

**State of California  
Office of Administrative Law**

**In re:  
Department of Mental Health**

**Regulatory Action: Title 9  
California Code of Regulations**

**Adopt section: 3855**

**DECISION OF PARTIAL  
DISAPPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL File No. 2009-0923-01 S**

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**SUMMARY OF REGULATORY ACTION**

The Department of Mental Health (Department) proposed to adopt new sections 3200.125, 3200.215, 3200.217, 3200.253, 3200.254, 3200.255, 3200.256, 3200.275, 3200.276, 3200.320, 3200.325, 3550, 3810, 3820, 3830, 3840, 3841, 3842, 3843, 3844, 3844.1, 3845, 3850, 3851, 3851.1, 3852, 3853, 3854, 3854.1, 3854.2, 3855, and 3856, and to amend existing sections 3310 and 3510 in title 9 of the California Code of Regulations concerning the Workforce Education and Training component of the Mental Health Services Act.

**DECISION**

New sections 3200.125, 3200.215, 3200.217, 3200.253, 3200.254, 3200.255, 3200.256, 3200.275, 3200.276, 3200.320, 3200.325, 3550, 3810, 3820, 3830, 3840, 3841, 3842, 3843, 3844, 3844.1, 3845, 3850, 3851, 3851.1, 3852, 3853, 3854, 3854.1, 3854.2, and 3856 and the amendments to sections 3310 and 3510 were approved by the Office of Administrative Law (OAL) on November 4, 2009. The proposed adoption of new section 3855 was disapproved on November 4, 2009 for failure to comply with the clarity standard and the requirements for incorporation by reference, and for failure to make a required form available to the public for comment during the rulemaking proceeding.

**DISCUSSION**

The adoption of regulations by the Department must satisfy requirements established by the part of the California Administrative Procedure Act (APA) that governs rulemaking by a state agency. Any rule or regulation adopted 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 rule or regulation subject to the APA may become effective, the rule or 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 rule or 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 rules and regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on rules and regulations before they become effective.

The Legislature in establishing OAL, found that regulations, once adopted, were frequently unclear and confusing to the persons who must comply with them. (Gov. Code, sec. 11340(b).) For this reason, OAL is mandated to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the “clarity” standard. (Gov. Code, sec. 11349.1(a)(3).) “Clarity” as defined by Government Code section 11349(c) means “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

New section 3855 as proposed by this rulemaking would have provided:

For each year in which a participant wishes to participate in the Mental Health Loan Assumption Program, prior to the expiration of the loan assumption agreement he/she shall submit a **loan assumption program renewal application**. (Emphasis added.)

Neither the loan assumption program renewal application, nor the content of the application, is further described in section 3855 or any other regulatory provision. A person directly affected by section 3855 would not easily understand from section 3855 what to submit in order to continue to participate in the Mental Health Loan Assumption Program beyond the first year. Moreover, if a particular form is intended and that form contains regulatory content that is not provided for in statute or other applicable law, the requirements for incorporation by reference would apply.

OAL adopted section 20 of title 1 of the California Code of Regulations to assure that material incorporated by reference in regulations conforms to the requirements of the APA. Subsection (b) of this section provides in pertinent part:

Material proposed for “incorporation by reference” shall be **reviewed in accordance with procedures and standards for a regulation** published in the California Code of Regulations.... (Emphasis added.)

In order to be reviewed by OAL, a document incorporated by reference **must be included** along with the regulation text submitted to OAL with the rulemaking file.

Subsection (c) of section 20 provides other requirements for a state agency that wishes to incorporate a document as part of a regulation by reference to that document. Subsection (c) of section 20 provides:

An agency may “incorporate by reference” only if the following conditions are met:  
...

- (4) The regulation text states that the document is incorporated by reference and identifies the document by **title and date of publication or issuance**. Where an authorizing California statute or other applicable law requires the adoption or enforcement of the incorporated provisions of the document as well as any subsequent amendments thereto, no specific date is required.... (Emphasis added.)

The loan assumption program renewal application referred to in proposed section 3855 was not included in the rulemaking file, nor was it identified by title and date in the regulation text, nor was it made available to the public for comment during the public availability period. If the application is a specific form with regulatory content that is not specified in statute or other applicable law, it has not properly been incorporated by reference as required by section 20 of title 1 of the California Code of Regulations, and must be added to the rulemaking record for review by OAL and made available to the public for comment for 15 days pursuant to sections 11346.8(d) and 11347.1 of the Government Code.

**CONCLUSION**

For the above stated reasons, proposed section 3855 of title 9 of the California Code of Regulations was disapproved.

Date: November 6, 2009

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