

## **FINAL STATEMENT OF REASONS**

### **UPDATE OF INITIAL STATEMENT OF REASONS**

As authorized by Government Code section 11346.9(d), the Department of Health Care Services (Department) incorporates by reference the Initial Statement of Reasons (ISOR) prepared for this rulemaking.

Amendments to the ISOR are described under the “AMENDMENTS TO THE INITIAL STATEMENT OF REASONS,” below.

### **PUBLIC COMMENT PERIODS/PUBLIC HEARING**

The regulation text was made available for public comment for at least 45 days, from March 22, 2019, through May 17, 2019. Twenty-six individuals submitted comments.

The Department received a request for a public hearing, The Department granted the request and a public hearing was convened on May 7, 2019. Sixteen individuals provided comments at the public hearing.

The Department also received a request for an extension of the written comment period. The Department granted the request and extended the written comment period to May 17, 2019.

A 15-day Public Availability, for the additional changes to the regulation text and additional supporting documentation included in the rulemaking file, was made available for public comment, from January 30, 2020, through February 14, 2020. Three individuals submitted comments.

### **SUMMARY AND RESPONSE TO PUBLIC COMMENTS**

The Department received comments during the 45-day and 15-day comment periods and at the public hearing. A summary of the comments and the Department’s responses are set forth in Addendums I and II.

- ADDENDUM I – Summary and Response to 45-day Public Comments
- ADDENDUM II – Summary and Response to 15-day Public Comments

A “List of Commenters” is also included with each Addendum.

### **AMENDMENTS TO THE INITIAL STATEMENT OF REASONS**

Additional changes were made to the regulatory text as a result of public comments received and further Department consideration. Therefore, the Department updated the ISOR to reflect these additional changes to the regulation text. For context and clarity,

the complete ISOR for the specific impacted regulatory provision is included in the discussion below.

### **Section 3420.10(c)**

This section is necessary to support the implementation of Welfare and Institutions (W&I) Code section 5892(b) that authorizes a County to use Community Services and Supports (CSS) funds for a Prudent Reserve and to be consistent with W&I Code section 5847(b)(7) that requires Counties to establish and maintain a Prudent Reserve in their Three-Year Program and Expenditure Plan and annual updates.

This section is proposed to specify the County requirement to maintain a Prudent Reserve at the minimum level calculated in section 3420.30(b). These provisions specify the process a County shall follow to replenish the Prudent Reserve when economic conditions permit (if the circumstances under sections 3420.35(a)(1) and (a)(2) are not met). Including this process within the proposed regulations, instead of via an alternative means, such as a corrective action plan, is the most convenient and comprehensive way to provide this information.

When a County's Prudent Reserve is below the required minimum funding level, the County shall transfer a minimum amount equal to twenty percent (20%) of the County's (Prudent Reserve) minimum funding level, each fiscal year until the Prudent Reserve reaches the minimum funding level. The Department established a minimum transfer amount of twenty percent (20%) of the County's (Prudent Reserve) minimum funding level to enable the County to meet the minimum funding level within five (5) fiscal years and still have funds available for current fiscal year services. This five-year timetable also correlates with W&I Code section 5892(b)(2) that requires a County to reassess the maximum amount of its Prudent Reserve every five years. Establishing a standard minimum transfer amount provides for administrative simplification that enables the Department to monitor County compliance through the Annual Mental Health Services Act (MHSA) Revenue and Expenditure Report (ARER).

The last sentence of this section is added for consistency with W&I Code section 5892(b)(1) and to clarify that a County, even when funding the Prudent Reserve to meet the minimum funding level required under section 3420.30(b), may still only transfer up to twenty percent (20%) of the average amount of the total funds, including redistributed funds, that the State Controller's Office (SCO) distributed to the County's Local Mental Health Services Fund over the previous five (5) fiscal years.

### **Section 3420.15**

This section is necessary to implement W&I Code section 5892(a)(4) that authorizes a County to increase its PEI expenditures (above 19%) if the Department determines that the increase in PEI expenditures will "decrease the need and cost for additional services" to severely mentally ill persons in that County "by an amount at least commensurate with the proposed increase." This section is also necessary to implement W&I Code sections 5847(a) and (3) and sections 5848 (a) and (b), which require a County to engage in a meaningful stakeholder process in developing its

Three-Year Program and Expenditure Plan or annual update or updates. The Department requires the County to include in the Three-Year Program and Expenditure Plan, annual update, or updates any information the Department will use when determining whether to approve or deny a proposed transfer of funds. This section also provides an appeal process to the County should the Department deny the request to transfer funds. This appeal process is offered to provide the County with due process that will help to ensure that Department decisions are appropriate.

**Section 3420.15(e)**

This section is necessary to inform a County that the Department requires up to forty-five (45) calendar days, which is adequate time to review and approve or deny a County's request to transfer CSS Account monies to the PEI Account. Written notice is provided to the County to offer documentation of the determination. If the County's transfer request is denied, the notice shall include the reasons for the Department's denial to enable the County to determine if it will seek an appeal.

**Section 3420.15(f)(1)**

This section is necessary to specify the County's ability to appeal the Department's denial decision. This section describes the appeal process by specifying the required information a County shall submit to the Department as part of the appeal. This is necessary to ensure the Department receives the appropriate information to consider during its review. The County is required to submit the appeal within 30 calendar days of the denial notice. The 30-calendar day timeframe is necessary to establish a defined and timely appeal process and it provides sufficient time for the County to develop and submit the appeal.

**Section 3420.15(f)(2)**

This section specifies that the Department will not consider information that changes the County's original request because approval of such a plan would be inconsistent with its Three Year Program and Expenditure Plan, annual update, or updates. This is necessary to clarify that the County cannot use the appeal process to edit or amend the County's original transfer proposal.

**Section 3420.15(g)**

This section is necessary to inform Counties of the Department's timeframe for review of an appeal. The Department must complete its review of an appeal and provide written notice of its decision to a County within forty-five (45) calendar days of receipt of the appeal. The forty-five (45) day timeframe is necessary to establish a defined and timely appeal process and provides the Department sufficient time to carefully review the explanation and supporting documentation provided in the appeal. This section also requires the Department to notify a County of the reasons the Department denies an appeal, which is necessary for transparency and to provide the County with complete information regarding the appeal.

**Section 3420.15(h)**

This section is necessary to require a County to include data to demonstrate the effectiveness of the PEI Program or services in decreasing the need and cost for services to severely mentally persons for each fiscal year that the County indicated in the Three Year Program and Expenditure Plan, annual update, or updates. By requiring the County to include data in the Three-Year Program and Expenditure Plan, annual update, or updates, the Department is able to substantiate whether the increase in PEI Account expenditures has decreased or is decreasing the need and cost for additional services. In addition, including the data in the Three-Year Program and Expenditure Plan, annual update or updates allows stakeholders, constituents, and the County's Board of Supervisors to have an opportunity to examine and comment on the data and the effectiveness of the program.

**Section 3420.15(i)**

This section requires a County to update its next Three Year Program and Expenditure Plan, annual update, or updates if the Department denies the County's request to transfer funds. Requiring this update will notify the stakeholders and board of supervisors with the Department's denial and ensure that the County's expenditures are consistent with its Three Year Program and Expenditure Plan, annual update, or updates, as required by W&I Code sections 5891(d) and 5892(g).

**Section 3420.15(j)**

This section is necessary to implement W&I Code section 5899(c)(1) that requires a County to identify the County's expenditures of the Local Mental Health Services Fund (LMHSF). This section is necessary to implement W&I Code sections 5899(d)(1), (2), and (5), which provide that the ARER shall include information that may be used to evaluate CSS and PEI programs. This section is also necessary for the Department to implement the reversion requirements. The ARER is intended, in part, to help the Department identify expenditures of MHSA funds, identify unexpended funds, and determine reversion amounts. By reporting the transfer of funds in the ARER, the Department will be able to account for the decrease in CSS Account monies and the increase in PEI Account monies.

**Section 3420.20(a)**

This section specifies that a County may transfer funds from the LMHSF to a joint powers authority (JPA) formed pursuant to Government Code section 6500 et seq. that provides the requirements Counties must follow to form or administer a JPA. This section implements W&I Code section 5892 that specifies the use of funds allocated from the LMHSF. This section is also necessary to implement W&I Code section 5897(b) that allows a County to act jointly with another County to deliver or to subcontract for the delivery of mental health services. This section also introduces specific requirements that a County must meet prior to transferring funds to the JPA.

**Section 3420.30(b)**

This section is necessary to implement W&I Code section 5847(b)(7), which requires a County to maintain a Prudent Reserve and W&I Code section 5892(b)(2), which

requires a County to fund its Prudent Reserve at an amount not to exceed 33% of the average CSS Account monies the County received in the preceding 5 years.

The Department is proposing the minimum Prudent Reserve level to be “five (5)” percent. Requiring a County to maintain a minimum Prudent Reserve level of five (5) percent meets the intent of W&I Code section 5847(b)(7) that requires a County to establish and maintain a Prudent Reserve. Establishing the Prudent Reserve minimum funding level at five (5) percent is necessary to allow a County to determine the appropriate level of funding necessary to continue providing the same level of service should there be a downturn in the economy, based on a County’s level of unspent funds and current expenditure level.

**Section 3420.30(b)(1)-(3):**

This section is necessary to implement W&I Code section 5847(b)(7), which requires a County to maintain a Prudent Reserve. This section is also necessary to implement W&I Code section 5892(b)(2) (as amended effective January 1, 2019), which sets the maximum Prudent Reserve funding level at “... 33 percent of the average community services and support revenue received for the [County’s Local Mental Health Services] fund in the preceding five years.”

It is necessary for the regulations to specify how Counties are to calculate minimum and maximum funding levels to ensure Counties perform this calculation consistently. It would be extremely difficult for the Department to enforce the Prudent Reserve funding levels if the Counties calculate those levels differently. Paragraphs (1)-(3) specify the formula Counties must follow to calculate the minimum and maximum funding levels for the Prudent Reserve. The formula includes the basic calculation for an average (the sum of all the numbers in a set, divided by the number of items in the set.) Paragraph (1) begins with the addition of the amounts a County allocates to its CSS account over the previous five fiscal years. Paragraph (2) requires the County to divide the sum in paragraph (1) by five to determine the average allocation over the previous five fiscal years. Paragraph (3) requires the County to multiply the average (computed in paragraph (2)) by five percent and thirty-three percent, in order to calculate the minimum and maximum funding levels, respectively.

**Section 3420.30(c)**

This section is necessary to implement W&I Code section 5892(b)(2), which provides in part, “A County shall calculate an amount it establishes as the prudent reserve, not to exceed 33 percent ... [and] reassess the maximum amount of this reserve every five years ... as part of the three year program and expenditure plan ...” Counties have already established a Prudent Reserve. As a result, this section requires Counties to determine the funding level of their Prudent Reserve as of July 1, 2019 and include the assessment in the County’s Three-Year Program and Expenditure Plan or annual updates for the 2019-20 Fiscal Year pursuant to sections 3310 and 3315. The Department chose to require the initial assessment to be performed as of July 1, 2019, because that is the beginning of the first fiscal year after the law takes effect. It is

necessary to include a date in the regulations because Counties are required to reassess their Prudent Reserve funding levels every five years from that date.

**Section 3420.30(d)**

This section is necessary to implement W&I Code section 5892(b)(2), which requires that each County certify its reassessment of its Prudent Reserve maximum funding level as part of its Three-Year Program and Expenditure Plan. The Department chose to require Counties to also assess the minimum funding level and actual funding level to facilitate meaningful stakeholder engagement. A County is required to reassess the funding level of its Prudent Reserve on July 1, 2024, and as of July 1 every five (5) fiscal years. While section 5892(b)(2) requires a County to reassess its Prudent Reserve level every five years, it does not prohibit a County from assessing this level on a more frequent basis. A County may wish to make this assessment more frequently to maintain a Prudent Reserve level that reflects their annual CSS revenue allocations. However, if a County makes this assessment, the County shall comply with subsection (e) to meet the requirements of W&I Code section 5892(b)(2) for a County to certify the reassessment of its Prudent Reserve funding levels.

**Section 3420.30(e)**

This section is necessary to implement the requirement in W&I Code section 5892(b)(2) (as amended effective January 1, 2019), which states, “A County shall calculate an amount it establishes as the prudent reserve...The County shall reassess the maximum amount of this reserve at minimum every five years and certify the reassessment as part of the three-year program and expenditure plan required pursuant to section 5847.” Counties are required to submit the Mental Health Services Act Prudent Reserve Assessment/Reassessment form DHCS 1819 (02/19) to the Department by email beginning in FY 2019-20 and every subsequent five fiscal years or anytime the County reassesses its Prudent Reserve.

**Mental Health Services Act Prudent Reserve Assessment/Reassessment Form Incorporated by Reference.**

The Mental Health Services Act Prudent Reserve Assessment/Reassessment form, DHCS 1819 (02/19), is incorporated by reference in section 3420.30(e). The form is incorporated by reference because it would be impractical to publish it directly in the California Code of Regulations. The form is available for download on the Department website at: <http://www.dhcs.ca.gov/formsandpubs/forms/Pages/default.aspx>. A detailed discussion of the components of the form is provided below.

The Department is requiring the use of DHCS 1819 (02/19), which is a PDF form. This is necessary to establish a standardized process for Counties to certify the assessment or reassessment of the local Prudent Reserve.

The header includes the Agency and Department name, which is necessary to identify the entity responsible for the form. The header also includes the title of the form, Annual Mental Health Services Act (MHSA) Revenue and Expenditure Report and MHSA Adjustments to Revenue or Expenditure County Certification. The form number, DHCS

1819 (02/19), which is necessary for the County to identify the form, is included in the footer.

**Note:** There was a clerical error under section 3420.30(e) in four instances the date of the Mental Health Services Act Prudent Reserve Assessment/Reassessment form, DHCS 1819 was incorrectly dated (10/2018) instead of the correct date (02/19). This was corrected in the text above.

### **Section 3420.30(g)**

This section implements the requirement in W&I Code section 5892(b)(2), which sets the maximum Prudent Reserve funding level at "... 33 percent of the average community services and support revenue received for the [County's Local Mental Health Services] fund in the preceding five years." Requiring a County to transfer funds in excess of the County's maximum funding level into the CSS Account implements W&I Code section 5892(b)(2). Requiring the return of excess funds back to the CSS Account (from which the funds were from) is consistent with W&I Code section 5892(b)(1), which authorizes a County to transfer CSS Account monies into the Prudent Reserve.

This section instructs a County to make its initial transfer of funds in excess of the Prudent Reserve maximum level during fiscal year 2019-2020 because that is the first fiscal year that the law is in effect.

Additionally, this section clarifies that 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 excess funds from its Prudent Reserve to its CSS Account pursuant to this section. W&I Code section 5892(b)(2) requires Counties to maintain a Prudent Reserve maximum funding level of 33%. As statute is not prescriptive regarding use of excess funds in the Prudent Reserve, and proposed subsections under section 3420.35 do not apply, the Department determined that the use of these funds is consistent with the use of funds allocated to the CSS Account from the Local Mental Health Services Fund. This subsection is necessary to clarify how a County can use funds in its Prudent Reserve that are in excess of its maximum funding level. The cross references to sections 3420.10, 3420.15, and 3420.20 are included for purposes of clarity and convenience.

### **Section 3420.30(h)**

This section is necessary to clarify that funds in the Prudent Reserve may be transferred to the County's PEI Account under the specified conditions. In fiscal year 2007-08, Counties were permitted to transfer PEI funds into their Prudent Reserve. To accommodate a County that transferred PEI funds into its Prudent Reserve in fiscal year 2007-08 and continues to have PEI funds in its Prudent Reserve, the Department determined that it is appropriate to authorize the County to transfer these funds out of its Prudent Reserve and back into its PEI Account to support prevention and early intervention programs for which these funds are intended.

### **Section 3420.30(i)**

This section is necessary to implement W&I Code sections 5892(h)(1) and (3) that require any funds allocated to a County which have not been spent for their authorized purpose within three or five years, and the interest accruing on those funds, to revert to the state to be deposited into the Reversion Account. As of January 1, 2019, the Department does not consider funds in excess of a County's maximum Prudent Reserve funding level, to be Prudent Reserve funds. Because Counties will transfer excess funds from the Prudent Reserve to the CSS Account (see subsection (g)), the Department will subject the funds to the same reversion requirements as CSS Account monies specified in sections 3420.50, 3420.55, and 3420.60.

#### **Section 3420.35(a)**

This section is necessary to specify the circumstances in which Counties may, but are not required to, access their Prudent Reserve funds, and the circumstances in which Counties are required to access their Prudent Reserve funds. This section is necessary to specify permissible transfers even when they result in a County's Prudent Reserve falling below the minimum funding level as calculated pursuant to section 3420.30(b). The Department's intention in establishing a Prudent Reserve minimum funding level is to ensure that a County has the appropriate funds available to meet the requirements of W&I Code sections 5847(b)(7) and (f). However, when the conditions specified under sections 3420.35(a)(1) and (2) are met, a County is authorized to transfer funds from its Prudent Reserve as necessary in accordance with this section. This subsection is necessary to allow for these transfers though they may result in the Prudent Reserve falling below the minimum funding level and clarifies the specified conditions under which these transfers are allowable.

#### **Section 3420.35(c)**

This section informs a County that funds transferred from the Prudent Reserve to the CSS Account must be spent for CSS services. Pursuant to W&I Code sections 5847(b)(7) and (f), the purpose of the Prudent Reserve is to ensure the provision of ongoing CSS services despite economic downturns. Permitting a County to transfer CSS Account funds to other component accounts during the same year that the County transfers Prudent Reserve funds to its CSS Account would be inconsistent with the purpose of the Prudent Reserve as specified in statute. A County accesses Prudent Reserve funds when a County's CSS Account allocation is inadequate to maintain CSS service delivery and additional funds are necessary to avoid service disruptions. As such, a County should not transfer CSS Account monies to the PEI Account, CFTN Account or WET Account in the same fiscal year that funds are transferred from the Prudent Reserve to the CSS Account. This is necessary to differentiate the other permissible transfers of funds from the Prudent Reserve, as specified under section 3420.30, where the transfer is based on an excess amount of funds that exceeds the Prudent Reserve maximum funding level.

#### **Section 3420.45(a)**

This section is necessary to implement W&I Code section 5899(a) that requires Counties and a joint powers authority (that receives funds from a County pursuant to section 3420.20) to "adhere to uniform accounting standards and procedures that



conform to the Generally Accepted Accounting Principles prescribed by the Controller pursuant to section 30200 of the Government Code when accounting for receipts and expenditures of Mental Health Services Act (MHSA) funds in preparing the [ARER] report,” except for expenditures and receipts for capital facilities and technological needs, which Counties and a joint powers authority are to account for on a cash basis. Government Code section 30200 requires the SCO to prescribe to Counties and a joint powers authority a uniform accounting procedure that conforms to GAAP; the State Controller’s Manual of Accounting Standards (2018) and Procedures for Counties. The Governmental Accounting Standards Board (GASB) creates the accounting procedures in GAAP, so Counties are required to follow GASB standards also.

**Section 3420.50(b)**

This section is necessary to implement W&I Code section 5892(h)(1) that states, “other than funds placed in a reserve in accordance with an approved plan, 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 to be deposited into the Reversion Account, hereby established in the fund and available for other counties in future years, provided however, that funds, including interest accrued on those funds, for capital facilities, technological needs or workforce education and training may be retained for up to 10 years before reverting to the Reversion Account.” This section is necessary to specify to Counties with populations of 200,000 or more, the reversion timeline associated with funds allocated to the CSS Account or transferred into the CSS Account from the Prudent Reserve pursuant to sections 3420.30(g) or 3420.35. The Department calculates reversion amounts on an annual basis, rather than a monthly basis, because it would be too cumbersome for the Counties to report expenditure information on a monthly basis, and for the Department to track expenditures on a monthly basis.

**Section 3420.50(d)**

This section is necessary to implement W&I Code section 5892(h)(1) that specifies the reversion timeline associated with funds allocated to the PEI Account for Counties with populations of 200,000 or more. To implement the intent of section 5892(h)(1), this section applies to PEI funds transferred into the PEI Account from the Prudent Reserve pursuant to sections 3420.30(h) or 3420.35(a)(1) or transferred into the PEI Account from its CSS Account pursuant to section 3420.15. The SCO distributes funds to the County’s LMHS Fund on a monthly basis. This section specifies that the start of the Reversion Period begins with the fiscal year the funds are deposited in the County’s LMHS Fund and not by the monthly deposits. The Department calculates reversion amounts on an annual basis, rather than a monthly basis, because it would be too cumbersome for the Counties to report expenditure information on a monthly basis, and for the Department to track expenditures on a monthly basis.

**Section 3420.50(e) and (f):**

These sections implement INN reversion requirements specified in W&I Code section 5892(h)(2) as amended by Senate Bill (SB) 79 (Chapter 26, Statutes of 2019). SB 79 amended W&I Code section 5892(h)(2)(A) to read as follows:

(2)(A) If a county 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 three years after the date of approval, whichever is later.

The notice for these proposed regulations was published on March 22, 2019. SB 79 went into effect on June 27, 2019, after the regulations were out for public comment. Therefore, the Department is now proposing the changes as outlined below.

#### **Section 3420.50(e)**

This section is necessary to implement W&I Code section 5892(h)(1) that specifies a three-year reversion timeline for funds allocated to the INN Account for Counties with a population over 200,000 or more. It also implements W&I Code section 5892(h)(2)(A) that requires a County to (1) identify funds in a plan for innovative programs and (2) obtain approval of that plan from the Mental Health Services Oversight and Accountability Commission (MHSAOC) to extend the reversion period for the funds identified in the plan beyond three years. The cross reference to Section 3930(d) is included for purposes of clarity and convenience.

The section is also necessary to specify that INN monies that are not identified in the budget of an Innovative (INN) Project Plan and approved by the MHSAOC within three (3) fiscal years, shall be subject to reversion. This section also specifies that the beginning of the reversion period starts with the fiscal year that the SCO distributes the funds to the County. To be consistent with W&I Code section 5892(h)(2)(A) and for purposes of clarity Counties are required to identify the funds in the budget of an INN Project Plan.

#### **Section 3420.50(f)(1)**

This section is necessary to implement W&I Code section 5892(h)(2)(A) that specifies that INN Account funds identified in an approved INN Project Plan shall not revert “so long as they are encumbered under the terms of the approved project plan, including any subsequent amendments approved by the commission, or until three years after the date of approval, whichever is later.” This section specifies that a County shall spend INN Account monies during the period the monies are encumbered under the terms of an Innovative Project Plan or within three fiscal years of receiving approval for the Innovative Project Plan, whichever is later. This section also specifies that the beginning of the reversion period starts with the fiscal year that the Mental Health Services Oversight and Accountability Commission initially approved the Project Plan. The section is also necessary to specify that INN monies that a County does not spend by the later of these two periods shall be subject to reversion.

**Section 3420.50(f)(2)**

This section is necessary to specify when INN Account monies are considered “encumbered,” which is important because encumbered funds are not subject to reversion. The first sentence states “INN Account monies identified in the budget of an Innovative Project Plan shall be considered encumbered.” This provision is necessary to clarify that estimated expenditures for an INN Project specified in the budget are considered encumbered.

The second sentence states “INN Account monies shall remain encumbered for the fiscal years and in the amounts identified in the budget of the Innovative Project Plan.” This provision is necessary to implement W&I Code section 5892(h)(2)(A) that specifies that INN funds included in an INN Plan shall not revert “so long as they are encumbered under the terms of the approved project plan.” The Department chose to use the information provided in the budget of an approved INN Project Plan to determine the amount of funds and the timeframe INN Account funds would be encumbered because a County is required to spend its INN Account funds consistent with its INN Project Plans.

The third sentence states, “Any amendment to an Innovative Project Plan that extends the time period of the Innovative Project, or changes the amount of funds in the budget of the Innovative Project, which is approved by the Mental Health Services Oversight Accountability Commission, shall extend the period or change the amount of funds encumbered under the Innovative Project Plan.” This language is necessary to implement W&I Code section 5892(h)(2)(A), which provides that an amendment to an INN Project Plan that is approved by the MHSOAC can change the amount of funds encumbered under an INN Project Plan and the length of the encumbrance. A County’s modifications to the period or the amount of encumbered funds will affect the reversion timeframe and the amounts subject to reversion for INN Account monies, accordingly.

The fourth sentence states “INN Account monies shall no longer be encumbered under an Innovative Project Plan effective the date a County terminates the Innovative Project pursuant to Section 3910.020.” This provision is necessary to specify the impact to encumbered funds when a County terminates an INN Project early. In the context of W&I Code section 5892(h)(2)(A) the term “encumber” means that a County has committed itself to use the funds identified in an INN Project Plan for that INN Project. Accordingly, the Department considers funds identified in the budget of an INN Project Plan that has been terminated prior to the planned end date to no longer be encumbered to that Plan. The cross reference to section 3910.020 is included for purposes of clarity and convenience.

**Section 3420.50(f)(3)**

This section is necessary to specify what a County can do with funds that are no longer encumbered under a Plan because the Plan is terminated in accordance with section 3910.020 or ends before the conclusion of the three (3) fiscal year period. (W&I Code section 5892(h)(2)(A) provides that INN Account monies included in an INN Project Plan (that has been approved by the MHSOAC) will not revert until the later of (1) the end of

the period the funds are encumbered under the Plan or (2) three years from the date the MHSOAC approved the Plan.)

The phrase “If the period of time INN Account monies are encumbered, under an approved Innovative Project, concludes before the end of the three (3) fiscal year period,” is necessary to capture the scenario where a County’s INN Project ends before three (3) fiscal years from the date the MHSOAC approved the Plan, such as a Plan intended to last only two years.

The phrase “or the County terminates an Innovative Project pursuant to section 3910.020 before the end of the three (3) fiscal year period,” is necessary to specify that it shall also apply to funds in a Plan that is terminated early, which is permissible pursuant to section 3910.020. The cross reference to section 3910.020 is included for purposes of clarity and convenience.

The next phrase “a County may reassign any unspent funds to another Innovative Project pursuant to Article 9,” is necessary to authorize a County to reassign such unspent INN funds to another INN Project since the funds are not yet subject to reversion. This provision is intended to offer a County flexibility in project planning and spending. The cross reference to Article 9 that governs INN Project Plans is included for purposes of clarity and easy reference.

The second sentence states, “The County shall spend reassigned funds within three (3) fiscal years.” The provision is necessary to specify the timeframe within which a County has this flexibility and can spend these funds.

The third sentence states “In determining the three (3) fiscal year period, the fiscal year in which the Mental Health Services Oversight and Accountability Commission approved the initial Innovative Project Plan shall be the first fiscal year.” This provision is necessary to clarify the start of the three (3) fiscal year period that determines the reversion period for these funds. Although funds can be reassigned to a different or new project, the reversion period is based upon the approval of the initial Innovative Project Plan, consistent with W&I Code section 5892(h)(2)(A).

The last sentence states “If a County fails to spend reassigned funds within these three (3) fiscal years, the funds shall revert to the Mental Health Services Fund for deposit into the Reversion Account.” This provision is necessary to specify that funds not spent for their authorized purpose within the three (3) fiscal years are subject to reversion, consistent with W&I Code section 5892(h)(1).

### **Section 3420.55(b)**

This section is necessary to implement W&I Code sections 5892(h)(1) and (3). W&I Code section 5892(h)(1) states, “other than funds placed in a reserve in accordance with an approved plan, 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 to be deposited into the Reversion Account, hereby established

in the fund and available for other counties in future years, 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 to the Reversion Account.” W&I Code section 5892(h)(3) extends the Reversion Period in W&I Code section 5892(h)(1) for Counties with a population of less than 200,000 from three years to five years. This section is necessary to specify to Counties with populations of less than 200,000, the reversion timeline associated with funds allocated to the CSS Account or transferred into the CSS Account from the Prudent Reserve pursuant to sections 3420.30(g) or 3420.35.

The Department calculates reversion amounts on an annual basis, rather than a monthly basis, because it would be too cumbersome for the Counties to report expenditure information on a monthly basis and for the Department to track expenditures on a monthly basis.

**Section 3420.55(d):** This section is necessary to implement W&I Code section 5892(h)(1) and (3) that specifies the reversion timeline associated with funds allocated to the PEI Account for Counties with a population of less than 200,000. To implement the intent of W&I Code section 5892(h)(1), this section applies to PEI funds transferred into the PEI Account from the Prudent Reserve pursuant to sections 3420.30(h) or 3420.35(a)(1) or transferred into the PEI Account from its CSS Account pursuant to section 3420.15. The SCO distributes funds to the County’s LMHS Fund on a monthly basis. This section specifies that the start of the Reversion Period begins with the fiscal year the funds are deposited in the County’s LMHS Fund and not by the monthly deposits. The Department calculates reversion amounts on an annual basis, rather than a monthly basis, because it would be too cumbersome for the Counties to report expenditure information on a monthly basis, and for the Department to track expenditures on a monthly basis.

**Sections 3420.55(e) and (f)**

These sections implement INN reversion requirements specified in W&I Code section 5892(h)(4)(A) as amended by Senate Bill (SB) 79 (Chapter 26, Statutes of 2019). SB 79 amended W&I Code section 5892(h)(4)(A)) to read as follows:

(4)(A) [I]f 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.

The notice for these proposed regulations was published on March 22, 2019. SB 79 went into effect on June 27, 2019, after the regulations were out for public comment. Therefore, the Department is now proposing the changes as outlined below.

**Section 3420.55(e)**

This section is necessary to implement W&I Code section 5892(h)(1) that specifies a three-year reversion timeline for funds allocated to the INN Account for Counties; and W&I Code section 5892(h)(3), which extends the reversion timeline to five years for Counties with a population of less than 200,000. It also implements W&I Code section 5892(h)(4)(A) that requires a County to (1) identify funds in a plan for innovative programs and (2) obtain approval of that plan from the MHSOAC to extend the reversion period for the funds identified in the plan beyond five years. The cross reference to Section 3930(d) is included for purposes of clarity and convenience.

This section is also necessary to specify that INN monies that are not identified in the budget of an Innovative Project Plan and approved by the MHSOAC within five (5) fiscal years, shall be subject to reversion. This section also specifies that the beginning of the reversion period starts with the fiscal year that the SCO distributes the funds to the County. To be consistent with W&I Code section 5892(h)(4)(A) and for purposes of clarity Counties are required to identify the funds in the budget of an INN Project Plan.

**Section 3420.55(f)(1)**

This section is necessary to implement W&I Code section 5892(h)(4)(A) that specifies that INN Account funds identified in an approved INN Project Plan shall not revert “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.” This section also specifies that the beginning of the reversion period starts with the fiscal year that the Mental Health Services Oversight and Accountability Commission initially approved the Project Plan.

The section is also necessary to specify that INN monies that a County does not spend by the later of these two periods shall be subject to reversion.

**Section 3420.55(f)(2):** This section is necessary to specify when INN Account monies are considered “encumbered” which is important because encumbered funds are not subject to reversion. The first sentence states “INN Account monies identified in the budget of an Innovative Project Plan shall be considered encumbered.” This provision is necessary to clarify that estimated expenditures for an INN Project specified in the budget are considered encumbered.

The second sentence states “INN Account monies shall remain encumbered for the fiscal years and in the amounts identified in the budget of the Innovative Project Plan.” This provision is necessary to implement W&I Code section 5892(h)(4)(A) that specifies that INN funds included in an INN Plan shall not revert “so long as they are encumbered under the terms of the approved project plan.” The Department chose to use the information provided in the budget of an approved INN Project Plan to determine the amount of funds and the timeframe INN Account funds would be encumbered because a County is required to spend its INN Account funds consistent with its INN Project Plans.

The third sentence states, “Any amendment to an Innovative Project Plan that extends the time period of the Innovative Project, or changes the amount of funds in the budget of the Innovative Project, which is approved by the Mental Health Services Oversight Accountability Commission, shall extend the period or change the amount of funds encumbered under the Innovative Project Plan.” This language is necessary to implement W&I Code section 5892(h)(4)(A), which provides that an amendment to an INN Project Plan that is approved by the MHSOAC can change the amount of funds encumbered under an INN Project Plan and the length of the encumbrance. A County’s modifications to the period or the amount of encumbered funds will affect the reversion timeframe and the amounts subject to reversion for INN Account monies, accordingly.

The fourth sentence states “INN Account monies shall no longer be encumbered under an Innovative Project Plan effective the date a County terminates the Innovative Project pursuant to Section 3910.020.” This provision is necessary to specify the impact to encumbered funds when a County terminates an INN Project early. In the context of W&I Code section 5892(h)(4)(A) the term “encumber” means that a County has committed itself to use the funds identified in an INN Project Plan for that INN Project. Accordingly, the Department considers funds identified in the budget of an INN Project Plan that has been terminated prior to the planned end date to no longer be encumbered to that Plan. The cross reference to section 3910.020 is included for purposes of clarity and convenience.

### **Section 3420.55(f)(3)**

This section is necessary to specify what a County can do with funds that are no longer encumbered under a Plan because the Plan is terminated in accordance with section 3910.020 or ends before the conclusion of the five (5) fiscal year period. (W&I Code section 5892(h)(4)(A) provides that INN Account monies included in an INN Project Plan (that has been approved by the MHSOAC) will not revert until the later of (1) the end of the period the funds are encumbered under the Plan or (2) five years from the date the MHSOAC approved the Plan.)

The phrase “If the period of time INN Account monies are encumbered, under an approved Innovative Project, concludes before the end of the five (5) fiscal year period,” is necessary to capture the scenario where a County’s INN Project ends before five (5) fiscal years from the date the MHSOAC approved the Plan, such as a Plan intended to last only two years.

The phrase “or the County terminates an Innovative Project pursuant to section 3910.020 before the end of the five (5) fiscal year period,” is necessary to specify that it shall also apply to funds in a Plan that is terminated early, which is permissible pursuant to section 3910.020. The cross reference to section 3910.020 is included for the purposes of clarity and convenience.

The next phrase “a County may reassign any unspent funds to another Innovative Project pursuant to Article 9,” is necessary to authorize a County to reassign such

unspent INN funds to another INN Project since the funds are not yet subject to reversion. This provision is intended to offer a County flexibility in project planning and spending. The cross reference to Article 9, which governs INN Project Plans, is included for the purposes of clarity and easy reference.

The second sentence states “The County shall spend reassigned funds within five (5) fiscal years.” This provision is necessary to specify the timeframe within which a County has this flexibility and can spend these funds.

The third sentence states “In determining the five (5) fiscal year period, the fiscal year in which the Mental Health Services Oversight and Accountability Commission approved the initial Innovative Project Plan shall be the first fiscal year.” This provision clarifies the start of the five (5) fiscal year period that determines the reversion period for these funds. Although funds can be reassigned to a different or new project, the reversion period is based upon the approval of the initial Innovative Project Plan, consistent with W&I Code section 5892(h)(4)(A).

The last sentence states “If a County fails to spend reassigned funds within these five (5) fiscal years, the funds shall revert to the Mental Health Services Fund for deposit into the Reversion Account.” This provision is necessary to specify that funds not spent for their authorized purpose within the five (5) fiscal years are subject to reversion, consistent with W&I Code section 5892(h)(4)(A).

### **Section 3420.60(a)**

This section is necessary to implement W&I Code section 5892(h)(1), which states, “Other than funds placed in a reserve in accordance with an approved plan, 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 to be deposited into the Reversion Account, hereby established in the fund, and available for other counties in future years, provided, however, that funds, including interest accrued on those funds, for capital facilities, technological needs, [CFTN] or education and training [WET] may be retained for up to 10 years before reverting to the Reversion Account.” This section is necessary to specify the reversion timeline associated with funds allocated to the CFTN and WET Accounts, transferred from its CSS Account to its CFTN Account or WET Account pursuant to section 3420.10 or transferred from the Prudent Reserve to its CSS Account pursuant to section 3420.30(g).

The Department calculates reversion amounts on an annual basis, rather than a monthly basis, because it would be too cumbersome for the Counties to report expenditure information on a monthly basis, and for the Department to track expenditures on a monthly basis.

This section clarifies the reversion timeline associated with section 3420.30(g) that provides Counties with the ability to transfer funds from their CSS Account to the CFTN and WET Accounts during the same fiscal year in which the County transfers



funds from its Prudent Reserve into its CSS Account. This section is also necessary to be consistent with W&I Code section 5892(h)(1) that specifies “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 to the Reversion Account.”

**Section 3510(a)**

This section is necessary to implement W&I Code section 5899(a) that requires Counties to submit their ARER electronically to the Department and to the MHSOAC by January 31. This proposed section clarifies that only a County receiving a direct distribution of MHSF monies from the SCO is required to submit an ARER. Consistent with the electronic submission requirement in W&I Code section 5899(a), this proposed section also informs a County of the email addresses to which a County is required to submit its ARER.

W&I Code section 5899(a) requires a County to submit electronically the ARER and certify the accuracy of the report. It is necessary for the ARER to be complete and accurate because the Department relies on the data counties report in their ARERs to determine reversion amounts. (W&I Code section 5899(c)(4).) The Department also uses ARERs to evaluate County compliance with the expenditure percentages in W&I Code section 5892(a) as well as the other requirements set forth in this regulatory proposal. The MHSOAC uses data reported in ARERs to evaluate the MHSA funded programs. (See W&I Code section 5899(d).) The Department and the MHSOAC cannot rely on incomplete or inaccurate data in performing these essential functions. The submittal of the report referenced herein ensures a County complies with statute. The January 31 due date may assist Counties in finalizing their ARER inclusive of non-MHSA costs, such as Federal Financial Participation costs. In addition the date provides a County with sufficient time from the end of a fiscal year to prepare the report in a manner that the County can certify as accurate.

**Section 3510.005(a)**

This section is necessary to inform Counties of the notification process the Department will follow when Counties fail to submit an ARER by the required deadline. Specifically, the Department will send the notification by email to both the County Mental Health Director and the County MHSA Coordinator to ensure the County receives the notice. This notification will be sent within five (5) business days of January 31 to ensure timely notification.

**Section 3510.005(b)**

This section is necessary to inform Counties of the notification process the Department will follow when Counties submit an incomplete or inaccurate ARER. Specifically, the Department will send the notification by email to both the County Mental Health Director and the County MHSA Coordinator to ensure the County receives the notice. It is necessary for the Department to deem an incomplete or inaccurate ARER as not submitted because the Department and the MHSOAC cannot use such reports. The Department relies on the data counties report in their ARERs to determine reversion

amounts. (W&I Code section 5899(c)(4).) The Department also uses ARERs to evaluate County compliance with the expenditure percentages in W&I Code section 5892(a) as well as the other requirements set forth in this regulatory proposal. The MHSOAC uses data reported in ARERs to evaluate the MHSA funded programs. (See W&I Code section 5899(d).) The Department and the MHSOAC cannot rely on incomplete or inaccurate data in performing these essential functions, and therefore, the Department deems an incomplete or inaccurate ARER as not submitted. This notification will be sent within fifteen (15) calendar days of January 31 to ensure timely notification of the status of the determination.

### **Section 3510.030**

This section is necessary to implement W&I Code section 5899(a) that requires Counties to certify the completeness and accuracy of the County's ARER, which the Counties are required to submit to the Department and the Mental Health Services Oversight and Accountability Commission. This section is necessary to inform the Counties that the Annual MHSA Revenue and Expenditure Report and Adjustment Worksheet County Certification, DHCS 1820 (02/19), is the certification the Department is requiring Counties to submit when they submit their ARER. This form is incorporated by reference in section 3420.65(b)(2).

### **DHCS 1822 B (02/19): Component Summary Worksheet**

The Department corrected a numerical error in the ISOR (page 74) for the PEI Worksheet instructions – Item 19 to reflect the form's actual instructions as follows:

“19 – Total PEI SW, A – Total” This field is calculated and there is no required entry to be made by the County. The field will auto populate from the PEI Component tab worksheet, section One, Row 4. Counties may assign funds to PEI Statewide Projects for suicide prevention, student mental health initiative, stigma and discrimination reduction. This field is necessary to implement W&I Code section 5840 that establishes a program designed to prevent mental illnesses from becoming severe and disabling. The program shall emphasize improving timely access to services for underserved populations.”

### **DOCUMENTS INCORPORATED BY REFERENCE:**

The following forms are incorporated by reference in this regulatory proposal:

1. Mental Health Services Act Prudent Reserve Assessment/Reassessment, DHCS 1819, (02/19).
2. Annual Mental Health Services Act (MHSA) Revenue and Expenditure Report and Adjustment Worksheet County Certification, DHCS 1820, (02/19).
3. Mental Health Services Act Adjustments to Revenue or Expenditure Summary Worksheet, DHCS 1821, (02/19).
4. Annual Mental Health Services Act (MHSA) Revenue and Expenditure Report.
  - a) Information Worksheet DHCS 1822 A, (02/19).
  - b) Component Summary Worksheet DHCS 1822 B, (02/19).

- c) Community Services and Supports (CSS) Summary Worksheet, DHCS 1822 C, (02/19).
- d) Prevention and Early Intervention (PEI) Summary Worksheet, DHCS 1822 D, (02/19).
- e) Innovation (INN) Summary Worksheet, DHCS 1822 E, (02/19).
- f) Workforce Education and Training (WET) Summary Worksheet, DHCS 1822 F, (02/19).
- g) Capital Facility Technological Needs (CFTN) Summary Worksheet, DHCS 1822 G, (02/19).
- h) MHSA Adjustments Worksheet, DHCS 1822 H, (02/19).
- i) FFP Revenue Adjustment Worksheet, DHCS 1822 I, (02/19).
- j) Comments Worksheet, DHCS 1822 J, (02/19).

It would be cumbersome, unduly expensive, and otherwise impractical to publish these forms incorporated by reference in the text in the California Code of Regulations.

#### Certification Under Penalty of Perjury

The forms – Mental Health Services Act Prudent Reserve Assessment/Reassessment DHCS 1819 (02/19) and Annual MHSA Revenue and Expenditure Report and Adjustment Worksheet County Certification DHCS 1820 (02/19) require the Local Mental Health Director to sign a certification under penalty of perjury. By signing these forms under penalty of perjury, the Local Mental Health Director acknowledges and accepts the responsibility for submitting complete and accurate information, including any consequences for knowingly submitting inaccurate information to the Department. This higher-level declaration is necessary to emphasize the fiscal responsibility assumed by the Local Mental Health Director and creates accountability to spend MHSA funds appropriately.

#### LIST OF DOCUMENTS RELIED UPON

There were no additional documents added to the file after the Notice of Proposed Rulemaking.

#### LOCAL MANDATE DETERMINATION

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

#### ALTERNATIVES CONSIDERED

No reasonable alternatives were considered by the Department or otherwise identified or brought to the attention of the Department that would be more effective in carrying out the purpose for which this regulatory action is proposed, would be as effective and less burdensome to affected private persons than this regulatory action, or would be

more cost-effective to affected private persons and equally effective in implementing the statutory policy or provision of law.

The MHSA was passed by California voters in November 2004. Since this time, no regulations have been promulgated that address the reversion requirements associated with the MHSA. In 2012, the Department assumed administration of certain MHSA related functions from the former Department of Mental Health. In a report published in February 2018, the California State Auditor found the Department could better ensure the effective use of MHSA funding, in part, by developing regulations as proposed in this regulation package.