11342(b) involves a two-part inquiry:

- (a) is the informal rule either (i) a rule or order of general application or (ii) a modification or supplement to such a rule?
- (b) does the rule being enforced either (i) implement, interpret, or make specific the law enforced or administered by the Department or (ii) govern the Department's procedure?

The answer to both parts of this inquiry is "yes."

For purposes of analysis, we will focus on one particular provision of the Rate Procedure Manual, section 3000 ("Cost Statement Policies and Procedures"), as one example of the numerous regulatory provisions of the manual. Other regulatory provisions are discussed in note 8.

Section 3000 provides:

"All vendors that are required to submit cost data to establish a rate must submit the information in the cost statement form [standard cost statement] designated by the Department. Actual cost data is REQUIRED at the end of the initial provisional period and on an annual basis thereafter to substantiate continuation of a rate as well as to provide the information necessary for annual rate adjustments. In addition, revised cost statements are required when submitting requests for rate adjustments and appeals. ALL DATA SUBMITTED IS SUBJECT TO VERIFICATION BY AUDIT including all records of the business and/or parent organization." [Original capitalization; emphasis added.]

First, section 3000 is clearly a standard of general application. It applies on a statewide basis to "All vendors required to submit cost data to establish a rate." (Emphasis added.) Section 3000 sets forth a general rule which requires the submission of cost data on a form designated by DDS./25

Second, section 3000 implements the law enforced and administered by DDS. Under the Lanterman Developmental Disabilities Services Act of 1978/26, DDS is responsible for the "care, custody, and treatment of developmentally disabled persons."27 This Act mandates that DDS develop standards "to ensure high quality services"28 and "a mechanism for setting equitable rates"29 of payment for those services.

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The "standard cost statement" is the designated form that DDS requires to be submitted as part of the mechanism for setting an equitable rate./30

We conclude that section 3000 is a "regulation" within the meaning of the key provision of Government Code section 11342.

THIRD, WE INQUIRE WHETHER THE CHALLENGED RULE FALLS WITHIN ANY LEGALLY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

Rules concerning certain activities of state agencies--for instance, "internal management"--are not subject to the procedural requirements of the APA./31 We conclude that none of the recognized exceptions (set out in note 31) apply to the Rate Procedure Manual./32

III.CONCLUSION

For the reasons set forth above, OAL finds that the DDS Rate Procedure Manual (1) is subject to the requirements of the APA, (2) is a regulation as defined in the APA, and is therefore invalid and unenforceable unless adopted as a regulation and filed with the Secretary of State in accordance with the APA.

DC:dlw/101:D1-7

NOTES

1. In this proceeding, the California Association of Rehabilitation Facilities was represented by David Rosenberg, of Diepenbrock, Wulff, Plant & Hannegan, 300 Capitol Mall, 17th Floor, Sacramento, CA 95814. The Department of Developmental Services was represented by Harriet Hopgood.
2. The legal background of the regulatory determination process --including a detailed survey of governing case law--is discussed at length in note 2 to 1986 OAL Determination No. 1 (Board of Chiropractic Examiners, April 9, 1986, Docket No. 85-001), California Administrative Notice Register 86, No. 16-Z, April 18, 1986, pp. B-14--B-16; typewritten version, notes pp. 1-4. For an additional example of a case holding a "rule" invalid because (in part) it was not adopted pursuant to the APA, see National Elevator Services, Inc. v. Department of Industrial Relations (1982) 136 Cal.App.3d 131, 186 Cal.Rptr. 165 (internal legal memorandum narrowly interpreting ambiguous statute). For a recent example of a case involving compliance with the APA, see Association for Retarded Citizens--California v. Department of Developmental Services (1985) 38 Cal.3d 384, 396, n. 5, 211 Cal.Rptr. 758, 764, n. 5 (avoiding issue of whether DDS directive was an underground regulation).
3. We refer to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Office of Administrative Law") of Division 3 of Title 2 of the Government Code. Sections 11340 through 11356, Chapters 4 and 5, also part of the APA, concern administrative adjudication rather than rulemaking.
4. As we have indicated elsewhere, an OAL determination concerning a challenged "informal rule" is entitled to great weight in both judicial and adjudicatory administrative proceedings. See 1986 OAL Determination No. 3 (Board of Equalization, May 28, 1986, Docket No. 85-004), California Administrative Notice Register 86, No. 24-Z, June 13, 1986, p. B-22; typewritten version, pp. 7-8; Culligan Water Conditioning of Bellflower, Inc. v. State Board of Equalization (1976) 17 Cal.3d 86, 130 Cal.Rptr. 321. The Legislature's special concern that OAL determinations be given appropriate weight in other proceedings is evidenced by the directive contained in Government Code section 11347.5: "The office's determination shall be published in the California Administrative Notice Register and be made available to . . . the courts." (Emphasis added.) Implementing this directive, this and other determinations are presently being mailed to the presiding judges of all state and federal courts in California.

5. Five timely comments were received and considered. Two separate comments were received from Judy McDonald, Cal-ARF Advocate; two separate comments were received from Barrie L. Dyer, Executive Director of Work Training Center for the Handicapped, Inc.; and one comment was received from Arnold R. Cole, President of First Step Independent Living, Inc. All supported the Request for Determination.
6. The Department elected not to submit a response to the Request for Determination. We encourage affected departments to submit responses in order to obtain full presentation of contrasting viewpoints.
7. We read the requestor's Prayer in the Request for Determination as asking that the Rate Procedure Manual (1) be found a "regulation" and (2) subject to the requirements of the APA and therefore invalid and unenforceable unless adopted pursuant to the APA. We interpret the language of the Prayer requesting a finding of "null and void and of no force and effect" as equivalent to requesting a finding of "invalid and unenforceable" and nothing more.
8. The Rate Procedure Manual contains numerous regulatory provisions--too numerous to be listed here. Each of the regulatory provisions meets both prongs of the statutory definition of "regulation."

Brief mention will be made of five particular provisions as examples of the content of the Rate Procedure Manual.

First, section 2500.012 requires all vendors to "retain all books and records pertaining to any cost statement submitted for rate determination at least three (3) years from the date of submission" for audit purposes.

Welfare and Institutions Code section 4780.5 makes DDS "responsible for the processing, audit, and payment of funds available to regional centers." Section 4648.1 of the same code gives DDS and regional centers the following authority: 1) to monitor services, 2) conduct fiscal reviews and audits of records, and 3) have access to facilities, etc.

The above two statutes make no reference to the requirement that the vendors keep records for three years for audit purposes. Hence, section 2500.012 informally supplements the statute and therefore is an underground regulation.

Second, section 2500.011 states "Title 17, Part II, Chapter 4, Subchapter 4 in the [CAC] specifies the audit procedures used by the Department."

We could not locate the above provision or any comparable provision in DDS regulations specifying audit procedures to be used by DDS.

Section 2500.011 states that "the vendor's signature on the standard cost statement authorizes the Department to audit records of the vendor for verification of the cost statement information. This signed statement also requires repayment of any overpayment made to the vendor"

The above "signature" provision is provided for neither by statute nor by DDS regulation. Therefore, section 2500.011 informally supplements the statute and is an underground regulation.

Third, section 2500.040 requires "Repayment by the vendor of the overpayment . . . must be established in writing with the vendoring regional center. A copy of the agreement must be sent to DDS's Audit Branch."

Title 17, CAC, section 50605 governs the recovery of overpayment from the vendor. There is no mention of the "writing" requirement of section 2500.040. Section 2500.040 supplements DDS regulations (tit. 17, CAC, sec. 50605) and therefore is an underground regulation.

Fourth, Section 1600.010 states in part that:

"The vendor is responsible for submitting accurate and complete cost information and program narrative in the format described in this Manual and within the required time frames. . . . All [information] changes must be made in conjunction with the vendoring regional center and its budgetary constraints."

This section informally supplements the statute and is therefore an underground regulation.

Fifth, sections 2100-2100.030 state and describe the three basic methods used by DDS to determine the rate of payment to be paid to providers of services: Schedule of Maximum Allowances, Fee Schedules, and Cost Statements.

Sections 2100-2100.030 informally supplement the statute and are therefore underground regulations.

9. Association for Retarded Citizens--California v. Department of Developmental Services (1985) 38 Cal.3d 384, 389, 211 Cal.Rptr. 758, 760.

10. See Welfare and Institutions Code section 4620.
11. See note 9, supra.
12. See Welfare and Institutions Code, division 4.5, chapter 5, article 2. The functions include outreach, client eligibility determination, client need assessment, the development of individual program plans for clients, and the purchase of needed services.
13. The Department has previously cited Government Code section 11152 as its rulemaking authority for adopting regulations (see title 17, CAC, sections 50500-50650; 50651-50667). Other state agencies have cited section 11152 as rulemaking authority: 1) State Lands Commission (title 2, CAC, sections 2125-2142), and 2) Office of Statewide Health Planning and Development (title 22, CAC, sections 91401-91405).

We also infer from Government Code section 11152.5 that the Legislature views section 11152 as a general grant of rule-making power.

14. "Developmental disability" is defined in section 4512(a) of the Welfare and Institutions Code as:

"a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. . . . [T]his term shall include mental retardation, cerebral palsy, epilepsy, and autism[], but shall not include other handicapping conditions that are solely physical in nature. . . ."

15. Government Code section 11342.2 provides that rulemaking power may also be impliedly granted by a statute. Section 11342.2 states:

"Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." [Emphasis added.]

See, title 1, CAC, section 14(a)(2) (OAL's definition of implied authority.)

Thus, we conclude that DDS has not only been granted general and specific rulemaking power as noted in Part I, but also has been impliedly granted pertinent rulemaking power by the Lanterman Development Disabilities Services Act of 1978.

16. Government Code section 11342(a). See Government Code sections 11346; 11343. See also 27 Ops.Cal.Atty.Gen. 56, 59 (1956).
17. See Poschman v. Dumke (1973) 31 Cal.App.3d 932, 943, 107 Cal.Rptr. 596, 609.
18. Request for Determination, pp. 1-2.
19. Department of Developmental Services, Rate Procedure Manual (February 1985), section 1100.
20. See Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 324 (points 1 and 2); Winzler & Kelly v. Department of Industrial Relations (1981) 121 Cal.App.3d 120, 174 Cal.Rptr. 744 (points 1, 2 and 3); National Elevator Services, Inc. v. Department of Industrial Relations (1982) 136 Cal.App.3d 131, 144, 186 Cal.Rptr. 165, 175 (point 1); cases cited in note 2 of 1986 OAL Determination No. 1. A complete reference to this earlier Determination may be found in note 2 to today's Determination.
21. In part I of the text, we concluded that DDS has pertinent rulemaking power, both express and implied.
22. See Government Code section 11346, which provides:

"It is the purpose of this article [Article 5 of Chapter 3.5] to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in section 11346.1, the provisions of this article are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this article repeals or diminishes additional requirements imposed by any such statute. The provisions of this article shall not be superseded or modified by any subsequent legislation except to the extent that such legislation shall do so expressly." [Emphasis added.]
23. We recognize that the question of whether or not a challenged rule is a "regulation" is also pertinent to the question of whether or not the challenged rule is "quasi-legislative" in nature. Armistead v. State Personnel Board (1978) 22 Cal.3d 200, 202-204, 149 Cal.Rptr. 1, 2-3.

24. Pacific Legal Foundation v. California Coastal Commission (1982) 33 Cal.3d 158, 168, 188 Cal.Rptr. 104, 111; as cited in 1986 OAL Determination No. 2 (Coastal Commission, April 30, 1986, Docket No. 85-003), California Administrative Notice Register 86, No. 20-Z, May 16, 1986, p. B-34 and n. 14; typewritten version, p. 7 and n. 14.
25. That the information required by the form will ultimately be used in order to establish payment schedules for the vendor, before the vendor may be paid for his or her services, is not relevant to this inquiry.
26. Welfare and Institutions Code sections 4500-4846.
27. Id., section 4416.
28. Id., section 4691(a).
29. Id., section 4691(b).
30. We note that under Government Code section 11342(b) the definition of "regulation" does not include

"any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued." [Emphasis added.]

However, the standard cost statement required by DDS does not fall within this exemption. DDS is implementing the law under which the form is issued, i.e., by requiring the form as part of the "mechanism" for establishing a rate, and therefore, the form must be adopted pursuant to APA requirements. See Stoneham v. Rushen (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130 (forms designed to implement the law must be promulgated in compliance with the APA.)

31. The following provisions of law may also permit agencies to avoid the APA's requirements under some circumstances, but do not apply to the case at hand:
 - a. Rules relating only to the internal management of the state agency. Government Code section 11342(b).
 - b. Forms prescribed by a state agency or any instructions relating to the use of the form, except where a regulation is required to implement the law under which the

form is issued. Government Code section 11342(b). See note 30, supra.

- c. Rules that "establish[] or fix[] rates, prices or tariffs." Government Code section 11343(a)(1).
 - d. Rules directed to a specifically named person or group of persons which do not apply generally throughout the state. Government Code section 11343(a)(3).
 - e. Contractual provisions previously agreed to by the complaining party. City of San Joaquin v. State Board of Equalization (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest); see Roth v. Department of Veteran Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552 (dictum); Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 719, 199 Cal.Rptr. 546, 553 (same); but see Government Code section 11346 (quoted in full in note 22) (no provision for non-statutory exceptions to APA requirements); see International Association of Fire Fighters v. City of San Leandro (1986) 181 Cal.App.3d 179, 182, 226 Cal.Rptr. 238, 240 (contracting party not estopped from challenging legality of "void and unenforceable" contract provision to which party had previously agreed); see Perdue v. Crocker National Bank (1985) 38 Cal.3d 807, 821, 171 Cal.Rptr. 604, 612 ("contract of adhesion" will be denied enforcement if deemed unduly oppressive or unconscionable).
32. One exception may arguably be applicable in this case. It is the APA exception for regulations that establish or fix rates, prices or tariffs--Government Code section 11343(a)(1).

However, we do not reach this issue since the Rate Procedure Manual only establishes policies, procedures, standards and methodologies used in determining rates--which policies, etc., must be adopted as "regulations" pursuant to Welfare and Institutions Code section 4691(b). See also Winzler & Kelly v. Department of Industrial Relations (1981) 121 Cal.App.3d 120, 129, 174 Cal.Rptr. 744, 748 whose holding concerning integral parts of the rate setting process is overridden by Welfare and Institutions Code section 4691(b).

