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State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

**SECOND NOTICE OF ADDITIONAL CHANGES TO THE TEXT OF PROPOSED
REGULATIONS AND ADDITION OF DOCUMENTATION TO THE RULEMAKING
FILE REGARDING**

**DHCS-14-026 – Narcotic Treatment Program
(California Code of Regulations, Title 9)**

Pursuant to Government Code Section 11346.8, notice is hereby given that the Department of Health Care Services (Department) is making additional changes to the text of the proposed subject regulations. A copy of the regulation text with the additional changes clearly indicated is attached.

Pursuant to Government Code Section 11347.1, notice is hereby given that the Department is adding supporting documentation to the rulemaking file for the proposed subject regulations.

The Department is making the additional changes and the added documentation available for review during a 15-day public comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department. *Only the additional changes to the proposed regulation text, as described in this notice, are subject to comment.*

Please label any comments as pertaining to DHCS-14-026 – Narcotic Treatment Program and submit using any of the following methods:

Mail Delivery: Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX: (916) 440-5748

Email: regulations@dhcs.ca.gov

The Department will accept written comments from January 15, 2020 through January 30, 2020. Any written comments, regardless of the method of transmittal must be received by the Office of Regulations by 5:00 pm on January 30, 2020, for consideration and response by the Department in the Final Statement of Reasons.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

BACKGROUND

On August 13, 2019, the Department submitted the DHCS-14-026 – Narcotic Treatment Program regulatory proposal (Office of Administrative Law (OAL) Matter Number: 2019-08-13-02) to the OAL for review. On September 25, 2019, the OAL disapproved the regulation package after determining that Sections 10056 and 10056.5 failed to comply with the “clarity” standard of Government Code section 11349.1. The disapproval specifically stated that “proposed subdivision (c) of section 10056 and subdivision (b) of section 10056.5 do not establish clear license or application fees, respectively, as required by the underlying statutes. Even though the department included the statutory language regarding types of costs allowed to be calculated in the regulation text, the proposed regulations are vague formulas subject to multiple reasonable interpretations. Because a directly affected person reading the ambiguous regulations would not know what the actual fees being charged are, the proposed regulations are unclear and violate subdivision (a)(1) of section 16 of title 1 of the CCR.”

In an effort to address this clarity issue identified by the OAL, the Department is proposing additional changes to the regulation text. These changes are necessary to meet the clarity standard of the Administrative Procedure Act (APA) as specified in Government Code section 11349.1 and further defined in section 16 of title 1 of the CCR. These changes and the explanations for these changes are discussed below.

METHOD OF INDICATING CHANGES

The Department is proposing additional changes to Sections 10056 and 10056.5. Specifically, the Department is proposing to maintain the existing language (revert back to language currently in effect) for Section 10056 with minor modifications. Additionally, the Department is no longer proposing the adoption of Section 10056.5.

The Department is using the following method to indicate the proposed changes to Sections 10056 and 10056.5:

- Proposed reversion of Section 10056 back to the existing language is represented in bold italic text (***bold italic text***)
- Proposed deletions to the existing language of Section 10056 is represented in bold, italic text and double strikeout (~~***bold italic text and double strikeout***~~)
- Proposed additions to the existing language of Section 10056 is represented in bold text and double underline (**bold text and double underline**)

- Proposed deletion of originally proposed language under Sections 10056 and 10056.5 is represented in bold text with single underline and double strikeout (~~**bold text with single underline and double strikeout**~~)

EXPLANATION OF ADDITIONAL CHANGES

Section 10056

The Department proposes to revert back to the existing regulation language that is currently in effect. The reversion back to existing language is necessary to address the clarity issue. Reverting back to the existing language of Section 10056 addresses the clarity issue by maintaining the current fee structure. This will also enable the Department to timely move forward and implement other provisions of this regulatory proposal.

In addition to reverting back to the existing title of Section 10056 “License Fees,” the Department proposes to revert back to the existing regulation language for the following subsections of Section 10056:

- Subsection (a), (a)(2) and (a)(2)(A)
- Subsection (b)
- Subsection (c)
- Subsection (f), (f)(1), (f)(2) and (f)(3)
- Subsection (g)
- Subsection (h), (h)(3), (h)(3)(B), (h)(3)(C) and (h)(3)(E)

For the other subsections under Section 10056, the Department proposes to revert back to the existing regulation language and proposes minor amendments, as specified below. These amendments are necessary to ensure consistency of the regulation language throughout the regulatory proposal. Furthermore, the amendments create a more seamless transition into the existing regulation language.

Proposed Amendments

Subsection (a)(1): This subsection is amended to remove the language “licensure of components such as medication units” and replace with language that allows for the addition of a medication unit or an office-based narcotic treatment network (OBNTN) to the primary NTP’s existing license. This amendment is necessary since the Department does not issue a separate license for medication units and OBNTNs. This amendment is also consistent with Sections 10020 and 10021 that specify the requirements to lawfully operate a medication unit or OBNTN, respectively.

Subsection (a)(2)(B): This subsection is amended to change the phrase “authorized patient capacity” to “licensed patient capacity.” This amendment is necessary for consistency throughout the regulations, including Section 10045 (titled) “Licensed Patient Capacity.”

Subsection (a)(3): This subsection is amended to add a cross-reference to Section 10037. This amendment is necessary to clarify that a county shall pay a relocation fee when relocating within a county or relocating outside of the current county indicated on its license, as specified in Sections 10035 and 10037, respectively. Accordingly, the word “section” is amended to “Sections” for correct grammar.

Originally proposed subsections (a) – (e): The originally proposed subsections beginning with subsection (a) that reads “An application fee shall...” through subsection (e) ending with “...paid by check or money order made payable to the Department” are deleted. Following OAL’s disapproval of subsection (c) for failure to meet the clarity standard of the APA, the Department re-evaluated these proposed subsections. The Department determined that in order to meet the clarity standard, the best course of action would be to revert back to the existing language of Section 10056 and maintain the current fee structure. Therefore, subsections (a) – (e) as originally proposed, are no longer necessary. However, minor modifications to the existing language of Section 10056 are necessary to ensure consistency with other proposed changes throughout the regulations, which are discussed herein.

Subsection (d): This subsection is amended to change the date by which the Department calculates the annual license fee for the future fiscal year from April 30 to March 1st. This amendment is necessary to coincide with the revised submission date for an annual license renewal, which is now March 31st, as specified in Section 10055. Accordingly, the March 1st date is necessary to give programs adequate notice of the upcoming annual license fee, prior to submission of their annual license renewal.

This subsection is also amended to specify that if all conditions in Section 10055 are met, the program license shall be renewed effective July 1st. A cross-reference to subsection (h) regarding the payment of the license fee is also included. These amendments are necessary to clarify the license renewal process as it relates to the payment of the annual license fee.

Subsection (e): This subsection is amended to change the date by which the Department provides written notice to programs of the license fees for the future fiscal year from April 30 to March 1st. This amendment is necessary to coincide with the revised submission date for an annual license renewal, which is now March 31st, as specified in Section 10055. Accordingly, the March 1 date is necessary to give programs adequate notice of the upcoming annual license fee, prior to submission of their annual license renewal.

Subsection (h)(1) and (2): This subsection is amended to replace the phrase “he/she” with “the licensee.” This amendment is necessary for consistency throughout the regulations, which already references “the licensee” and eliminates the unnecessary use of gender-based pronouns.

Subsection (h)(3)(A): This subsection is amended to replace the phrase “that he/she has failed” with “of the failure.” This amendment is necessary for consistency throughout the regulations and eliminates the unnecessary use of gender-based pronouns.

Subsection (h)(3)(D): This subsection is amended to replace the phrase “his/her” with “the.” This amendment is necessary for consistency throughout the regulations and eliminates the unnecessary use of gender-based pronouns.

Subsection (h)(3)(F): This subsection is amended to replace the phrase “that he/she may” with “of the right to.” This amendment is necessary for consistency throughout the regulations and eliminates the unnecessary use of gender-based pronouns.

Subsection (h)(4): This subsection is amended to replace the phrase “his/her” with “the.” This amendment is necessary for consistency throughout the regulations and eliminates the unnecessary use of gender-based pronouns.

Proposed Addition

Subsection (i): This subsection, which was originally proposed as subsection (j) of Section 10056.5, is added to section 10056 to specify that a licensee is entitled to a refund of the license fee in the event of closure due to automatic termination, license revocation or voluntary closure. Providing a refund is consistent with the purpose of the license fee, which is to cover the Department’s costs related to licensing activities. Once a program closes there are no additional licensing expenditures or costs associated with the closed program. Effective closure date is defined to provide a consistent description of this phrase as it is used in this subsection. It also clearly describes the date upon which the program is deemed closed and the date upon which the calculation of any remaining refund is determined. The date of June 30th is used to calculate the remaining funds due because all programs are licensed through June 30th pursuant to Health and Safety Code section 11839.7(a)(2) and have been previously invoiced through that date.

Section 10056.5

This section as originally proposed is being deleted from this regulatory proposal. Following, OAL’s disapproval of subsection (b) for failure to meet the clarity standard of the APA, the Department re-evaluated this proposed section. The Department determined that in order to meet the clarity standard, the best course of action would be to eliminate this proposed section and maintain the current fee structure specified in Section 10056. However, subsection (j) as originally proposed is relocated under Section 10056(i), as described above.

DOCUMENTATION ADDED TO THE RULEMAKING FILE

1. Office of Administrative Law Decision of Disapproval of Regulatory Action, OAL Matter Number: 2019-0813-02

CONTACT PERSONS

Inquiries regarding the proposed changes to the regulations and/or documentation added to the rulemaking file described in this notice may be directed to Crystal Sanchez, Licensing and Certification Division at (916) 345-7482.

All other inquiries concerning the regulatory action described in this notice may be directed to Kenneisha Moore of the Office of Regulations, at (916) 345-8403, or to the designated backup contact person, Jasmin Delacruz, at (916) 440-7695.

ASSISTIVE SERVICES

The Department can also provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, or computer disk. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email – regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.

AVAILABILITY OF MATERIAL REGARDING THE REGULATORY ACTION

Materials regarding the regulatory action described in this notice (including this public notice and the additional changes to the text of the proposed regulations) are posted to the Department's Internet site at:

<https://www.dhcs.ca.gov/formsandpubs/laws/regs/Pages/14-026.aspx>.