Section 3200.022

Comment #17A: The commenter states: "I urge you to spend MHSA funds on building licensed board-and-cares for the seriously mentally ill. I oppose amending Section 3200.022 to exclude "supportive housing" as a use of MHSA Capital Facilities Funds… There are fewer board and cares now than ever. Those that exist are pretty awful…It is the people with serious mental illness that these funds should be spent on. There is no place for them to live, let alone with some dignity."

Response #17A: The Department did not amend this section in response to this comment. The commenter opposes the exclusion of supportive housing (Section 3200.022 excludes "housing projects") as a use of Capital Facilities and Technological Needs (CFTN) funds as this would also entail the exclusion of licensed board-and-cares. "Housing projects" is excluded from the definition of CFTN because Counties can use Community Services and Supports (CSS) funds to provide housing assistance, which includes, "Rental assistance [and] [c]apital funding to build or rehabilitate housing for homeless, mentally ill persons or mentally ill persons who are at risk of being homeless." (Welfare and Institutions (W&I) Code sections 5892(a)(5) & 5892.5(a)(2)) In addition, board and care facilities are typically privately owned and are therefore not eligible to be funded with CFTN funds because facilities purchased or built with CFTN funds are county-owned and operated.

Comment #18A: The commenter states: "I want MHSA funds to be spent on building licensed board-and-cares for the seriously mentally ill. I oppose amending Section 3200.022 to exclude "supportive housing" as a use of MHSA Capital Facilities Funds. We don't need more "office space," we need beds and roofs for our kids…First order of business should be housing, and licensed Board and Care is what they need."

Response #18A: The Department did not amend this section in response to this comment. Comment #18A is similar to Comment #17A. Please see Response #17A.

Comment #19A: The commenter states: "I am pleading that MHSA funds can be spent on building more licensed board and cares for the seriously mentally ill and that MHSA funds also provide additional funding to the existing Board and Cares, which may otherwise close in the near future… I oppose amending Section 3200.022 to exclude "supportive housing" as a use of the MHSA Capital Facilities Funds… And it is nearly impossible to help the seriously mentally ill if they do not have a place to live and are not traceable to provide services to…They are entitled to live safely with dignity in a supportive and supervised environment that is appropriate for their individual needs and capabilities." Commenter submitted a report titled, "A Call to Action: The Precarious State of the Board of Care System Serving Residents Living with Mental Illness in Los

Angeles County," prepared by the Los Angeles County Mental Health Commission, Ad-hoc Committee on LA County's Board and Care System.

Response #19A: The Department did not amend this section in response to this comment. Comment #19A is similar to Comment #17A. Please see Response #17A.

Comment #20A: The commenter states: "I want MHSA money to be spent on helping the SERIOUSLY mentally ill, the sickest thousand or so in each county, and I don't see a better way to help them than building 1) hospital beds and 2) licensed board-and-cares reserved for the seriously mentally ill… I oppose the language proposed for section 3200.022 that "supportive housing" as a use of MHSA Capital Facilities Funds should be excluded...We need supportive housing badly… No Place Like Home cannot build board-and-cares; that fund only build housing where the seriously mentally ill are a minority."

Response #20A: The Department did not amend this section in response to this comment. Comment #20A is similar to Comment #17A. Please see Response #17A.

Comment #21A: The commenter states: "I am opposed to amending Section 3200.022 to exclude "supportive housing" as a use of MHSA Capital Facilities Funds. I would like Capital Facilities and Technological Needs (CFTN) funds to be documented in the regulations to be able to be used for licensed facilities, which include licensed board and cares…Additionally, the California Housing Finance Authority (CalHFA) and No Place Like Home (NPLH) funds cannot be used for licensed facilities."

Response #21A: The Department did not amend this section in response to this comment. Comment #21A is similar to Comment #17A. Please see Response #17A.

Comment #29A: The commenter states: "Alameda County supports the use of Capital Facilities and Technological Needs (CFTN) funds for the acquisition, development, renovation of licensed residential care facilities and suggests corresponding clarifying amendments to Section 3002.022 of the proposed regulations...Furthermore, licensed residential care facilities are excluded from consideration for funding by the California Housing Finance Authority (CalHFA) and No Place Like Home (NPLH). Over the past five years, there have been significant declines in the number of licensed board and care facilities, residential hotels, and room and board facilities frequently utilized by individuals living on fixed incomes…These circumstances necessitate the CFTN funds be allowed for the acquisition and development or renovation of licensed residential care facilities. Doing so not only adds to our housing stock for individuals with severe mental illness, it also enables counties to take full advantage of local opportunities to support those individuals and their families."

Alameda County requests a revision of the proposed new text in section 3200.022 to state: "The definition of Capital Facilities in this section is consistent with the dictionary definitions of "capital" as property and of "facility" as a building; and the apparent intent of Welfare & Institutions (W&I) Code sections 5892(b)(l) and 5847(b)(5)—to authorize counties to use the funds to provide office space for the administration and delivery of MHSA funded services, *including licensed facilities such as non-time limited licensed residential facilities, adult residential facilities and/or residential care facilities for the elderly."*

Response #29A: The Department did not amend this section in response to this comment. W&I Code section 5892(a)(5) allows a County to use CSS funds for "services that may include housing assistance." Comment #29A is similar to Comment #17A. Please see Response #17A.

Section 3200.260

Comment #30B: The commenter states: "With respect to adopting proposed section 3200.260, Small County, 3420.50, Reversion for Counties with a Population of 200,000 or More: CSS Account, PEI Account, and INN Account, and 3420.55, Reversion for Counties with a Population of 200,000 or More: CSS Account, PEI Account, and INN Account, Yolo County requests that any references to a population size of 200,000 be changed to 250,000. In Yolo County's experience, statutory references to county population sizes are generally at 250,000. For example, Vehicle Code Section 9250.14(c) differentiates counties based on population size over and under 250,000. The 58 counties in California range in population size of just over one thousand to over ten million, with 26 counties' populations exceeding 250,000. Counties with a population size of less than 250,000 have consistently been considered small. DHCS should be consistent with other state agencies and existing regulations."

Response #30B: The Department did not amend this section in response to this comment. As written, the reference to "a total population of less than 200,000" is consistent with W&I Code sections 5892(h)(3) and (4) where "a county with a population of less than 200,000" is established, a description from which the Department has no authority nor discretion to vary.

Section 3420(b)

Comment #31A: The commenter suggests that "The proposed regulation § 3420 should be amended to accurately reflect the requirements set forth in WIC § 5892(a)(3)-(6) that counties spend a minimum of 20% on the Prevention and Early Intervention (PEI) component."

Response #31A: The Department did not amend this section in response to this comment. The commenter interprets W&I Code sections 5892(a)(3)-(6) to require a County to allocate a minimum of 20% of the funds the State Controller's Office (SCO)

deposits into the County's Local Mental Health Services Fund (MHSF) each year to the County's PEI Account (component). W&I Code sections 5892(a)(3)-(6) provides as follows:

> (3) "Twenty percent of funds distributed to the counties pursuant to subdivision (c) of section 5891 shall be used for prevention and early intervention programs in accordance with Part 3.6 (commencing with section 5840).
>
> (4) The expenditure for prevention and early intervention may be increased in any county in which the department determines that the increase will decrease the need and cost for additional services to persons with severe mental illness in that county by an amount at least commensurate with the proposed increase.
>
> (5) The balance of funds shall be distributed to county mental health programs for services to persons with severe mental illnesses pursuant to Part 4 (commencing with section 5850) for the children's system of care and Part 3 (commencing with section 5800) for the adult and older adult system of care. These services may include housing assistance, as defined in section 5892.5, to the target population specified in section 5600.3.
>
> (6) Five percent of the total funding for each county mental health program for Part 3 (commencing with section 5800, Part 3.6 (commencing with section 5840), and Part 4 (commencing with section 5850), shall be utilized for innovative programs in accordance with sections 5830, 5847, and 5848.[1]"

The commenter construes W&I Code section 5892(a)(3) in isolation. However, statutory provisions are to be read in context. "[T]he various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole" (Moyer v Workmen's Comp. Appeals Bd. (1973) 10 Cal. 3d 222, 230).

The paragraphs in W&I Code section 5892(a) are best harmonized when construed to set forth a sequential formula for allocation of MHSF monies by Counties. W&I Code section 5892(a)(3) requires a County to allocate 20 percent of the total funds distributed to the County's Local MHSF from the SCO to PEI programs. W&I Code section 5892(a)(4) authorizes a County to increase its allocation to PEI programs above 20 percent if the Department determines that the increased funding for PEI programs would decrease the need and cost for CSS programs. Accordingly, the 20 percent allocation to PEI specified in W&I Code section 5892(a)(3) is only an initial allocation. W&I Code section 5892(a)(5) requires the County to allocate its remaining balance of funds, after its PEI allocation, to CSS programs. However, this is also only an initial allocation.

[1] Note that Parts 3 and 4 are the Adult and Older Adult Mental Health System of Care Act and the Children's Mental Health Services Act, respectively, which are part of CSS. Part 3.6 is PEI.

W&I Code section 5892(a)(6) requires a County to allocate five percent of the total funding for PEI programs and five percent of the total funding for CSS programs to Innovation (INN) programs. Accordingly, a County must contribute five percent of the County's funds allocated to PEI and five percent of the County's funds allocated to CSS to support INN programs. Permitting a County to allocate five percent of the total funding from only one Account would not give effect to subdivision (a), and in particular, would not effectuate the requirements of W&I Code section 5892(a)(6).[2]

Section 3420(b) specifies that a County is to allocate five percent of the total funding to INN, 19 percent to PEI, and 76 percent to CSS. After a County contributes 5 percent of its annual funding towards INN programs, the County's allocations for PEI and CSS programs are reduced to 19 percent and 76 percent, respectively, of the total MHSA funds distributed to the County from the SCO.[3] This allocation methodology is consistent with W&I Code section 5892(a) and is simpler to administer.

The examples in the tables below compare allocations that use a sequential method that follows the allocation order specified in W&I Code section 5892(a) and the method in proposed section 3420(b). The tables below demonstrate that the percentage allocations and final funding amounts for INN, PEI, and CSS are equivalent under the two methods.

	Sequential Method
Step 1: Allocate total Local MHSF funds distributed between PEI and CSS pursuant to W&I Code sections` 5892(a)(3) and 5892(a)(5)	Total allocation: $100 Initial PEI allocation: $100 x 20% = $20 Initial CSS allocation: $100-$20 = $80 (Balance of funds)

[2] If subdivision (a) is not construed sequentially, W&I Code section 5892(a)(6) would conflict with paragraph (a)(3) because it requires PEI funds be used for INN programs. ["Five percent of the total funding for **e**ach county mental health program for … Part 3.6 (commencing with section 5840), shall be utilized for innovative programs…] If subdivision (a) is not construed sequentially paragraph (a)(6) would also conflict with paragraph (a)(5), which provides that "The balance of funds [after the PEI allocation] shall be distributed to county mental health programs for [CSS] services …." Paragraph (a)(6) would conflict with this provision because it requires CSS funds to be used for INN programs. In other words, if subdivision (a) is not construed sequentially paragraph (a)(6) could not be given effect because both paragraphs (a)(3) and (a)(5) mandate funding levels for PEI and CSS services that account for 100% of the funds distributed to the County and paragraph (a)(6) requires some of those funds be used for INN programs.

[3] If a County requests an increase to its PEI allocation pursuant to W&I Code section 5892(a)(4) and the Department approves the County's request, the transfer of funds from CSS to PEI would occur after the County allocates funds according to the percentages above. As such, the initial allocation percentages remain the same even if a County transfers funds from CSS to PEI.

Step 2: Allocate 5 percent from PEI and CSS to INN pursuant to W&I Code section 5892(a)(6)	PEI Contribution to INN: $20 x 5% = $1 CSS Contribution to INN: $80 x 5% = $4 Total Contribution to INN: $1 (PEI) + $4 (CSS) = $5
Step 3: Determine Final Allocation for PEI, CSS, and INN	PEI: $20 (Initial PEI Allocation) - $1 (PEI Contribution to INN)=$19 CSS: $80 (Initial CSS Allocation) - $4 (CSS Contribution to INN)=$76 INN: $1 (PEI Contribution to INN) + $4 (CSS Contribution to INN)=$5
Percentage Allocations	PEI: $19 ÷ $100 = 19% CSS: $76 ÷ $100 = 76% INN: $5 ÷ $100 = 5% <u>Note:</u> The allocation percentages under this method are the same as the allocation percentages specified in Mental Health and Substance Use Disorder Services Information Notice, Nos. 17-059 and 18-033.

	Simplified Method
Step 1: Allocate 5% of the total funding for PEI and CSS to INN pursuant to W&I Code section 5892(a)(6)	Total allocation: $100 Combined PEI and CSS Contribution to INN: $100 x 5% = $5
Step 2: Determine Final Allocations for PEI and CSS pursuant to W&I Code sections 5892(a)(3) and (a)(5)-(6)	PEI: $100 x 19% = $19 CSS: $100 x 76% = $76 INN: $100 x 5% = $5

Furthermore, W&I Code section 5846(b) requires the Department to adopt regulations that are "consistent" with regulations adopted by the Mental Health Services Oversight and Accountability Commission (MHSOAC). The MHSOAC adopted regulations for the INN component, which were effective on October 1, 2015 and include California Code of Regulations section 3930(d)(7). The latter requires a County to document in the INN component of its Three-Year Program and Expenditure Plan that "the source of Innovation funds is 5 percent of the County's PEI allocation and 5 percent of the CSS allocation." Accordingly, the allocation percentages that the Department requires a

County to use in this regulatory proposal are consistent with the regulations that the MHSOAC adopted in 2015.

Comment #32A: The commenter proposes that "Part of MHSA's charge is to provide for the prevention and early intervention of mild to moderate conditions before they become severe, thus the Act requires counties to allocate 20 percent of their MHSA funding to prevention and early intervention (PEI). However in the proposed regulations the Department suggests that only 19 percent be allocated to the PEI component, which conflicts with current law. Thus we ask that the Department update its proposed regulations to accurately reflect the requirements set forth in WIC § 5892(a)(3)…Under Section 3420(b)(2) update the PEI funding allocation to be 20 percent of MHSA funds instead of the current 19 percent."

Response #32A: The Department did not amend this section in response to this comment. Comment #32A is similar to Comment #31A. Please see Response #31A.

Comment #33B: "Proposed § 3420(b) conflicts with the plain language of Welfare and Institutions Code § 5892(a)(3)-(4)
Proposed § 3420(b) on page 19 of DHCS Proposed MHSA Fiscal Regulations 16-009 states:

> (b) Each County shall allocate funds distributed by the State Controller into the County's Local Mental Health Services Fund, other than Redistributed Funds, on the following percentage bases:
>
> 1. Five (5) percent to the INN Account.
> 2. Nineteen (19) percent to the PEI Account.
> 3. Seventy-six (76) percent to the CSS Account.

However, the plain language of the California Welfare and Institutions Code ("WIC") at Section 5892(a)(3)-(6) states as follows:

> (3) Twenty percent of funds distributed to the counties pursuant to subdivision (c) of Section 5891 shall be used for prevention and early intervention programs in accordance with Part 3.6 (commencing with Section 5840).
>
> (4) The expenditure for prevention and early intervention may be increased in any county in which the department determines that the increase will decrease the need and cost for additional services to persons with severe mental illness in that county by an amount at least commensurate with the proposed increase.
>
> (5) The balance of funds shall be distributed to county mental health programs for services to persons with severe mental illnesses pursuant to Part 4 (commencing with Section 5850) for the children's system of care and Part 3 (commencing with Section 5800) for the adult and older adult system of care. These services may include housing assistance, as defined in Section 5892.5, to the target population specified in Section 5600.3.
>
> (6) Five percent of the total funding for each county mental health program for Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840),

and Part 4 (commencing with Section 5850), shall be utilized for innovative programs in accordance with Sections 5830, 5847, and 5848.

[The Department] misinterprets the applicable provisions of WIC §§ 5891(c) and 5892(a)(3)-(6). The most logical method of allocation is 20 percent (or more) to PEI, 80 percent (or less) to CSS, and five percent to INN (deducted from CSS) . . . ."

Response #33B: The Department did not amend this section in response to this comment. Comment #33B is similar to Comment #31A. Please see Response #31A.

Comment #34A: The commenter indicates that proposed section 3420 conflicts with the plain language of W&I Code section 5892(a)(3)-(4). Excerpts from the proposed regulation text as well as the statute are included. The commenter indicates confusion by the Department's guidance instructing a County to allocate just 19 percent of their annual MHSA revenues to PEI programs. "We respectfully request clarification on this matter," the commenter noted, "as it appears the Department has adopted the same 19 percent allocation language in its recently proposed MHSA fiscal regulations, now in the 45-day Public Comment Period."

Response #34A: The Department did not amend this section in response to this comment. Comment #34A is similar to Comment #31A. Please see Response #31A.

Comment #35A: The commenter states: "the local mental health services fund allocation violates the MHSA's mandatory expenditure allocation. The MHSA explicitly states that counties are required to spend at least 20% of their MHSA funds on Prevention Early Intervention (PEI) programs. The proposed DHCS regulation to redistribute funds to 5% Innovations, 19% PEI programs, and 76% percent to CSS is a violation of MHSA's mandatory expenditure allocation. Not only is this proposal a violation of the mandatory expenditure, the decrease in funding for PEI programs will negatively decrease access to mental health services for Southeast Asian American community and many underserved communities. PEI programs have enabled community based organizations to successfully educate, outreach and serve mild mental health needs through innovative, culturally, and linguistically competent mental health services. *We request removing the proposal to reallocate local MHSA fund expenditures in compliance with current statutory law."*

Response #35A: The Department did not amend this section in response to this comment. Comment #35A is similar to Comment #31A. Please see Response #31A.

Comment #36A: The commenter suggests that proposed regulation section 3420 be amended to reflect the requirements set forth in W&I Code section 5892(a)(3)-(6) that a County allocate a minimum of 20% to the Prevention and Early Intervention (PEI) Account.

Response #36A: The Department did not amend this section in response to this comment. Comment #36A is similar to Comment #31A. Please see Response #31A.

Comment #37A: The commenter suggests that proposed section 3420 is inconsistent with the requirements (plain language) of W&I Code section 5892(a)(3)-(4), particularly the enforcement of allocation amounts that do not match those in this statute. Excerpts from the proposed regulation text and the statute are listed, including what the commenter indicates accurately reflects the requirements set forth in W&I Code section 5892(a)(3)-(6). Specifically, the commenter requests the Department modify section 3420 to reflect a 20 percent mandatory allocation to PEI, an 80 percent mandatory allocation to CSS, a 5 percent mandatory allocation of CSS Account funds for INN, and a 20 percent permissive allocation of CSS Account funds for WET, CFTN, and the prudent reserve. The commenter also requests the Department modify section 3420 to reflect a 5 percent mandatory allocation of CSS Account funds to support annual planning costs (community planning process).

Response #37A: The Department did not amend this section in response to this comment. Comment #37A is similar to Comment #31A. Please see Response #31A. While the Department appreciates the portion of Comment #37A regarding funding to support the community planning process, the Department did not include the development of standards for engaging stakeholders in the MHSA community planning process as part of the scope of this regulatory proposal.

Comment #38A: The commenter suggests that proposed section 3420 is inconsistent with the requirements of W&I Code section 5892(a)(3)-(4). Excerpts from proposed section 3420 and the plain language of the statute are included. The commenter asks that the Department amend section 3420 to accurately reflect the requirement in W&I Code section 5892 that a County allocate a minimum of twenty percent of its Local Mental Health Services Fund to its PEI Account.

Response #38A: The Department did not amend this section in response to this comment. Comment #38A is similar to Comment #31A. Please see Response #31A.

Comment #39A: The commenter suggests that the MHSA allocations as proposed are a new methodology and that the Department should not penalize a County for following another methodology.

Regarding proposed section 3420, the commenter states: “This revision memorializes the allocations of MHSA funds to local jurisdictions of 76 percent to Community Services and Supports (CSS), 19 percent to Prevention and Early Intervention (PEI) and 5 percent for Innovative Programs (INN). DHCS has previously issued guidance on this within MHSUDS Information Notices 17-059 and 18-033 and it is inconsistent with the Welfare and Institutions Code (WIC) 5892 which outlines that 20 percent must go to PEI programs. We would ask that the Department moving forward with this regulation to hold harmless all counties that operate under prior methodologies and that these regulations have a set effective date and to not backdate the regulation.”

Response #39A: Portions of Comment #39A that pertain to funding allocation percentages are similar to Comment #31A. Please see Response #31A.

The commenter also requests that the Department hold harmless all Counties that operated under prior allocation methodologies and to not backdate the regulation. In December 2017, the Department published MHSUDS Information Notice No.:17-059 that implemented provisions in Assembly Bill (AB) 114 (Chapter 38, Statutes of 2017). AB 114 provided that all unspent funds subject to reversion, as of July 1, 2017, are deemed to have been reverted and reallocated to the County of origin for the purposes for which they were originally allocated. AB 114 and the Department's implementing guidance specify how Counties were to allocate and spend reverted and reallocated funds. In August 2018, the Department published MHSUDS Information Notice No.:18-033, which provided guidance to the Counties regarding funds subject to reversion on or after July 1, 2017. MHSUDS Information Notice No.:18-033 states, "DHCS will allocate the amount the SCO distributed to the County and interest earned as follows: 76 percent to the CSS component [and] 19 percent to the PEI component..." These allocation percentages are also reflected in the Annual Revenue and Expenditure Reports and have been for several years. As such, Counties were aware of the Department's allocation percentage requirements prior to the publication of these proposed regulations and the Department intends to monitor County allocations for compliance with these percentages through ARER reporting and program reviews of County performance contracts.

Comment #10G: :The commenter states: "I would also like to touch upon a little bit with the discrepancy between the Welfare and Institutions Code and the regulations and the information notice that the Department had put out a few years ago on the PEI at 19 percent, CSS 76 percent and Innovation at 5 percent. Almost all counties have been operating under this premise of 76, 5 and 19. However, we would hold that if the Department moves forward on this regulation to hold harmless any county that in the past had been operating under a different formula and had been following the Welfare and Institutions Code rather than the information notice and that the regulations have an effective date and not back date it any."

Response #10G: The Department did not amend this section in response to this comment. Comment #10G is similar to Comment #39A. Please see Response #39A.

Comment #2A: The commenter states: "Our understanding is that the Act explicitly requires counties to allocate 20 percent of their MHSA funding to PEI. However, the proposed regulations the Department suggest only require 19 percent to be allocated to the PEI component, which conflicts with current law. Therefore, regarding Section 3420 of the proposed regulations we ask that the Department update its proposed regulations to accurately reflect the requirements set forth in the Welfare and Institutions Code and ensure that 20 percent of the counties' MHSA funding is used towards PEI."

Response #2A: The Department did not amend this section in response to this comment. Comment #2A is similar to Comment #31A. Please see Response #31A.

Comment #6B: The commenter states: "I wanted to address the math that was brought up with harmonizing the minimum 20 percent for PEI and 5 percent for innovations. PEI is actually allowed to spend more than 20 percent and more money can go into it to draw it down, to be able to withdraw money from that account. So if there was a 21.1 allocation to PEI and a 78.9 percent allocation to CSS, then using your 95 percent formula that you enumerated in your Statement of Reasons would maintain the 20 percent minimum in PEI and also have the 5 percent for innovations and the rest being allocated to CSS. In addition to that I believe there is room for the CPP or the community planning process to be enumerated in the same language as the required elements that are mentioned in this regulation, page 19 of the regulations listed."

Response #6B: The Department did not amend this section in response to this comment. The Department interprets the comment to request that the Department modify the regulation to increase a County's allocation to PEI to 21.1 percent of total funding. According to the commenter, this increase would result in a County allocating 20 percent of total funds to PEI and 5 percent of total funds to INN. The commenter's proposal is inconsistent with the Department's interpretation of section 5892(a), as discussed in response to Comment #31A. In addition, although section 5892(a)(4) permits a County to increase its PEI allocation, a County may only do so if the conditions specified in section 5892(a)(4) are met (i.e., when the Department makes a determination that a County's increase in PEI expenditures would lower the need and cost for CSS services). The Department outlines the process for a County to request an increase to its PEI allocation in section 3420.15 of these proposed regulations.

The portion of Comment #6B requesting modification to the Department's proposed allocation methodology for PEI is similar to Comment #31A. Please see Response #31A.

While the Department appreciates the portion of Comment #6B regarding funding for the community planning process, this comment is outside the scope of these proposed regulations and cannot be considered through this regulatory proposal.

Comment #8B: The commenter states: "the proposed PEI regulations stating that 19 percent would be allocated to PEI, it does contradict the plain language of the Welfare and Institutions Code that says that 20 percent of all MHSA funds distributed to the counties shall be used, shall be used. Not shall be allocated to but shall be used for prevention and early intervention programs. In the regulations if you say that only 19 percent need be allocated to it then there is no way that the counties can comply with the statutory language that says that 20 percent shall be used on PEI programs."

Response #8B: The Department did not amend this section in response to this comment. Comment #8B is similar to Comment #31A. Please see Response #31A.

Comment #9B: The commenter states: "We were talking about the PEI requirement in the regs that it is only 19 percent. Communities of color and other under-served communities like the LGBT and other cultural groups, PEI is the promise, it's one of the biggest promises of the MHSA to improve services because the types of services and approaches that we use, that we like and that are effective with our community are prevention and early intervention services. So when you diminish, even that one percent, it is hurting our communities, so that is an important point of the specifics of the regs."

Response #9B: The Department did not amend this section in response to this comment. Comment #9B is similar to Comment #31A. Please see Response #31A.

Comment #14A: The commenter states: "20 percent is 20 percent . . . . So you come up with this algorithm that allows you to do that but it reduces PEI to 19 percent instead of 20. And while I'm sympathizing with your goals I am saying that 20 percent is 20 percent and that is the law. And I think, you know, regulations implement a law but I don't think you have the scope to actually violate the law in your regulations. And that I think is what that does and could potentially even be a lawsuit. I'm not a lawyer but you could be up that alley.**"**

Response #14A: The Department did not amend this section in response to this comment. Comment #14A is similar to Comment #31A. Please see Response #31A.

Section 3420.10

Comment #39B: The commenter states: "This revision clarifies that only CSS funds may be used to establish the Prudent Reserve (PR). However, it does not address previously funded Prudent Reserve amounts, which may include transfers of PEI funds (ref. DMH Info Notice No. 09 -16). Counties were instructed to transfer out CSS and/or PEI proportionately according to DHCS MHSUDS Info Notice No. 19-017 in order to adjust PR levels. This instruction seems inconsistent with the regulation that only CSS funds may be used to establish a PR. Further, WIC 5847 (b) (7) requires the "Establishment and maintenance of a prudent reserve to ensure the county program will continue to be able to serve children, adults, and seniors that it is currently serving pursuant to Part 3 (commencing with Section 5800), the Adult and Older Adult Mental Health System of Care Act, Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs, and Part 4 (commencing with Section 5850), the Children's Mental Health Services Act, during years in which revenues for the Mental Health Services Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index." This language specifies that the PR is also intended to facilitate the funding of prior year service levels in the event of

insufficient revenues for the PEI Programs. As such, it seems that PEI funds should also be a viable source of transfers into the PR, not just CSS."

"This revision," the commenter continues, "clarifies that the County is not to transfer funds from the CSS Account into its PR, CFTN Account, and/or WET account during the same fiscal year in which the County transfers funds from its PR into its CSS Account. However, to the extent that the CSS transfer out of the PR is for reasons of adjusting to a minimum of twenty-three percent or a maximum of thirty-three percent (rather than for reasons of projected insufficient CSS funds), transfers to CFTN and WET should still be allowed. To the extent that PEI funds transferred out of the PR is for reasons of adjusting the previously allowed funding of the PR and/or to adjust to the specified minimum or maximum threshold, CSS transfers to the PR, CFTN and WET should still be allowed."

Response #39B: The portion of Comment #39B pertaining to PEI funds transfers to the Prudent Reserve pursuant to DMH Information Notice No. 09 -16 is similar to Comment #29B. Please see Response #29B.

The Department did not amend this section based on this comment. The sole statutory authority for a County to fund their Prudent Reserve, W&I Code section 5892(b)(1), does not authorize a County to use PEI funds. W&I Code section 5892(b)(1) specifies that funding for CSS programs may be used to establish a Prudent Reserve. It reads in part, "programs for services pursuant to Part 3 (commencing with Section 5800) and Part 4 (commencing with Section 5850) may include funds for … a prudent reserve to ensure services do not have to be significantly reduced in years in which revenues are below the average of previous years."

The commenter cites W&I Code section 5847(b)(7) as a basis for funding the Prudent Reserve with PEI funds. However, W&I Code section 5847(b)(7) only authorizes a County to use their Prudent Reserve to provide CSS and PEI services; it does not authorize funding the Prudent Reserve with PEI funds. It provides as follows:

"The three-year program and expenditure plan and annual updates shall include all of the following:

(7) Establishment and maintenance of a prudent reserve to ensure the county program will continue to be able to serve children, adults, and seniors that it is currently serving pursuant to Part 3 (commencing with Section 5800), the Adult and Older Adult Mental Health System of Care Act, Part 3.6 (commencing with Section 5840), Prevention and Early Intervention Programs, and Part 4 (commencing with Section 5850), the Children's Mental Health Services Act, during years in which revenues for the Mental Health Services Fund are below recent averages adjusted by changes in the state population and the California Consumer Price Index."

The portion of Comment #39B pertaining to Prudent Reserve funds transfers to CFTN and WET to meet Prudent Reserve funding level requirements is similar to Comment #29C. Please see Response #29C.

Section 3420.15

Comment #39C: The commenter states: "The process outlined describes when a County wants to transfer CSS funding to the PEI account that a County must garner approval from the Board of Supervisors (BOS) and subsequently request permission from DHCS. When a denial from DHCS occurs, there is no opportunity to appeal and removes the discretion from the local BOS and stakeholders. A proposed solution would be a modified procedure that allows the County to either request permission from DHCS prior to BOS approval or only require them to demonstrate effectiveness of the change at the local level as articulated in (d). In addition, a 45-day turn around for approval determinations is too lengthy (section (e)). CBHDA would recommend 30 days."

Response #39C: The comment prompted the Department to revise this section by adding an appeal process that a County may pursue if the Department denies a County's transfer request.

The Department did not amend this section to authorize a County to request permission from the Department to transfer CSS Account funds to the PEI Account prior to BOS approval or only require a County to demonstrate the effectiveness of a proposed change. The Department will maintain the requirement that the BOS approve a County's request prior to submitting the proposal to the Department. Prior BOS approval of the County's proposal provides assurance to the Department that the County has consulted with local stakeholders and that the stakeholders approved a potential increase to fund PEI programs and a corresponding decrease in funding for CSS programs. Section 3420.15(b) of these proposed regulations authorizes a County to include an alternative plan (in its Three-Year Program and Expenditure Plan) for the expenditure of CSS Account funds should the Department deny the request to transfer CSS Account funds to the PEI Account. Providing an alternative use for the CSS funds in the Three-Year Plan permits the County's BOS to consider both the County's initial proposal and an alternative plan simultaneously, minimizing the County's need to re-engage the BOS. In addition, per section 3420.15(i), if the Department denies a County's request to transfer CSS Account funds to its PEI Account the County can wait until its next Three-Year Program and Expenditure Plan, annual update or update to reflect the denial. This also minimizes the County's need to engage its BOS.

The commenter recommends the Department revise subsection (e) to require the Department to approve or deny a County request to transfer CSS funds to the PEI component within 30 days, instead of 45 days. The Department did not make any changes based on this request. The 45 days is necessary for the Department to review the County's request and supporting data, and make a determination on the County's

proposal. Since a County will be submitting supporting data, which the Department will analyze, the Department sees a reasonable need for a 45 day decision period.

To allow a County to appeal the Department's decision 30 days after receiving the notice of denial the Department will add sections 3420.15(f)(1) and (2) and (g) that also allow the Department 45 days to notify the County of the Department's approval or denial of the appeal. The new changes are proposed as follows:

(f)(1) A County may appeal the Department's denial of a request to transfer funds from its CSS Account to its PEI Account. The appeal shall include an explanation stating the basis for the appeal and supporting documentation. The appeal shall be submitted by the County to the Department, by email to MHSA@dhcs.ca.gov, within thirty (30) calendar days of the date on the notice specified in subsection (e).

(2) The Department shall only consider the original request as specified in subsection (d) during the review of the County's appeal.

(g) The Department shall provide written notice to a County either approving or denying a County's appeal within forty-five (45) calendar days of receipt of the appeal. A notice denying the County's appeal shall include the reasons for the Department's decision.

Section 3420.20

Comment #40A: The commenter recommends eliminating sections 3420.20(2)(d) and (2)(e) and replacing them with, "A County shall report its transfer of funds to CalMHSA as an expenditure in its Annual MHSA Revenue and Expenditure Report, in accordance with section 3510 and according to Government Codes regulating Joint Powers Authority investment practices such as section 53601." The commenter suggests that the transfer to a JPA should be considered the same as the transfer described for other governmental entities such as CalHFA. The funds should be considered spent once transferred to the JPA and the government entity.

Response #40A: The commenter recommends the Department delete subsections (d) and (e) and replace them with the language quoted in the preceding paragraph. The Department did not amend those subsections in response to this comment.

The Department determined it is necessary to subject JPAs to the same reversion requirements as its member Counties to implement W&I Code section 5892(h). If the regulations treat funds a County transfers to a JPA as spent upon transfer, Counties will be able to avoid reversion by transferring unspent funds to a JPA. This would be inconsistent with the intent of the reversion provisions.

In addition, JPAs established by Counties to implement the MHSA are required to comply with the same reversion rules as the Counties that form the JPA. The Joint Exercise of Powers Act, Government Code (Gov. Code) section 6500 et seq., authorizes two or more public agencies, by contract, to establish a separate legal entity

(Gov. Code, § 6507) to jointly exercise a power common to the contracting parties (Gov. Code, § 6502). Such authorities are commonly referred to as joint powers authorities. The power of a JPA is "subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement" (Gov. Code, § 6509). A JPA established to administer an MHSA program would be composed solely of Counties, or Counties and cities that receive MHSA funds. No other entities receive MHSA funds to administer MHSA programs. The authority of those Counties and cities to spend MHSA funds are subject to the reversion limitations in W&I Code section 5892(h). Accordingly, the revision requested by the commenter is inconsistent with the statutes governing JPAs and the Department declines to make the requested revision.

Comment #39D: The commenter wants a different definition than currently proposed for the meaning of "transfer" and "spending" when applied to a Joint Powers Authority (JPA).

Regarding sections 3420.20 Joint Powers Authority and CalHFA, the commenter "would argue that a transfer to a joint powers authority (JPA) should be treated as the same as a transfer to another government entity such as CalHFA. Additionally, the definition of spending between the two regulations do not align. In both cases, funds from various counties are deposited and used for the approved purposes. In the case of the JPA the county still has control over the funds thus assuring compliance with the approved plans.

Since the local planning process and the three-year expenditure plan includes the transfer of funds to the JPA, the regulations should affirm that the expenditure to a JPA is part of the local planning process which requires BOS approval. We recommend the elimination of Section (2)(b) through 2(e) of 3420.20 and substitute the language from (2)(b) through 2(e) from 3420.25. These regulations are impractical and do not reflect the way investments work since funds invested to not receive their return in any given period of time. The restrictions would make investments too restrictive to generate a reasonable return.

Additionally we would add that under 3420.20 (2)(c) that "A County shall report its transfer of funds to a Joint Powers Authority as an expenditure in its Annual MHSA Revenue and Expenditure Report, in accordance with section 3510" and for funds expended to a JPA, "according to Government Codes regulating Joint Powers Authority pursuant to section 53601."

Also please clarify for the JPA, if there are CSS that are expended but there are interest from those funds that are not expended at that time, are those also subject to reversion?"

Response #39D: The portions of Comment #39D that request the Department amend section 3420.20 to treat a JPA the same as another government entity is similar to Comment #40A. Please see Response #40A.

The Department did not amend this regulation in response to this comment. The Department determined it is necessary to subject JPAs to the same reversion requirements as its member Counties to implement W&I Code section 5892(h). If the regulations treat funds a County transfers to a JPA as spent upon transfer, Counties will be able to avoid reversion by transferring unspent funds to a JPA. This would be inconsistent with the intent of the reversion provisions.

The commenter also states that these regulations "do not reflect the way investments work since funds invested to [*sic*] not receive their return in any given period of time. The restrictions would make investments too restrictive to generate a reasonable return." Section 3420.20(e)(2) requires a JPA to make any Investment Gain earned from County's funds during a fiscal year available for expenditure by the County during the same fiscal year. "Investment Gain" is defined as "any realized earning, less any realized loss, on Local Mental Health Services Fund money invested by a County, including capital gains, dividends, and interest." (section 3200.195) Accordingly, this provision only requires a JPA to make earnings from an investment available for expenditure by the County after the JPA realizes the earnings; it does not limit the length of time a JPA can invest County funds that gives the JPA flexibility to use various types of investments.

The Department interprets the commenter to also ask about unspent interest earned on expended CSS Account monies and whether the interest earned on the CSS Account funds would be subject to reversion. W&I Code section 5892(h)(1) provides that interest accruing on MHSA funds is subject to reversion. In addition, similar to the response above, because the proposed regulations define an "Investment Gain" as a realized earning, less any realized loss, a County is only required to make earnings (e.g., interest) available for expenditure after the County realizes the earnings. Pursuant to proposed section 3420.40(e), any realized earnings on CSS Account monies would be subject to the reversion timeframes specified in either sections 3420.50 or 3420.55 depending on the population of the County.

Comment #10B: The commenter suggests that there should be no differences in the proposed regulations for a transfer to a JPA and for a transfer to CalHFA. The commenter suggested that the regulations for the transfers to a JPA should be the same as a transfer to CalHFA.

Response #10B: The Department did not amend this section in response to this comment. Comment #10B is similar to Comment #40A. Please see Response #40A.

Comment #15A: The commenter recommends that the Department remove proposed sections 3420(d) and (e) and suggests the following language: "The counties shall

report its transfer of funds to CalMHSA as an expenditure in its annual MHSA Revenue and Expenditure Report in accordance with Section 3510." The commenter recommends that the regulations deem transfers as encumbered. Transfers are considered expended.

Response #15A: The Department did not amend this section in response to this comment. Comment #15A is similar to Comment #40A. Please see Response #40A.

Section 3420.25

Comment #39E: The commenter recommends changing the reference from CalHFA to "local government housing entity" that is apparently consistent with title 9, division 1, chapter 14 section 3630.05. Project-Based Housing Program. According to the commenter, the Special Needs Housing Program (SNHP) operated by CalHFA is sunsetting and it does not make sense to call out specifically CalHFA as this program will not exist in the future.

The commenter states: "please consider modifying the ARER template - CalHFA transfers are separately reported and included as CSS expenditures; however, since funds transferred to other qualified entities are considered irrevocable - non CalHFA transfers are included in CSS expenditures but not separately identified in the ARER."

Response #39E: The comment prompted the Department to delete section 3420.25 because the California Housing and Finance Agency (CalHFA) is no longer accepting funds from Counties for new projects under either the MHSA Housing Program or the Special Needs Housing Program. Since CalHFA no longer accepts transfers of MHSA funds from the Counties, the Department determined that this proposed section is no longer necessary. In addition, the Department determined that replacing CalHFA with a "local government housing entity" – to allow for the transfer of CSS funds to be considered as an irrevocable transfer and as an expenditure in the County's Annual Revenue and Expenditure Report (ARER) – would be inconsistent with W&I Code section 5892(h)(1) that provides the reversion requirements for CSS funds for a County with a population of more than 200,000 and subsection (h)(3) that provides the reversion requirements for a County with a population of less than 200,000. The proposed deletion is as follows:

~~§ 3420.25. Community Services and Supports (CSS) Account Transfers to California Housing Finance Agency.~~

~~(a) A County may transfer funds from its CSS Account to the California Housing and Finance Agency (CalHFA) for the development of permanent supportive housing for persons with a serious mental disorder or for seriously emotionally disturbed children and adolescents as defined in section 5600.3 of the Welfare and Institutions Code, if before transferring funds:~~

~~(1) The County includes a description of the proposed transfer in its Three-Year Program and Expenditure Plan, annual update, or updates in accordance with sections 3310 and 3315; and~~

~~(2) The County's Board of Supervisors adopts the Three-Year Program and Expenditure Plan, annual update, or updates, describing the proposed transfer of funds to CalHFA.~~

~~(b) A County shall report its transfer of funds to CalHFA as an expenditure in its Annual MHSA Revenue and Expenditure Report, in accordance with section 3510.~~

Comment #10C: The commenter would like to request the Department remove the references to CalHFA because the Special Needs Housing Program, is sunsetting in a few years and that moving forward with these regulations there may be another government entity that might take over or do something similar. Recommends this section reference something along the lines of housing entity, housing agency.

Response #10C: Comment #10C is similar to Comment #39E. Please see Response #39E.

Section 3420.30(b)

Comment #30A: The commenter states: "With respect to adopting proposed section 3420.30, Prudent Reserve Funding Levels, Yolo County requests any references to a prudent reserve minimum level be stricken from the proposed regulations, or thoroughly reworked. Per the Government Finance Officers Association's (GFOA) publication titled GFOA Updates Best Practice on Fund Balance, 'very large governments often are in a much better position to predict contingencies than are small governments. Levels of fund balance typically are less for larger governments than for smaller governments because of the magnitude of the amounts involved.' Applying a one-size-fits-all policy to all 58 California counties (with population sizes ranging from one thousand to ten million) is not the best way to accomplish DHCS' intent. Yolo County recommends not statutorily mandating a minimum level of prudent reserve without first engaging in dialogue with the stakeholders first; namely, the California State Association of Counties, the California Behavioral Health Directors Association, the California Welfare Directors Association, and the GFOA."

Response #30A: The comment prompted the Department to amend this section to lower the minimum Prudent Reserve level to five percent. Counties are required to establish and maintain a Prudent Reserve pursuant to W&I Code section 5847(b)(7). As such, the Department determined that it was necessary to implement a minimum funding level in these proposed regulations to ensure County compliance with the statutory requirement to maintain a Prudent Reserve.

The Prudent Reserve must be set at a level sufficient to meet the needs of clients when the conditions in W&I Code sections 5847(b)(7) or (f) are met. The Department is

lowering the minimum Prudent Reserve level to 5 percent to give a County more flexibility to allocate an amount to maintain in its Prudent Reserve, as determined by the local stakeholder process. Setting maximum and minimum funding levels at 33 percent and 5 percent, respectively, gives a County a broad range of discretion to determine a Prudent Reserve funding level that would ensure the continuity of services during an economic downturn while also enabling a County to utilize more funds to meet the existing service needs of the local community

Section 3420.30(b) is amended to read:

"(b) A County shall fund its Prudent Reserve at a minimum level of ~~twenty- three (23)~~five (5) percent and a maximum level of thirty-three (33) percent of the average amount the County allocated to its CSS Account, pursuant to section 3420, over the previous five (5) fiscal years. The calculation for the minimum and maximum funding levels percentage shall be as follows:

(1) Add the total funds allocated to the County's CSS Account over the previous five (5) fiscal years.

(2) Divide the amount in subsection (b)(1) by five (5); and,

(3) Multiply the amount in subsection (b)(2) by ~~twenty-three (23)~~five (5) percent to determine the minimum level, multiply the amount in subsection (b)(2) by thirty-three (33) percent to determine the maximum level."

Comment #32B: The commenter states: "Many counties recognize the unique role that FQHCs can play in the behavioral health delivery system, and have contracted with FQHCs to serve as providers to the seriously mentally ill patients that fall under the responsibility of the county mental health plan. Given the strong link between CHCs and their communities and patients, community health centers are usually the first point of contact for individuals seeking healthcare services, be it primary care or behavioral health services. In fact, research increasingly points to primary care as a critical point for patients that might not otherwise seek assistance for their behavioral health needs in other settings due to stigma. A report by the UCLA Center for Health Policy cites that more than 70% of behavioral health conditions are diagnosed and treated within the primary care setting, underscoring just how critical the role of primary care is in linking patients to care for their behavioral health conditions.

However, given the high demand for behavioral health services, California and its respective counties should ensure funding is flowing from local governments into services for members of the community and should not be forced to have a minimum level of 23 percent in their prudent reserve account. Although we appreciate the concern in ensuring counties maintain a prudent reserve in preparation for difficult economic times, we believe this should be left to the counties discretion. In recent reports counties have been cited for having too much in their prudent reserve, and not

necessarily that they don't have enough. By enforcing a minimum amount we will inadvertently impact the amount of resources, and unavoidably services, offered within the community.

Despite the enormous role that community based organizations, like CHCs, play in providing care to diverse communities with mild, moderate, and severe mental illness, in many cases counties do not coordinate care with non-county providers as no requirement exists to mandate partnerships, and local MHSA resources are not shared with the non-county delivery system. If counties are forced to place MHSA funds into a prudent reserve, it will create yet another barrier in pushing funding from counties into the community.

Additionally, current law (W&I Code § 5892(b)(1)) does not require counties to hold a minimum amount of funding in their prudent reserve account, allowing counties to use these funds if they see it necessary to help address the mental health needs of their community. To ensure funding is going towards services and programs we ask that counties not be forced to have a minimum amount of funding in their prudent reserve."

Under the section 3420.30(b) we ask that counties not be forced to have a minimum amount of funding in their prudent reserve."

Response #32B: Comment #32B is similar to Comment #30A. Please see Response #30A.

Comment #33C: The commenter maintains that proposed section 3420.30(b) contradicts the permissive language contained in W&I Code section 5892(b)(1) and improperly usurps local control of MHSA spending. The commenter includes regulation provisions; accompanying ISOR language and statutory language.

Response #33C: Comment #33C is similar to Comment #30A. Please see Response #30A.

Comment #37B: The commenter maintains that "proposed Section 3420.30(b) contradicts the permissive language contained in WIC § 5892(b)(1) and improperly usurps local control of MHSA spending." The commenter includes regulation provisions and statutory language. The commenter asks that "DHCS amend proposed regulation § 3420.30 by eliminating the minimum Prudent Reserve balance set forth in subsection (b) to preserve counties' independent discretion protected under WIC § 5892(b)(1)-(2)."

Response #37B: Comment #37B is similar to Comment #30A. Please see Response #30A.

Comment #38B: The commenter maintains that proposed section 3420.30(b) contradicts the permissive language contained in W&I Code section 5892(b)(1); indicating that the enforcement of the proposed 23% minimum Prudent Reserve level

improperly usurps local control of MHSA spending. Excerpts from proposed section 3420.30(b) and the statute are included in the comment.

The commenter asks that the Department amend proposed section 3420.30 by eliminating the minimum Prudent Reserve balance set forth in subsection (b) to preserve the Counties' independent discretion protected under W&I Code section 5892(b)(1)-(2).

Response #38B: Comment #38B is similar to Comment #30A. Please see Response #30A.

Comment #2B: The commenter states: "Current law does not require counties to hold a minimum amount of funding in their prudent reserve account, allowing counties to use their good judgments and invest these funds however necessary to help address the mental health needs of their community. Counties should not be forced to have a minimum level of 23 percent in their prudent reserve account. This amount should be a suggestion, not a mandate, and we request that DHCS revise their standards -- revise their recommendations."

Response #2B: Comment #2B is similar to Comment #30A. Please see Response #30A.

Comment #7C: The commenter states: "If you think about it, if there is a minimum 23 percent and a maximum 33 percent, what happens when the economy goes down? There is so little money for the counties to be able to access. So I would say it should be a guideline a minimum amount but I don't think we should have a minimum Prudent Reserve requirement."

Response #7C: Comment #7C is similar to Comment #30A. Please see Response #30A.

Comment #8A: The commenter recommends that the regulations do not impose a Prudent Reserve minimum level of 23 percent. The commenter states: "Proposed section 3420.30(b) which requires the minimum 23 percent Prudent Reserve contradicts the permissive language that's contained in the Welfare and Institutions Code in Section 5892(b)(1) and it also properly usurps local control of MHSA spending."

Response #8A: Comment #8A is similar Comment #30A. Please see Response #30A.

Comment #10A: The commenter suggests that the Prudent Reserve of 23 percent removes local control and the ability of the local board of supervisors with stakeholder engagement and the County behavioral health department to decide the Prudent Reserve minimum level.

Response #10A: Comment #10A is similar to Comment #30A. Please see Response #30A.

Comment #16A: The commenter has worked with a County Counsel, with the Chief Financial Officer, and with the Government Finance Officers Association, GFOA. The commenter states: "GFOA issued a document talking about best practices with funding reserves. It recognizes that various governmental entities are different sizes and what they talk about in their best practices depends on how big you are. They talk about a range of 5 to 15 percent; and the really large government organizations would probably only need a 5 percent reserve, whereas a very small government organization would need a larger reserve, 15 percent or 20 percent.

So I would urge you to take advantage of what the Government Finance Officers Association has published as well as take advantage and engage with your various stakeholders, the California Association of Counties, California Welfare Directors Association, California Behavioral Health Directors Association. We would certainly engage with you and work with you to provide feedback on something that we could actually implement should it actually be adopted."

Response #16A: Comment #16A is similar to Comment #30A. Please see Response #30A.

Section 3420.30

Comment #39K: The commenter requests that the Department consider including interest accrued on CSS funds to be a part of the calculation of the Prudent Reserve level.

Response #39K: The Department did not amend this section in response to this comment. W&I Code section 5892 (b)(2) limits the amount of funds a County can hold in its Prudent Reserve to thirty-three (33) percent of the average CSS Account revenue the County received over the preceding five year period. It provides, "A county shall calculate an amount it establishes as the prudent reserve for its Local Mental Health Services Fund, not to exceed 33 percent of the average community services and support revenue received for the fund in the preceding five years."

Section 3420.30(a-b)

Comment #39F: The commenter requests the Department clarify whether the reassessment to be completed by July 1, 2019 can include previously transferred PEI funds or if Counties must correct prior transfers prior to reassessment and reestablish the Prudent Reserve levels with solely CSS funds.

The commenter states: "the regulations do not address previously funded Prudent Reserve amounts that may come from PEI dollars (ref. DMH Info Notice No. 09-16)... Additionally, if WIC specifies that the Prudent Reserve may be used for PEI programs,

should the methodology for transfers in to the Prudent Reserve also consider the average of total allocations of PEI funds over a given period of time?"

Response #39F: The Department did not amend this section in response to this comment. The commenter requested the Department clarify whether the reassessment to be completed by July 1, 2019 can include previously transferred PEI funds or if a County must correct prior transfers prior to reassessment and reestablish the Prudent Reserve levels with only CSS funds. A County is not required to transfer PEI funds currently in its Prudent Reserve before assessing its Prudent Reserve levels.

The commenter appears to be asking whether a County should use the average allocation of PEI funds it has received in calculating the maximum and minimum funding levels of the County's Prudent Reserve. This is not the methodology authorized in law. W&I Code section 5892(b)(2) requires a County to calculate the funding levels of its Prudent Reserve based on average CSS revenue. It provides, in part, "A county shall calculate an amount it establishes as the prudent reserve for its Local Mental Health Services Fund, not to exceed 33 percent of the average community services and support revenue received for the fund in the preceding five years."

The portion of the comment pertaining to Prudent Reserve amounts previously funded from PEI Account funds is similar to Comment #29B. Please see Response #29B.

Comment #41A: Commenter asks, "For counties below the minimum threshold, what are the consequences of "maintaining" a PR balance below the minimum and should the regulations include a period of time to build up to the 23% minimum level?"

Response #41A: The comment prompted the Department to amend section 3420.10 to clarify the requirement to maintain a Prudent Reserve at the minimum level prescribed in section 3420.30(b). The Department added subsection (c) to section 3420.10 to read:

(c) If in a fiscal year a County's Prudent Reserve falls below the minimum funding level as calculated pursuant to section 3420.30(b), in each subsequent fiscal year in which the conditions in section 3420.35(a)(1) and (a)(2) are not met, the County shall transfer a minimum of twenty percent (20%) of the amount of the County's minimum funding level until the minimum funding level in the County's Prudent Reserve is met. The amount transferred to the Prudent Reserve in each fiscal year pursuant to this subsection shall not exceed the total amount as calculated in subsection (a)(1).

The addition of subsection (c) is to ensure a County complies with the maintenance of the minimum Prudent Reserve funding level. The requirement to transfer 20% of the County's minimum balance ensures County compliance with W&I Code section 5892(b) and enables the County to meet the minimum level within five fiscal years. The Department will monitor County compliance through the ARER. A County out of compliance with section 3420.10(c) may be required to enter into a corrective action plan to ensure compliance. In addition, an audit of the County's MHSA programs may require corrective action plans for a County not in compliance with subsection (c).

Section 3420.30(d)

Comment #39G: The commenter requests clarification on the timeline of reassessment for the Prudent Reserve level and requests the Department add language that allows assessments of the Prudent Reserve to be completed more frequently than, but no longer than, every five years.

Response #39G: As a result of public comment, this section and section 3420.30(e) are amended to allow a County to reassess their Prudent Reserve levels more frequently than once every five years. These sections are amended to read:

(d) A County shall reassess its Prudent Reserve funding levels as of July 1, 2024, and as of July 1 every five (5) fiscal years thereafter and include the reassessment in the applicable County Three-Year Program and Expenditure Plan pursuant to sections 3310 and 3315. The reassessment shall include the minimum and maximum funding levels and the actual funding level of the County's Prudent Reserve. A County may reassess its Prudent Reserve funding levels more frequently.

(e) A County shall submit a complete Mental Health Services Act Prudent Reserve Assessment/Reassessment form DHCS 1819 (02/19), hereby incorporated by reference, to the Department by email at MHSA@dhcs.ca.gov when submitting a County's Three Year Program and Expenditure Plan or annual update, beginning in fiscal year 2019-2020 and every five (5) fiscal years thereafter and during any other fiscal year a County assesses its Prudent Reserve levels.

Section 3420.30(g)

Comment #29C: The commenter seeks clarity on when unexpended CSS funds can be transferred from CSS to CFTN, WET, or CalHFA during a fiscal year when a County needs to transfer funds from the Prudent Reserve to maintain the 33% prudent reserve maximum level. The commenter suggests that this language should not apply when a County's Prudent Reserve is above 33%.

According to the commenter, while the language the Department is proposing may be appropriate in instances where Prudent Reserve funds are transferred due to poor economic conditions, this language should not apply when a County's Prudent Reserve is above the 33% threshold.

Response #29C: The comment prompted the Department to amend section 3420.30(g) to allow a County to transfer funds from the CSS Account into its PEI Account, CFTN Account, or WET Account when a County has a Prudent Reserve over the 33% maximum funding level. Proposed section 3420.30(g) is amended to read:

(g) A County shall transfer funds in excess of the County's maximum funding level into its CSS Account during fiscal year 2019-2020 and during each subsequent fiscal year in which the County reassesses its Prudent Reserve funding level pursuant to subsection (d). A County may transfer funds from its CSS Account to its CFTN Account, WET Account, PEI Account or JPA, pursuant to sections 3420.10, 3420.15 and 3420.20 during the same fiscal year in which the County transfers funds from its Prudent Reserve to its CSS Account pursuant to this subsection.

Comment #39H: The commenter asks "if once the monies have been transferred to the CSS account, if there is a stakeholder process and approval can the funding be utilized for WET or CFTN, particularly in the same year?

Additionally, within 3420.35(c), please clarify if only PR levels above 33% are to be moved."

Response #39H: Although Comment #39H suggests that the relevant proposed section is 3420.35, the Department addressed the matter by making appropriate changes to proposed section 3420.30(g) that is relevant to Comment #39H and other comments similar to Comment #29C. Comment #39H is similar to Comment #29C. Please see Response #29C.

Comment #29B: The commenter requests that the proposed regulations be clarified for consistency with guidance provided in Mental Health and Substance Use Disorder Services Information Notice (IN) 19-017 including a request that the text of IN 19-017 be included under section 3420.30(g) to allow PEI funds that were transferred into the Prudent Reserve to return to the PEI when funds above the 33% maximum are transferred out of the Prudent Reserve in 2019-2020.

"Alameda County requests that the text of Information Notice No: 19-017 be included under Section 3420.30(g) to allow for PEI funds that were transferred into the Prudent Reserve to return to the PEI component when funds above the 33% maximum are transferred out of the Prudent Reserve in FY 19/20."

Response #29B: The comment prompted the Department to move current section 3420.30(h) to (i) and add language to section 3420.30(h). These amendments provide clarity to a County that funds in the Prudent Reserve may be transferred to the PEI Account under the specified conditions. In FY 2007-08, Counties were permitted to transfer PEI funds into their Prudent Reserve. To accommodate a County that did transfer PEI funds to their Prudent Reserve in that fiscal year, and continues to have PEI funds in the Prudent Reserve, the Department determined that it is appropriate to provide a County with the ability to transfer these funds out of the Prudent Reserve and into its PEI Account under the conditions specified in section 3420.30(d). Section 3420.30(h) is added to read:

(h) A County that transferred funds from its PEI Account to its Prudent Reserve in fiscal year 2007-08 may transfer funds in excess of the County's maximum funding level into its PEI Account during fiscal year 2019-20, and during each subsequent fiscal year in which the County reassesses its Prudent Reserve funding level pursuant to subsection (d). A County may transfer funds from its Prudent Reserve to its PEI Account until the amount transferred equals the amount the County transferred from its PEI Account to its Prudent Reserve in fiscal year 2007-08.

Section 3420.35(a)

Comment #39I: The commenter states: "Establishment of a 23% minimum Prudent Reserve level would remove the ability of counties to appropriately use the reserves, as intended, in the event of an economic downturn…as a recession and downturn hits, a County would be unable to access these funds for their intended purpose." The commenter suggests that a County should be able to pull funds out of the Prudent Reserve below the 23% level in the event of an economic downturn and requests that the proposed minimum be excluded from the final regulations.

Response #39I: After considering the comment above, the Department amends section 3420.35(a) to clarify that a County may transfer funds from the Prudent Reserve when the conditions in W&I Code sections 5847(b)(7) or (f) are met. A County may transfer amounts such that the remaining balance in the Prudent Reserve falls below the minimum funding level after the transfer. As the Department's intention in establishing a minimum Prudent Reserve balance is to ensure a County has appropriate funds available to meet the conditions identified in W&I Code sections 5847(b)(7) and (f), the Department is clarifying section 3420.35(a) to state:

(a) A County may transfer funds from its Prudent Reserve into its CSS Account and/or PEI Account in a year in which the condition in paragraph (1) is met. A County shall transfer funds from its Prudent Reserve into its CSS Account in a year in which the conditions in paragraph (2) are met. These transfers shall be permissible even when it results in a County's Prudent Reserve falling below the minimum funding level as calculated pursuant to section 3420.30(b).

Section 3420.35(c)

Comment #39H: The commenter states "This section describes the process for how to transfer PR to the CSS and PEI Accounts. If once the monies have been transferred to the CSS account, if there is a stakeholder process and approval can the funding be utilized for WET or CFTN, particularly in the same year?" The commenter further requests, within Section 3420.35(c), for the Department to clarify if only PR levels above 33% are to be moved.

Response #39H: The Department did not amend this section in response to this comment. First, to clarify, section 3420.35(c) only prohibits a County from transferring

CSS Account funds into its WET or CFTN account during the same fiscal year the funds were transferred from its Prudent Reserve into its CSS Account. It does not prohibit transfers in subsequent fiscal years.

W&I Code sections 5847(b)(7) and (f) do not support a County using funds transferred from its Prudent Reserve into its CSS Account for WET or CFTN in the same year of the transfer because those funds are to be used to provide CSS and PEI services during that year. A County transfers Prudent Reserve funds during years in which the County's CSS allocation is inadequate to allow the County to continue to maintain the same level of CSS services as in prior years. W&I Code section 5847(b)(7) provides the purpose of the Prudent Reserve is to "ensure the county program will continue to be able to serve children, adults, and seniors that it is currently serving," through the provision of CSS and PEI services, "during years in which revenues for the Mental Health Services Fund are below recent averages." W&I Code section 5847(f) provides that a County must transfer funds from the Prudent Reserve to the CSS Account when funds for CSS services "are not adequate to continue to serve the same number of individuals as the county had been serving in the previous fiscal year." Permitting a County to transfer CSS funds to its CFTN Account or WET Account during the same year that the County transfers Prudent Reserve funds to its CSS Account would be inconsistent with this purpose of the Prudent Reserve.

Within section 3420.35(c), the commenter would like the Department to clarify if only PR levels above 33% are to be moved.

This comment does not appear relevant to the section identified. The Department interprets the comment to be relevant to section 3420.30(g) that specifies a County "shall transfer funds in excess of the County's maximum funding level into its CSS Account." The "maximum funding level" is identified in section 3420.30(b) as, "a maximum level of thirty-three (33) percent of the average amount the County allocated to its CSS Account, pursuant to section 3420, over the previous five (5) fiscal years." The "excess" refers to funds in a County's Prudent Reserve over the 33% maximum funding level; therefore, only Prudent Reserve monies above the 33% are to be transferred.

The Department did not amend this section in response to this comment. However, upon further review, and consistent with the newly-proposed deletion of section 3420.25, the Department is amending section 3420.35(c) to delete "CalHFA" since CalHFA administered programs are no longer accepting MHSA funds from Counties and only administering previously approved housing programs. This section now provides that a County may not transfer CSS funds to its PEI Account, CFTN Account, or WET Account during the same fiscal year in which the County transfers funds from its Prudent Reserve into its CSS Account.

Section 3420.40(d)

Comment #39J: The commenter requests clarification whether investment gains for PEI funds should also be transferred to the CSS account or should the funds for PEI and corresponding interest earned be taken out of the Prudent Reserve and transferred back to the PEI account.

Response #39J: The Department did not amend this section in response to this comment. For clarification purposes, investment gain on the Prudent Reserve must be transferred to the CSS Account, as specified in section 3420.40(d). The section makes clear what a County is required to do with interest earned on Prudent Reserve funds and enables the Department to standardize a County's reporting of Investment Gain on Prudent Reserve funds. In addition, the Department does not track interest earned by an Account funding source, and a County is not required to track interest at that level. Such an allocation of interest to CSS and PEI would be administratively burdensome to the County and the Department.

Section 3420.45(a)

Comment #41B: The commenter noted that this section requires records to be maintained in accordance with Generally Accepted Accounting Practices (GAAP), Governmental Accounting Standards Board (GASB) standards, and the SCO Manual of Accounting Standards and Procedures for Counties except for receipts and expenditures for the CFTN component. The commenter maintains that the cash basis of accounting is not consistent with GAAP. Commenter asks "Why is this exception noted for CFTN component?"

Response #41B: The Department did not amend this section in response to this comment. This section is necessary to implement W&I Code section 5899(a) that requires a County to report on their ARER, "receipts and expenditures related to capital facilities and technology needs using the cash basis of accounting" to recognize expenditures at the time payment is made.

Sections 3420.50(b) and 3420.55(b)

Comment #41C: The commenter states: "Section 3420.50(b) provides an exception for the three year spending rule if placed in the "Prudent Reserve." A first in-first out (FIFO) approach to the funds should be used to show they are used within the three years to avoid possible "claw-back" of funds." For section 3420.55(b), the commenter states: "See comments for section 3420.50(b) – as it relates to a five year period."

Response #41C: The Department did not amend this section in response to this comment. The commenter suggests that the first-in-first-out approach to funds should be used to show they are used within the three years. The Department interprets the comment to refer to funds transferred out of the Prudent Reserve, as funds placed in the Prudent Reserve are not subject to reversion. Using the first-in-first-out method,

expenditures are attributed to the oldest funds first; therefore, the first funds in (received) would be the first funds out (spent). The regulations clearly state that a County must spend the amount it received from the SCO within three years or the funds will be subject to reversion. While the County is not precluded from using the first-in-first-out accounting method to reflect expenditures, the Department does not believe it is necessary to reference this methodology within the regulations. The criteria to determine reversion is based on whether the amount received from the SCO was spent within the reversion period, regardless of what year (within the reversion period) the expenditures are attributed.

The Department, due to other considerations, amended sections 3420.50(b) and 3420.55(b) to account for the reversion period for funds transferred out of the Prudent Reserve and into the CSS Account.

The proposed amendment to section 3420.50(b) reads:

(b) Unless transferred into the Prudent Reserve, the CFTN Account, or the WET Account pursuant to section 3420.10, a County shall spend CSS Account monies within three (3) fiscal years of receiving those funds from the State Controller, or within three (3) fiscal years of transferring funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35. In determining the three (3) fiscal year period, the fiscal year in which the State Controller distributes ~~those~~ CSS funds to the County, or the fiscal year in which the County transfers funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35, shall be the first fiscal year. If a County fails to spend such funds within three (3) fiscal years, the funds shall revert to the Mental Health Services Fund for deposit into the Reversion Account.

The proposed amendment to section 3420.55(b) reads:

(b) Unless transferred into the Prudent Reserve, the CFTN Account, or the WET Account pursuant to section 3420.10, a County shall spend CSS Account monies within five (5) fiscal years of receiving those funds from the State Controller, or within five (5) fiscal years of transferring funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35. In determining the five (5) fiscal year period, the fiscal year in which the State Controller distributes ~~those CSS~~ funds to the County, or the fiscal year in which the County transfers funds from the Prudent Reserve to its CSS Account pursuant to sections 3420.30(g) or 3420.35, shall be the first fiscal year. If a County fails to spend such funds within five (5) fiscal years, the funds shall revert to the Mental Health Services Fund for deposit into the Reversion Account.

Sections 3420.50(i) and 3420.55 (i)

Comment #41D: The commenter states: “Section 3420.50(i) at the end of the first sentence “not been withheld” – the following should be added on: “for purposes of

calculation the three year time limit to spend the funds." For section 3420.55(i), the commenter states: "See comments for section 3420.50(i) – as it relates to a five year period."

As the sentence stands currently it could be mistaken to suggest that even though the funds are withheld, the County needs to record them as revenue received in the fiscal year. Is that the intent? Is the intent only for the purpose of calculating the three year time limit to spend funds?"

Response #41D: The Department did not amend sections 3420.50(i) or 3420.55(i) in response to this comment. These sections are necessary to implement W&I Code section 5892(h) that sets forth reversion timelines for funds deposited in the Local Mental Health Services Fund (LMHSF). This section also implements W&I Code section 5899(e) that authorizes the Department to withhold funds from a County that does not timely submit the ARER until the report is submitted. The Department's intent is for the County to record the funds as revenue received in the same fiscal year the SCO would have distributed the funds to the County had they not been withheld by the SCO.

Section 3420.50(g)

Comment #39L: The commenter states: **"**Investment Gain is also exposed to reversion. When counties receive an interim payment from DHCS that exceeds their actual costs in other major funding streams, if they have earned interest on the difference before they settle with DHCS, they can keep the interest. Other state funds are treated this way and we believe that the MHSA should be too."

Response #39L: The Department did not amend this section in response to this comment. The commenter is asking the Department to not subject investment gains to reversion. W&I Code section 5892(h)(1) requires interest be subject to reversion. It provides, "any funds allocated to a county that have not been spent for their authorized purpose within three years, and the interest accruing on those funds, shall revert to the state … provided, however, that funds, including interest accrued on those funds, for capital facilities, technological needs, or education and training may be retained for up to 10 years before reverting."

Sections 3420.50 and 3420.55

Comment #30C: The commenter states: "With respect to adopting proposed sections 3200.260, Small County, 3420.50, Reversion for Counties with a Population of 200,000 or More: CSS Account, PEI Account, and INN Account, and 3420.55, Reversion for Counties with a Population of 200,000 or More: CSS Account, PEI Account, and INN Account, Yolo County requests that any references to a population size of 200,000 be changed to 250,000. In Yolo County's experience, statutory references to county population sizes are generally at 250,000. For example, Vehicle Code Section 9250.14(c) differentiates counties based on population size over and under 250,000. 58

Counties in California range in population size of just over one thousand to over ten million, with 26 counties' populations exceeding 250,000. Counties with a population size of less than 250,000 have consistently been considered small. DHCS should be consistent with other state agencies and existing regulations."

Response #30C: The Department did not amend these sections in response to this comment. This comment was addressed under section 3200.260, Small County, where the Department made clear that it could not vary from the statutory definition of "a county with a population of less than 200,000" established in W&I Code sections 5892(h)(3) and (4).

Regarding sections 3420.50 and 3420.55 that set forth reversion rules for a County with a population of 200,000 or more and rules for a County with a population of less than 200,000. The commenter requests that the Department amend the regulations to refer to a County with a population of 250,000 or more and with a population of less than 250,000. The Department did not make the requested amendment because it would conflict with statute. W&I Code sections 5892(h)(3) and (4) require longer reversion periods for a County with a population of less than 200,000. W&I Code sections 5892(h)(3) and (4) provide as follows:

(3) Notwithstanding paragraph (1), any funds allocated to a county with a population of less than 200,000 that have not been spent for their authorized purpose within five years shall revert to the state as described in paragraph (1).

(4) (A) Notwithstanding paragraphs (1) and (2), if a county with a population of less than 200,000 receives approval from the Mental Health Services Oversight and Accountability Commission of a plan for innovative programs, pursuant to subdivision (e) of Section 5830, the county's funds identified in that plan for innovative programs shall not revert to the state pursuant to paragraph (1) so long as they are encumbered under the terms of the approved project plan, including any subsequent amendments approved by the commission, or until five years after the date of approval, whichever is later.

Sections 3420.50 and 3420.55

Comment #10E: The commenter recommends that the reversion period for INN should begin on the date that the project is actually approved by the MHSOAC. The commenter states: "I would also like to highlight a little bit with the reversion time clock that is outlined in there. If a county ends up going before the Mental Health Services Oversight and Accountability Commission to be able to get their innovation project approved the regulations end up stating that the time clock for when reversion will take place is at the beginning of that fiscal year in which the project is approved. However, if a county is not able to get on the books, on the calendar with the Oversight and Accountability Commission or due to other reasons that until June of that year the funds are – the reversion time clock begins at the beginning of that year, the prior July, losing an entire

year for the counties to be able to carry out and actually implement the project, which we see as a huge issue. We believe that it should be on the date that the project is actually approved by the Oversight and Accountability Commission is the date that the reversion time clock should begin for three years for large and medium counties and then for small counties five years from that date that it is actually approved, not within the beginning of the fiscal year."

Response #10E: The Department did not amend these sections based on this comment. The commenter recommends that INN reversion be on the date that the project is actually approved by the MHSOAC. The use of the fiscal year is consistent with how the Department tracks SCO deposits of MHSA funds to the County. The SCO distributes funds to the County's LMHS Fund on a monthly basis. The provisions in this regulation specify that the start of the reversion period correlate with the fiscal year the funds are deposited in the County's LMHS Fund and not by the monthly deposits. However, the Department is amending sections 3420.50(e) and 3420.55(e) and adding sections 3420.50(f) and (f)(1)-(3) and 3420.55(f) and (f)(1)-(3) in response to the passage of Senate Bill (SB) 79 (Chapter 26, Statutes of 2019). This bill amended W&I Code sections 5892(h)(2)(A) and (h)(4)(A) to specify that INN Account funds shall not revert for the duration that the funds are encumbered under the terms of an MHSOAC approved INN Project Plan, including any subsequent amendments approved by the commission, or until three years after the date of approval, whichever is later.

Comment #39M: The commenter recommends that reversion as proposed be changed to allow for the INN reversion period to begin on the date of MHSAOC approval.

Response #39M: The Department did not amend this section in response to this comment. Comment #39M is similar to Comment #10E. Please see Response #10E.

Section 3420.60(a)

Comment #39N: The revision indicates that the County has ten fiscal years to spend CFTN and WET funds from time of receipt from State Controller's Office (SCO). However, the State did not follow these guidelines in determining the AB114 Reversion for CFTN and WET. When the state allocated funding in FY 06-07, the SCO issued it in installments and so the reversion for those funds should not expire until ten years after the year that they were received Specifically, in LA County FY 2006 - 07 WET Planning and Early Implementation funds of $2.450 M were received in FY 2007-08 and $32.217M for WET activities were received in FY 2009-10. According to these revisions, the latter should not expire until FY 2019-20. However, DHCS included FY 2006-07 and FY 2007-08 WET funds in the AB114 Reversion calculation based on the initial allocation disregarding the installments. DHCS should issue revised letters clarifying funding end dates as well as revise its methodology.

Response #39N: The commenter recommends that the Department clarify past reversion policies by issuing revised information letters clarifying funding end dates and revising the reversion methodology. Comment #39N is similar to Comments #42A and #42B. Please see Response to Comments #42A and #42B. The Department declines to issue revised information notices pertaining to funding end dates or revise the reversion methodology. The guidance provided in MHSUDS Information Notices 17-059 and 18-033 implement the reversion requirements specified in W&I Code sections 5892, 5892.1, and 5899.1.

Comment #42A: The commenter suggests the proposed regulation does not comport with current existing policy for calculation of reversion set forth in Information Notice 08-07 dated March 13, 2008. This commenter is unaware of any rescission or modification to the policies set forth in the Information Notice. The commenter states: "On pages 2 and 3 it states,
"The period used to calculate reversion will begin concurrent with the start of a State Fiscal Year. Additionally, for purposes of reversion, funding will be considered "allocated" to a County when the Proposed Guidelines and Planning Estimates are published and funds are available to each County for distribution. If Planning Estimates and Proposed Guidelines are published:

• prior to the start of the Fiscal Year, funds would be "allocated" at the start of the Fiscal Year to which the Planning Estimate applies;

• in the first quarter of the Fiscal Year to which the funds apply, funds would be considered allocated at the start of that Fiscal Year.

• after the end of the first quarter of the FY to which the funds apply, funds will be considered allocated, for the purposes of calculating reversion, at the beginning of the following FY.

For example, considering FY 07/08 funds, if for a specific component, the Planning Estimates and Proposed Guidelines for FY 07/08 are published in April 2007, funds would be considered "allocated" effective July 1, 2007. Likewise, if Planning Estimates are published in April 2007, but the Proposed Guidelines for this same period are not published until August of 2007, funds would still be considered allocated July 2007. However, if Planning Estimates are published in April 2007, and the Proposed Guidelines for this same period are published in October 2007, although funds would be available for distribution to the counties effective October 2007, for the purposes of calculating reversion, funds would not be considered allocated until July 2008. (see Enclosure I for detail on Reversion Periods for Previously Released Funds)."

"The WET Guidelines and Planning Estimates were released on July 24, 2007 through IN 07-14. The CFTN Guidelines and Planning Estimates were released on March 18, 2008. Per the policy highlighted in yellow above, the reversion clock began at the commencement of SFY 2007-08 for WET and SFY 2008-09 for CFTN. This policy

provides for the same start/end of the 10-Year reversion period to be the same for all counties for these components of the MHSA, with the exception of CSS funds transferred into local WET or CFTN accounts.

The proposed regulation has the reversion clock begin "In determining the ten (10) fiscal year period, the fiscal year in which the State Controller distributes those funds to the County shall be the first fiscal year." Ostensibly, this regulation results in 58 different reversion clocks for the first planning estimates made available for those components as it establishes the distribution of the funds as the trigger to begin the reversion clock."

This commenter recommends that in order to be clear, separate regulatory language needs to be used to set forth the separate policies for the two reversion period clocks for the WET and CFTN funding made available in fiscal years 2007-08 and 2008-09, from the reversion period clock for CSS funds that Counties transfer into their local WET and/or CFTN accounts.

Response #42A: The Department did not amend this section in response to this comment. The commenter suggests that the regulations do not comport with "current existing policy for calculation of reversion set forth in Information Notice 08-07 (March 13, 2008)" and the commenter is "unaware of any rescission or modification to the policies set forth in this Information Notice." The commenter recommends that in order to be more clear and specific, there should be two separate sections, one for the reversion policies for the initial allocation of WET and CFTN funding to a County (in fiscal years 07-08 and 08-09) and a separate section for CSS funds subsequently transferred to the WET and CFTN Accounts.

The Department addressed this comment by previously addressing initial allocations of CFTN and WET funds distributed to the Counties in 2017. In December 2017, the Department published MHSUDS Information Notice No.:17-059 that implemented provisions in Assembly Bill (AB) 114 (Chapter 38, Statutes of 2017). AB 114 provided that all unspent funds subject to reversion, as of July 1, 2017, are deemed to have been reverted and reallocated to the County of origin for the purposes for which they were originally allocated.

The commenter refers to regulatory language for the two reversion clocks for CFTN and WET funding. However, the initial allocations of CFTN and WET funds to Counties was addressed by MHSUDS Information Notice: 17-059. This Information Notice addressed the issue raised in this comment by subjecting all funds distributed to Counties from FY 2005-06 through FY 2014-15, which includes the CFTN and WET funds at issue in this comment, to reversion. This Information Notice provided:

- Funds subject to reversion as of July 1, 2017, were distributed to Counties from Fiscal Year (FY) 2005-06 through FY 2014-15. These funds include those provided in the Planning Estimates and Component Allocations from FY 2005-06 through FY 2011-12 for CSS, PEI, INN, CFTN and WET components.

- An appeal process if they disagreed with the Department's determination of funds subject to reversion.
- Requirements that each County, by July 1, 2018, submit a plan to expend these funds on or before July 1, 2020.
- Any reallocated MHSA funds that are unexpended as of July 1, 2020, will be reverted to the State and reallocated to other Counties.

Comment #42B: The commenter raises a concern that section 3420.60 and the "corresponding SOR make an inaccurate connection between the language in WIC 5892(h) and the regulatory language in this proposed section" by making this section applicable to funds the SCO distributed to a county during fiscal year 2008-09 and in subsequent fiscal years." The commenter further states that this proposed regulation presents "an arbitrary point in time trigger of FY 2008-09" when funds were made available in prior fiscal years. The commenter also recommends developing clear and specific regulations for the current process of establishing a reversion period clock for CSS funds that are transferred into the WET and CFTN Accounts.

Response #42B: The Department interprets the comment to request the Department explain why section 3420.60 is applicable to CFTN and WET Account funds distributed to the Counties during FY 2008-09 and subsequent fiscal years. Section 3420.60 applies to CFTN and WET Account funds distributed during FY 2008-09 and fiscal years thereafter to implement W&I Code section 5899.1(a) that specifies reversion requirements for funds subject to reversion on or after July 1, 2017. CFTN and WET Account funds subject to reversion on or after July 1, 2017 would have been distributed to the Counties during FY 2008-09 or later.

As discussed in Response #42A, the Department addressed CFTN and WET Account funds subject to reversion that were distributed prior to FY 2008-09 in MHSUDS Information Notice No.:17-059. Please see Response #42A.

The Department has amended section 3420.60(a) to require a County to spend "funds transferred from its CSS Account to its CFTN or WET Account pursuant to Section 3420.10 within ten (10) fiscal years of receiving those funds from the State Controller." This is necessary to clarify that the reversion period for funds a County transfers from its CSS Account to its CFTN Account or WET Account, pursuant to section 3420.10, begins when the SCO distributes the funds to the County.

Section 3510

Comment #39O: The commenter requests that the Department change the ARER due date to January 31, following the end of the reporting fiscal year.

Response #39O: The comment prompted the Department to amend sections 3510(a) and 3510.005(a) and (b).

Section 3510(a) is amended as follows:

"Each County receiving a direct distribution of Mental Health Services Fund monies from the State Controller shall submit a complete and accurate Annual MHSA Revenue and Expenditure Report to the Department by email at MHSA@dhcs.ca.gov and to the Mental Health Services Oversight and Accountability Commission at MHSOAC@mhsoac.ca.gov, by ~~December~~ January 31, following the end of the reporting fiscal year.

Section 3510.005 (a) is amended as follows:

(a) If a County does not submit an Annual MHSA Revenue and Expenditure Report pursuant to section 3510 by ~~December~~January 31, the Department shall send notification to the County Mental Health Director and the MHSA Coordinator by email within five (5) business days of ~~December~~ January 31 that the report was not timely submitted.

Section 3510.005 (b) is amended as follows:

(b) If a County provides an incomplete or inaccurate Annual MHSA Revenue and Expenditure Report pursuant to section 3510, as determined by the Department, the Department shall send notification to the County Mental Health Director and the MHSA Coordinator by email within fifteen (15) calendar days of ~~December~~ January 31 that the report is incomplete or inaccurate and deemed not submitted.

Comment #10D: The commenter requests that the Department change the deadline for the ARER to be a month after the Medi-Cal cost reports are to be finalized so that a County can provide the most accurate information in the ARER.

Response #10D: Comment #10D is similar to Comment #39O. Please see Response #39O.

Section 3510.030

Comment #41E: The commenter brought to the Department's attention that section 3510(a) requires the submitted ARER be "complete and accurate," but section 3510.030 only requires filling a "complete" ARER. For consistency, the commenter requests the Department include "accurate" in describing the form.

Response #41E: This comment prompted the Department to amend section 3510.030 as follows:

Each County shall submit a complete and accurate Annual MHSA Revenue and Expenditure and Adjustment Worksheet County Certification form, DHCS 1820 (02/19),

to the Department at MHSA@dhcs.ca.gov and to the Mental Health Services Oversight and Accountability Commission at MHSOAC@mhsoac.ca.gov, when submitting the Annual MHSA Revenue and Expenditure Report, pursuant to Section 3510.

Comments Directed at the Procedures Followed by the Department in Proposing this Action

Comment #9A: The commenter states: "We believe that DHCS should have widely noticed and held public stakeholder meetings before the comment period for these regulations began. We also received no notice from DHCS of the public hearing regarding these regulations that were to be held today. When the MHSA was passed public stakeholders clearly expected more than merely a posting of a 45-day notice regarding something as consequential to changes to MHSA fiscal regulations, especially when some of these regulations do not reflect the language of the Act itself.

Wish to register our complaint that DHCS did not engage community stakeholders in a meaningful way in accordance with the Mental Health Services Act."

Response #9A: The Department did not amend this section in response to this comment. The commenter refers to stakeholder involvement in the development of these proposed regulations.

Pursuant to W&I Code section 5898, the Department engaged stakeholders prior to the 45 day public comment period for these regulations. In July 2016, the Department conducted several meetings with the MHSOAC and the California Behavioral Health Directors Association of California to discuss proposed fiscal policies and obtain input to be used in the development of these regulations. The meetings centered on specific issue papers the Department developed and presented to the two organizations (DHCS 2016 Fiscal Regulation Issue Papers). These issue papers centered on the following topics:

1. The tracking of revenue and expenditures by component.
2. The tracking of interest earned on investments.
3. The determination of total revenue allocated to each component.
4. The transferring of funds from the CSS component to CFTN and WET Accounts, and Prudent Reserve.
5. The determination of total expenditures from the Local Mental Health Services Fund for each component.
6. The calculating of reversion.
7. The method the Department will use to recoup funds that have been reverted.
8. The transfer of only CSS funds to the Prudent Reserve.
9. The determination of the maximum amount that may be held in the local Prudent Reserve and when to access the Prudent Reserve.

During the course of this rulemaking process, the Department distributed these proposed regulations to a diverse group of stakeholders, including various mental health

consumer advocacy groups. Moreover, on Tuesday May 7, 2019 the Department held a public hearing on these regulations and took numerous public comments into consideration and amended these proposed regulations as reflected in the rulemaking file.

Comment #33A: "DHCS did not develop the proposed regulations with the "maximum feasible opportunity for public participation and comments."

California Welfare and Institutions Code ("WIC") at § 5898 states:

The State Department of Health Care Services, in consultation with the Mental Health Services Oversight and Accountability Commission, shall develop regulations, as necessary, for the State Department of Health Care Services, the Mental Health Services Oversight and Accountability Commission, or designated state and local agencies to implement this act. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

Despite this requirement, the DHCS 16-009 Initial Statement of Reasons (ISOR) reveals DHCS met only with the MHSOAC and the California Behavioral Health Directors Association (CBHDA) in drafting the proposed regulations and has not held a meeting since July 2016. (ISOR, p. 5.) While the MHSA mandates Community Collaboration in all MHSA planning and policy activities (9 CCR § 3200.060), no other community stakeholders were invited to participate in these discussions: no clients, no family members, no providers, no cultural community members, no representatives of un- or under-served groups, no educators, no law enforcement, and no mental health advocacy groups had an opportunity to shape the proposed regulations now pending. The MHSA is different. DHCS must do better in this area."

Response #33A: The Department did not amend this section in response to this comment. Comment #33A is similar to Comment #9A. Please see Response to #9A.

Comment #7B: The commenter states: "According to the Welfare and Institutions Code, DHCS is required to develop their regulations with stakeholder involvement. So I would like to see them pulled back, some actual meetings held with clients and have them redeveloped with client input."

Response #7B: The Department did not amend this section in response to this comment. Comment #7B is similar Comment #9A. Please see Response #9A.

Comment #12B: The commenter states: "Given that I and other advocates who are highly engaged here in the Capitol were left unaware of your work (proposed regulations), which should have been public and transparent, I carry serious concern for whether the processes and structures of DHCS' rulemaking adequately reflects the spirit of the Mental Health Services Act. . . . Given the lack of community planning and

involvement in the preparation of these regulations I stand unsurprised at the description, or the lack of description and instruction in how to run community planning processes at the county level. I request that DHCS either amend regulation 3420 to provide instruction regarding community planning processes or that DHCS develop a new regulation to fill this existing gap regarding community planning processes.

I also agree with my colleagues regarding the request to require minimum spending on community planning processes and I advocate for a 2.5 percent.

I also request and strongly recommend that DHCS convene community stakeholders in the implementation of my recommendations."

Response #12B: The Department did not amend this section in response to this comment. Comment #12B is similar to Comment #9A. Please see Response #9A.

Comment #33E: The commenter requests that the Department honor the mandate in W&I Code section 5898 by allowing maximum feasible opportunity for public participation and comments in the revision of any proposed regulations and in the development of all new MHSA regulations moving forward.

Response #33E: The Department did not amend this section in response to this comment. Comment #33E is similar to Comment #9A. Please see Response #9A.

Comment #35B: The commenter suggests that the stakeholder process used to develop the proposed regulations was not sufficient. An excerpt to W&I Code section 5898 is listed, including the phrase "shall be developed with the maximum feasible opportunity for public participation and comments."

Response #35B: The Department did not amend this section in response to this comment. Comment #35B is similar to Comment #9A. Please see Response #9A.

Comment #22A: The commenter states: "The stakeholder process used to develop the proposed regulations was not sufficient. The MHSA explicitly states a required stakeholder process in development of any DHCS or MHSOAC regulations related to MHSA funds. These proposed DHCS regulations were developed using a process that was not open to the public as clearly called for by the MHSA.

WIC § 5898 states: The State Department of Health Care Services, in consultation with the Mental Health Services Oversight and Accountability Commission, shall develop regulations, as necessary, for the State Department of Health Care Services, the Mental Health Services Oversight and Accountability Commission, or designated state and local agencies to implement this act. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments."

Response #22A: The Department did not amend this section in response to this comment. Comment #22A is similar to Comment #9A. Please see Response #9A.

Comments Outside of the Scope of the Regulatory Proposal

Comment #3B: The commenter states: "If there is one thing I'd just like to see in addition to what was said about the money being used as to design to, it's just people having the conversation with themselves. How can resources be put to the best use to help as many people as possible. That is really where it came from as many people were in need. We would like to serve as many people and see them help themselves along the road of recovery and not just a passing parade of money being spent."

Response #3B: The Department did not amend this section in response to this comment. While the Department appreciates the comment, the commenter does not make a comment specific to the proposed regulations.

Comment #39R: The commenter is concerned about the potential consequences when the County is unable to get its Innovation program plans approved in a timely manner by the MHSAOC, due to MHSAOC capacity or backlog.

Response #39R: The commenter appears to refer to issues regarding the MHSOAC's ability to approve Innovation plans in a timely manner. The MHSOAC is responsible for approving County innovation programs (section 5830(e)) and is authorized to administer its operations separate and apart from the Department (section 5845(d)(2)). As such, the comment is considered outside the scope of this regulatory proposal and cannot be considered in these regulations**.**

Comment #31B: The commenter recommends that the regulatory proposal "must include specific language related to required mandatory county spending on ongoing planning process."

"We request that additional regulations be drafted, or the proposed regulations be modified, to require meaningful stakeholder involvement at all levels in the ongoing development, implementation, and evaluation of MHSA programs in robust ongoing Community Program Planning processes.

Proposed regulation § 3420 on page 19 of the pending DHCS Proposed MHSA Fiscal Regulations 16-009 enumerates all state mandated spending categories, except Community Planning. The language of the proposed fiscal regulations in DHCS 16-009 offer no instruction to counties regarding the MHSA's specific mandate to fund an annual ongoing MHSA planning process and ensure consumers, family members, and other stakeholders meaningfully participate. (See WIC §§ 5848(a), 5892(c); 9 CCR § 3300.)"

Response #31B: The commenter requests the regulations address the stakeholder involvement in the community planning process. The Department did not amend the regulations in response to this comment. The Department did not include the

development of standards for engaging stakeholders in the MHSA community planning process as part of the scope of this regulatory proposal.

Comment #34B: The commenter suggests that the guidance provided offers no instruction to counties regarding the MHSA's specific mandate to fund an annual MHSA community planning process (CPP) and ensure consumers, family members, and other stakeholders meaningfully participate.

The commenter states: "Counties have not spent anywhere near five percent of their annual MHSA revenues on the local CPP process. We respectfully ask the Department to include such guidance in its future MHSA Information Notices."

Response #34B: The Department did not amend this section in response to this comment. Comment #34B is similar to Comment #31B. Please see Response #31B.

Comment #33D: The commenter states: "The proposed regulations ignore the MHSA's requirement for counties to fund and implement a robust Community Program Planning process that includes meaningful stakeholder involvement in all MHSA-related activities…we are particularly troubled by the absence of fiscal regulations on these critical statutory mandates. Counties have not spent anywhere near five percent of their annual MHSA revenues on their local CPP process, while simultaneously amassing hundreds of millions of dollars in unspent MHSA funds now subject to reversion. Local and state-level decision makers need a clear framework for enacting the MHSA's stakeholder inclusion and CPP funding requirements. These requirements are a cornerstone of the MHSA and a crucial avenue of achieving the Act's mission to end "business as usual" in California's Public Mental Health System. Moreover, counties difficulties in spending down MHSA funds can be remedied through the adequate funding and implementation of functional local CPP process (as already directed by the MHSA). "

Response #33D: The Department did not amend this section in response to this comment. Comment #33D is similar to Comment #31B. Please see Response #31B.

Comment #8C: The commenter suggests that it is important that the community planning process be adequately funded and that this clearly falls under the Department's purview and that the Department has shirked its responsibility in governance and funding of the community planning process. The commenter would like the Department to include the community program planning in these regulations.

Response #8C: The Department did not amend this section in response to this comment. Comment #8C is similar to Comment #31B. Please see Response #31B.

Comment #37C: The commenter states: "The proposed regulations ignore the MHSA's requirement for counties to fund and implement a robust Community Program Planning process that includes meaningful stakeholder involvement in all MHSA-related

activities." The commenter references W&I Code sections 5848(a) and 5892(c); and 9 California Code of Regulations section 3300 and includes excerpts.

The commenter "asks DHCS to include such guidance in its future MHSA Information Notices and collaborate with clients and community stakeholders in the development of regulations governing the MHSA's CPP process."

Response #37C: The Department did not amend this section in response to this comment. Comment #37C is similar to Comment #31B. Please see Response #31B.

Comment #38C: The commenter states: "The proposed regulations ignore the MHSA's requirement for counties to fund and implement a robust Community Program Planning process that includes meaningful stakeholder involvement in all MHSA-related activities." The commenter references W&I Code sections 5848(a), 5892(c); and California Code of Regulations, title 9, section 3300 and includes excerpts.

The commenter "asks DHCS to include such guidance in its future MHSA Information Notices and collaborate with clients and community stakeholders in the development of regulations governing the MHSA's CPP process."

Response #38C: The Department did not amend this section in response to this comment. Comment #38C is similar to Comment #31B. Please see Response #31B.

Comment #32C: The commenter states: "The language of these proposed fiscal regulations offer no instruction to counties regarding the MHSA's specific mandate to fund an annual MHSA planning process and ensure consumers, family members, and other stakeholders meaningfully participate (See WIC §§ 5848(a), 5892(c); 9 CCR § 3300). While the MHSA does not set a minimum funding allocation for annual planning activities, the statutory language at WIC §§ 5848(a) and 5892(c) and existing regulations at 9 CCR § 3300 clearly require counties to both fund and implement a robust and ongoing MHSA Community Program Planning ("CPP") process. However, in many counties stakeholders and service providers are unaware of upcoming meetings and thus miss a critical opportunity to help influence the counties MHSA plan. As safety net providers, we would welcome the opportunity to increase our involvement in MHSA planning meetings, however we've found it extremely difficult to determine when and where these meetings are held. Thus we ask that the Department work with the Mental Health Services Oversight and Accountability Commission (OAC) to determine standards for engaging stakeholders in the MHSA community planning process while also ensuring funding is available to help support the stakeholder meeting.

The Department should work with the OAC to develop standards for engaging stakeholders in the MHSA community planning process while also ensuring funding is available to help support the stakeholder involvement at these meetings (i.e. child care, transportation vouchers, easily accessible location, etc.)."

Response #32C: The Department did not amend this section in response to this comment. Comment #32C is similar to Comment #31B. Please see Response #31B.

Comment #35C: The commenter recommends that the "regulations must include specific language related to required mandatory county spending on ongoing planning processes. We request that additional regulations be drafted, or the proposed regulations be modified, to require meaningful stakeholder involvement at all levels in the ongoing development, implementation, and evaluation of MHSA programs in robust ongoing Community Program Planning processes."

Response #35C: The Department did not amend this section in response to this comment. Comment #35C is similar to Comment #31B. Please see Response #31B.

Comment #36B: The commenter requests that the regulatory proposal be amended to "include specific language related to required mandatory county spending on ongoing planning processes."

The commenter requests that additional regulations be drafted, or the proposed regulations be modified, to require meaningful stakeholder involvement at all levels in the ongoing development, implementation, and evaluation of MHSA programs in robust ongoing Community Program Planning processes.

The commenter states: "Proposed regulation § 3420 on page 19 of the pending DHCS Proposed MHSA Fiscal Regulations 16-009 enumerates all state mandated spending categories, except Community Planning. The language of the proposed fiscal regulations in DHCS 16-009 offer no instruction to counties regarding the MHSA's specific mandate to fund an annual ongoing MHSA planning process and ensure consumers, family members, and other stakeholders meaningfully participate. (See W&I Code §§ 5848(a), 5892(c); 9 Cal. Code Regs. § 3300.)"

Response #36B: The Department did not amend this section in response to this comment. Comment #36B is similar to Comment #31B. Please see Response #31B.

Comment #1A: The commenter states: "I would like the DHCS to follow the regulations for maximum opportunity for public participation and comments as regulations such as the ones proposed today are developed; as stated in Welfare and Institutions Code section 5898."

The commenter requests that the Department adopt a regulation that mandates Counties allocate 5 percent of CSS MHSA funds to a robust community planning process and provide specific guidelines to Counties regarding the actual community planning. The commenter requests that regulations be modified to provide clear guidance to Counties on this process.

Response #1A: The Department did not amend this section in response to this comment. Comment #1A is similar to Comment #31B. Please see Response #31B.

Comment #2C: The commenter states: "In terms of other concerns: The language of these proposed fiscal regulations offer no instruction to counties regarding the MHSA's specific mandate to fund an annual MHSA planning process that ensures consumers, family members and other stakeholders meaningfully participate. The stakeholder engagement process is essential - as you heard before from the previous speaker and it would be more inclusive and robust if counties were provided guidance and standards for engaging stakeholders in the MHSA community planning process, including guidance toward a minimum investment of total funding in the process. We urge the Department to work with the MHSA Oversight and Accountability Commission to develop standards for engaging stakeholders in the MHSA community planning process, while also ensuring funding is available to help support broad and representative stakeholder involvement at these meetings, such as allowances for child care, transportation vouchers, making it an easily accessible location and time, et cetera."

Response #2C: The Department did not amend this section in response to this comment. Comment #2C is similar Comment #31B. Please see Response #31B.

Comment #4A: The commenter echoes the comments that have already been made, particularly in regard to the community planning process. The commenter maintains that the Department is abdicating its responsibility, and would like to see the Department hold Counties accountable for their community planning processes.

Response #4A: The Department did not amend this section in response to this comment. Comment #4A is similar to Comment #31B. Please see Response #31B.

Comment #5A: The commenter recommends that the Department include regulations governing the community planning process funding. The commenter recommends that a County spend the maximum percentage allowable for the planning process. The commenter would like the Department to include stakeholders in all Mental Health Services Act policy discussions, regulation drafting, and decision-making activities. Additionally, the commenter would like to see money spent to help stakeholders overcome transportation barriers that some face who live in rural areas and have to travel to stakeholder events.

Response #5A: The Department did not amend this section in response to this comment. Comment #5A is similar to Comment #31B. Please see Response #31B.

Comment #6A: The commenter states: "I believe that the community planning process should be enumerated in that same set of regulations using similar language that you used for the Prudent Reserve minimum, a county shall develop an amount that is to be

spent or a minimum of 2.5 percent of 5 percent, which is the maximum that could be spent."

Response #6A: The Department did not amend this section in response to this comment. Comment #6A is similar to Comment #31B. Please see Response #31B.

Comment #7A: The commenter states: "The MHSA was developed to transform the mental health system into a bottom-up system with everything driven by clients and other stakeholders. And we have lost that over time, it's becoming more and more top down with now DHCS does these regulations without any client stakeholder involvement that we have been able to track down.

So, we have to get back to the original intent of the MHSA, a client-driven bottom-up system, and we have to start spending money on planning processes. Because that's the only way that we are going to find services within the community that the community needs."

Response #7A: The Department did not amend this section in response to this comment. Comment #7A is similar to Comment #9A. Please see Response #9A.

Comment #10F: The commenter would like to have further discussions about the community planning process and has concerns about mandating a minimum.

Response #10F: The Department did not amend this section in response to this comment. Comment #10F is similar to Comment #31B. Please see Response #31B.

Comment #11A: The commenter requests that the Department ensure that Counties that receive MHSA funding are investing in an adequate community planning process and that it is reflective of their communities.

Response #11A: The Department did not amend this section in response to this comment. Comment #11A is similar to Comment #31B. Please see Response #31B.

Comment #12A: The commenter requests that the Department either amend regulation 3420 to provide instruction regarding community planning processes or that the Department develop a new regulation to fill this existing gap regarding community planning processes and advocates for a 2.5 percent minimum.

Response #12A: The Department did not amend this section in response to this comment. Comment #12A is similar to Comment #31B. Please see Response #31B.

Comment #13A: The commenter states, "And when I looked at the language, you know, where's community planning? That is extremely critical and it needs to be part of the rules and regulations with the Department of Health Services.

The reason. I just found out from our local mental health advisory board that one of the providers that got the contract to provide peer support services only got two years

instead of three years and that puzzled me. To me it shows that at the county level they are playing politics behind the scene and not validating what the community is asking for, peer support services.

Another thing, the language needs to be stronger to monitor and to make that the counties are doing what they are supposed to be doing in the spirit of the law, the Mental Health Services Act. Why? In my county I was shocked that our county is under the grand jury. The mental health services advisory board is being monitored by the grand jury because they were out of compliance, inadequate training from the county, not consumers and families being served on the board of the advisory board and questionable about funded projects, whether it is beneficial to the mental health community or not.

So stakeholders and community planning needs to be included permanently in order to avoid what's happening in my county will happen with all the other counties throughout California. County mental health services play politics and they like to play politics. But if the community is involved and you put pressure the county is going to have to buy in and live with it, period.

You know, I am there to serve the mental health community. Last Thursday night I had a senior that keeps coming back at the psychiatric unit. What she's missing is a program that we don't have in our community that's available in South Bay, North Bay, San Francisco, where she can go into a home with other individuals with 24 hour support that's unlocked. Yes, I agree with her, she shouldn't be forced to live in a nursing home because her psychiatric illness is so bad as part of her aging process. No fault of her own. Yet Thursday night 2:30 in the morning she's screaming at us ripping her paper because she got served a 5250 14 day hold. We're doing it for her own safety but I get that being in her shoes. I wouldn't want that either, I would not want to be in a nursing home. I'd rather utilize programs and services that s' available for me to live in the community, not in a nursing home. So it's really important that I want the Department of Health Services to take a step back.

First, put stronger language. When I looked at it it seems too vague, too open. No, we need to tighten up, tighten up the ship the way it needs to be and monitor the counties to make sure that they are in compliance with what they need to do. That's what I'm asking as an individual, as a taxpayer, even though I'm not paying into that fund because I'm not a millionaire. I wish I was but I'm not.

But you need to put yourself in their shoes. I felt bad for the 87 year old lady screaming. I couldn't say anything. We couldn't say anything because we knew where she was going to end up but we didn't want to tell her to wake up the rest of the patients in the unit, you know. And I took it very personal because I grew up without grandparents. Here is a poor old lady just venting, what she wants that she can't have because we don't have that in our community, yet I know they're available in the South Bay, North

Bay, San Francisco. But she's not going to want to move. Santa Cruz is her home. That's where she grew up and that's where she should stay.

I'm hard of hearing so I'm not sure if my voice is too low or too loud because I can't hear without my hearing aids.

Please, revisit your regulations and do it the right way. It can happen, it's doable, we can force the counties to do what they need to do. You can't trust the counties if the regulations are vague where they can do whatever they want because it will happen. Look at the two examples I used, the program that got a two year contract instead of a three year contract that the state commission approved. Not finding out until after the fact. But yet all the others got three years. It blew my mind away.

And then the county mental health advisory board being under the grand jury. What does that say? You don't want more of that to be happening throughout the state. Because I bet you if the community asked the grand jury they're going to find out the same issues and problems that they would identify – that our county has identified and still working on, each list being checked off by the judge until you're clear."

Response #13A: The Department did not amend this section in response to this comment. Comment #13A is similar to Comment #31B. Please see Response #31B.

Comment #14B: The commenter states: "the stakeholder process might apply to an innovation so maybe they pull it from Innovation dollars. You need to have that fund like you do in the other ones where you can identify where the stuff came from, how it landed in that fund and how it was expended. Because once again, you cannot evaluate, you cannot do that kind of stuff without measuring it and you need to measure that, you know. You're leaving that out."

Response #14B: The Department did not amend this section in response to this comment. Comment #14B is similar to Comment #31B. Please see Response #31B.

Comment #24A: The commenter requests that DHCS include language regarding community planning, inclusion and consultation of MHSA stakeholders, and ongoing dialogue to justify these ends.

Response #24A: The Department did not amend the regulations in response to this comment. Comment #24A is similar to Comments #31B and 9A. Please see Responses #31B and 9A.

Comment #22B: The commenter states: "The regulations must include specific language related to required mandatory county spending on ongoing planning processes**.** We request that additional regulations be drafted, or the proposed regulations be modified, to require meaningful stakeholder involvement at all levels in the ongoing development, implementation, and evaluation of MHSA programs in robust ongoing Community Program Planning processes.

Proposed regulation § 3420 on page 19 of the pending DHCS Proposed MHSA Fiscal Regulations 16-009 enumerates all state mandated spending categories, except Community Planning. The language of the proposed fiscal regulations in DHCS 16-009 offer no instruction to counties regarding the MHSA's specific mandate to fund an annual ongoing MHSA planning process and ensure consumers, family members, and other stakeholders meaningfully participate. (See W&I Code §§ 5848(a), 5892(c); 9 Cal. Code Regs. § 3300.)"

The commenter requests that additional regulations are drafted or the proposed regulations be modified to require meaningful stakeholder involvement at all levels in the ongoing development, implementation, and evaluation of MHSA programs in a robust ongoing community program planning processes.

Response #22B: The Department did not amend this section in response to this comment. Comment #22B is similar to Comment #31B. Please see Response #31B.

Comment #4B: The commenter suggests that the regulations that Department proposes for reversion are "weak." The commenter states:

"And since DHCS absorbed the department essentially and all of those functions there is no review of the counties' plans anymore, it all stops at the Board of Sups. You know, there was a time in the very beginning when we all really believed in the MHSA. We're kind of jaded now, especially those of us who are from the consumer movement, because it hasn't happened the way it's supposed to happen. Communities are not involved, they are not being engaged in this, and it has – it has to start there, it just has to. How do you know what a community needs unless you talk to them? So that's something that has just been a long problem. But the reversion is huge. I mean literally Sacramento County alone is sitting on $140 million of funds that were allocated this year. You walk by people every day experiencing auditory hallucinations in this town and many others across the state of California. Make the counties spend the money, put some teeth in the reversion, do your jobs. Thank you very much."

Response #4B: The commenter refers to reversion and encourages the Department to make Counties spend the money. The Department did not amend this section in response to this comment. While the Department appreciates the comment, the commenter makes no specific recommendation related to the proposed regulations. Furthermore, the Department believes these regulations appropriately implement the reversion requirements in W&I Code section 5892(h). In addition, the Department began enforcing the reversion requirements in 2017 through Information Notices 17-059 and 18-033 as discussed in response to comment #s 42A and 42B.

Comment #14C: The commenter states: "DHCS through its mechanism of the performance contracts is set to judge the counties about how well they're doing about something like stakeholders, if you've got the right evidence. And how can you do that if

you are not really clear on how to do the stakeholder process yourselves? I mean, it comes right back home, you know. So I urge you to -- there's a lot of pieces I could comment on, smaller pieces in here I'm not going to, there is no opportunity. I, like many other people, learned about this like a week ago. You know, I usually have lots of things that come in and I was like, what, whoa, wait, you know, and it's almost over. It would have been much nicer if we could have had a discussion."

Response #14C: The Department did not amend this section in response to this comment. Comment #14C is similar to Comment #9A. Please see Response #9A.

Comment #23A: The commenter states: "I work for Peer Recovery Art Project in Modesto California. I am a subcontractor for Norcal MHA. . . . While delivering the trainings on the core concepts of peer support, many peer support workers have expressed confusion in their peer support role. This confusion was found to be linked to not having an understandable job description for the peer support worker. In the same fashion the rules, regulations, and language used by the, DHCS is the job description for all counties and their agencies providing mental health services, to do their jobs correctly and efficiently."

Response #23A: The commenter refers to a peer support program and a lack of clarity on the roles and responsibilities of a peer support worker. The comment is recommending the Department develop regulations for peer support workers. While the Department appreciates the comment, the comment is outside the scope of this regulatory proposal and cannot be considered through these regulations.

Comment #3A: The commenter states: "I'm Pete Lafollette, I'm from Ventura County. A number of advocacy titles on a state basis but really what I am here for today and what I am most proud of is my association with NorCal MHA ACCESS and I really would like to applaud them for expediting this process. I support the adoption of regulations of the community planning process. I support the ACCESS position statement of established notice of these meetings, inclusion, engagement. I especially support the fiscal accountability of Mental Health Services Act funds and local governing authorities from informed stakeholder constituency. I am most pleased and proud to be involved with the MHA culture and as you can see, the attendees of this meeting in this room represent the best product and success of the MHSA recovery process. Credentialed consumers participating in advocacy, showing expertise and experience. These things, they cannot be valued too highly in the overall press of the Mental Health Services Act funds. There is a Buddhist saying, they come and they go, they come and they go. Well, those of us that have been involved such a long time in this process know that the oversight people that come, they also go as they move on to something else. Yet we as a culture, we remain to reeducate them, to reintegrate them, to make them more familiar with the process that we that have been here from the beginning since we founded the Mental Health Services Act that was funded by the survival culture, know very well. The MHSA consumer stakeholder culture, we are on the move and we are hoping that you will join us."

Response #3A: The commenter appears to refer to MHSA funds being used effectively and efficiently. The Department did not amend this section in response to this comment. While the Department appreciates the comment, the comment is outside the scope of this regulatory proposal and cannot be considered through these regulations.

Comment #25A: The commenter includes an email thread, which reads "CBHDA thread: quote on SMI Reduction of Disparities directly related to wellness:

"Reduction of disparities faced by individuals diagnosed with serious mental illness or children diagnosed with serious emotional disorders and their families required to pursue wellness and recovery." Mr. Lafollette noted that these individuals are so poorly served that they are at risk of situational effects including homelessness, institutionalization, incarceration or substance abuse. Mr. Lafollette added that a minimum of funds are provided to the severely mentally ill, the majority of funds are utilized to support new clients and programs such as the Innovations Project:

There have been surprising results when designated funds are used to help with housing, jobs and self- determination. With encouragement and tool, even the seriously ill population (whom the law was written by and for protection of) can recover.'

Adrienne Shilton Adrienne Shilton, the Director of Intergovernmental Affairs at the County Behavioral Health Association (CBHDA), stated that the MHSA was designed to be a local initiative with local oversight. Counties and local programs have been partners with the state to showcase the impact of those programs. There have been significant resources given to DHCS and the MHSOAC in terms of positions and budget authority dedicated to evaluate the MHSA. One of the striking things about the LHC report was not their call for additional oversight but the fact that professional researchers could not locate publicly-available data and the evaluations that already exist, which are on the MHSOAC and other's websites. Ms. Shilton reviewed a handout categorizing various oversight functions of DHCS and the MHSOAC and where those functions are found in statute. She suggested that a question for the task force to explore is what the end goal is and what is missing. There is substantial oversight at both local and state levels with the resources that have been given to counties and state entities. The MHSOAC needs to do more to promote the outcomes of the MHSA. There is a statewide database for FSPs but not for PEI programs. One of the initiatives that the CBHDA is involved with and presented to the MHSOAC is called "Measurements, Outcomes, and Quality Assessment (MOQA) Data Report." CBHDA has gone statewide to tell the story of the impact of behavioral health services across the state and has created a way to categorize PEI programs to get the story out about what is happening."

Response #25A: The commenter appears to refer to reducing disparities in mental health through services that incorporate housing, substance use disorder treatment, jobs and self- determination. Furthermore, the commenter seems to recommend that

the Department do more to govern better "to promote the outcomes of the MHSA." The Department did not amend this section in response to this comment. While the Department appreciates the comment, the commenter makes no specific recommendation related to the proposed regulations.

Comment #26A: The commenter states: "The MHSA design was legislated to have MH recovery model working alongside and augmenting medical treatment which continues to be given short shrift and failing outcome, and needs to be provided the same emphasis and classification as CA HCS and federal reform trends towards prevention and wellness along with the resources and funding to make this a practical reality given the public tax expense of non-recovery- disability, substance abuse, rehabilitation, incarceration hospitalization, institutionalization, long list of atrophy. I suggest broader fiscal oversight."

Response #26A: The commenter refers to the recovery model and broader fiscal oversight. The Department did not amend this section in response to this comment. While the Department appreciates the comment, the commenter makes no specific recommendation related to the proposed regulations.

Comment #27A: Commenter states: "MHSA planning through MHSOAC supports an industry of contractors, consultants, committees, conferences, reports, reviews, focus groups, also the subject of grievances. MHSA revenue has created a separate, new tier of "Cadillac" mental health programs for newly recruited clients. The existing lower tier of programs continues to deteriorate, service and access declines, and current consumers are denied adequate treatment. In defiance of logic and the law, OAC requires counties to establish a separate, new bureaucracy of programs to obtain MHSA funds. By changing Innovations and PEI contract language, OAC created funding categories and objectives not found in the MHSA, and instructed counties to spend a majority of funds on this new system.

BUDGET BATTLES INTENSE=--WE THINK THE MHSA $$$ TRUST FUND WILL LOOK APPEALING TO LEGISLATURE AGAIN. ADVOCATE SHIRLEY BARD HAS BEEN BATTLING WITH SAN DIEGO

OFFICIALS SINCE LAST YEAR'S CONFISCATION OF MENTAL HEALTH REVENUE—demanding that counties challenge raid on funds.

Prop 10 First Five Commission hired attorneys to fight raid on their funds--while mental health advocates hired a public relations firm. Prop 10 won their legal battle--Prop 63 advocates did not even go to battle. TAKE A LOOK AT STEINBERG SB1136 TO AMEND MHSA AGAIN. TERESA PASQUINI AND ROSE KING TESTIFIED AGAINST IT NT HE SENATE AND THE BILL WILL BE HEARD IN ASSEMBLY

HEALTH ON JULY 3RD/ . We will keep you posted -- contact your legislators or plan to come and testify. SB 1136 eliminates state requirement to direct integration of MHSA,

aims to legalize the violations of MHSA law enacted by voters, and promote more misuse of mental health funds to continue spending on a broad range of programs with no benefit to treatment of serious mental illnesses."

Response #27A: The commenter appears to refer to the MHSOAC use of contracts for various consultants, contractors, conferences, committees, etc. Additionally, the commenter refers to budget battles and raids on the MHSA trust fund. The Department did not amend this section in response to this comment. While the Department appreciates the comment, the commenter makes no specific recommendation related to the proposed regulations.

Comment #27B: Commenter states: "I listened entirely to 2/28/19 MHSOAC meeting and heard some compelling public comment. Unfortunately, it was after the fact, since the Innovation contracts were all approved as a foregone conclusion:

- Nevada City $2,395,892.02,
-Imperial County $2,395,892.02-$3,120,109 respectively
-San Bernardino $17,024,309,
-Toby Ewing project RFP $25,000,000

Worth noting, one of the above contracts will introduce dogs as a strategy for combatting depression. 7 figures for dog food (?) Also I heard a commissioner repeating her earlier meeting complaint of not getting the packet on time or in timely manner, and as always was rushed to vote with inadequate discussion. The ongoing comments are this lack of process is repeated and systemic. My overall takeaway is the commission members revel in the big numbers and the power they yield by approving contracts with little concern of content. It was also said during PC that commissions members often come late and leave early to catch their flight. These unreal meeting outcomes are a charade. I know what I heard- after the role call when all those INN contacts were voted and approved, the roar from the contractors in the room was testimony of the commission's enthusiasm for big numbers. The money is awarded at the county administrative level and is not getting to the SMI populations."

Response #27B: The commenter appears to refer to the MHSOAC approval of Innovation contracts (projects). The Department did not amend this section in response to this comment. While the Department appreciates the comment, the commenter makes no specific recommendation related to the proposed regulations.

Comment #28A: The commenter states: "Are voter-approved and paid monies for through the Mental Health Services Act (Prop. 63) reaching targets?

Transform California's mental health services approach by uniting California's diverse communities to embrace mental wellness and delivering the tools individuals need before they reach the crisis point.

Provide an up-front investment that will pay off with sustained cost reductions in health, social services, education and criminal justice. Without proactive Recovery modelled progress, the hospitalization, incarceration and institutionalization expense being spoke of will eliminate public tax dollars and MHSA from the state budget.

And to the law enforcement community so they can understand how their police officers, county sheriff Deputies and DAs became mental health providers while county mental health directors sit on the side lines passing out billions for car washes and those outrageous TV commercials. They should know what realignment did for the severely mentally ill and join us in protest in Sacramento.

The Innovations and PEI contract language were changed in recent years by MHSOAC resulting in dramatically less direct services provide for the SMI populations:

Prevention and Early Intervention: I would support keeping these contracts as originally designed for MHSA. With the increasing and frequent school shootings, 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 non-recovery."

Additional information entitled "Further Consumer Testimony" was also include as part of Comment #28A.

Response #28A: The commenter appears to refer to the various MHSA programs and funding. The Department did not amend this section in response to this comment. While the Department appreciates the comment, the commenter makes no specific recommendation related to the proposed regulations.

The additional information entitled "Further Consumer Testimony" was not specifically directed to language proposed through this regulatory action.

Statement of Reasons

Comment #39P: The commenter states: "Under the statement of reasons document we have several comments on the instructions and data for the worksheets.

Page 74 "19 - Total PEI SW, A – Total"
There is an error on instructions - Instructions indicate this line populates for PEI Worksheet Section One, Row 7. Testing shows the amount populates from Row 4.

Statement of Reasons, Page 75. "21--Total Mental Health Services for Veterans, A – Total"

The commenter states: "Information on MHSA expenditures to fund mental health services for veterans may not have been collected retroactive to July 1, 2018, since counties were not informed of this new reporting requirement until October 1, 2018.

Data collection systems may need to be enhanced in order to track associated costs. Additionally, does this mean any MHSA funded program or just direct clinical services?"

Response #39P: The commenter points out a typographical error in the statement of reasons. The error is not replicated in the Annual Revenue and Expenditure Report or the instructions for the Expenditure Report. Therefore, the Department did not amend the regulations and forms in response to this comment. Thank you for bringing this to our attention. The Department has fixed this typographical error in the Final Statement of Reasons.

The commenter refers to MHSA expenditures to fund mental health services for veterans. The comment refers to data collection systems and a question regarding services. The commenter seems to refer to the reporting requirement in the ARER section on "Total Mental Health Services for Veterans" that requires a County to enter the total MHSA funds spent on mental health services provided to veterans for all programs and projects funded from the CSS, PEI, and INN Accounts. However, the Department has determined this comment to be outside the scope of this regulatory proposal.