FINAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATIONS AND FACTUAL BASIS FOR DETERMINATION THAT REGULATIONS ARE NECESSARY

1. Application

Section 3100. Application of Chapter

Specific Purpose: Section 3100 specifies that Chapter 14 applies to the mental health services and supports provisions of the Mental Health Services Act (MHSA).

Rationale for Necessity: This is necessary to establish this chapter within Title 9 specifically for implementing the provisions of the MHSA. This chapter is devoted solely to the services and supports for which MHSA funds can be used.

Article 2. Definitions

In general, this Article defines terms that have meanings other than those covered by standard dictionary definitions. The definitions and program terms contained in this Article are used in more than one section of the regulations. If terms requiring a regulatory definition are used only in one section of the regulations, that definition is provided separately in that section.

Section 3200.010. Adult

Specific Purpose: Section 3200.010 defines an adult as a person 18 years of age through 59 years of age.

Rationale for Necessity: This definition is necessary to delineate the various groups within the California population that may access mental health services and programs. As written the MHSA requires that services be provided to Children/Youth, Transition Age Youth, Adults and Older Adults. It is necessary to assign an age range to these various groups; therefore, regulations must establish what constitutes an adult. This definition defines the eligible adult population within California. This delineation allows the county to categorize information for reporting of services provided and accountability to the Department on the populations served.

Section 3200.020. Bridge Funding

Specific Purpose: Section 3200.020 defines those funds used to continue specific mental health services/programs in existence prior to approval of the county's initial Three-Year Program and Expenditure Plan.

Rationale for Necessity: This definition is necessary to clearly state which programs/services are allowed to use bridge funding and that the bridge funding is intended to allow for continuation of services/programs that would have been discontinued due to lack of funding. It also clarifies that the timeframe for use of these

funds is the time between when the prior funding ended and the approval of the county's initial Three-Year Program and Expenditure Plan. At the time the county's Three-Year Program and Expenditure Plan is approved, the MHSA funds become available.

Section 3200.030. Children and Youth

Specific Purpose: Section 3200.030 defines the population of "Children and Youth" as birth through 17 years of age as well as individuals 18 years of age and older who meet the conditions specified in Chapter 26.5 of the Government Code beginning with Section 7570.

Rationale for Necessity: This definition is necessary to delineate the various groups within the California population that may access mental health services and programs. As written the MHSA requires that services be provided to Children/Youth, Transition Age Youth, Adults and Older Adults. It is necessary to assign an age range to these various groups; therefore, regulations must establish what constitutes a child/youth. This definition defines the population that is considered Children and Youth for the purposes of reporting of services provided and accountability to the Department on the populations served. Additionally, Chapter 26.5 of the Government Code beginning with Section 7570 recognizes an individual aged beyond 17 as a child/youth when an assessment determines he/she is "severely emotionally disturbed". This age exception is recognized in these regulations for consistency with Government Code Section 7570 et seq., which allows these individuals to access services that are more appropriate to children/youth rather than the population defined as an adult.

Section 3200.040. Client

Specific Purpose: Section 3200.040 defines a "client" for purposes of these regulations and acknowledges that the "client" may choose to use other terms to define him/herself as a current/past recipient of mental health services.

Rationale for Necessity: This definition is necessary to distinguish the client from other individuals who may be potential recipients of MHSA programs/services. The MHSA will provide money to fund programs/services to "engage" individuals with serious mental illness into the mental health system. Once the individual is in the system and accessing the appropriate programs and services necessary to achieve his/her attainable goals, the individual is a "client" as used in these regulations. The definition also recognizes that not all individuals accessing mental health services and supports wish to be referred to as a "client". The definition acknowledges other terms that current/past recipients of mental health services may use to refer to themselves.

Section 3200.050. Client Driven

Specific Purpose: Section 3200.050 defines the term "client driven" in order to standardize the term as used in these regulations.

Rationale for Necessity: This definition is necessary to acknowledge the change of focus of mental health treatment from solely a medical/clinical base to one that includes the Recovery model of mental health services. The philosophy of "client driven" is predicated on the preferences and strengths of the client in determining the services and supports that will best support the desired outcomes.

Section 3200.060. Community Collaboration

Specific Purpose: This definition describes the process by which clients and/or families receiving services work in concert with other community members and agencies, organizations, etc. to share information and resources in order to reach a common goal.

Rationale for Necessity: This regulation is necessary to incorporate a working definition of community collaboration into the regulations as a key component of the basis for the Mental Health Services Act; that is, the bringing together of agencies, organizations, etc. that have an interest in mental health services in the State of California with those clients/individuals having mental health needs. These entities represent the "community" and the working together to share information and resources provides the two-way communication necessary to build on the strength and knowledge of the various entities to identify the needs of the community and achieve defined goals.

Section 3200.070. Community Program Planning Process

Specific Purpose: Section 3200.070 defines the "Community Program Planning" Process.

Rationale for Necessity: This definition is necessary to clarify the process the counties will use, in collaboration with stakeholders, to identify and analyze local mental health needs as well as to establish priorities and strategies to meet the identified needs. The MHSA requires the counties to develop each Three-Year Program and Expenditure Plan and/or update with local stakeholders. (Welf. And Inst. Code Section 5848(a). The information gathered through this Planning Process is vital to the development of the county's Three-Year Program and Expenditure Plan and subsequent updates to the Plan. The use of the Community Program Planning Process is not limited to only the development of the Three-Year Program and Expenditure Plan. These regulations require that the Three-Year Program and Expenditure Plan be updated, at least annually. Additionally, counties may find that there are additional programs and/or services needed within the county and the county may be requesting that these programs/services be added to their specific Three-Year Program and Expenditure Plan. In contrast, a county may need to eliminate a program and/or service identified in its Plan. In these situations as well as in the development of the initial Three-Year Program and Expenditure Plan, it is the intent to involve the community in the entire process including the identification of issues, evaluation and prioritization of the issues and the re-evaluation of the priorities and strategies to meet the community's

mental health needs. The introduction of this term will differentiate the MHSA Community Program Planning process from other stakeholder processes that exist at the county level.

Section 3200.080. Community Services and Supports

Specific Purpose: Section 3200.080 defines "Community Services and Supports" as the system for the delivery of mental health services and also to specify that the service delivery systems referenced are similar to those found in the Welfare and Institutions Code.

Rationale for Necessity: The necessity for this definition is twofold. First this definition is necessary to distinguish the service delivery to children and youth, transition age youth, adults and older adults with serious mental/emotional disturbances funded through MHSA from existing and previously existing System of Care programs (Adult and Older Adult Systems of Care and Children's System of Care) funded at the federal, state and local levels. Secondly, this definition is necessary to identify Community Services and Supports as one of the components of the Three-Year Program and Expenditure Plan, pursuant to Welfare and Institutions Code Section 5847(a).

Final Modification: No change was made that impacts the intent of the definition. The amendment made was to correct a typographical error to the term "et seq." In the original draft, a period "." was inadvertently included after the "et".

Section 3200.090. County

Specific Purpose: Section 3200.090 defines the term "County" as used in these regulations.

Rationale for Necessity: This definition is necessary as the word "county" in regulations can refer to multiple county entities depending on the specific program governed. Chapter 14 encompasses the regulations pertinent to the MHSA. This definition, therefore, specifies that "county" is referring to the county mental health program as well as county mental health programs that act jointly and city-operated programs as allowed in Welfare and Institutions Code Section 5701.5.

Section 3200.100. Cultural Competence

Specific Purpose: Section 3200.100 defines the term "cultural competence" as used in these regulations.

Rationale for Necessity: This definition is necessary in order to provide to the users of these regulations, primarily the counties within the State of California, a working definition of "cultural competence". The cultural and linguistic characteristics of many mental health clients present needs that the system must better address to ensure adequate access to appropriate treatment options and services. In addition to the

reference to “cultural competence” as a standard to be employed in the planning, implementing and evaluating of programs/services with MHSA funds, this standard is to embraced by county employees at all levels in the individual delivery of services to mental health clients and individuals. The MHSA is intended to be transformational and there is widespread stakeholder agreement that MHSA programs and services should not reflect “business as usual”. There are racial/ethnic/cultural groups that have not had access to mental health programs and services because the design and implementation of the traditional mental health service delivery system did not adequately reach or serve a diverse group of consumers. Some counties have had difficulty responding to the need for cultural competence due to a lack of clarity about what the term means in actual practice. Additionally, throughout the regulations there is specific reference to the principles of cultural competence that include such actions as providing equal opportunity for peers who share the diverse racial/ethnic, cultural, and linguistic characteristics of the individuals/clients served and Personal Service Coordinators/Case Managers, and others involved in developing programs and service delivery who are linguistically and culturally competent to serve a linguistically diverse client population.

Section 3200.110. Department

Specific Purpose: Section 3200.110 defines “Department” as the State Department of Mental Health.

Rationale for Necessity: This definition is necessary as “department” can refer to any governmental department. The Mental Health Services Act charges the State Department of Mental Health to promulgate and administer the regulations for implementation of the requirements of the Act. As used within the Act, “department” refers to the California State Department of Mental Health.

Section 3200.120. Family Driven

Specific Purpose: Section 3200.120 defines the term “family driven” in order to standardize the term as used in these regulations.

Rationale for Necessity: This definition is necessary to acknowledge the change of focus of mental health treatment from a medical/clinical base to one predicated on the preferences and strengths of the client in determining the services and supports that will best support the desired outcomes. However, while this is the intent specified in the Rationale for Necessity for the term “Client Driven”, some clients, specifically younger children are not able to fully participate in the identification of their needs and goals. For these clients it is necessary to involve the parent(s), or in their absence the legal guardian(s) to assist in identifying specific needs and the services/supports necessary to meet those needs and achieve specified goals.

Section 3200.130. Full Service Partnership

Specific Purpose: Section 3200.130 defines "full service partnership" as the relationship between the county and a specific client whereby services to meet the identified needs of the client, whether mental health related or not, are provided.

Rationale for Necessity: This definition is necessary as there is reference within the regulations to the full service partnership that exists between the county and each client who is receiving both mental health and non-mental health services. It is necessary to distinguish the relationship between the county and the client engaged in a full service partnership from the service category of Full Service Partnership. The Full Service Partnership Service Category is defined below and refers to one of the three service categories within the Community Services and Supports component of the Three-Year Program and Expenditure Plan.

Section 3200.140. Full Service Partnership Service Category

Specific Purpose: Section 3200.140 provides a definition of the "Full Service Partnership Service Category" that is one of three service categories within the Community Services and Supports component of the Three-Year Program and Expenditure Plan.

Rationale for Necessity: It is necessary to define this service category as one of three distinct service categories that exists within the Community Services and Supports component of the Three-Year Program and Expenditure Plan. In recognition that the California mental health system did not have the infrastructure to provide a full array of services and supports to everyone who is in immediate need, the Department created three service categories fundable under the Community Services and Supports component. The service categories (Full Service Partnership, General System Development and Outreach and Engagement) are intended to be approaches to service delivery and are not considered categorical. The Full Service Partnership Service Category is designed for those programs that provide the full spectrum of community services and supports to individuals and their families, when appropriate.

Final Modification: No change was made to this definition. However, a fourth service category within the Community Services and Supports component of the Three-Year Program and Expenditure Plan was added - the Mental Health Services Act Housing Program Service Category. The requirements for this service category are in the process of being promulgated into regulation. (See Section 3200.080 for the definition and Section 3615, Community Services and Supports Service Categories for the inclusion of the Mental Health Services Act Housing Program Service Category.)

Section 3200.150. Full Spectrum of Community Services

Specific Purpose: Section 3200.150 defines "Full Spectrum of Community Services" as a reference to all of the services and supports necessary to assist full service partnership clients and their families, when appropriate, to meet the designated goals.

Rationale for Necessity: It is necessary to include this definition to make it clear that the services and supports allowed under the Full Service Partnership Service Category (one of four service categories in the Community Services and Supports component of the Three-Year Program and Expenditure Plan) are not limited to those services/supports that address mental health needs, but also includes "non-mental health services" if such services and supports are identified in the client's Individual Services and Supports Plan. "Non-mental health services and supports" refers to services and supports that can indirectly improve the overall mental health of a client and family, when appropriate. Examples of "non-mental health services" are clothing and health care treatment.

Section 3200.160. Fully Served

Specific Purpose: Section 3200.160 defines "fully served" as a client who is receiving all the community services and supports necessary to advance the client's recovery. This definition distinguishes those who are "fully served" from those clients who are by definition "underserved, and individuals who are by definition "unserved".

Rationale for Necessity: It is necessary to define "fully served" to provide counties with a definition for purposes of implementing the Full Service Partnership Service Category and to differentiate "fully served" from other terms used to define the level of services provided to clients/individuals. The other terms used in this context are "unserved" and "underserved". Within the regulations the county is required to assess and submit an analysis of the mental health needs of county residents. The population categories to address are the "unserved", "underserved" and "fully served" who qualify for MHSA services. The county cannot provide this analysis without an understanding and distinction of the terminology used. Definitions of "Underserved" and "Unserved" are also within Article 2, Definitions.

Section 3200.170. General System Development Service Category

Specific Purpose: Section 3200.170 provides a definition of the "General System Development Service Category" that is one of three service categories within the Community Services and Supports component of the Three-Year Program and Expenditure Plan.

Rationale for Necessity: It is necessary to define this service category as one of three distinct service categories that exists within the Community Services and Supports component of the Three-Year Program and Expenditure Plan. In recognition that the California mental health system did not have the infrastructure to provide a fully array of

services and supports to everyone who is in immediate need, the Department recognized that it may not be logistically possible for all counties to provide the full spectrum of community services and supports (Full Service Partnership) to every individual in immediate need. The service categories (Full Service Partnership, General System Development and Outreach and Engagement) are intended to be approaches to service delivery and are not considered categorical. The General System Development Service Category is designed to allow counties to improve their infrastructure as well as the ability to provide a narrower array of mental health services and supports designed to address the mental illness/emotional disturbances.

Final Modification: No change was made to this definition. However, a fourth service category within the Community Services and Supports component of the Three-Year Program and Expenditure Plan was added - the Mental Health Services Act Housing Program Service Category. (See Section 3200.225 for the definition and Section 3615, Community Services and Supports Service Categories for the inclusion of the Mental Health Services Act Housing Program Service Category.)

Section 3200.180. Individual Services and Supports Plan

Specific Purpose: Section 3200.180 defines "Individual Services and Supports Plan" as the plan developed by the Personal Service Coordinator/Case Manager in collaboration with the client and his/her family, when appropriate, to achieve his/her goals.

Rationale for Necessity: This definition is necessary to communicate the Department's commitment to honor the intent of the MHSA to balance existing service delivery models and terminology with a focus on client-centered practices. A "treatment plan" is generally perceived and associated with the medical model with the treatment plan developed and implemented by a physician or other appropriately licensed person. The "treatment plan" directs the client's treatment from this medically-driven perspective. In contrast, the Individual Services and Supports Plan (ISSP) is intended to be developed and implemented in a collaborative manner between the client and his/her family, when appropriate, and the Personal Service Coordinator/Case Manager. The ISSP documents, not only treatment needs, but also the services and supports needed for the client and family, when appropriate to reach his/her goals.

Section 3200.190. Integrated Service Experience

Specific Purpose: Section 3200.190 defines "Integrated Service Experience" for the purpose of these regulations as the full range of services needed by the client, and when appropriate his/her family, that are provided not by a single agency, but by multiple agencies, programs, etc. in a comprehensive and coordinated manner.

Rationale for Necessity: This definition is necessary as the regulations require each county to follow specific standards in the planning, implementing, and evaluating of the

programs and services provided with MHSA funds. The standards must include community collaboration, cultural competence, as well as "integrated service experiences" for the clients and their families. This standard of "integrated service experiences" is to be incorporated into the Community Program Planning Process, the development of the Three-Year Program and Expenditure Plans and subsequent updates as well as into the manner in which services are delivered to clients on an individual basis.

Section 3200.210. Linguistic Competence

Specific Purpose: Section 3200.210 defines "Linguistic Competence" as the ability of organizations and individuals working within the system to communicate and convey information in a manner so that it can be understood by diverse audiences that include individuals with few or limited literacy skills, limited English proficiency as well as disabilities that impair communication.

Rationale for Necessity: This definition is necessary in order to provide to the users of these regulations, primarily the counties within the State of California, a working definition of "linguistic competence". The linguistic and cultural characteristic of many mental health clients present needs that the system must better address to ensure adequate access to appropriate treatment options and services. Throughout the regulations there is reference to linguistic competence that include such actions as providing equal opportunity for peers who share the linguistic characteristics of the individuals/clients served and Personal Service Coordinators/Case Managers, and others involved in developing programs and service delivery who are linguistically and culturally competent to serve a linguistically diverse client population.

Section 3200.220. Mental Health Services Act

Specific Purpose: Section 3200.220 defines the Mental Health Services Act as the laws that took effect on January 1, 2005 when Proposition 63 was approved by the voters and codified in the law.

Rationale for Necessity: This definition is necessary to inform anyone using and/or referring to these regulations that the term Mental Health Services Act, or its abbreviation, MHSA, is referring to a specific law that became effective on January 1, 2005 and is contained in the Welfare and Institutions Code.

Final Modification – New Term Defined

Section 3200.225. Mental Health Services Act Housing Program Service Category (New)

Specific Purpose: Section 3200.225 provides a definition of the "Mental Health Services Act Housing Program Service Category" that is one of four service

categories within the Community Services and Supports component of the Three-Year Program and Expenditure Plan.

Rationale for Necessity: It is necessary to define this service category as one of four distinct service categories that exists within the Community Services and Supports component of the Three-Year Program and Expenditure Plan. In recognition that the California mental health system did not have the infrastructure to provide a fully array of services and supports to everyone who is in immediate need, the Department recognized that it may not be logistically possible for all counties to provide the full spectrum of community services and supports (Full Service Partnership) to every individual in immediate need. The service categories (Full Service Partnership, General System Development and Outreach and Engagement) are intended to be approaches to service delivery and are not considered categorical. The fourth category, Mental Health Services Act Housing Program Service Category was added to the Community Services and Supports component of the Three-Year Program and Expenditure Plan in direct recognition of the need for low income housing for those individuals defined as needing mental health treatment and services. If a definition of the Mental Health Services Act Housing Program Service Category is not provided, the county would have to interpret the purpose and use of this service category. Provision of this definition will allow for standardization of this service category within the counties.

Section 3200.230. Older Adult

Specific Purpose: Section 3200.230 defines an "older adult" as an individual 60 years of age and older.

Rationale for Necessity: The necessity for this definition is twofold. First, this definition is necessary to clarify that the Department is adopting the term "older adults" to refer to the term "seniors" as used throughout the Mental Health Services Act (commencing with Section 5813.5 of the Welfare and Institutions Code).

Secondly, this definition is necessary to delineate the various subgroups within California's population that may access mental health services and programs. As written, the Mental Health Services Act requires that services be provided to Children/Youth, Transition Age Youth, Adults and Older Adults. It is necessary to assign an age range to these various groups; therefore, regulation establishes what constitutes an "older adult". This delineation allows the county to categorize information for reporting of services provided and accountability to the Department on the populations served. While this definition categorically defines the eligible older adult population within California, the programs/services offered under the Mental Health Services Act are not exclusive to a specific population but should be designed to meet individual needs.

Section 3200.240. Outreach and Engagement Service Category

Specific Purpose: Section 3200.240 provides a definition of the "Outreach and Engagement Service Category" that is one of three service categories within the Community Services and Supports component of the Three-Year Program and Expenditure Plan.

Rationale for Necessity: It is necessary to define this service category as one of three distinct categories that exist within the Community Services and Supports component of the Three-Year Program and Expenditure Plan. In recognition that the California mental health system did not have the infrastructure to provide a full array of services and supports to everyone who is in immediate need, the Department created three service categories under the Community Services and Supports component. The Department also recognizes that, as the Mental Health Services Act points out, it is necessary to reach out to unserved populations and engage people with severe mental illness/disorders. The service categories are intended to be approaches to service delivery and are not considered categorical illness/disorders into the mental health system. Therefore, the Department designed this funding category specifically for outreach and engagement purposes. This service category allows counties to develop, propose, and operate programs designed to reach out to the unserved populations within their jurisdictional boundaries.

Final Modification: No change was made to this definition. However, a fourth service category within the Community Services and Supports component of the Three-Year Program and Expenditure Plan was added - the Mental Health Services Act Housing Program Service Category. (See Section 3200.225 for the definition and Section 3615, Community Services and Supports Service Categories for the inclusion of the Mental Health Services Act Housing Program Service Category.)

Section 3200.250. Planning Estimate

Specific Purpose: Section 3200.250 defines "Planning Estimate" as the actual amount of money determined by the Department that is available to each county and therefore the maximum amount of Mental Health Services Act funding that the county can request.

Rationale for Necessity: It is necessary to define "Planning Estimate" as the term is referenced in regulations. In general usage, one would associate the term to an amount of money that can be spent on "planning"; be that planning an activity, planning a strategy, etc. In these regulations, "planning estimate" is used in a larger context. This "planning estimate" represents the amount of money that the Department has determined will be available to the county to spend on MHSA associated programs and supports. The "planning estimate" amount is the basis on which the county determines the amount of money that can be spent for the implementation of the Mental Health Services Act and the various components contained in the Act. It is necessary for

counties to be informed of the amount of Mental Health Services Act money that is available to fund mental health programs and supports. The actual amount of money available to the county is determined by the Department using the most current and accurate information from statewide or national databases as well as other factors such as county population most likely to apply for services, populations most likely to access services, etc.

Section 3200.260. Small County

Specific Purpose: Section 3200.260 defines a small county as a county within the State of California with a total population of less than 200,000.

Rationale for Necessity: It is necessary to define what constitutes a "small county" for the purpose of these regulations. In general, there are specific requirements that must be met by each county in order to be eligible for Mental Health Services Act funds. Compliance with some of the requirements will be difficult for the smaller counties due to the small county employee workforce and the ability of small counties to have access to the same level of programs and community supports available in the larger metropolitan areas. Therefore, some regulatory requirements provide "small counties" with additional timeframes to attain compliance. Because of the variances allowed for small counties, it is necessary to establish in regulation what constitutes a "small county" in terms of population size and the single-source that the Department will rely on for this purpose which is the State Department of Finance.

Section 3200.270. Stakeholders

Specific Purpose: Section 3200.270 defines the group of individuals or entities having an interest in mental health services in California.

Rationale for Necessity: Welfare and Institutions Code Section 5848 requires that each Three-Year Program and Expenditure Plan and update be developed with the input of local "stakeholders". Additionally, the "stakeholders" are to be involved in the review process of the Three-Year Program and Expenditure Plan and updates. The involvement of stakeholders is specifically mentioned in the MHSA. It is therefore necessary to acknowledge the key role that stakeholders play in the process of development of the county's Three Year Program and Expenditure Plan and updates. The definition describes the stakeholder as an individual or entity with an interest in mental health services in California. This list includes individuals with severe mental illness/disorders, their families, providers, educators, law enforcement, and any others with an interest. The example is not all inclusive as it is necessary to recognize that each county may have individualized/unique needs that will necessitate the involvement of differing individuals/groups as appropriate to address county specific mental health needs.

Section 3200.280: Transition Age Youth

Specific Purpose: Section 3200.280 defines "Transition Age Youth" as individuals age 16 to 25 years of age.

Rationale for Necessity: This definition is necessary to delineate the various groups within the California population that may access mental health services and programs. As written, the Mental Health Services Act requires that services be provided to Children/Youth, Transition Age Youth, Adults and Older Adults. Because of their special needs, the Mental Health Services Act distinguishes transition age youth in the Welfare and Institutions Code Section 5847(c) from both the Children/Youth and Adult populations. This delineation also allows the county to categorize information for reporting of services provided and accountability to the Department on the populations served. While this definition categorically defines the eligible transition age youth population within California, the programs/services offered under the Mental Health Services Act are not exclusive to a specific population but rather are designed to meet individual needs.

Section 3200.300. Underserved

Specific Purpose: Section 3200.300 defines "Underserved" as a client diagnosed with a serious mental illness and/or serious emotional disturbance who is receiving "some" services.

Rationale for Necessity: This definition is necessary as the Mental Health Services Act specifically requires that funds disbursed to the counties under this Act include services to those that have been underserved. In order to meet this statutory mandate, regulations refer to "underserved" in Section 3620.05 as a criterion for participation in a full service partnership. The definition also provides examples of those client groups that are underserved which include clients at risk of becoming homeless, institutionalized, etc. as well as members of ethnic/racial, cultural and linguistic populations that may be "underserved" due to language and cultural barriers.

Section 3200.310. Unserved

Specific Purpose: Section 3200.310 defines "unserved" as individuals who may have serious mental illness and/or serious emotional disturbance and are not receiving mental health services.

Rationale for Necessity: The findings and intent of the Mental Health Services Act, Section 2 (c) describes untreated mental illness as the leading cause of disability and suicide. Many people left untreated or with insufficient care see their mental illness worsen. It is necessary to identify this group of individuals as those with serious mental illness/emotional disorders, and their families, to include not only those who are not receiving mental health services, but also those who have had brief and/or crisis oriented contact and/or services from the county. Older adults with frequent, avoidable

emergency room and hospital admissions, adults who are, or are at risk of becoming, homeless or incarcerated, transition age youth exiting the juvenile justice or child welfare systems or experiencing their first episode of major mental illness are considered a part of this population.

Article 3: GENERAL REQUIREMENTS

Section 3300. Community Program Planning Process

Section 3300(a)

Specific Purpose: This section establishes that the Community Program Planning Process is to be the basis for the development of the County's Three-Year Program and Expenditure Plan as well as for any subsequent updates.

Rationale for Necessity: This section is necessary to inform the counties that the community program planning process is to be used for the development of the individual county's Three-Year Program and Expenditure Plan as well as any subsequent updates that amend/revise the Three-Year Plan. The specifics of this Community Program Planning Process are described in other regulations in this section.

Section 3300(b), (b)(1)-(b)(5)

Specific Purpose: This section states the need for the county to adequately staff the Community Program Planning Process in order to ensure that the process includes full representation of the community with an interest in mental health services and the delivery of such services.

Rationale for Necessity: This section is necessary in order to require that the county not only have adequate staff involved in the Community Program Planning Process, but also that specific individuals or units are designated responsibility for the various components of this community process. Designation of responsibility for the various components of the Community Program Planning Process will ensure the representation of not only agencies and organizations involved in the delivery of mental health services, but also the involvement of individuals and the families of those individuals in need of mental health treatment/services and clients who are utilizing those mental health services currently available. The purpose of the community planning process is to identify the needs of the county in the area of mental health treatment services and supports. It is important to identify and address not only the needs as identified by the county and the organizations and agencies involved in the area of mental health at the local level, but more specifically to reach out to the consumers of these services to obtain input. To this end, county staff/units are to be responsible for the overall process and coordination and management of the process. Responsibility must also be specifically assigned to ensure the involvement of stakeholders (as defined in Definitions, Section 3200.270) and that the stakeholder

involvement include participation from all impacted groups such as the unserved and underserved populations.

Section 3300(c), (c)(1)-(c)(3), (c)(3)(A)-(B)

Specific Purpose: This section states who, at a minimum, is to be included in the Community Program Planning Process and to inform the county that training is to be provided, as needed, to county staff and stakeholders and others participating in this process.

Rationale for Necessity: This section is necessary to set forth the minimum requirements for the Community Program Planning Process. As mentioned above, the Community Program Planning Process is to be used for the identification of the mental health services needs of persons within a particular county's jurisdiction. The identification of these needs becomes the basis for the goals and objectives of the county. As this is a "community" planning process, it is important to ensure that those clients with serious mental illness/serious emotional disturbances are included in the process. Additionally, stakeholders, as defined, are a key contributor to the identification of the county's needs and must be a part of the planning process. Lastly, training, as needed, is to be provided to the county staff given the responsibility for the overall Community Program Planning Process as well as the ongoing management and oversight of the process. Stakeholders, clients, and client family members who are participating in the process must also receive training regarding their role in the process and the overall importance of their contributions to this process.

Section 3300(d)

Specific Purpose: This section informs the county that up to five percent of the "Planning Estimate" for a specific fiscal year may be used for the purpose of Community Program Planning if the Department does not specifically dedicate funds for this purpose.

Rationale for Necessity: This regulation is necessary in order to inform the county that monies may be used for the Community Program Planning Process. The Community Program Planning Process is an obligation placed on the county in the Mental Health Services Act. The Act specifically requires the county to include stakeholders in the development of the Three-Year Program and Expenditure Plan and annual updates. This involvement of stakeholders represents a cost to the counties in order to do outreach to the community informing them of the Community Program Planning Process and to solicit the involvement of stakeholders, clients, etc. with an interest in the future of the mental health system in that process. Welfare and Institutions Code Section 5892(e)(3) specifies that 5 percent of the 2004/05 funds shall be allocated for local planning. This obligation for Community Program Planning is not a one-time activity, but rather is an integral component in the development of the Three-Year Program and Expenditure Plan and the annual updates. Therefore, it is necessary

to acknowledge the cost associated with this activity and allow the county to access funding for this purpose.

Section 3310(a)

Specific Purpose: This section establishes the criteria that the county must fulfill in order to receive Mental Health Services Act funds.

Rationale for Necessity: This regulation is necessary to identify the specific criteria that the county must comply with in order to receive funds through the Mental Health Services Act. The first requirement is the submittal of the Three-Year Program and Expenditure Plan or annual update. As referenced in other regulatory requirements, the Three-Year Program and Expenditure Plan is the mechanism used by the county to identify the individual county's needs in the area of mental health services and supports and further identification of the county's priorities to meet these needs. This is the mechanism to be used by the county to inform the Department of how the money will be spent, and also serves as the blueprint for the county in terms of its identified priorities. As mentioned earlier, the Three-Year Program and Expenditure Plan and the annual updates are the product of the Community Program Planning Process and represent the work plan for the county in terms of mental health services and the delivery and identification of the populations to be served. It is also necessary for the Three-Year Program and Expenditure Plan to have the approval of the Department before the Plan can be implemented. The county is also required to enter into an MHS Performance Contract with the Department in order to receive these funds.

Final Modification: Additional language was added to this regulation to require that in order to receive Mental Health Services Act funds, the County must comply with "all other applicable requirements". This language was necessary as a result of adding a fourth services category, specifically, the Mental Health Services Act Housing Program Service Category. The Housing service category will allow the county to acquire, rehabilitate or construct permanent supportive housing for clients with serious mental illness. The undertaking of construction, be it new or of a rehabilitative nature, will require the county to meet additional requirements outside of those contained in the MHSA regulations and the Welfare and Institutions Code. There will be additional requirements, including but not limited to, local ordinances, permits and laws specific to housing. The addition of this language acknowledges these additional requirements and notifies the County that in order to access MHSA funds, compliance with regulations and law, beyond those contained in Chapter 14, the Mental Health Services Act and the Welfare and Institutions Code may be required.

Section 3310(a)(1)

Specific Purpose: This section allows city-operated programs operating under the exemption in Welfare and Institutions Code Section 5701.5 to request Mental Health Services Act funds separate from the county in which it is located.

Rationale for Necessity: This regulation is necessary to clarify that city-operated programs (those cities operating programs as allowed by W&IC Section 5701.5) may submit a Three-Year Program and Expenditure Plan separate from the Plan submitted by the county in which it is located.

It is the Department's intent to avoid duplication and potential gaps in services in a county where both a city-operated program and a county-operated program exist. To this end, the Department expects that the city-operated programs and county mental health programs will collaborate with one another to minimize gaps in the provision of mental health services and supports.

Section 3310(b), (b)(1)-(b)(5)

Specific Purpose: This section establishes which components are required to be included in the Three-Year Program and Expenditure Plan.

Rationale for Necessity: This section is necessary to provide the county with information on the components that the law requires are to be included in the Three-Year Program and Expenditure Plan as well as the age categories that may access the mental health services defined within the Community Services and Supports component. The other components, Capital Facilities and Technological Needs, Education and Training, Prevention and Early Intervention and Innovative Programs, will be addressed in future regulations as the Department implements each component.

Section 3310(c)

Specific Purpose: This section establishes the timeframe for updating the Three-Year Program and Expenditure Plan.

Rationale for Necessity: This section is necessary in order to provide the county with the timeframe for updating their Three-Year Program and Expenditure Plan as required in the Mental Health Services Act. As stated in the MHSA, the Three-Year Program and Expenditure Plan must be updated at least annually.

Section 3310(d), (d)(1)

Specific Purpose: This section specifies that the development of the Three-Year Program and Expenditure Plan must be collaborative and that the Community Program Planning Process as described is the appropriate process.

Rationale for Necessity: This section is necessary to ensure that the Three-Year Program and Expenditure Plan and the updates are developed in partnership with stakeholders through the Community Program Planning Process consistent with the Mental Health Services Act. The Community Program Planning Process provides a structure and process the county can use in partnership with their stakeholders in

determining how best to utilize Mental Health Services Act funds. Requiring stakeholders be included in the "update" process ensures an ongoing partnership with the stakeholders in determining how best to utilize available funds to meet the mental health needs of the community. Reference to county programs/services being funded only if the Community Program Planning Process was followed further reinforces the intent of the Mental Health Services Act to ensure that a partnership exists between the county and the stakeholders and that the stakeholders are involved in the process of identifying the mental health needs and services and prioritization of these identified needs and services.

Section 3310(e)

Specific Purpose: This section requires that a statement be included in the Three-Year Program and Expenditure Plan or the annual update that the requirements of Section 3300 (Community Program Planning Process) were met.

Rationale for Necessity: This section is necessary to ensure that the Community Program Planning Process was an integral part in the development of the county's Three-Year Program and Expenditure Plan or the annual update. A statement explaining how the requirements of Section 3300 were met will require the county to provide information as to how they ensured the participation of stakeholders, representing not only the unserved and underserved, but also the racial/ethnic, etc. populations unique to the individual county.

Section 3310(f)

Specific Purpose: This section requires the county to submit documentation of compliance with the requirements of Section 3315 to conduct a local review process.

Rationale for Necessity: This section supports the requirement contained in Section 3315, Local Review Process, subsection (b) that requires documentation of compliance with the Local Review Process. Section 3315 provides the specifics as to what information this documentation is to include. Section 3310(f) makes the documentation of compliance with the local review process a component of the Three-Year Program and Expenditure Plan.

Section 3315. Local Review Process

Section 3315(a)

Specific Purpose: This section requires the county to conduct a local review process prior to submitting the Three-Year Program and Expenditure Plan or annual update to the Department.

Rationale for Necessity: This regulation is necessary to ensure that the county conducts a local review process prior to actually submitting their Three-Year Program

and Expenditure Plan or annual update to the Department for approval. Other regulations require the county to outreach to the community and obtain stakeholder input as part of the Community Program Planning Process. However, if input is requested but there is no opportunity for the stakeholders and other community members to react to the county's proposal before it is submitted to the Department, the process is incomplete. By requiring the county to conduct a local review process, the stakeholders are involved in the entire process from its inception through submittal of the Three-Year Program and Expenditure Plan or annual update to the Department. Reference is made in this regulation to the requirement for a 30-day comment period and a public hearing. This process is similar to that used for proposed regulations to ensure adequate time for individuals to offer either written or oral comments to the proposed plan.

Section 3315(a)(1)-(a)(4)

Specific Purpose: This section specifies what documentation is to be provided to the Department to substantiate compliance with the local review process including the 30-day comment period, public hearing, a summary and analysis of any substantive recommendations received, and a description of any substantive changes made to the Three-Year Program and Expenditure Plan or annual update.

Rationale for Necessity: This regulation is necessary as documentation of the Local Review Process is required and this documentation is a part of the Three-Year Program and Expenditure Plan or annual update submitted to the Department. As counties are required to submit documentation that the local review process was conducted, it is necessary to provide specifics as to what is to be included in this documentation. Therefore, the specifics to be documented include: (1) the methods used to circulate the draft Plan/annual update to representatives of stakeholder interests and other persons who request the draft; (2) date of the public hearing; (3) a summary and analysis of any substantive recommendations and (4) a description of any substantive changes made to the proposed Plan or annual update that was circulated. Each of these items represents key components to the local review process to ensure that the contributors to the Community Program Planning Process are given the opportunity to review and comment on the Three-Year Program and Expenditure Plan or the annual update prior to its submittal to the Department. Additionally, any substantive recommendations, particularly those that resulted in a change in the Three-Year Program and Expenditure Plan or annual update are to be identified and provided to the Department as part of the local review process. This is especially important as the County may amend the Three-Year Program and Expenditure Plan or the update based on a recommendation provided by stakeholders or other interested parties. If the Plan/Update is amended, there must be a description of this change if it is substantive as it represents a deviation from the original Plan/Update as presented to the stakeholders/other interested parties.

Section 3315(b)

Specific Purpose: This section requires the county to conduct a local review process prior to submitting updates, other than the annual update, to the Three-Year Program and Expenditure Plan to the Department.

Rationale for Necessity: This regulation is necessary to ensure that the county conducts a local review process prior to submitting updates to the approved Three-Year Program and Expenditure Plan to the Department. The law, specifically, Welfare and Institutions Code Section 5848 (a) and (b) set forth the requirements for (1) the development of the Three-Year Program and Expenditure Plan and updates with stakeholders, (2) the circulation of said Plan or update for review and comment for at least 30 days, (3) the holding of a public hearing by the mental health board, (4) inclusion in the Plan or annual update of any substantive written recommendations for revision and (5) a summary and analysis of the recommended revisions. These requirements stated in law are specific to the Plan (Three-Year Program and Expenditure Plan) and "annual" updates (emphasis added). During the development of the regulations, it became apparent that Counties may need to submit updates to the Three-Year Program and Expenditure Plan beyond the required "annual" update. Additionally, if the Department is allowing the county to submit updates to the Three-Year Plan, it is necessary to ensure that some type of local review process is required. To this end, updates to the Three-Year Plan mirror the requirements for the initial Three-Year Plan and the annual updates except that a public hearing is not required. However, the County is still required to provide for a 30-day comment period to ensure that updates to the Three-Year Plan include stakeholders and thereby represents the needs of the community, as well as to ensure that stakeholders have a say in any and all major revisions to the Three-Year Plan.

Section 3315 (b)(1)- (b)(3)

Specific Purpose: This section specifies the documentation necessary to substantiate compliance with the local review process for Three-Year Plan updates, other than annual updates, that are provided to the Department. The documentation includes a 30-day comment period, a summary and analysis of any substantive recommendations received and a description of any substantive changes made to the Three-Year Program and Expenditure Plan.

Rationale for Necessity: This regulation is necessary as the Department feels it is important for stakeholders and/or other interested persons to have input to any proposed change to the Three-Year Plan that is represented as an "update". Therefore, the Department is requiring a modified local review process in order to ensure that the community-at-large is informed of any proposed change to the Three-Year Plan and is given the opportunity to comment on the change. Just as with the requirements for a local review process for the Three-Year Program and Expenditure Plan or annual updates, specific actions are to be taken to inform the public of the proposed change to the Three-Year Plan, and documentation that these actions were carried out. The

documentation of the Local Review Process is a component of the Plan/annual update submitted to the Department. As any update to the Three-Year Plan requires collaboration with the stakeholders, it is necessary to require a similar local review process prior to making amendments to the Three-Year Plan/annual update. Therefore, the review processes for both are similar with the exception of the public hearing. Each of these required items represent a key component to the local review process to ensure that the contributors to the Community Program Planning Process are given the opportunity to review and comment on any update to the Three-Year Program and Expenditure Plan prior to its submittal to the Department. Additionally, it is important that any substantive recommendations, particularly those that result in a change in the Three-Year Program and Expenditure Plan, are identified and described for the purpose of obtaining the appropriate approvals.

Section 3320. General Standards

Section 3320(a), (a)(1)-(a)(6)

Specific Purpose: This section informs the county as to the standards to be embraced in the Community Program Planning Process, the development of the Three-Year Program and Expenditure Plan and/or updates, and the manner in which the County delivers the services and evaluates the delivery of the services.

Rationale for Necessity: This section is necessary as it is a reference to specific terms defined as the standards to be followed in the planning, implementing and evaluating of programs and/or services that are paid for with Mental Health Services Act funds. The Mental Health Services Act not only provides money to fund programs and services in the area of mental health, but also provides the Department and the county an opportunity to change the focus of the mental health system to one that reflects the individualized needs of the community and, for the individual receiving the services, a system that reflects his/her specific needs, or as appropriate the needs of his/her family. The integration of these standards is not to be reflected in a single program or process, but rather in all programs, services and processes funded with Mental Health Services Act funds. Each of the standards are defined in Article 2, Definitions, with the exception of “Wellness, Recovery, and Resilience Focused.” “Wellness, Recovery and Resilience Focus” are not used as terms of art and therefore, are not defined within the context of these regulations.

Section 3350. Amendment of MHSA Performance Contract

Section 3350(a)

Specific Purpose: This regulation informs the county that amendments to the performance contract can be initiated at any time.

Rationale for Necessity: This regulation is necessary to allow for the initiation of contract amendments if needed. If this regulation were not in place, the county would

be unaware that amendments to the MHSA Performance Contract are acceptable. Amendments to the Performance Contract may be necessary in specific situations as described in Section 3350(b). For example, the county may find it necessary to eliminate a previously approved program. The elimination may be due to lack of interested participants, need for services in a previously unidentified area, etc. MHSA Performance Contract amendments will establish the performance contract as a working document that is current and representative of each county's specific and unique needs. The regulation allows for contract amendments to be initiated by the county or the Department at any time. However, the regulations address in Subsection (b), only those situations for which the county may initiate a contract amendment.

Section 3350(b), (b)(1)-(b)(6)

Specific Purpose: This regulation provides a list of situations for which the county may initiate an amendment to the MHSA Performance Contract.

Rationale for Necessity: This regulation is necessary to specify the situations for which the county may initiate an amendment to the performance contact. For example, the regulation will allow the county to request a contract amendment to eliminate an approved program. Once the Department approves a county's Three-Year Program and Expenditure Plan, the county is held accountable for the development and implementation of each program described in the Plan. However, lack of resources or a change in the identified population to be served could result in the need for the county to eliminate a previously approved program. Another example is the ability of the county to initiate a contract amendment to request funding for a new program that was not part of the county's initial contract. Again, the Three-Year Program and Expenditure Plan or annual update and the MHSA Performance Contract that is attached to the Plan or update, must be allowed to be fluid to ensure that it represents the current needs of the community and the individuals in need of mental health services and supports. The ability of the county to initiate contract amendments allows the flexibility to revise Plans and updates to meet the changing needs.

Section 3350(c)

Specific Purpose: This regulation informs the County that an amendment to the Performance Contract may require an update to the Three-Year Program and Expenditure Plan.

Rationale for Necessity: This regulation provides discretionary language allowing the Department to require the county to submit an update to the Three-Year Program and Expenditure Plan. The rationale is to establish a process to ensure that the stakeholders have the ability to be involved in any significant changes to the Three-Year Plan. As this regulation is written, if the county is required to submit an update to the Three-Year Plan, Section 3315 (b) will be invoked requiring that the Local Review Process (Section 3315) be followed. This local review process includes a 30-day comment period, circulation of the proposed amendment to representatives of

stakeholders, summary and analysis of substantive recommendations, and a description of the substantive changes. In this way, the Department ensures the ongoing collaboration between the county and the community it serves in the identification of local needs and the development and implementation of the Three-Year Program and Expenditure Plan.

Section 3360. Program Flexibility

Section 3360(a)

Specific Purpose: Section 3360(a) allows the county to use alternative practices, programs/services, procedures, and/or demonstration projects as long as the requirements set forth in this section are met.

Rationale for Necessity: This regulation is necessary in order to allow the counties flexibility in the development of programs and/or services, procedures and demonstration projects to serve those with mental health needs.

Section 3360(a)(1)

Specific Purpose: Section 3360(a)(1) requires that any alternative practice, program, service, etc. must meet the intent of the Mental Health Services Act and the applicable regulations.

Rationale for Necessity: This regulation is necessary as the Department wants to allow the county flexibility to react to innovative and new programs, services, etc. as well as demonstration projects to meet the needs of those with mental health treatment needs. However, in allowing the counties flexibility to consider the use of alternatives, it is important to maintain the integrity of the Mental Health Services Act. Therefore, in considering alternative practices, programs, etc. the county shall ensure that the intent as specified in Section 3 of the Act is met as well as any and all applicable regulations.

Section 3360(a)(2)

Specific Purpose: Section 3360(a)(2) allows the use of an alternative practice, program, service, etc. if the county submits a written request and supporting documentation for the alternative to the Department.

Rationale for Necessity: This regulation is necessary to ensure that alternative practices, programs, services, etc. are submitted to the Department in the form of a written request. It is not sufficient to submit only a written request in order to implement an alternative practice, program, procedure, etc. The regulation also requires the submittal of documentation supporting the alternative. Such documentation may include material such as a study of the specific practice and the results of the study or other evidence of the success of the alternative. This type of documentation will provide

the Department with the information necessary to review the alternative for possible approval.

Section 3360(a)(3)

Specific Purpose: Section 3360(a)(3) requires that the county must have prior approval from the Department before any alternative practice, program/service, etc. is implemented.

Rationale for Necessity: This regulation is necessary as the Department is the entity designated in the law as having the responsibility for the implementation of the Mental Health Services Act. To this end, it is necessary to include a regulation that requires the county request and receive approval from the Department prior to any implementation or enactment of an alternative practice, program/service, procedure and/or demonstration project.

Section 3360(b)

Specific Purpose: Section 3360(b) requires the county to maintain continuous compliance with all applicable regulations unless the Department has given written approval of the alternative.

Rationale for Necessity: This regulation is necessary to ensure that the county does not implement an alternative until receipt of written approval from the Department. Sub items (1), (2) and (3) of Section 3360(a) set forth the requirements for the county to request approval of an alternative. However, the regulation does not specify what the county does in regard to said alternative while awaiting the approval/denial of the written request for implementation. This regulation provides that needed direction to the county by requiring compliance with the regulations unless the county has “written” approval of the alternative from the Department.

Article 4. GENERAL FUNDING PROVISIONS

Section 3400. Allowable Costs and Expenditures

Section 3400(a)

Specific Purpose: This regulation states that Mental Health Services Act funds can only be used to establish or expand mental health services and supports for the components specified in Section 3310(b) (the components are also specified in the Mental Health Services Act) and for the funding of the Community Program Planning Process specified in Section 3300.

Rationale for Necessity: This regulation is necessary to restate what is in the Mental Health Services Act as to the specific components eligible for funding under the Act.

The county currently receives funds, other than MHSA funds, to provide and support a wide array of mental health programs/services. The Mental Health Services Act provides a funding source to use for new mental health services/programs as well as the expansion of existing mental health services/programs. In keeping with the intent of the law to expand mental health services, it is necessary to specify the allowable use of the funds while ensuring that the county continues the commitment of funds to existing programs/services. The reference to the Community Program Planning Process is included as this process is a requirement of the Mental Health Services Act and it is necessary to acknowledge that the expenditure of MHSA funds on this activity is an allowable cost.

Section 3400(b)

Specific Purpose: Section 3400(b) provides an introduction to three specific requirements that must be met by any program/service that is provided with MHSA funds.

Rationale for Necessity: This section is necessary to provide an introduction to the established criteria that must be met by any programs and/or services in order to use MHSA funds on the program/service.

Section 3400(b)(1)

Specific Purpose: Section 3400(b)(1) states one of the essential requirements that must be met in order to utilize MHSA funds; specifically, the services and supports must be to individuals with severe mental illness and/or severe mental disorders., and when appropriate, their families.

Rationale for Necessity: This section is necessary to ensure that the use of the funds is consistent with the Findings and Declaration as stated in the Mental Health Services Act which recognizes the issues that arise when mental illness/mental disorders are not treated. The passage of Proposition 63, the Mental Health Services Act, provides funding specifically for the treatment of individuals with severe mental illness/disorders. The use of MHSA funds is specific to the provision of programs and/or services related to supporting those with a serious mental illness and/or serious emotional disturbance. The expenditure of MHSA funds on any service/program that is not specific to the treatment of individuals with severe mental illness/disorders is contrary to the Act and, therefore is not fundable.

Section 3400(b)(1)(A)

Specific Purpose: Section 3400(b)(1)(A) provides an exemption to the requirement that Mental Health Services Act funds can only be used to offer services and/or supports to individuals/clients with serious mental illness and/or emotional disturbance.

Rationale for Necessity: This exemption is necessary as it is specific to Prevention and Early Intervention. Prevention and Early Intervention is a component of the Mental Health Services Act. The law provides that the Prevention and Early Intervention Program is to be designed to include specific objectives that includes outreach to families, employers, primary health care providers, etc. to recognize the early signs of potentially severe and disabling mental illness; reduction in stigma associated with either being diagnosed with a mental illness or seeking services; and reduction in discrimination against people with mental illness. These objectives are not specific in terms of services and/or supports offered to the individual with mental illness. The objectives address education of specific populations to identify mental illness and equally as important, the reduction of the stigma attached to those diagnosed with a mental illness or those seeking mental health services. If this stigma can be reduced and eventually eliminated, it can hopefully result in individuals seeking earlier treatment. The results from earlier treatment for individuals is a reduction in suicide, incarcerations, school failure and other negative outcomes resulting from untreated mental illness.

Section 3400(b)(2)

Specific Purpose: Section 3400(b)(2) states another of the essential requirements that must be met in order to utilize MHSA funds: the services/programs must be designed for voluntary participation.

Rationale for Necessity: This section is necessary to ensure that the Mental Health Services Act funds are used to establish and/or expand the array of voluntary programs/services offered by the county. This means that the actual programs/services that are established by the county are programs/services that individuals with mental illness can choose to access in order to achieve their personal goals. The voluntary nature of the program is separate and distinct from the legal status of the individual with serious mental illness/disorders. For example, an individual with a serious mental illness, currently incarcerated in the county jail, may be offered the opportunity to attend a drug rehabilitation program as a condition for early release. The program is designed for voluntary participation by those in need of help with their drug addiction. However, for this individual, his/her current legal status is involuntary but his/her choice to participate in the drug rehabilitation program is voluntary. It is necessary for the regulation to acknowledge that the voluntary or involuntary legal status of an individual with serious mental illness/disorders is not relevant in determining his/her ability to access programs/services. Many individuals with mental health illness/disorders may have an involuntary legal status. To exclude such individuals from programs/services funded with MHSA funds would by contrary to the intent of the Act and exclude some of the very individuals in most need of mental health services/supports.

Section 3400(b)(3)

Specific Purpose: Section 3400(b)(3) states another of the essential requirements that must be met in order to utilize MHSA funds; the funds cannot supplant existing state or county funds utilized to provide mental health services.

Rationale for Necessity: This section is necessary to inform the county that MHSA funds cannot be used to fund an existing program or service, unless such program or service is being expanded as specified in Section 3410, Non-Supplant. This requirement to comply with the non-supplant requirements of Section 3410 is in keeping with specific language contained in section 5891 of the Welfare and Institutions Code. W&IC Section 5891 specifically states: "The funding established pursuant to this Act shall be utilized to expand mental health services. These funds shall not be used to supplant existing state or county funds utilized to provide mental health services." (emphasis added)

Section 3400(c)

Specific Purpose: Section 3400(c) expands on the allowable use of the MHSA funds which is to match other funding sources, but not solely for the purpose of increasing reimbursement.

Rationale for Necessity: This section is necessary to specify that the county can use Mental Health Services Act funds to maximize other funding sources such as federal reimbursements including Medi-Cal and the Healthy Families Program, whenever possible. Funds requested under the MHSA should not be driven by the goal of maximizing Medi-Cal or Health Families Program reimbursement but rather to create new and innovative programs/services that will be effective in achieving outcomes consistent with the Mental Health Services Act.

Section 3400(d)

Specific Purpose: Section 3400(d) states that the County is not obligated to use MHSA funding for the purpose of funding court mandates.

Rationale for Necessity: Rational for Necessity: This section is necessary to ensure the integrity of the Community Program Planning Process as set forth in Sections 3300, 3310, 3315, 3320, and 3350 of these regulations. The Community Program Planning Process is a basic and integral part of the Mental Health Services Act as passed by the voters and an essential step in the development of the Three Year Program and Expenditure Plan and updates to that Plan. It is necessary to emphasize in these regulations that it is the county's responsibility, in conjunction with its stakeholders and community-at-large, to develop a plan that meets local needs and to implement the programs and services determined to be necessary to meet those needs. This section informs the county that court mandates do not override that process. A court order or mandate may be considered as part of the overall Community Program Planning Process but does not take priority over the programs developed through the Community Program Planning Process.

Section 3410. Non-Supplant

Section 3410(a), (a)(1), (a)(2)

Specific Purpose: Sections 3410(a), (a)(1), and (a)(2) provide clarification that the Mental Health Services Act funds distributed under this Chapter cannot be used for services/programs that were in existence on November 2, 2004. Subsections (a)(1) and (a)(2) set forth the two exceptions where the counties may use Mental Health Services Act funds for services/programs that were in existence on November 2, 2004. The two exceptions are (1) the expansion of mental health services or program capacity beyond those that previously provided and (2) continued funding in fiscal year 2004-05 of programs with bridge funding as defined in Section 3200.020. (See Specific Purpose and Rationale for Necessity of bridge funding in Statement of Reasons Section 3200.020.)

Rationale for Necessity: These regulations are necessary to establish that programs operating on November 2, 2004, for the purpose of providing mental health services are not eligible for MHSA funds unless they meet one of the two specific criteria below.

(1) The first exception is if the program in existence on November 2, 2004 either expands the mental health services offered and/or the program capacity. In accordance with Section 5891 of the Welfare and Institutions Code, Mental Health Services Act funds may only be used to expand mental health services beyond those which were provided or funded at the time of the enactment of the MHSA, which was November 2, 2004. The Department has interpreted expansion to represent services not provided or funded in the county at the time of the enactment of the Mental Health Services Act or expansion of program capacity beyond that in existence at the time the MHSA was enacted.

(2) The counties received funding in Fiscal Year (FY) 2004-05 in order to fund specific mental health programs. Each county receives funding for provision of various mental health services each fiscal year. Some mental health programs funded in FY 2004-05 had the funding either reduced or discontinued. Subsection 3410(a)(2) allows the county to continue with bridge funding, specific programs whose funds were impacted. Bridge funding (as defined in Section 3200.020) is short-term funding that enabled the county to continue to provide services/programs from the date the funding for the program ended until the approval of the county's initial Three-Year Program and Expenditure Plan. Some counties continued funding (after the state funds were discontinued or reduced) the very programs that the Mental Health Services Act is trying to replicate. The counties continued the funding in the hope that the Mental Health Services Act would pass and there would be long-term funding available. If the Department did not allow this bridge funding, those counties that continued funding of specific programs would be unable to ever use MHSA funding for those services.

Section 3410(b)

Specific Purpose: Section 3410(b) provides in regulation, a prohibition against using Mental Health Services Act funds to supplant state or county funds required to be used for services/supports in existence in Fiscal Year 2004-05.

Rationale for Necessity: The necessity for this regulation is twofold. Welfare and Institutions Code Section 5891 states that MHSA funds "shall not be used to supplant existing state or county funds utilized to provide mental health services". While this prohibition against supplanting existing state or county funds with MHSA dollars exists in statute, it is necessary to include this restriction in regulations in order to convey the Department's interpretation of the Mental Health Services Act regarding the supplantation of MHSA funds. The Department has provided clarification to the supplant prohibition by interpreting the "existing state or county funds required to be used to provide mental health services" to be specific to those services that were in existence in Fiscal Year 2004-05. To assist the county in estimating the aggregate amount of funds that were required to be used to provide mental health services in FY 2004-05, the Department released DMH LETTER NO: 05-08 on October 5, 2005 (copy attached).

The exceptions in this regulation relate only to the Realignment Base. It was therefore necessary to clarify the non-supplant rule as it relates to the Realignment funds. The Department had to provide this exception for the Realignment funds to avoid conflict with other state statute, specifically W&IC Section 17600.20

Section 3410(b)(1), (b)(1)(A)

Specific Purpose: Section 3410(b)(1) provides in regulation an exception to the prohibition of using MHSA funds to supplant state or county funds required to be used for services and/or supports that were in existence in FY 2004-05. The exception is that counties may continue (as allowed by law) to reallocate 10 percent of the Realignment funds either in or out of the mental health account. However, if a county transfers funds out of the mental health account, the county must comply with Non-Supplant, Section 3410(a).

Rationale for Necessity: The necessity for this regulation is twofold. First, this regulation is necessary as counties cannot use MHSA funds to replace other state and county funds required to provide mental health services in FY 2004-05 (the time of enactment of MHSA). Funds required to be used by the county mental health department include all allocations either from or through the State Department of Mental Health, State General Funds, etc. and Realignment funds allocated for mental health services (excluding allowable 10 percent Realignment transfers as allowed by W&I Code Section 17600.20).

Second, this regulation is further necessary to address the non-supplant rule at 3410(b), dealing with funds spent in FY 2004-05, and its relation to the Realignment funds. It is

not the Department's intent to conflict with W&I Code Section 17600.20 that allows the counties to reallocate 10 percent of Realignment funds in or out of its mental health account. The exception is in regulation in recognition that while the Realignment funds are part of the aggregate maintenance of effort the counties have to maintain, the 10 percent allowable Realignment transfer is exempt from the aggregate maintenance of effort amount. However, the Department wants to be clear that if the counties do allocate 10 percent of the Realignment funds out of the mental health account, the county cannot then use MHSA funds to fill the void left by the reallocation and pay for programs and/or services that were in existence as specified in Section 3410(a).

Section 3410(b)(2), (b)(2)(A)

Specific Purpose: Section 3410(b)(2) provides in regulation an exception to the prohibition of using MHSA funds to supplant state or county funds required to be used for services and/or supports that were in existence in FY 2004-05. This regulation allows the county (if the county was exceeding the amount required by law) to reduce their mental health amount to the amount required to be deposited in FY 2004-05 pursuant to W&I Code Section 17608.05 without consequences to the aggregate maintenance of effort amount. However, if the county does reduce the mental health amount to the amount level required in FY 2004-05, Section 3410(b)(2)(A) specifies that the criteria for spending of funds, that is, Section 3410(a) is then applicable.

Rationale for Necessity: This regulation is necessary to provide direction to the county regarding county matching funds in excess of requirements (overmatch) for mental health services pursuant to W&I Code Section 17608.05. Pursuant to the MHSA and reiterated in Section 3410(b) of these regulations, MHSA funds shall not supplant state or county funds required to be used for services and supports that were in existence in FY 2004-05. The Department released, via DMH LETTER NO: 05-08, a listing, by county, of state and county funds required to be used for mental health services in FY 2004-05. The aggregate amounts in DMH LETTER NO: 05-08 become the base or maintenance of effort counties are required to spend in order to be in compliance with the non-supplant rule at 3410(b). The Realignment Base is one source of funding (excluding the 10 percent allowable transfer). In order for counties to receive Realignment funds, W&I Code Section 17608.05 require that each month, the counties deposit local matching funds into the mental health account. The Department recognizes that many counties exceed the amount required by law. This is referred to as "overmatch". Therefore, Section 3410(b)(2) `exempts the funds exceeding the amount required by law in 2004-05 from the aggregate maintenance of effort the counties are required to spend in order to comply with the non-supplant regulation at 3410(b). However, the Department wants to be clear, that if the county elects to reduce its overmatch to the level required by law in 2004-05, thereby reducing the funding for a program/service that was in existence on November 2, 2004, the requirements outlined in Section 3410(a) apply and the county cannot use MHSA funds to fill the void left by the reduction of overmatch.

Section 3410(c)

Specific Purpose: This regulation specifies that MHSA funds cannot be used to pay for inflationary costs associated with programs and/or services that were in existence on November 2, 2004.

Rationale for Necessity: In accordance with Section 5891 of the Welfare and Institutions Code, MHSA funds must be used to expand mental health services beyond that which was provided or funded at the time of enactment of the Mental Health Services Act, which was November 2, 2004. The Department has interpreted expansion to represent services not provided or funded at the time of enactment of the MHSA. An increase of program capacity beyond what existed at the time of enactment of the MHSA is considered expansion and therefore can be funded under the Mental Health Services Act. Inflationary increases in costs associated with programs that were in existence at the time of enactment of the MHSA are not eligible for MHSA funding because they do not represent an expansion of services or increase in program capacity but rather an increase in the cost of doing business.

Section 3410(d)

Specific Purpose: This regulation prohibits counties from loaning MHSA funds for any purpose.

Rationale for Necessity: Section 5891 of the Welfare and Institutions Code specifies prohibitions on the use of the MHSA funds not only for the county, but for the State as well. However, as these regulations provide direction to the county, it is necessary to delineate the restrictions applicable to the county. Section 5891 states that the (MHSA) funds may not be loaned to "a county general fund or any other county fund for any purpose other than those authorized by Section 5892." Section 5892 limits the county use of MHSA funds to those programs specified in Section 3310(b) of these regulations. A statutory limitation on use of the MHSA funds was established and, therefore, a regulation prohibiting the loaning of MHSA funds for any purpose is appropriate.

Final Modification: This language is necessary due to the addition of the Mental Health Services Act Housing Program Services Category to the Community Services and Supports (CSS) component of the Three-Year Program and Expenditure Plan. The original regulatory language was more restrictive than that contained in the Mental Health Services Act which is the actual law. The statute does not prohibit the loaning of funds for all purposes. DMH intends for the counties to have the option of providing specified housing services to clients who are homeless or at risk of homelessness. The original regulation expanded the prohibition on loaning of MHSA funds in a manner that would prevent the counties from providing some of these services through the Mental Health Services Act Housing Program (MHSA Housing Program). Accordingly, the modification to the original language to more closely parallel the language in the MHSA is necessary in order for counties to provide housing through the MHSA

Housing Program. As amended, the County will be allowed to loan MHSA funds as long as the purpose for the loan is consistent with Welfare and Institutions Code Section 5891.

Article 5. Reporting Requirements

Section 3500. Non-Supplant Certification and Reports

Section 3500(a)

Specific Purpose: Section 3500(a) requires certification from the county mental health director that the Three-Year Program and Expenditure Plan and updates are in compliance with the requirements/exceptions to the use of the MHSA funds as specified in Section 3410, Non-Supplant.

Rationale for Necessity: This regulation establishes documentation whereby the county agrees that it will not use MHSA funds to supplant existing state or county funds. Section 3410, Non-Supplant provides the counties with an expanded explanation of this prohibition and also incorporates exceptions to the limitation. This section will ensure that the County Mental Health Director acknowledges that the Three-Year Program and Expenditure Plan and updates, developed by the county, are in compliance with the Non-Supplant regulations. The Three-Year Program and Expenditure Plan is the mechanism used by the counties to request funds under the MHSA. As the Director is ultimately responsible for the Three-Year Program and Expenditure Plan and its contents, it is necessary for accountability purposes that such a certification is obtained.

Section 3500(b)

Specific Purpose: Section 3500(b) requires that the county maintain documentation of all expenditures of MHSA funds and provide this documentation to the Department annually and more often if requested.

Rationale for Necessity: This regulation is necessary as the Department has the responsibility for overseeing the implementation of the Mental Health Services Act. This oversight responsibility includes monitoring the county to ensure that all funds are expended in the most cost effective manner and services are provided in accordance with recommended best practices subject to local and state oversight to ensure accountability to taxpayers and to the public. This Department oversight also complies with the intent of the Act to ensure accountability that the MHSA money is spent specifically on programs and services to serve those with mental health needs.

Section 3500(c), (c)(1),

Specific Purpose: This section introduces the two additional items that must be certified to as part of the Annual Cost and Financial Reporting System (“Cost Report”)

submitted to the Department. The first new item to which the county shall certify is that the MHSA funds were used in compliance with Section 3410, Non-Supplant.

Rationale for Necessity: This section is necessary to enable the Department to monitor the county's compliance with Section 3410 of these regulations, Non-Supplant. It is important to ensure that the MHSA funds provided to the counties are used to expand mental health services, not to replace other state or county funds required to be used to provide mental health services. To this end, an entire section was dedicated to the issue of Non-Supplant to ensure compliance with the directive contained in the law. The Annual Cost and Financial Reporting System requires certification by the county as to the accuracy, completeness, etc. of the Cost Report. Compliance with Section 3410, Non-Supplant is added to the certification.

Section 3500(c)(2)

Specific Purpose: Section 3500(c)(2) specifies that as part of the Annual Cost and Financial Reporting System (Cost Report), the county must certify that mental health funds, other than MHSA, required to be used for services/supports in existence in Fiscal Year 2004-05 were used for the required purposes

Rationale for Necessity: This section is necessary to require that the county certify their compliance with the use of the MHSA funds. Section 3410(b) prohibits the county from using the MHSA funds to supplant state or county funds for services/supports that were in existence in Fiscal Year 2004-05. (See Specific Purpose and Rationale for Necessity) Section 3410(b) set forth the prohibition. This regulation requires as part of the certification that accompanies the "Cost Report", a statement that mental health funds provided to the county for specific programs/services were used for that purpose. Section 3410 (b) states that the county cannot use MHSA funds to supplant state or county funds required to be used for services/supports in existence in FY 2004/05. This regulation requires "certification" that is, a written acknowledgement of compliance.

Section 3500(d), (d)(1), (d)(2)

Specific Purpose: This regulation requires that if the county used "bridge funding", documentation must be maintained indicating what programs were funded, what services were provided and that these services were an identified priority in the Community Program Planning Process. Additionally, this regulation gives examples of "acceptable" documentation.

Rationale for Necessity: These regulations are required to ensure that those counties that utilized "bridge funding" know that documentation on the use of bridge funding is maintained and examples of what is acceptable documentation. As stated in the Rationale for Necessity for section 3410(a)(2), bridge funding (short term funding) was used by some counties to supplement a project until the MHSA funds were available. It is, therefore, necessary for those counties utilizing "bridge funding" to demonstrate that this short-term funding was solely intended to bridge the time until the MHSA funds

were available and that the services funded are clearly delineated in the Mental Health Services Act. This is why it is necessary for the county to maintain documentation that specifies the programs funded and the services provided. Additionally, the documentation must state that these services have been identified as a priority in the Community Program Planning Process. This again is in keeping with the spirit of the Mental Health Services Act to provide a structure and process that counties use, in partnership with their stakeholders, in determining how best to utilize the MHSA funds to meet unmet mental health needs within each individual county. The regulations also include examples of what constitutes "acceptable documentation" for the use of "bridge funding." The regulation, however, is not all inclusive as a county may have other means of supporting the use of bridge funding. That is why in addition to the examples stated, reference is to "other official documentation" to ensure the legality of the document.

Section 3505. Cost Report

Introduction: The California Department of Mental Health's Cost Report is required to be completed by all legal entities furnishing local community mental health services. For the purpose of year-end cost reporting and submission, each county's designated local mental health agency is responsible for submitting the county legal entity's cost report. The objective of the Cost Report is to:

1. Compute the cost per unit for each Service Function;
2. Determine the estimated net Medi-Cal entitlement (Federal Financial Participation-FFP) for each legal entity;
3. Identify the sources of funding;
4. Serve as the basis for the local mental health agency's year-end cost settlement, focused reviews and subsequent Short-Doyle/Medi-Cal fiscal audit; and
5. Serve as the source for County Mental Health fiscal year-end cost information

The requirements contained in the following sections are to capture the information related to revenue, distribution and expenditures for those programs and/or services funded by the Mental Health Services Act.

Section 3505(a)

Specific Purpose: This section sets forth the requirement that the county must complete and submit information on MHSA revenue, distribution and expenditures.

Rationale for Necessity: This regulation is necessary to inform the county that as part of the Annual Cost and Financial Reporting System (Cost Report), an accounting of the MHSA revenue, distribution and expenditures is to be made. Currently, each county is required to submit a completed county cost report package that includes a separate detailed cost report for each county and contract legal entity and a county summary report every fiscal year. This regulation expands the cost reporting responsibility of the

county to now include an accounting of the additional funds received from the Mental Health Services Act for mental health programs and services.

Section 3505(b)

Specific Purpose: Section 3505(b) requires the County Mental Health Director and the County Auditor-Controller to certify that the cost report is correct and, specific to the Mental Health Services Act funding, that the county is in compliance with Section 3410, Non-Supplant.

Rationale for Necessity: This regulation is necessary to insure that the County Mental Health Director and the County Auditor-Controller not only certify that the cost report is correct, but also certify that the county is in compliance with the non-supplant prohibitions contained in Section 3410 of these regulations. The Cost Report submitted by the county must include a certification signed by the individuals noted above as to the accuracy of the information. With the passage of Proposition 63 and enactment of the Mental Health Services Act, additional monies are provided to the counties to support new and/or expanded mental health programs and services. The law specifically prohibits the counties from using the MHSA monies for the purpose of funding mental health services and programs that were in existence on November 2, 2004 (date Proposition 63 passed). This prohibition is specifically to ensure that the MHSA monies are spent on new mental health programs and supports or on increases in program capacity beyond that previously provided. (Note: exceptions to this prohibition are contained in Section 3410(b)(1) and (2) above.) It is important that the County acknowledge their compliance with the stipulations set forth in law and included in Section 3410, Non-Supplant, for the spending of MHSA monies.

Section 3505(c)

Specific Purpose: Section 3505(c) requires the County Mental Health Director and the County Auditor-Controller to certify that the reconciled cost report is correct and specific to the Mental Health Services Act funding. This section also informs the county that this reconciled Cost Report must include certification that with respect to the MHSA funding, the county is in compliance with Section 3410, Non-Supplant.

Rationale for Necessity: The reconciled Report is subject to the same certification as to accuracy and compliance with the Non-Supplant as required for the initial Cost Report. (See Rationale for Necessity of Section 3505(b).)

Section 3505(d)

Specific Purpose: Section 3505(d) establishes in regulation the ability of the Department to withhold MHSA funds if the county does not submit the Cost Report and subsequent reconciled Cost Report within the timeframes established by the Department.

Rationale for Necessity: The timelines for these two reports are critical in order for the Department to have ample time to reconcile these reports and submit the necessary documents to ensure the continued availability of Federal Financial Participation and other reimbursement sources, as appropriate. Without the ability to withhold funds, the Department has no leverage with the county to ensure compliance with the established timeframes for reporting purposes.

The basis for the timeframes for the Cost Report and the reconciled Cost Report are contained in Welfare and Institutions Code Section 5718(c) which requires "submission of year-end cost reports by December 31 following the close of the fiscal year." The reconciled Cost Report is due within 21 months following the close of the fiscal year covered by the Cost Report, but no later than April 1.

Section 3510. Annual MHSA Revenue and Expenditure Report

Introduction: The Annual MHSA Revenue and Expenditure Report is designed to capture revenues and expenditures related to Community Services and Supports (CSS) activities under the Mental Health Services Act. The Department will use information provided on the Annual MHSA Revenue and Expenditure Report, along with performance measurement information, to calculate the cost of services per client under the Mental Health Services Act. The Department will also use the information provided on the Annual MHSA Revenue and Expenditure Report to evaluate each county's compliance with their MHSA performance contract. Information from the Annual Reports will be shared with the public, including stakeholders.

Section 3510(a), (a)(1), (a)(1)(A), (a)(2), (a)(2)(A), (a)(3), (a)(3)(A), (a)(4)

Specific Purpose: Section 3510(a) through (a)(4) set forth the requirement that the county shall submit an Annual Mental Health Services Act Revenue and Expenditure Report for Community Services and Supports and specifies the expenditures and MHSA funding to be reported.

Rationale for Necessity: This section is necessary as the county must prepare this Annual MHSA Revenue and Expenditure Report and submit it to the Department for the purpose of accounting for the actual expenditures incurred and revenues received under the MHSA. This Annual MHSA Revenue and Expenditure Report consists of Administration Expenditures, Program Expenditures, One-Time Expenditures, and MHSA Funding. Sub items (1), (2), (3) and (4) correspond to those individual reports that collectively make up the Annual MHSA Revenue and Expenditure Report. Instructions are provided to the county via the regulations as to what expenditures and revenues are to be included in the various reports. The Annual Mental Health Services Act Revenue and Expenditure Report is specific to the Community Services and Supports component of the MHSA. Article 6 of these regulations is specific to the Community Services and Supports (CSS) component of the MHSA. As such, this Article provides the county with information as to the types of services and programs that are eligible for MHSA funds within each of the three service categories under

Community Services and Supports. Those service categories are Full Service Partnership, General System Development and Outreach and Engagement.

Final Modification: No changes were made to Section 3510(a), (a)(1), (a)(2), or (a)(3). Section 3510(a)(4) was amended to correct a grammatical error that has no bearing on the intent or context of the regulations. Section 3510(a)(4) makes reference to a source of revenue that is to be included in the Annual MHSA Revenue and Expenditure Report. The description of this revenue should have been to the "MHSA Funds" received from the Department, not "MHSA Funding" received. This error has been corrected.

Section 3510(b)

Specific Purpose: Section 3510(b) establishes in regulation, the date by which the county must submit the Annual MHSA Revenue and Expenditure Report.

Rationale for Necessity: This regulation is necessary as Section 3510(a) provides the basis for requiring the County to submit the Annual Mental Health Services Act Revenue and Expenditure Report and the various revenue and expenditure reports that comprise this Annual Report. The information provided in these reports is reconciled with the Three-Year Program and Expenditure Plan that the county developed as its blueprint for the next three years in terms of services and supports to be funded with MHSA funds. It is therefore necessary to require accountability by the county for the use of the funds. A fiscal year, unlike a calendar year, goes from July 1 of one calendar year through June 30 of the following calendar year. The Annual Report represents the activities within the county that end on June 30. The December 31 due date gives the county six months from the close of the fiscal year in which to gather the required information and report it to the Department. This six-month time frame should not place any hardship on the county for purposes of reporting and December 31 is consistent with the due date for most fiscal year-end reports.

Section 3510(c)

Specific Purpose: Section 3510(c) informs the counties that the Department may withhold MHSA funds for failure to comply with the timeframe for submittal of the Annual MHSA Revenue and Expenditure Report.

Rationale for Necessity: This regulation is necessary as a specific date is specified in Section 3510(b) by which the Annual MHSA Revenue and Expenditure Report is to be submitted to the Department. Without this specific regulation, there is no ability for the Department to assess a penalty for failure to comply with the specified timeframe for submittal of this Report. Without the ability to withhold funds, the Department has no leverage to ensure compliance with this timeframe for reporting purposes.

Section 3520. Local Mental Health Services Fund Cash Flow Statement

Introduction: The Local Mental Health Services Fund Cash Flow Statement is designed to improve the monitoring of the city/county's available cash amount for ongoing MHSA operations in order to make adjustments to the MHSA funding distribution amounts from the Department, if necessary. The cash balance information will be completed by all MHSA funded cities/counties twice a year for the following six month intervals: (1) October 1 through March 31 and (2) April 1 through September 30.

Section 3520(a), (a)(1)

Specific Purpose: Sections 3520(a) and (a)(1) informs the county of the requirement to complete and submit to the Department a Local Mental Health Services Fund Cash Flow Statement no later than 30 days following the end of each six-month period.

Subsection (a)(1) provides the necessary clarification as to the specific six-month periods to be covered by this Cash Flow Statement; that is, April 1 through September 30, and October 1 through March 31. Additionally, it is necessary to provide the exact months to be covered in order to support the requirement to submit the Cash Flow Statement no later than 30 days following the end of the six-month period.

Rationale for Necessity: This regulation is necessary as the Mental Health Services Act charges the Department with the responsibility to oversee the expenditures of this money for mental health services and supports. It is therefore necessary for the Department to require the county to report specifics in terms of expenditures and revenue. The specific items to be included in the Cash Flow Statement are delineated in subsection (b) of this section. Additionally, this regulation establishes a timeframe in which the Cash Flow Statement is to be submitted, specifically, "no later than 30 days following the end of the six-month period that is to be reported."

Subsection 3520(a)(1) is necessary to provide the specificity that the county needs as to the specific periods of time to be covered by the Cash Flow Statement. If the regulations did not specify the exact months to be covered by the Cash Flow Statement, it is conceivable that each of the 58 counties within the State of California could determine their own reporting period as long as it represented a six-month period of time. It is essential that the Department inform the county of the exact months to be included in each of the six-month periods.

Section 3520 (b), (b)(1)-(b)(6)

Specific Purpose: Section 3520(b), (b)(1)-(b)(6) represents accountability of cash and investments in the Local Mental Health Services Fund as reflected in the City or County financial records. Item (b)(6) provides examples of MHSA funds that may be reserved for future expenditures.

Rationale for Necessity: This section is necessary in order to identify within the Cash Flow Statement, the cash and investments on-hand on the first day of the six-month reporting period (either April 1 or October 1). The identification of the cash and investment is necessary as the Department is required to monitor the MHSA fund amounts that have been disbursed to each county. In order to have a complete financial picture of the MHSA cash flow, the amount of cash, interest income and investments on-hand must be identified and reported. Item (b)(6) is necessary to provide the county with examples of future spending activities for which MHSA funds may be held in reserve for this later spending.

Section 3520(c), (c)(1)

Specific Purpose: Section 3520(c) and (c)(1) limits the unreserved balance of MHSA funds in the Local Mental Health Services Fund to no more than 35 percent of the county's Community Services and Support Planning Estimate.

Rationale for Necessity: This regulation is necessary to inform the county that there is a limit to the amount of the unreserved balance of MHSA funds that may be maintained in the Local Mental Health Services Fund. The unreserved MHSA cash and investments on-hand are limited to 35 percent of each city/county's annual CSS Planning Estimate (one fiscal quarter of expenditures plus a 10 percent operating reserve). Amounts over the 35 percent maximum may be withheld from future quarterly distributions.

Final Modification: Section 3520(c) and (c)(1) have been deleted. These sections are being deleted due to a procedural change that was devised by the Department in consultation with the California Mental Health Directors' Association. Previously, distribution of approved MHSA funding was provided to the counties on a quarterly basis. This approach has been revised and payment to the county will now be a "cash-based system" thus ensuring sufficient MHSA funds to support each component of the Three-Year Program and Expenditure Plan for the subsequent fiscal year. Under the new procedure, each county will receive 75 percent of its approved Three-Year Program and Expenditure Plan amount either upon approval of this Plan or at the start of the fiscal year, whichever is later. The remaining 25 percent will be distributed upon submission of the reports required in the regulations including the Local MHS Fund Cash Flow Statement, MHSA Annual Revenue and Expenditure Report, and potentially updates and Full Service Partnership reporting.

Section 3520(d)

Specific Purpose: Section 3520(d) requires that the Local MHS Fund Cash Flow Statement be signed by the County Mental Health Director, or his/her authorized designee, certifying the validity of the information.

Rationale for Necessity: This regulation is necessary to have accountability for the information that is provided on the Cash Flow Statement. The accountability for this particular document is represented by certification from county officials that, under penalty of perjury, the Cash Flow Statement is correct and complete and that all expenditures have been made in accordance with the Mental Health Services Act requirements. For purposes of the MHSA, the official who must sign and certify that the information on the Cash Flow Statement is true and complete is the Mental Health Director for the county submitting the Cash Flow Statement.

Final Modification: No change was made to the substance of the regulation requiring the signature of the County Mental Health Director or his/her designee to the Local MHS Fund Cash Flow Statement. With the deletion of Sections 3520(c) and 3520(c)(1), it was necessary to renumber the subsections within Section 3520. (See rationale above for the deletion of Section 3520(c) and Section 33520(c)(1)).

Section 3520(e)

Specific Purpose: Section 3520(e) informs the county that the distribution of future MHSA funds may be delayed or withheld if the county fails to comply with the reporting requirements contained in this section.

Rationale for Necessity: This regulation is necessary as the Department is accountable, under the law, for both the disbursement of the Mental Health Services Act money and oversight of the county's expenditures of this money. Oversight of the county's expenditures of the MHSA money is guided by the intent/purpose of the Act, as well as the Three-Year Program and Expenditure Plan that is developed by the county in collaboration with interested stakeholders, and approved by the Department Section 3520, not only specifies the timeframe for submittal of the Cash Flow Statement, but also informs the county of the specific information to be reported. This regulation allows the delay or withholding of future MHSA funds if the county fails to comply with the reporting requirements as outlined. The reporting requirements include the timeframe for reporting as well as the specific items that are to be included in the report.

Final Modification: No change was made to the substance of the regulation informing the County that future MHSA fund distributions may be delayed/withheld for failure to comply with the reporting requirements. With the deletion of Section 3520(c) and 3520(c)(1), it was necessary to renumber the subsections within Section 3520. (See rationale above for the deletion of Section 3520(c) and Section 33520(c)(1)).

Section 3530. Client/Services Reporting Requirements

Specific Purpose: Section 3530 informs the county of the reporting requirements that are client and/or service specific that must be submitted to the Department.

Rationale for Necessity: This regulation is necessary to provide an introduction to those sections of the regulations that require the submittal of specific information to the Department. This data information is critical in order to glean the data necessary to meet the reporting requirements for Medi-Cal managed care; implementation of unique identifiers that will meet Medi-Cal requirements, and will meet the MHSA requirement for cost effectiveness in the provision of services and programs. Specific reporting requirements for each of the reports are provided in the regulatory sections that follow this introduction. Additionally, reference is made to the report by title and cross-referenced to the appropriate section number.

Section 3530(b)

Specific Purpose: Section 3530(b) informs the county that failure to comply with the individual timeframes for the referenced reports may affect future distributions of MHSA funds.

Rationale for Necessity: This regulation is necessary to establish a possible consequence for failure to submit the information as required in Sections 3530.10, 3530.20, 3530.30 and 3530.40 within the timeframes also stated in pertinent sections.

Each of the sections that describes the information to be provided to the Department, also informs the county of the timeframe by which the information is to be submitted. The consequence for failure to submit each report with its individually prescribed timeframe is the same, MHSA funds may be withheld. This statement is contained in this section to avoid repeating the same consequence in each of the sections.

Section 3530.10. Client and Service Information System Data

Section 3530.10(a), (a)(1)

Specific Purpose: Section 3530.10 requires the county to submit Client and Service Information System data on each client receiving services funded with MHSA money.

Rationale for Necessity: This regulation is necessary to ensure that data elements related to client demographics and descriptions of services for each client are reported to the Department. The Department requires basic demographic and service data on all clients served by the County Department of Mental Health. Similar information is required in other program areas. This information is not captured in any other reports required in these regulations and the MHSA mandates that the Department be accountable for the services provide to clients and the outcomes associated with them. The Department needs to be able to tie services back to the client and this information is needed for that purpose.

The timeframe for submission of this information is consistent with the timeframe established for the Client and Service Information data to be submitted for the Community Mental Health Program.

Section 3530.20. Quarterly Progress Report

Section 3530.20(a)

Specific Purpose: Section 350.20 requires the county to submit a quarterly progress for each approved program and/or service. The term "approved" is referring back to the program and/or services that are contained in the county's Three-Year Program and Expenditure Plan that has been approved by the Department.

Rationale for Necessity: This regulation is necessary as it captures information related to the number of clients or families served within each program or service that received funding through MHSA. This information is not captured in any other reports required in these regulations and the MHSA mandates that the Department be accountable in regards to the number of individuals benefiting from services provided through MHSA.

Section 3530.20 (a)(1), (a)(2)

Specific Purpose: These regulations inform the counties that the Quarterly Progress Report is to include both the targeted number of individuals, clients and families that the county projects will be served during the reporting quarter and the actual numbers of persons served in the reporting period.

Rationale for Necessity: This regulation is necessary as the county projects within the Three-Year Program and Expenditure Plan the numbers of individuals, clients, etc. that the county will serve in each of the service categories (Full Service Partnership, General System Development and Outreach and Engagement). For reporting purposes, it is necessary to have the numbers of persons actually served during the reporting quarter.

Section 3530.20(b)

Specific Purpose: This regulation requires the final Quarterly Progress Report to include the total number of individuals, clients and family units served during the reportable fiscal year.

Rationale for Necessity: This regulation is necessary to describe the additional information to be provided by the county in the final quarterly progress report. The information reported in sub item (b) is differentiated from the other two reportable numbers. This number of unduplicated individuals, clients and family units represents, not the total number of individuals served in the reportable quarter, by services, but rather the total number of individuals served during the fiscal year. For sub item (b), the

“unduplicated” number is not a sum of the four quarters, but rather represents the total number of individuals served.

Section 3530.20(c)

Specific Purpose: This regulation requires the county to submit this information no later than 60 days following the end of each reporting quarter.

Rationale for Necessity: This regulation is necessary to provide the county with a due date for the submittal of the required information. If this information is required to be submitted to the Department, the county must be provided a timeframe for the submittal of such information. Additionally, the Department needs time to review this information in order for the Department to carry out their responsibility to ensure accountability by the county for the services and programs funded through MHSA.

Section 3530.30. Full Service Partnership Performance Outcome Data

Specific Purpose: This regulation informs the county of the need to submit the Performance Outcome Data as required in Section 3620.10 and provides the timeframe for the submittal of the information.

Rationale for Necessity: This regulation is necessary as it captures information about the outcomes associated with individuals enrolled in Full Service Partnership programs funded under the MHSA. Without this information the Department will be unable to meet the mandate of accountability as required in the MHSA. This information is not captured in any other reports required in these regulations. This information is tied to information collected through the Client and Services Information System and together they explain the impact the services funded through the Act have had on the individuals that receive them.

Section 3530.40. Consumer Perception Semi-Annual Survey

Specific Purpose: This regulation informs the county that they shall conduct a semi-annual survey to solicit comments from consumer’s regarding programs and services funded through MHSA.

Rationale for Necessity: This regulation is necessary as it captures information about the perceptions and levels of satisfaction with the services received by individuals. This information is not captured in any other reports required in these regulations. The solicitation of input regarding perception of services received by the clients and individuals served further validates the requirements of the Act to ensure the involvement of the community served. The Act requires the development of the local review process to ensure that stakeholders have a role in the identification of the programs and services offered in each individual county. In this same vein, the Department wants a mechanism whereby the county and the Department can obtain feedback from the consumer on the programs and services.

Section 3540. Information Technology Project Status Report

The Information Technology (IT) Project Status Report informs the Department about the progress, budget and any risks related to an MHSA funded technology project. In its MHSA accountability role, DMH uses this information to: 1) report on county/local project Information Technology project implementations, 2) address risks and communicate corrective actions, 3) avoid continued funding of potentially unsuccessful projects, 4) share achieved objectives and lessons learned with all counties/local programs to ultimately improve the development and deployment of future projects.

Section 3540. (a), (a)(1) – (a)(10):

Specific Purpose: These regulations inform the county of the need to submit to the Department a status report for any approved Information Technology (IT) project funded with Community Services and Supports (CSS) funds. These regulations further inform the counties of the minimal data that the Information Technology Project Status Report is to include in order for the county to continue to receive funding.

Rationale for Necessity: These regulations are necessary as they capture project management information related to any approved Information Technology (IT) project funded with Community Services and Supports (CSS) funds. This information is not captured in any other reports required in these regulations. The capturing of this information for project management purposes follows best practice guidelines as set forth in the Project Management Body of Knowledge Third Edition, a guide published by the Project Management Institute in 2004, and widely accepted to be the standard in the field of project management.

Section 3540. (b):

Specific Purpose: This regulation requires the county to submit this information no later than 30 days following the end of each fiscal quarter.

Rationale for Necessity: This regulation is necessary to provide the county with a due date for the timely submittal of the required information on a quarterly basis. As stated above, by requiring such information within 30 days of the end of the quarter, the Department can assist the county by addressing risks and communicate corrective actions as well as potentially avoiding continued funding of potentially unsuccessful projects. Additionally, as the county is required to compile this information and submit it to the Department, a timeframe for the submittal of the information is necessary

Section 3540. (c), (c)(1) – (c)(5): These regulations require the county to submit to the Department a final report for any approved Information Technology project funded with Community Services and Supports (CSS) funds. These regulations further inform the counties of the specific data that the Information Technology Project Final Report is to include, at a minimum, in order for the county to receive funding.

Rationale for Necessity: These regulations are necessary as they capture project management information related to any approved Information Technology (IT) project funded with Community Services and Supports (CSS) funds. The specific data to be included in the Information Technology Project Final Report includes the data specified in Section 3540. (a)(1) – (a)(10), and specifies additional data to be provided. This information is not captured in any other reports required in these regulations. The capturing of this information for project management purposes follows best practice guidelines as set forth in the Project Management Body of Knowledge Third Edition, Project Management Institute in 2004.

Final Modification: An error in the numbering is being corrected. In the numbering of the sections under (c), the number "4" was inadvertently omitted. The correction to this section was merely to change (c)(5) to (c)(4) for sequential numbering.

Section 3540. (d): This regulation informs the county that failure to comply with the specified timeframes for the quarterly status report and final IT report may affect future distributions of MHSA funds.

Rationale for Necessity: This regulation is necessary to establish a possible consequence for failure to submit the information as required in Section 3540 within the timeframes also stated in pertinent sections.

Each of the sections that describes the information to be provided to the Department, also informs the county of the timeframe by which the information is to be submitted. The consequence for failure to submit each report with its individually prescribed timeframe is the same, MHSA funds may be withheld.

Article 6. Community Services and Supports

Section 3610. General Community Services and Supports Requirements

Section 3610(a)

Specific Purpose: Section 3610(a) introduces the principles and standards to be incorporated into the mental health programs/services funded through the Community Services and Supports component.

Rationale for Necessity: This section is necessary as the Mental Health Services Act allocates portions of the funds available in the Mental Health Services Fund for specific purposes. As such, this section provides an introduction to those principles and standards that are to be incorporated into the Community Services and Supports component.

Section 3610(a)(1), (a)(2), (a)(3)

Specific Purpose: Sections 3610(a)(1), (a)(2), and (a)(3), are the list of the specific principles and standards that are to be incorporated in those programs and services funded with Mental Health Services Funds.

Rationale for Necessity: Section 5892 of the Welfare and Institutions Code provides the allocation percentage for the various components of the Mental Health Services Act, i.e., Education and Training, Prevention and Early Intervention, Innovative Programs, Community Services and Supports, etc. The Act specifies that the balance of funds are to be distributed to county mental health programs for services to persons with severe mental illnesses (Community Services and Supports), pursuant to the Children's System of Care and the Adult and Older Adult Systems of Care. Section 5890 of the Welfare and Institutions Code also references the requirement for the Mental Health Services Fund to provide funding for the Adult and Older Adult Systems of Care Acts as well as the Children's Mental Health Services Act. In subsection (a)(1) reference is made to the Homeless Mentally Ill Program. This Program is specifically mentioned as it is a component of the Adult and Older Adult Mental Health Systems of Care. The last subsection refers to the General Standards contained in Section 3320. The General Standards were extracted from the Mental Health Services Act either directly or through inference. For example, the reference to Cultural Competence as a General Standard is extracted from Section 3, Purpose and Intent, of the Mental Health Services Act requiring the expansion of "the kinds of successful innovative services program including culturally and linguistically competent approaches for underserved populations."

Section 3610(b)

Specific Purpose: Section 3610(b) informs the counties of the need to either establish or expand the peer support and family education support services to meet the needs and preferences of the clients and/or family members served.

Rationale for Necessity: This regulation is necessary to ensure that the support provided to the clients and/or family members includes support from the client's and/or families' peers. The passage of the Mental Health Services Act offers the unique opportunity for the improvement of the mental health system within the county as it currently exists. As mentioned in earlier justifications, the approach to mental health treatment within most counties has been clinical. The use of peers to support the identified needs of the client allows for better interaction between the delivery of the support and the recipient. In the case of the family members, it is necessary to ensure that, not only are the direct needs of the family being met, but also that the family receives support services of an informative nature. In this way, the family is receiving direct support so that they can assist the client/family member with their identified mental health needs, but also the family acquires an understanding of mental illness and coping strategies.

Section 3610(b)(1)

Specific Purpose: Section 3610(b)(1) requires the county to conduct outreach so that, as necessary, the support provided to the client can be accomplished through the use of peers with the same or similar racial/ethnic, cultural and linguistic characteristics as the client.

Rationale for Necessity: This regulation is necessary to support the preceding regulation that requires the county to establish peer support and family education support services to meet the needs and preferences of the client and/or the family members. In establishing peer support, it is important that the county not look only for individuals within the same social structure as the client and his/her family. Other factors are equally important, especially now with the diversity of the overall population within the State of California. The need for the peer to be able to communicate with the client is important. This communication is not specific just to languages other than English, but also to that client with limited communication skills, be it English or another language. Additionally a peer who shares the same racial/ethnic characteristic of the client and/or the client's family may be better able to relate to the situations being faced by the client and/or the client's family as well as the cultural stigmas that may be an offshoot of either having a mental illness or living in a family unit in which a member has a mental illness.

Section 3610(c)

Specific Purpose: Section 3610(c) requires the county to include a wrap-around program for services to children in accordance with Section 18250 et seq. of the Welfare and Institutions Code or the county must provide "substantial" evidence why it is not feasible to do so.

Rationale for Necessity: This regulation is necessary as the Mental Health Services Act makes several references to the wrap-around program and/or the services provided within that program. One reference is contained in Welfare and Institutions Code Section 5878.3 requiring that, subject to the availability of funds, the level of funding to the counties should be such to ensure that the counties can provide each child served all of the "necessary services …….when appropriate and necessary to prevent an out-of-home placement, such as services pursuant to Chapter 4 of Part 6 of Division 9 (commencing with Section 18250)." Another reference to Section 18250 is contained in Welfare and Institutions Code Section 5847 requiring that the county mental health program prepare and submit a three year plan and annual update to include "…a program for services to children in accordance with Part 4 to include a program pursuant to Chapter 6 of Part 4 of Division 9 commencing with Section 18250 (wrap around) or provide substantial evidence that it is not feasible to establish a wrap-around program in that county."

For informational purposes only, Welfare and Institutions Code Section 18250 describes in part "wrap-around" services, where services are wrapped around a child living with

his or her birth parent, relative, adoptive parent, licensed or certified foster parent, or guardian. The wrap-around services developed under this section shall build on the strengths of each eligible child and family and be tailored to address their unique and changing needs.

Final Modification: No change was made that affects the intent of the definition. The amendment made was to correct a typographical error to the term "et seq." In the original draft, a period "." was inadvertently included after the "et".

Section 3610(d)

Specific Purpose: Section 3610(d) states that the MHSA funds can only be used to pay for the portion of the mental health programs and/or services for which no other funding source is available.

Rationale for Necessity: This regulation is necessary in order to inform the county that while Mental Health Services Act funds are to be used for mental health programs and services, the county is still to seek other available funding sources when appropriate. For example, public or private insurance or other entitlement programs such as Medi-Cal and special education programs may pay all or a portion of the mental health treatment needs of the child. Those funding sources are to be pursued. However, when those sources are either unavailable as in the case of private insurance, or insufficient to meet all of the identified mental health needs, the Mental Health Services Act funds can be accessed.

Section 3610(e)

Specific Purpose: Section 3610(e) prohibits the use of Community Services and Supports programs and services funds to pay for any law enforcement function and/or any function that supports a law enforcement purpose.

Rationale for Necessity: This regulation is necessary to ensure that law enforcement functions and/or functions that support a law enforcement purpose are not funded with Mental Health Services Act money. It is expected that the county has and will continue to have funds necessary to support law enforcement personnel and their related functions. The prohibition, however, does not exclude using MHSA funds for the costs of the training of law enforcement personnel and for evaluation of new or expanded services. The costs for the law enforcement officers doing law enforcement functions are not allowable costs and are usually funded by the law enforcement jurisdiction, consistent with their existing responsibilities. Other costs borne by law enforcement when responding to police calls, such as police cars, radios, administrative costs, etc. cannot be funded under MHSA.

Section 3610(f)

Specific Purpose: Section 3610(f) prohibits the county from providing services funded through the Mental Health Services Act to individuals incarcerated in a state/federal prison or those who are on parole from a state/federal prison.

Rationale for Necessity: This regulation is necessary to conform to that portion of the law within the Mental Health Services Act. Specifically, Welfare and Institutions Code Section 5813.5 (f) prohibits funds (referring to the Mental Health Services Act funds) being used to pay for persons incarcerated in state prison or parolees from state prisons. Additionally as the prohibition from using the MHSA funds contained in law referenced state prison and those on parole from a state prison, the Department expanded the prohibition to include individuals currently in a federal prison or on parole from a federal prison.

Section 3610(g)

Specific Purpose: Section 3610(g) limits the use of MHSA funds for programs and services provided in juvenile halls and/or county jails to programs and services that will facilitate an individual's discharge from such institutions.

Rationale for Necessity: The need for this regulation is twofold. First, it makes a distinction between those individuals incarcerated in a state/federal prison, and those detained in juvenile hall and/or county jail. This regulation allows the county to use MHSA funds for programs/services for those individuals in juvenile hall and/or county jail. Section 5813.5 of the Welfare and Institutions Code added with the passage of Proposition 63, The Mental Health Services Act, specifically prohibits the use of MHSA funds to be used for persons incarcerated in state prison or parolees from state prison. That prohibition is clearly stated in Section 3610(f). The second reason for this regulation is to ensure that the county does not consider individuals in the juvenile justice system and/or county jails as falling under the same prohibition as those incarcerated in state/federal prisons. In this regulation the clarification is provided that MHSA funds may be used for programs and services provided in juvenile halls and/or county jails. The only criterion is that the purpose of the program or service must be the facilitation of discharge.

Section 3615. Community Services and Supports Service Categories

Section 3615(a), (a)(1)-(a)(3)

Specific Purpose: Section 3615(a), et al. states that there are three service categories within the Community Services and Supports component and then specifies by title the three service categories. The service categories are: Full Service Partnership, General System Development, and Outreach and Engagement. Each of these service categories is defined in Article 2, Definitions.

Rationale for Necessity: This regulation is necessary to make available three different types of system transformation funding under the Community Services and Supports component. Ideally, county mental health programs should be serving all clients through a partnership agreement where the client and his/her family, when appropriate, is receiving any and all services and supports necessary for the client to attain his/her goals. However, due to a long history of under funding, relatively small percentages of clients can be fully served (Full Service Partnership). A larger percentage of clients and their families receive some level of services (General System Development), and many individuals who have serious mental illnesses and children and youth who may have serious emotional disorders, and their families, may not currently be receiving any services at all (Outreach and Engagement).

The three service categories as described, will allow clients and their families who are underserved or unserved to receive some level of service until such time as the county mental health program has the infrastructure as well as resources to provide full services to everyone in need. It is the goal of the Department to eventually provide all needed cost-efficient and effective services and supports for all those in need of mental health services and their families. As described, this is Full Service Partnership. However, as noted, until the infrastructure and resources are available to provide Full Service Partnerships to all clients, other service categories were developed in order to allow counties the funds to improve programs, services and supports for all clients and families (General System Development) and funding to provide the special activities needed to reach unserved populations, thus Outreach and Engagement.

Final Modification: The Community Services and Supports component of the Three-Year Program and Expenditure Plan has been expanded from three to four service categories – specifically the addition of the Mental Health Services Act Housing Program. The definition of the Mental Health Services Act Housing Program Service Category is also added to Article 2, Definitions. (Please see Final Modification below for the Specific Purpose and Rationale for Necessity for the Mental Health Services Act Housing Program service category.

Final Modification: Addition of Section 3615(a)(4)

Section 3615(a)(4) (New)

Specific Purpose: Section 3615 has been expanded to include a fourth service category within the Community Services and Supports component. The fourth category is the MHSA Housing Program, the definition for which has also been added to Article 2, Definitions.

Rationale for Necessity: Pursuant to Governor's Executive Order S-07-06, signed May 12, 2006 (See Attachment at page 1027.1), the Department of Mental Health shall work with the California Housing Finance Agency, and other state agencies, county mental health departments, etc. in the development of Community Services and Supports that focus on the housing needs of individuals with mental illness.

Many people with mental illness within California are homeless due to lack of affordable housing for this specific population. Money directed to the counties for the purpose of mental health treatment has been diminishing over the years, resulting in an inability to provide adequate mental health services and supports. The primary purpose of the Mental Health Services Act is to provide another source of funding to the counties to serve the needs of this vulnerable population, specifically those with mental illness. To provide the counties with funds for services and supports to these individuals yet failing to meet their most basic need, which is housing, would undermine the intent of the Act.

The rising costs of housing within California has greatly hindered the ability of the Counties to engage individuals into the mental health system when they are unable to offer these individuals housing. Additionally, as stated above, even when housing is offered, it is only on a temporary basis. In order to ensure that the Mental Health Services Act is truly transformational in nature, the Counties must be able to offer affordable housing to mental health clients, and when appropriate, their families. The Mental Health Services Act Housing Program will provide the Counties with the funds to partner with developers in their geographic area to fund the construction of new, permanent housing and/or the renovation of existing housing for the specific purpose to serve the target population; that is, mental health clients and, when appropriate, their families.

It should be noted that in order to fully implement the Mental Health Services Act Housing Program, regulations specific to this Program are necessary. The County must be informed how to partner with developers for the purpose of accessing loans to build/rehabilitate permanent supportive housing for individuals with mental illness, and, as appropriate, their families. The regulations specific to the Housing Program have been developed and are (as of October 23, 2007) being routed within the Department for review and signoff before seeking the approval of the Health and Human Services Agency and the Department of Finance. Once the approvals are obtained, the Department will begin the regulatory process for the issuance of emergency regulations.

Section 3620. Full Service Partnership Service Category

Section 3620 (a)

Specific Purpose: Section 3620(a) requires the county to develop and operate programs to provide services under the Full Service Partnership Service Category. The services provided under a Full Service Partnership agreement may include a full spectrum of services necessary to attain the goals identified in the client's Individual Services and Supports Plan (ISSP). The regulation also allows for provision of a service that has not been included in the ISSP if the service is necessary to address an unforeseen circumstance in the client's life.

Rationale for Necessity: This regulation is necessary to support the goal of the MHSA which is to provide all needed services and supports for those in need of mental health services. By requiring the county to direct funds to Full Service Partnerships, the Department is laying the foundation for a system that will provide an approach to services and supports in which the client and their families will participate in the development of the individualized service and support plan, as well as choose and direct the kinds and intensity of services necessary for the client to attain his/her goals. This regulation also recognizes that life is not predictable and while the ISSP may address the majority of goals the client wishes/needs to attain, provision is made for the unexpected. To this end, flexibility is incorporated so that when an unforeseen situation occurs that can impact on the client's life and his/her progress for recovery, the needed service/support can be readily accessed prior to such service/support being specifically identified in the ISSP.

Section 3620(a)(1)(A)(i)-(x)

Specific Purpose: This section of regulations is an introduction to the Full Spectrum of Community Services and provides a lengthy, though not totally comprehensive, list of the services and supports that constitute the mental health portion of the Full Spectrum of Community Services.

Rationale for Necessity: This regulation is necessary to provide the county with a list of the mental health services and supports considered a component of the Full Spectrum of Community Services. Full Spectrum of Community Services is defined in Article 2, Definitions as the mental health and non-mental health services and supports necessary to address the needs of the client to advance the client's goals, etc. This particular section of the regulations provides the county with a listing of the types of services and supports that are mental health in nature. The regulation section that follows provides a listing of those services and supports that while a component of the Full Spectrum of Community Services, are the services and supports considered to be non-mental health.

Section 3620(a)(1)(B)(i)-(vi)

Specific Purpose: This section of regulations follows the introduction to the Full Spectrum of Community Services and introduces those services and supports that, while included in the definition of Full Spectrum of Community Services, represent the services and supports that are non-mental health in nature.

Rationale for Necessity: This regulation is necessary for the continuity of the regulation section above. Specifically, Section 3620(a) includes those services and supports that address the mental health needs of the client, and when appropriate, the client's family. However, as defined, the Full Spectrum of Community Services is comprised of both mental health services and supports and non-mental health services and supports. While the items listed do not constitute all the services and supports that may be identified as a need for a particular client, the list will provide the county with

general areas of support and services that can be paid for under the Full Service Partnership category. Additionally this list will be helpful to the county as the other two service categories, General System Development and Outreach and Engagement are more restrictive in the services and supports that can be funded.

Section 3620(a)(1)(C)

Specific Purpose: Section 3620(a)(1)(C) informs the county that the Full Spectrum of Community Services for children is consistent with wrap-around services as defined in Section 18250 et seq. of the Welfare and Institutions Code.

Rationale for Necessity: This regulation is necessary to provide information to the counties that under the Full Service Partnership service category, the term Full Spectrum of Community Services for children includes those services defined as "wrap-around services" in WIC 18250 which includes both mental health and non-mental health services and supports as part of an all inclusive package to wrap all needed services around a child.

Section 3620(b)

Specific Purpose: Section 3620(b) states that the county may pay for the "full spectrum of community services" (definition contained in Article 2, Definitions) when it is cost effective and consistent with the client's Individual Services and Supports Plan.

Rationale for Necessity: This regulation is necessary as the Full Service Partnership service category is designed to allow the provision of mental health and non-mental health services and supports to clients who have a Full Service Partnership Agreement with the county. The regulation, however, allows the use of MHSA funds to pay for all services needed by the client as long as (1) the service/support provided is specified in the client's Individual Services and Supports Plan in order to achieve an identified client goal and (2) the service being provided is cost effective. The reference to "cost effective" is to remind the county that other funding such as Medi-Cal, is to be utilized as appropriate before accessing MHSA. Additionally, the county needs to be resourceful in accessing services for the client. For example, it may be cost effective to pay the fee and provide transportation to a client to attend a privately-run program as opposed to the county undertaking the task of dedicating manpower and other county resources to this purpose.

Section 3620(c)

Specific Purpose: Section 3620(c) informs the County that the majority (more than 50 percent) of the Community Services and Supports funds are to be spent on the Full Service Partnership Category.

Rationale for Necessity: This regulation is necessary as the Department is making three different types of system transformation funding available to the county under the

Community Services and Supports Component of the MHSA. The three types of funding available under this component are the Full Service Partnership Funds, General System Development Funds, and Outreach and Engagement Funding. Full Service Partnership is the service delivery in which clients will receive whatever services and supports are needed, as long as the services and supports are consistent with the individualized plans. Full Service Partnership is the ultimate goal for serving all individuals with mental health needs. Therefore, the Department is requiring that counties request a majority of their total CSS funding for Full Service Partnerships in order to begin to provide full service to as many individuals/families as possible.

Section 3620(c)(1)

Specific Purpose: Section 3620(c)(1) allows "small counties" as defined in Section 3200.010 to meet the requirement of Section 3620(c) no later than fiscal year 2008-09.

Rationale for Necessity: This regulation is necessary as the county mental health programs have a long history of under funding. Although it varies from county to county, relatively small percentages of clients, especially in the small counties, can be fully served, as counties currently do not have the infrastructure or resources to immediately begin providing full service to all those in need. By providing the small counties with this additional time, it will enable these county mental health programs to develop the resources necessary for the delivery of full service partnerships.

Section 3620(c)(2)

Specific Purpose: Section 3620(c)(2) informs the county that services funded under General System Development and/or Outreach and Engagement that are provided to full service partnership clients can be pro-rated to meet the requirement to direct the majority of the CSS funds to full-service partnerships.

Rationale for Necessity: This regulation is necessary as the funding types are not categorical funds that need to be tracked separately. Full Service Partnership Funds can pay for all services and supports needed by a client, even if it is not a mental health service and/or support, as long as the service is meeting a need identified in the client's individual plan. The two other funding types, General System Development and Outreach and Engagement are more limiting in the types of services and supports they can fund. The ability to pro-rate the services designed under General System Development and/or Outreach and Engagement will allow counties to meet the mandate of directing the majority of its funds to Full-Service Partnership without jeopardizing the funds in the other categories. A client who is in a full service partnership and accessing a service that is funded under General System Development can have that portion of the service count towards meeting the mandate of directing the majority of the funds to the Full Service Partnership category.

Final Modification: Addition of Section 3620(c)(3)

Section 3620(c)(3) (New)

Specific Purpose: Section 3620(c)(3) informs the county that for purposes of directing the majority of the County's Community Services and Supports (CSS) funds to Full Service Partnership, funds for the Housing Program are to be excluded.

Rationale for Necessity: This regulation is necessary to exempt the county from directing the majority of its Community Services and Supports funds to the Full-Service Partnership Service Category. The county will receive a separate allocation for the Mental Health Services Act Housing Program. While the funds for the MHSA Housing Program are a separate allocation, the funds are within the Community Services and Supports component and thus the requirement of 3620(c) is applicable. To require that the MHSA Housing Program funds be included in the requirement for the county to direct the majority of the Community Services and Supports funds to the Full-Service Partnership Service Category would actually decrease the amount of MHSA Housing Program funds being used for the designated purpose, housing. The purpose of Regulation 3620(c), ensuring that the majority of funds is dedicated to the Full-Service Partnership Service Category, was written when the Community Services and Support component consisted of three categories – Full-Service Partnership, General System Development and Outreach and Engagement – not four categories. This amendment will ensure the continuity of the intent that the majority of the funds for the provision of direct client services continues to go to Full-Service Partnerships without jeopardizing the ability of the county to provide affordable housing to mental health clients.

Section 3620(d)

Specific Purpose: Section 3620(d) requires the county to give priority to populations that are "unserved".

Rationale for Necessity: This regulation is necessary to address the needs of those with serious mental illness and/or serious emotional disturbance who are not receiving mental health services (by definition, the unserved). The list of individuals considered unserved includes individuals who are homeless and incarcerated in jails or juvenile halls. Individuals who are members of ethnic populations are also in this category and these ethnic disparities must be addressed.

Section 3620(e)

Specific Purpose: Section 3620(e) requires the county to enter into a full service partnership agreement with each client served under the Full Service Partnership Service Category, and when appropriate, the client's family.

Rationale for Necessity: This regulation is necessary to reinforce the change in direction for the delivery of mental health services and supports from clinical to a cooperative arrangement between the county and the client. The term "partnership agreement" implies a collaborative effort between the two parties with both parties discussing the needs and goals for the client, as well as the services and supports that will be necessary to achieve the goals. The premise is a basic one: if a person, organization, etc. buys into the plan and has input into the end result to be achieved, success is more apt to be achieved.

Section 3620(f)

Specific Purpose: Section 3620(f) requires that each client in a full service partnership shall have a personal service coordinator/case manager designated as the single point of responsibility for that client and when appropriate, the client's family.

Rationale for Necessity: This regulation is necessary as the personal service coordinator/case manager is the individual who will be assisting the client, and/or the client's family to identify the client's needs as well as coordinating the specific services and supports to achieve the client's goals. It is this single point of contact that is responsible for assisting the client with other needs as they are identified in an effort to simplify the entire recovery process.

Section 3620(f)(1)(A)-(f)(1)(C)

Specific Purpose: This section requires the county to ensure that the Personal Service Coordinators/Case Managers are in sufficient numbers to be available to the client, provide individualized attention, and, as needed, the provision of intensive services and supports.

Rationale for Necessity: This regulation outlines the specific responsibilities of the Personal Service Coordinators/Case Managers. This individual is the one designated as the single point of contact for the client/family. It is therefore necessary that the coordinator/manager ratio to clients is low enough to ensure that the coordinator/manager develops a rapport with the client/family and can provide to the client/family the level and degree of attention and service needed.

Section 3620(g)

Specific Purpose: Section 3620(g) requires an Individual Services and Supports Plan (ISSP) be developed for each client in a full service partnership.

Rationale for Necessity: This regulation is necessary as the ISSP, as defined, is the plan developed by the client/family with the Personal Service Coordinator/Case Manager. This document identifies the client's goals and describes the services and supports necessary to advance these goals. This document is the roadmap for the

client in terms of his/her goals and the services and supports that will support achieving these goals. This document is necessary for the purpose of not only providing written documentation of services/supports to be provided to the client, but also reinforces the concept of a partnership between the client and the county in the development of this individualized plan.

Section 3620(h), (h)(1), (h)(1)(A), (h)(2)

Specific Purpose: Section 3620(h) requires the county to ensure that the Personal Service Coordinator/Case Manager is responsible for developing the ISSP with the client, as well as ensuring the collaboration with other agencies that may be providing services/supports to the client/family. Lastly, the coordinator/manager is to be culturally and linguistically competent and/or have knowledge of resources within the client's/family's racial/ethnic community.

Rationale for Necessity: Throughout these regulations there is recognition of the need for cultural and/or linguistic competence as a standard for planning, implementing and evaluating the programs and/or services provided with Mental Health Services Act funds. It would, therefore, be appropriate for the county to ensure the same degree of competence in those individuals who are most directly involved with the client/family. The Personal Service Coordinators/Case Managers are the backbone of the MHSA and the ability of the Department, as well as the county to change the whole perception of mental health treatment within the community rests with these individuals. It is therefore necessary, for the success of MHSA as well as individual success for the client, for the coordinator/manager to be "connected", not only to the client's identified needs, but barriers that may exist because of ethnic customs, language barriers, etc.

Section 3620(i)

Specific Purpose: Section 3620(i) requires the Personal Service Coordinator/Case Manager or other qualified individual be available to provide after-hour intervention, 24/7.

Rationale for Necessity: This regulation is necessary as the Personal Service Coordinator/Case Manager is designated as the single point of contact for the client/family for ensuring the provision of appropriate services, individualized attention as needed, etc. As such this "best practices" service strategy is intended to provide immediate "after-hours" intervention that will reduce negative outcomes for individuals including but not limited to unnecessary hospitalizations, incarcerations and evictions.

Section 3620(i)(1)

Specific Purpose: Section 3620(i)(1) requires that in situations where the Personal Service Coordinator/Case Manager or other individual known to the family is not available, another qualified individual must be available to provide the 24/7 after-hour intervention.

Rationale for Necessity: This regulation is necessary to acknowledge that there may be times when the Personal Service Coordinator/CaseManager known to the client/family is not available. In these cases, it is the responsibility of the county to ensure that another "qualified" individual is available to respond to provide the after-hour intervention. The regulation is clear that the "substitute" must be qualified so that they are familiar with the duties and responsibilities of the coordinator/manager and will have access to records and information necessary in order to provide the required intervention.

Section 3620(i)(2)

Specific Purpose: Section 3620(i)(2) makes an exception for small counties to the above requirement for a personal service coordinator/case manager through the use of peers or community partners.

Rationale for Necessity: This regulation is specific to small counties (defined as a county with a total population of less than 200,000). This is another in a series of exceptions provided in the regulations for small counties. The small counties may not have a sufficient number of qualified individuals to be Personal Service Coordinators/Case Managers. The regulation, therefore, allows the use of peer or community partners such as community-based organizations. The important component for the Coordinator/Manager that is also required when using peers or community partners is that this person must be known to the client/family. Again, when the client/family is in need of after-hour intervention, stress level will be high and it is imperative that the person providing the intervention be known to the client/family to help defuse the situation and obtain some level of resolution.

Section 3620(j)

Specific Purpose: Section 3620(j) requires the county to provide services to all age groups; i.e., older adults, adults, transition age youth and children/youth in the Full Service Partnership category.

Rationale for Necessity: This regulation is necessary as the Mental Health Services Act requires services be provided to children/youth, adults/older adults, and makes specific mention of the need for services to transition age youth (defined as youth 16 to 25 years of age). Full Service Partnership is a service category within Community Services and Supports and delivery of this service category should encompass the unique and distinct needs of the various age groups represented within the county. By requiring services be provided to all age groups, the county will be in compliance with the intent of the Mental Health Services Act.

Section 3620(j)(1)

Specific Purpose: Section 3620(j)(1) allows the county the opportunity to delay the provision of full service partnership services to all age groups in this, the early stages of implementation of the Mental Health Services Act. However, if services are not to be provided to all age groups, the county must explain the reason why specific age group(s) is/are not being served and specify how and when all age groups will be served.

Rationale for Necessity: This regulation is necessary for several reasons. As mentioned in earlier regulation rationale, lack of funding within counties has an impact on the ability of the counties to meet the varying needs of each age group, as well as the lack of infrastructure within counties to meet the identified needs of specific clients and/or client groups. Additionally, because of the lack of funding, funds were diverted to meet those needs identified as urgent. As such, groups such as homeless transitional age youth were not provided with comprehensive programs, but rather individual clients were provided with minimal needs to meet the emergency. However, the goal of meeting the needs of all age groups is to be achieved by the counties, but recognition of the inability of counties to achieve this goal within the first years of operation is acknowledged.

Section 3620(k)

Specific Purpose: Section 3620(k) allows the counties to pay for short-term acute inpatient services when the client is uninsured for this service or no other funds are available for this purpose.

Rationale for Necessity: Section 3400(b)(2) requires that programs and services paid for with MHSA funds must be designed for voluntary participation. This regulation is an exception to that requirement. The county may pay for short-term acute inpatient services when the client is either uninsured or other funds are not available for this purpose. This regulation allows the use of MHSA funds for acute inpatient services. Not all clients in full service partnerships are going to be insured and their placement could be jeopardized when short term acute care is needed for stabilization or for the treatment of a previously unidentified/untreated need.

Final Modification: This regulation was amended in two ways: (1) The term "acute inpatient services" was amended to "acute inpatient treatment" and (2) the reference to "30 days" was deleted.

1. The word "services" has been replaced by the word "treatment". The word "services" is subject to broad interpretation as it can encompasses any care that a client is receiving beyond that considered acute. "Treatment" provides the necessary clarity that the client must be actively receiving care that addresses and alleviates the crisis. The MHSA funding is limited specifically to this crisis treatment and any other care provided in the acute setting will have to be funded

through another source. This is consistent with the MHSA in that only services/supports to the mental health client can be funded.

2. The Department removed the 30-day payment limitation from this regulation as there was confusion as to what the 30 days was referring to -- was it 30 days per episode, 30 days per year, etc.? Some stakeholders assumed that the 30 days represented the length of time that one could be hospitalized as opposed to the regulation being about the "funding" of necessary acute inpatient services. The determination of whether a client needs acute inpatient services (including 5150), is not made by the Department. This decision rests solely with the mental health professional based on established criteria contained in current law.

Section 3620(l)

Specific Purpose: Section 3620(l) prohibits the use of MHSA funds for long-term hospitalization and/or long-term institutional care.

Rationale for Necessity: This regulation is necessary as the focus of MHSA is on recovery for mental health clients. Individuals placed in either a hospital or institution for long-term care are not receiving services/supports that are "recovery" driven. Additionally, there are specific funding sources available to those with long-term institutional needs through other mental health funds or other state/federal entitlement programs. As other funding is available for long-term hospital and/or institutional care, it is necessary to ensure the appropriate use of the MHSA funds as well as the purpose and intent for which the people of California passed Proposition 63, the Mental Health Services Act.

Section 3620.05. Criteria for Full Service Partnerships Service Category

Section 3620.05 (a)

Specific Purpose: Section 3620.05(a) requires that individuals selected for participation in the Full Service Partnership service category must meet the eligibility criteria contained in the Welfare and Institutions Code for his/her specific age group.

Rationale for Necessity: This regulation is necessary as Section 5600.3 of the Welfare and Institutions Code provides the criteria for determining that a person is seriously emotionally disturbed (children), has a serious mental disorder (adults/older adults) or is at risk of requiring inpatient care, etc. because of a mental disorder. This regulation lays the basic foundation for an individual to be selected for Full Service Partnership. The regulation sections which follow, 3620.05(b), (c), and (d) describe the additional criteria that must be met by individuals in order to be eligible for full service partnership.

Section 3620.05(b), (b)(1), (b)(1)(A)-(b)(1)(G)

Specific Purpose: This regulation states that in addition to the criteria specified in 3620.05(a), a transition age youth must be either unserved or underserved (as defined in Section 3200.010) and meet one of the criteria specified in (b)(1)(A) through (b)(1)(G).

Rationale for Necessity: This regulation is necessary to assist the county in determining the initial populations within each age group to be served in the Full Service Partnership service category. The priorities listed are consistent with the issues of public concern and the Mental Health Services Act. The criteria provided in (A) through (G) represent issues that are unique to the transition age youth. One of the biggest issues for the age group of 16 to 25 is that they are aging out of the children's systems (mental health, welfare, and/or juvenile justice) and yet, they have needs not necessarily compatible with those of an adult. This section distinguishes between a transitional age youth and, as defined, a child or an adult and targets the transitional age youth special needs as criteria for eligibility for full service partnership.

Section 3620.05(c), (c)(1), (c)(1)(A)-(c)(1)(C) and (c)(2), (c)(2)(A)-(c)(2)(C)

Specific Purpose: This regulation states that in addition to the criteria specified in 3620.05(a), an individual meeting the definition of an "adult" must also meet the criteria in either (1) or (2) of this section in order to be eligible for the Full Service Partnership service category.

Rationale for Necessity: This regulation is necessary to provide the county the additional criteria to be met by an individual defined as an "adult", in order to be eligible for services under the Full Service Partnership service category. The criteria is separated into two distinct sections. The individual must be unserved as defined in the Definitions and then meet one of three additional criteria set forth including either homeless or at risk of becoming homeless, involved in the criminal justice system, or a frequent user of hospital/emergency room services for mental health treatment. The other criteria that an adult can meet for eligibility as a Full Service Partner is underserved as defined in the Definitions and "at risk" of homelessness, involvement in the criminal justice system or institutionalization.

Section 3620.05(d), (d)(1), (d)(1)(A)-(d)(1)(F) and (d)(2), (d)(2)(A)-(d)(2)(E)

Specific Purpose: This regulation states that in addition to the criteria specified in 3620.05(a), an individual meeting the definition of an "older adult" must also meet the criteria in either (1) or (2) of this section in order to be eligible for the Full Service Partnership service category.

Rationale for Necessity: This regulation is necessary to provide the county the additional criteria that must be met by an individual defined as an "older adult" in order to be eligible for services under the Full Service Partnership service category. As with

the criteria for individuals defined as an “adult”, the criteria for the older adult is separated into two distinct sections. The individual can be unserved and meet one of five scenarios, or be underserved and at risk of one of five scenarios. The criteria for the adult and the older adult are very distinct for the age group being served and the circumstances most often associated with the specific age group. For example, “at risk of out-of-home care” is a huge concern for the older adult, this age group often faces the prospect of placement in either a nursing home or some type of out-of-home care. The additional criteria for each of the age groups are representative of the biggest issues faced by the various age categories.

Section 3620.05(e)

Specific Purpose: Section 3620.05(e) does not prohibit the county from providing services to clients with serious mental illness and a co-occurring substance abuse disorder and/or health condition.

Rationale for Necessity: This regulation is necessary to inform the county that as long as the client meets the criteria established for eligibility in the Full Service Partnership service category, the presence of a co-occurring condition of substance abuse or other health condition should not exclude an individual from service. It is necessary to acknowledge the presence of co-occurring conditions in the mental health population. Individuals who are or become homeless will oftentimes have a history or involvement with substance abuse. To exclude this group from service would be contrary to the purpose and intent of the Mental Health Services Act by limiting access to services to some of those in greatest need.

Section 3620.10. Full Service Partnership Data Collection Requirements

Section 3620.10(a), (a)(1)-(a)(10), (b), (b)(1), (b)(2), (b)(2)(A)-(b)(2)(E), and (c), (c)(1)-(5)

Specific Purpose: This section requires the county to conduct a partnership assessment at the time the full service partnership agreement is entered into by the county and the client, and when appropriate, the client’s family. Items (a)(1)-(10) are the specific information items that the county is to collect at the time the agreement is entered into. Sub-items (b)(1) and (2)(A)-(2)E) specify those events to be considered “key” quality of life areas and any changes in these areas are to be collected and reported to the Department. Lastly, sub-item (c) specifies the information that the county shall review and update, through the Quarterly Assessment.

Rationale for Necessity: These regulations are necessary to identify the initial requirements developed for measuring individual-level performance outcomes for Full Service Partnership clients. These requirements are considered “initial” because more data and different data will need to be captured, as more is learned about services and outcomes through quality improvement processes. The initial requirements were developed from input gathered at Mental Health Services Act stakeholder meetings and

from recommendations made by the Department of Mental Health Performance Measurement Advisory Committee. The county is expected to collect these outcomes as soon as they begin providing services to Full Service Partnership clients.

Three assessment form types, Partnership Assessment, Key Event Tracking and Quarterly Assessment, were developed for the MHSA target population age groups specified in the Mental Health Services Act (children/youth, transition age youth, adults and older adults). The Partnership Assessment form, completed when the partnership is established, captures history and baseline data. A Key Event Tracking form is completed when a change occurs in key quality of life areas. The Quarterly Assessment form is completed every three months.

Although not regulatory in nature, the counties have two options for submitting the data to the Department, either through the Department developed Data Collection and Reporting System or through local technology. If a county opts to use the Department On-line Data System, the Department will maintain and update the system as needed, and will provide on-going training and technical support for county users. Counties that choose to collect the data using local technology will need to submit the data using a DMH-specified XML (Extensible Markup Language) schema. The county will be responsible for maintaining their data system, including training, technical support, etc. In addition, the county will be responsible for keeping the data systems in compliance with the Department's reporting requirements.

Section 3620.10(d)

Specific Purpose: Section 3620.10 refers to Section 3530.30, Full Service Partnership Performance Outcome Data and reinforces the requirement for the data to be submitted to the Department within 90 days of collection.

Rationale for Necessity: This regulation is necessary as Section 3530.30, Full Service Partnership Outcome Data requires in section (b) submittal of the data no later than 90 days after collection. Section 3620.10 is the section where the data to be collected is specified as well as additional data such as key events and the quarterly assessment. This cross-reference merely reinforces the timeframe for submittal of the information and links the two regulatory sections.

Section 3630. General System Development Service Category

Section 3630(a)

Specific Purpose: Section 3630(a) states that the programs developed and operated by the county under the General System Development Service Category must focus on those clients specified in Welfare and Institutions Code Section 5600.3(a), (b) or (c).

Rationale for Necessity: This regulation is necessary to ensure that the programs developed and operated using funds under the General System Development Service

Category focus on the clients specified in the above-referenced Welfare and Institutions Code. The W&IC sections reference (a) children, (b) adults and (c) older adults who are by definition severely emotionally disturbed and/or have a mental illness. Individuals who meet the criteria in the W&IC represent the populations to be targeted for services under the Mental Health Services Act. Under the Full Service Partnership Category, it is specified that for an individual to be in a Full Service Partnership agreement, criteria beyond that established in the W&IC must be met. However, the General System Development Funds are to help the county improve programs, services and supports for all clients and families, to change the service delivery system and build transformational programs and services. Therefore, this service category does not have restrictive criteria beyond that stated in W&IC Section 5600.3(a), (b), or (c).

Section 3630(b), (b)(1), (b)(1)(A)-(b)(1)(I), (b)(2), (b)(3)

Specific Purpose: Section 3630(b) provides the county with information as to the three areas in which General System Development funds may be used.

Rationale for Necessity: As stated above, there are three specific areas in which General System Development Funds may be used: (1) to improve program services and supports for all clients, to improve the county service delivery system and to build transformational programs and services. Examples for this kind of funding are client and family services such as peer support, wellness centers, needs assessments, individual services and supports plan development, etc. The General System Development Service Category funds may only be used for mental health services and supports to address the mental illness or emotional disturbance. Again, this is in contrast to the Full Service Partnership Service Category where any and all services needed by a client in a Full Service Partnership Agreement can be paid for under the Full Service Partnership Service Category. The General System Development Service Category is limited to services and supports specific to the client's mental illness or emotional disturbance. This regulation section provides the county with the information as to the specific areas in which the General System Development funds can be spent.

Section 3630(c)

Specific Purpose: Section 3630(c) states that when the county is working in collaboration with non-mental health community programs and/or services, only the costs directly associated with providing mental health services and supports can be paid for under the General System Development Service Category.

Rationale for Necessity: This regulation is necessary as it reiterates the specific areas where the General System Development Service Category funds can be spent. It is further necessary to ensure that in situations where the county works in collaboration with non-mental health community programs, that the costs for these programs are pro-rated according to the portion of the program that is specific to a mental health service and/or support. This is necessary to again ensure that this funding is only used for mental health services and supports to address the mental illness or emotional

disturbance. Community supports such as rental subsidies, other treatment such as health care or substance abuse treatment and respite care are not allowable under General System Development. These types of services and supports, as discussed in Section 3620, represent a full spectrum of community service and are therefore included only in the Full Service Partnership Service Category.

Section 3640. Outreach and Engagement

Section 3640(a)

Specific Purpose: Section 3640(a) establishes Outreach and Engagement as the third funding category under the Community Services and Supports Component of the Mental Health Services Act.

Rationale for Necessity: This regulation is necessary to introduce the Outreach and Engagement service category which is to provide funds for outreach and engagement of those populations that are currently receiving little or no service. However, as with the Full Service Partnership and General System Development funds, the use of these funds must also focus on the clients specified in Welfare and Institutions Code Sections 5600(a), (b) or (c). The W&IC sections reference (a) children, (b) adults and (c) older adults who are by definition severely emotionally disturbed and/or have a mental illness. Individuals who meet the criteria in the W&IC represent the populations to be targeted for services under the Mental Health Services Act. This fund is in recognition of the special activities needed to reach the unserved populations and can only be used for those activities necessary to reach unserved populations.

Section 3640(b), (b)(1), (b)(2), (b)(3), (b)(3)(A)-(b)(3)(E), (b)(4), (b)(4)(A), (b)(4)(B), (b)(4)(C)

Specific Purpose: Section 3640(b) specifies the four areas of special activities for which the Outreach and Engagement funds can be used in order to reach unserved populations.

Rationale for Necessity: This regulation is necessary as this fund is specific to the development and operation of outreach programs and activities for the purpose of identifying and engaging unserved individuals. Outreach and engagement is the funding source that the county can use to develop an overall approach to the reduction of ethnic disparities. Therefore, the regulation focuses on those community-based entities that help individuals who are homeless or incarcerated and link potential clients to services. Again, unlike the Full Service Partnership funds that can be used to provide whatever services the client needs, Outreach and Engagement funds may only be used for those activities to reach unserved populations as defined in Section 3200.010, Definitions.

Final Modification: A change was made to Section 3640(b)(4)(C). This change does not represent a change in the intent of the regulation but corrects a

grammatical error. Specifically, the word "that" in reference to (people) incarceration in county facilities has been corrected to the word "who", as the reference in the regulation is to individuals, not objects.

Section 3640(c)

Specific Purpose: Section 3640(c) states that when the county is working in collaboration with non-mental health community programs and/or services, only the costs directly associated with providing mental health services and supports can be paid under the Outreach and Engagement Service Category.

Rationale for Necessity: This regulation is necessary as it reiterates the specific areas where the Outreach and Engagement Service Category funds can be spent. It is further necessary to ensure that in situations where the county works in collaboration with non-mental health community programs, that the costs for these programs are pro-rated according to the portion of the program that is specific to a mental health service and/or support. This is necessary to again ensure that this funding is only used for mental health services and supports to address the mental illness or emotional disturbance.

Section 3650. Community Services and Supports Component of the Three-Year Program and Expenditure Plan

Section 3650(a)

Specific Purpose: Section 3650(a) introduces the Community Services and Supports (CSS) Component of the Three-Year Program and Expenditure Plan and the contents that will comprise this component.

Rationale for Necessity: This regulation is necessary as the Mental Health Services Act requires that each county mental health program prepare and submit a three-year plan. Additionally, the Mental Health Services Act requires that "the department shall establish requirements for the content of the plan." This regulation sets forth the requirements for the CSS component under this Act.

Section 3650(a)(1), (a)(1)(A), (a)(1)(B)

Specific Purpose: Section 3650(a)(1) requires the county to provide an assessment of the mental health needs of county residents, including adults, older adults and transition age youth who may have or have been diagnosed with serious mental illness, and children/youth and transition age youth who may have or have been diagnosed with serious emotional disorders.

Rationale for Necessity: This regulation is necessary in order to recognize all those who would qualify for Mental Health Services Act services, including those who are currently unserved, underserved or fully served, and identify their age group and racial/ethnic, age and gender disparities.

Section 3650(a)(2), (a)(2)(A), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(2)(D)(i)-(a)(2)(D)(vii)

Specific Purpose: Section 3650(a)(2) requires the county to include in the CSS Component, a list of the community mental health issues that were identified through the Community Program Planning Process. Section (a)(2) also describes the additional information to be provided for each of the issues identified through the Community Program Planning Process.

Rationale for Necessity: This regulation is necessary as the county determined, through the Community Program Planning Process, the mental health issues to which the MHSA funds will be directed. However, it is not sufficient to merely identify the issues, it is also important to identify which of the issues will be the priority in the CSS component of the Three-Year Program and Expenditure Plan. It is necessary to require the county to describe the factors/criteria to determine the issue's priority. For example, the county may have identified, through the planning process, 30 issues that result from the lack of mental health services and supports. However, it is unrealistic to assume that all 30 issues can be the focus in the Three-Year Plan. It is therefore necessary for the county to develop criteria to determine those issues that will be the focus of the Three-Year Plan. For each of the issues that will be the focus/priority for the county, the county shall describe any identified disparities in access for ethnic and other populations. The intent is to recognize all those who would qualify for MHSA services, including those who are currently unserved, underserved or fully served, and identify their situational characteristics (e.g., homelessness, involvement in the juvenile and/or criminal justice system, out-of-home placement, etc.)

Section 3650(a)(3)

Specific Purpose: Section 3650(a)(3) requires the county to provide an estimate of the number of clients, by age group, to be served in the Full Service Partnership Service Category for each fiscal year of the Three-Year Program and Expenditure Plan and how the selections will reduce the identified disparities.

Rationale for Necessity: This regulation is necessary as not everyone who will be served under the Mental Health Services Act can be fully served (in this context, fully served are those clients in a Full Service Partnership Agreement). Therefore, the county should identify the initial full service populations so that they can be successful in helping clients and families achieve their goals and in establishing the effectiveness of MHSA services and supports, identify how these figures will change over the course of the Plan and describe how these selections will reduce the identified disparities.

Section 3650(a)(4), (a)(4)(A), (a)(4)(B), (a)(4)(C)

Specific Purpose: Section 3650(a)(4) requires the county to provide specific information about the proposed programs and services to be funded under the MHSA including the service category under which the program/service will be funded, a

description of the program/service and an explanation of how the program/service relates to the issues identified in the Community Program Planning Process.

Rationale for Necessity: This regulation is necessary as the Department is responsible for ensuring that the Mental Health Services Act funds are spent in accordance and compliance with the law and these regulations. As such, the Department is responsible for reviewing and approving the county Three-Year Program and Expenditure Plan for said compliance which includes: (1) A list of the programs/services identified by the service category that will be the funding source. As outlined in earlier regulations, there are specific limitations on how the funds in the three service categories, Full Service Partnership, General System Development and Outreach and Engagement can be utilized. By having the county identify the service category for the proposed program/service, the Department can ensure that the expenditure from the specific fund is appropriate. Also required is an explanation of how the program/service relates to the issues identified in the Community Program Planning Process. The establishment of the Community Program Planning Process is mandated in the Mental Health Services Act to ensure that the issues identified by the county represent the unique and specific needs of their community. This regulation connects back to Section 3300 that states that the Community Program Planning Process is the basis for the development of the Three-Year Program and Expenditure Plan.

Section 3650(a)(5), (a)(5)(A), (a)(5)(B), (a)(5)(C)

Specific Purpose: Section 3650(a)(5) requires the county to provide an assessment of its capacity to implement the program/services proposed in the Three-Year Program and Expenditure Plan. Specific information is identified that is to be included in the assessment.

Rationale for Necessity: This regulation is necessary as again, the Department has the responsibility under the Mental Health Services Act, to "evaluate each proposed expenditure plan and determine the extent to which each county has the capacity to serve the proposed number of children, adults and seniors…" By providing the information requested in (A), (B), and (C), the Department will have enough information about the county's current mental health services system capacity and workforce and therefore be able to assess the county's ability to expand current programs and develop and implement new strategies. The Department is charged with the approval of the Three-Year Program and Expenditure Plan. This oversight on the part of the Department gives it the responsibility to ensure that the county is not overextending its current resources. Also, based on this information the Department may suggest that the county scale back on the numbers of programs/services to be offered initially to ensure that the necessary strategic plans are developed to ensure the success of the programs and the success of the Mental Health Services Act.

Section 3650(a)(6), (a)(6)(A)-(a)(6)(F)

Specific Purpose: Section 3650(a)(6) requires the county to submit a separate work plan for each proposed program/service and identifies the information to be included in the work plan.

Rationale for Necessity: This regulation is necessary as the county is required to submit a detailed work plan for each proposed program/service describing the implementation of the proposed programs/services to be funded by the Mental Health Services Act. The Department is responsible for the oversight of the MHSA and the funds that are allocated to the counties for its implementation and ongoing mental health services and supports. In order to carry out this responsibility, it is critical that the Department has a complete description of each program on which to base its approval. This section of the regulations will assist the county in developing their work plans for each proposed program/service. The information delineated in the regulations provides to the county the minimal information that must be submitted as part of the work plan.

Section 3650(a)(6)(F) is an exemption for the small counties as defined in Section 3200.010. Counties are required to request a majority of their Community Services and Support funding for Full Service Partnerships. There is a small county exemption that limits the requirement to request a majority of funding for full service partnerships only for Fiscal Year 2007-08. This regulation provides the small counties with additional flexibility for FY 2007-08 in that small counties are not required to provide detailed responses related to full service partnership workplans, timeframes, budgets and staffing with the initial plan submission. In the initial submission, a small county proposing to initiate full service partnerships in Fiscal Year 2007-08 must only identify the Full Service Partnership priority population and the amount of funding to be reserved for this purpose. The details as required in Section 3650 (a)(6)(A)-(E) will be required for these full service partnerships for Department review and approval prior to implementation.

Section 3650(b)

Specific Purpose: Section 3650(b) requires that the Community Services and Supports component of the Three-Year Program and Expenditure Plan be signed by the County Mental Health Director.

Rationale for Necessity: This regulation is necessary to ensure that the County Mental Health Director signs the Community Services and Supports component of the Three-Year Program and Expenditure Plan prior to submittal to the Department. The County Mental Health Director has the responsibility and oversight for the mental health program without his/her county jurisdictional lines. It is therefore necessary to ensure that this individual takes responsibility for the information contained in the document and is held accountable for the services/programs that are to be implemented, the budget for the individual services/programs, numbers of clients to be served, etc.

MATERIALS RELIED UPON IN PROMULGATING THIS RULEMAKING:

1. Mental Health Services Act
2. DMH Letter Number 05-08: Fiscal Year 2004-05 Funding Required to be used for Mental Health Services under the Mental Health Services Act.
   a. Enclosure 1 - Resources Required to be used for Mental Health Services under the Mental Health Services Act
   b. Enclosure 2 - County Operations North & South Regional Listings
3. Excerpts from *A Guide to the* ***Project Management Body of Knowledge****, Third Edition (PMBOK® Guide)*–**an American National Standard ANSI**/PMI 99-001-2004

LOCAL MANDATE STATEMENT

Proposition 63, which expands mental health services, was passed by the voters in November 2004. Counties may choose to participate in the program; it is not a mandated program. If a county chooses to participate in these programs, the State will provide funding to the county based on its approved Three-Year Program and Expenditure Plan. For fiscal year 2006-07, approximately $398,300,000 in the Mental Health Services Fund is estimated to be expended for Community Services and Supports.

DMH has determined that the proposed regulatory action imposes mandates on county government **only** when County Mental Health Programs apply for funds pursuant to these regulations. However, funds are available through the Mental Health Services Fund created by the Mental Health Services Act and codified in Welfare and Institutions Code, Section 5890 to finance the mandates as required by Part 7(commencing with Section 17500) of Division 4 of the Government Code.

STATEMENT OF ALTERNATIVES CONSIDERED

DMH has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

DMH has determined that the regulations would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF FEBRUARY 26, 2007, THROUGH APRIL 16, 2007.

In responding to public testimony, reference is made to conservators and conservatorship and their authority and decision-making role for clients. In the context of the responses the reference to conservatorship assumes that the type of

conservatorship allows the conservator to make decisions on behalf of the client related to his/her mental health.

General Comments

The testimony provided to the Department of Mental Health includes many real life experiences and perceptions of what the mental health system has proved to be and the hope for changes resulting from the enactment of the Mental Health Services Act. The Department appreciates and took into account all of the additional information and personal experiences shared by commenters during this process. While we cannot attach these comments to specific regulations, the Department appreciates the comments and wants to ensure the commenters that the personal life experiences they shared were considered in the overall direction of the regulations.

1. Comments: Commenters #6, 24, 28, 39, 81, 83, 103, 118/Exhibits 15A-H and 126/Exhibit 23 expressed that they want the MHSA regulations to define and acknowledge that guardians, conservators and/or caregiver should be included in treatment planning, case management and/or otherwise kept fully aware of all aspects of the clients for whom they are concerned. Regulatory references are requested to be specifically added to include these individuals as participants, sources of support and decision making, and to ensure that their input is valued and utilized.

Response: The Department appreciates the comments. Legal guardians and conservators appointed by the court have a legal right to be included in the treatment planning, case management and/or otherwise be informed on an ongoing basis of all aspects of care for clients for who they are concerned. Therefore specific reference in these regulations is not necessary and would be duplicative of existing law.

2. Comment: Commenters #22, 23, 24, 28, 46, 83, 103, 118/Exhibits 15A-H and 126/Exhibit 23 request that "regulations be amended to add definitions of Caregiver and Caregiver Collaboration."

Response: The Department appreciates the comments. Definitions are included in the regulations when: (1) the term needs to be defined as the definition used in the context of the regulations is other than how the term in defined in a standard dictionary; or (2) when the term is used in the regulations and a working definition of the term is required. Caregiver and Caregiver Collaboration are not referenced in these regulations as a "caregiver" has no legal status in decision-making for a client of mental health services be that client a minor or an adult. A "caregiver" is a broad term used to describe various relationships between individuals such as the relationship between an elderly individual and an unrelated person providing care to the elderly individual in his/her own home. A "caregiver" is recognized within these regulations when the "caregiver" has legal authority granted under other provisions of law to act on the behalf of the client

such as a legal guardian, conservator or parent. See Response to Comment #25-27.

3. Comment: Commenter #43 encourages "DMH to strengthen the regulations involving the role that clients and individuals with mental health diagnoses play in developing and implementing county systems, programs and services. Despite the clear intent of the MHSA, in many counties clients are relegated to roles where their voices are not heard or their concerns are swallowed up by the voices of providers and others."

Response: The Department appreciates your comment. The regulations are written to require the participation of clients and their family members in <u>all</u> (emphasis added) aspects of the Community Program Planning Process which is the basis for the County's Three-Year Program and Expenditure Plan and updates. This Plan/update is the document that identifies the mental health needs within the county and the mental health services and supports to which MHSA funds will be directed. The involvement of clients in this process is clearly outlined in the regulations and is also a requirement of the Mental Health Services Act. To further ensure the involvement of clients, and/or their families, reference is made within the regulations to the inclusion of "stakeholders" in the planning process. Included in the definition of "stakeholders" is specific reference to individuals with serious mental illness and/or serious mental disturbance and/or their families. Section 3300 establishes requirements for the Community Program Planning Process including a requirement for adequate staffing and designated positions and/or units to be responsible for "ensuring that stakeholders have the opportunity to participate." Section 3300 also states that representatives of the unserved and underserved populations (as defined in Sections 3200.300 and 3200.310) as well as their family members be included in the planning process and have the opportunity to participate.

The Community Program Planning Process is a new approach to identifying community issues. It is no longer the sole responsibility of the county to determine community mental health needs, there is now specified in regulations a requirement that stakeholders, including clients, be involved in this decision-making process. Unlike past practices, the implementation of this process will provide a better avenue for input by all members of the community.

4. Comment: Commenters #50 and 52 state "I am against MHSA bailing out DMH with MHSA's money." Commenter #79 states, "Action Alert! Not (sic) to Emergency Regulation of December, 26! The real emergency here is that DMH is strapped for cash and they want MHSA to bail them out."

Response: The Department appreciates the comments. However, as the Department is unable to determine a specific regulation to which these comments are directed, no further response is provided.

5. Comment: Commenter #58 states "I oppose this provision".

Response: The Department appreciates the comment. However, as the Department is unable to determine the specific provision to which this comment is directed, no further response is provided.

6. Comment: Commenter #60 states “Disability wants to make a cut in MHSA. We are not blind. DMH have there (sic) eyes wide open and MHSA is the target”.

Response: The Department appreciates the comment. However, as the Department is unable to determine the specific provision to which this comment is directed, no further response is provided.

7. Comment: Commenter #65 states “Forced treatment did not get the problem I had with Department of Public Services solved. Instead I was 5150 only to find how this government had made a mistake that was corrected. There is also the treatment of mental health facilities and their doctors not becoming more involved with their patients. Are they leaving this part of treatment up to the interns and therapists? Will their jobs only be to continue prescribing the medications? In my situation more then (sic) ten years clean and sober need more recognition, serious consideration and help after more intense help in my dual diagnosis.”

Response: The Department appreciates the commenter sharing this information but this issue is beyond the scope of these regulations. The regulations do address the need for participation by clients and family members of clients in the Community Program Planning process for overall county programs and services and more importantly, the specific involvement of the client and his/her family members in the development of the client’s Individual Services and Support Plan. See Response to Comment #3.

8. Comment: Commenter #69 states “I am against the ‘Emergency Regulations’ because it is discriminatory and stigmatizing to all mental health clients.”

Response: The Department appreciates the comment. The purpose of these regulations is to further the understanding of the intent of the MHSA to move away from existing service delivery models and terminology and focus on client-centered practices. The Department is unsure of what the commenter deems as “discriminatory and stigmatizing”, therefore cannot further respond.

9. Comment: Commenter #73 states “To whom it may concern, I wish that the purpose of the mental health of all people should be a concern that the quality of life. In hospitals wellness centers, etc. Should be non bias/understood with patients hopes.”

Response: The Department appreciates the comment. However, as the Department is unable to determine the specific provision to which this comment is directed, no further response is provided.

10. Comment: Commenter #75 states “moneys should be used for MHSA. It’s a beer (sic) cause.”

Response: The Department appreciates the comment. The purpose of these regulations is to further the understanding of the intent of the MHSA to move away from existing service delivery models and terminology and focus on client-centered practices. However, as the Department is unable to determine the specific provision to which this comment is directed, no further response is provided.

11. Comment: Commenter #78 provided no comment on the post card.

Response: As no comment was provided, the Department cannot respond.

12. Comment: Commenter # 82 states “Regulations do not address how counties would use the MHSA money that they receive from DMH for housing.” The commenter further recommends that the definitions of Community Services and Supports (Section 3200.080), Full Spectrum of Community Services (Section 3200.140), General System Development Service Category (Section 3200.170), and Individual Services and Supports Plan (Section 3200.180) be revised to expressly include or reference housing. Commenter also attached a mark-up of the regulations that offer suggested changes to the regulations.

Response: The Department appreciates the comment. These regulations do not state how counties are to use MHSA money for housing except under the provisions in the Full Services Partnership and Outreach and Engagement System sections, where housing is identified as a supportive service. Regulations specifically addressing the use of MHSA money for housing will be developed in the near future; therefore, the commenter’s suggested changes are not within the scope of these regulations. Other suggested changes offered by the commenter are responded to within the specific regulation section.

13. Comment: Commenter #82 states “As noted in our comments to the CalHFA Guidelines, we recommend that the Regulations use ‘household’ in place of ‘family’ in order to avoid the issues associated with defining what and who constitute a family.”

Response: The Department appreciates the comment. These regulations are not based on CalHFA Guidelines, but on the provisions of the Mental Health Services Act that is administered by the Department of Mental Health. Also see Response to Comment #12.

14. Comment: Commenter #85 states “Please put a hold on this debate, and decision. Take a look at a program that has successfully implemented a Recovery Model program starting in 1999.” Commenter attached a copy of the Recovery Innovations of Arizona Programs.

Response: The Department appreciates the comment. The regulations are designed to provide the framework for the Community Services and Supports component of the Mental Health Services Act that includes the development of new and innovative programs and services to meet the needs of individuals with a mental illness. The specific programs and services that the county offers are based on local needs identified through the Community Program Planning Process. The Department encourages you to become involved in the Local Planning Process for your county which will enable you to have a voice in the direction of the county's mental health services and supports and the opportunity to present this Recovery Model for consideration.

15. Comment: Commenter #88 states "The recurring use of the phrase 'families where appropriate' throughout the definitions concerns us…Our concern is that the extensive application of the qualifier 'where appropriate' to define the family role will result in the disenfranchisement of families of adult clients at many levels even beyond that of the care given their own family member. Families regularly report mental health professional's reluctance to deal with them…We submit that regardless of the client's age, families need inclusion rather than exclusion and it should apply to families regardless of the client's age."

Response: The Department appreciates the comment. There is nothing in the regulations preventing the participation of family members, friends, etc. in identification of the client's needs as well as the specific services and supports he/she receives. Family members, friends, etc. who have relevant information about the client may present that information to the mental health professional. However, the active participation of family members, friends, etc. for the adult population (aged 18 and over) in directing services and supports must be with the consent of the adult client. This is the law. Adults are considered to have the ability to consent unless this ability is removed through a legal process such as conservatorship.

16. Comment: Commenter #98 states, "In order to protect the mentally ill, of which our son is one, we urge you to retain the present regulations and prevent slashing of funds."

Response: The Department appreciates the comment and thanks the commenter for his/her support.

17. Comment: Commenter #114 encourages the use of MHSA funding for peer support programs and provides some examples of programs that have apparently been successful in utilizing peer support and self-help. The commenter also raises the concern that some adult outpatient programs which appear to be medical model programs, apparently do not utilize peer supports.

Response: The Department appreciates the comment. The Department agrees that peer support and self-help programs may be beneficial to client recovery. There is nothing in these regulations precluding the use of MHSA funding for

peer support programs. In fact, Sections 3620 (a)(1)(A)(ii) and 3630 (b)(1)(B) both identify peer support as elements of the Full Service Partnership and the General System Development Service Categories. In other words, peer support is a recognized mental health service and support and as such, can be paid for using Mental Health Services Act dollars.

18. Comment: Commenter #119 states "we should keep this proposition going and I'm in support with it to the fullest".

Response: The Department appreciates the comment and thanks the commenter for his/her support.

19. Comment: Commenter #125 states "The President of the United States today should involve the community of capital to address more system on the mental health issues through the planning commission, a major city planner on our behalf. The level of development of these activities should be more expressed to the President's proposal on the tables."

Response: The Department appreciates the comment. The comment, however, is beyond the scope of these regulations.

20. Comment: Commenter #81 states "Persons with a mental illness are best served in a system of care that supports and acknowledges the role of the family, including parents….It is clear from the context that family and parents are not restricted to those related to mentally ill persons under age 18. It is important that the regulations acknowledge the role of families in giving information about their relative's illness and in decision making."

Response: The Department appreciates the comment. Oftentimes, input from family members can be beneficial to the recovery of a mentally ill client and nothing in these regulations prohibits such input. However, when dealing with adult clients there are other laws that the mental health system must follow related to the care and treatment of the adult client. See Response to Comments #15 and #28.

21. Comment: Commenter #126/Exhibit 23 states "…encourage family participation by adding a definition and by adding a standard section entitled "Family Participation." A proposed definition of "Family Participation" was also included in Exhibit 23.

Response: The Department appreciates the comment. See Response to Comments #15 and #28.

22. Comment: Commenter #126/Exhibit #23 states: "…editorial correction should be made in Section 3200.080 and many other sections. The phrase 'et. seq.' should be written 'et seq.' with no period after 'et'". "…section 3640(b)(4)(C) should be amended to read 'Those <u>who</u>…' rather than 'Those that'…"

Response: The Department appreciates the comments and the corrections have been made.

Section 3200.050

23. Comment: Commenter #126/Exhibit #23 states: "the definitions of 'Client,' 'Client Driven,' and 'Family Driven' in sections 3200.040, 3200.050, and 3200.120 are inconsistent with law giving parents, guardians, and conservators decision-making authority.. 'Client' is defined to be an individual 'of any age'." This definition includes minors. The definition of 'Client Driven' provides that 'the client has the primary decision-making role'…" Taken together, these definitions give minors and other persons who do not have legal decision-making authority, the primary role in deciding what services and supports are appropriate for themselves. In addition, the definition of 'Family Driven' fails to include guardians and conservators. These provisions must be amended to be consistent with the law and to take into account the legal status of individual clients, while at the same time preserving the emphasis on client driven services. Otherwise, the regulations will be inconsistent with the purposes of the MHSA and will fail to meet the consistency, necessity, and clarity standards of Government Code section 11349.1(a)."

Response: The Department appreciates the comments. In the context of these regulations anyone, regardless of age, who is receiving or has received mental health services, is a client. In determining the services, supports and goals of the client, one must look at the legal status of that client. If the client is an adult the services and supports are "client driven", that is the client has the primary decision-making role. If the client is under conservatorship, the final decision-making authority rests with the conservator, however the client should participate in this process to the extent he/she is able. Conversely, if the client is a child, defined as birth through 17, then the decision-making role for determining which services and supports would be most helpful and effective for the child rests with the family. As previously stated, participation in the decision-making process for an adult client can include whomever the client chooses to involve. See Response to Comment #25-27.

Section 3200.100

24. Comment: Commenter #26 indicated strong support for the definition of "Cultural Competence".

Response: The Department appreciates the comment and thanks the commenter for his/her support.

Section 3200.120

The Department received numerous comments regarding the term and definition for "Family Driven". The comments vary somewhat on the specifics. In order to capture the essence of the comments, the Department is including all of the variations related to the issue. A single Department response is provided that encompasses all of the comments.

25. Comment: Commenters #22, 23, 28, 46, 83, 103, 118/Exhibits 15A-H and 126/Exhibit 23 state the definition of "Family Driven" does not recognize many families as caregivers for adult clients whether or not the caregivers have any formal legal standing and propose that the definition of "Family Driven" be amended to include guardians and conservators.

26. Comment: Commenter #24 states "consider that 'caregiver, caregiver collaboration and family driven' should include legal guardians and conservators who often have final responsibility in decision making, and those families of adults and older adults need to be recognized."

27. Comment: Commenter #40 requests "that the regulations are amended to include in the definition of 'Family Driven' to include parents of adult children and their conservators."

Response: The Department appreciates the comments. The use of the term "Family Driven" in these regulations is specific to the role of the families of children and youth with serious emotional disturbance as the primary decision-maker for their care. In the context of these regulations anyone, regardless of age, who is receiving or has received mental health services, is a client. In determining the services, supports and goals of the client, one must look at the legal status of that client. If the client is an adult the services and supports are "client driven", that is the client has the primary decision-making role. If the client is under conservatorship the final decision-making authority rests with the conservator, however the client should participate in this process to the extent he/she is able. Conversely, if the client is a child, defined as birth through 17, then the decision-making role for determining which services and supports would be most helpful and effective for the child rests with the family. As previously stated, participation in the decision-making process for an adult client can include whomever the client chooses to involve. See Response to Comment #28.

28. Comment: Commenter #88 states "Section 3200.120 Family Driven. This section decrees that the input of families as the factor for planning, policies, procedures, service delivery, evaluation and the definition and determination of outcomes. This section refers only to families of minor children. It should also apply to families of adults as well."

Response: The Department appreciates the comments. Family participation is encouraged within the context of these regulations. The General Standards, Section 3320, sets forth the standards that are to apply to all programs and/or

services provided with MHSA funds. Included in these standards are community collaboration and integrated service experience. Both of these definitions specifically include reference to clients' families who are receiving services. The inclusion of "families" into these definitions recognizes the important role of the family by referencing the need to ensure that the families are given appropriate services to assist in the recovery and delivery of services and supports to the mental health client.

The Department acknowledges the difficulty for those who have adult family members with a mental illness and their inability to be intimately involved in decision-making for the services and supports provided to the client, as well as the goals identified by the client. Under the law, adult clients are presumed to have the capacity and right to make decisions about their care. There are legal avenues that can be pursued when it is necessary to remove or restrict the adult clients' ability to make decisions about their care. These remedies are beyond the scope of these regulations.

All children, defined as aged 0-through 17, are legally protected under the provisions of law. Parents and/or court-appointed legal guardians are charged with the responsibility and given the authority to make decisions regarding their minor child's care as long as such decisions are is in the best interest of the child. Therefore, there does not appear to be a necessity to encourage family participation, through regulations, for this population. Children who have been emancipated are, of course, excluded from this protection as they are to be considered adults for all decision-making purposes.

Section 3200.230

29. Comment: Commenter #82 states that "DMH's definition of 'Older Adults' is not compatible with fair housing laws concerning seniors….We recommend that DMH qualify the definition of 'Older Adults' as it pertains to housing."

Response: The Department appreciates the comment. These regulations define an "Older Adult" specifically for the purpose of accessing mental health services and supports under the Mental Health Services Act. Likewise, how "Older Adult" is defined under fair housing law or any other rules, laws, or regulations is intended to apply only to the programs and/or activities within the scope of said rules, laws and regulations.

Section 3200.280

30. Comment: Commenter #82 states that "DMH's definition of 'Transition Age Youth' is not compatible with fair housing laws…Therefore, we recommend that DMH make the age limitations of 'Transition Age Youth' consistent with the 'Homeless Youth' age limitations."

Response: The Department appreciates the comment. The definition of a Transition Age Youth is specified in Welfare and Institutions Code Section 5847 (c) as 16 years to 25 years of age. As this population is clearly defined in the law the Department has no authority to change the definition.

Section 3200.300

31. Comment: Commenter #26 recommends "significant changes to Section 3200.300 'Underserved' and proposes that the definition be changed to state: 'Underserved' means people from racial and ethnic communities, as well as people from the lesbian/gay/bisexual/transgender/intersex (LGBTI) community." These communities have a demonstrated history of disparities in access to and utilization of appropriate mental health services….The proposed language is so broad, it essentially states that any youth with SED, any adult consumer, or families of these who don't have optimal services are 'underserved'. That is the vast majority of people already connected with the system in any way. However, it interestingly leaves out people who may have serious mental health needs but are not yet diagnosed."

Response: The Department appreciates the comment. The definition of "Underserved" is intentionally broad in order to be inclusive of any population receiving mental health services and supports, but that is not receiving the level of or appropriate services and supports necessary to support recovery, wellness and/or resilience. The reference the commenter makes to the language "ethnic/racial, cultural and linguistic populations" are provided as examples of some of the populations that historically have been underserved. This is not, nor is it intended to be an all-inclusive list. The commenter is correct; this definition "leaves out people who may have serious mental health needs but are not yet diagnosed." This population is considered "Unserved" and a definition for this category is provided in section 3200.310.

Section 3320(a)(6)

32. Comment: Commenter #126/Exhibit 23 states "in section 3320(a)(6) the counties are required to adopt a general standard that is not defined. Without a definition this standard is unclear and fails the clarity standard of Government Code section 1349.1(a)."

Response: The Department appreciates the comment. Regulation 3320(a)(6) states: "Integrated Service Experiences for clients and their families, as defined in Section 3200.190. (Emphasis added) Section 3200.190 defines "Integrated Service Experience as "the client, and when appropriate the client's family, accesses a full range of services provided by multiple agencies, programs and funding sources in a comprehensive and coordinated manner." The Department is, therefore, unclear as to the commenter's objection.

Section 3350

33. Comment: Commenter #104/Exhibit 1 states that "Current Regulations language outlines conditions under which the County or the Department may initiate MHSA Performance contract amendments with no mention of review or comment by the OAC. Language should be amended to include review and comment by the OAC …."

Response: The Department appreciates the comments. The Welfare and Institutions Code (WIC) Section 5847 provides authority for the OAC to review and comment on the Three-Year Program and Expenditure Plan and/or annual update related to Community Services and Supports. The Department has responsibility to review and subsequently approve the county's Three-Year Program and Expenditure Plan and/or annual update related to Community Services and Supports. Through this process, the OAC does, in effect, have input into MHSA Performance Contract amendments in that the OAC reviews and provides comment on the county's Three-Year Program and Expenditure Plan and/or annual update which is the basis for the MHSA Performance Contract and amendments.

Additionally, WIC Section 5845 states that the OAC is established to oversee Parts 3 (Adult and Older Adults), 3.1 (Human Resources, Education, and Training Programs), 3.2 (Innovative Programs), 3.6 (Prevention and Early Intervention Programs), and 4 (Children's Programs) of the Mental Health Services Act. This provision specifies that if the OAC identifies a critical issue related to the performance of a county mental health program, it may refer the issue to the State. Further, WIC Section 5846 states that the OAC shall annually review and approve each county mental health program for expenditures, but limits this review and approval to the categories of Innovative Programs and Prevention and Early Intervention.

These regulations are intended to address requirements that apply to all the components of the MHSA. As the role of the OAC is different for the components of Innovative Programs and Prevention and Early Intervention, when regulations for these components are developed, the regulatory language will be modified to reflect the role of the OAC.

Section 3360

34. Comment: Commenter #104/Exhibit 1 states that "language should be amended to include review and comment by the OAC prior to the department approving such alternative practices, programs, services, procedures, and/or demonstration projects, and in the areas of prevention, early intervention, and innovation, the OAC should be given the written approval or cosigning authority in granting written approval."

Response: The Department appreciates the comments. The section regarding program flexibility is intended to allow the county flexibility in implementing and

maintaining programs and/or services in order to meet individual county needs. The program flexibility can only be granted to the county for alternatives that continue to meet the intent of the law and comply with applicable regulations. Additionally, the county must obtain written approval from the Department prior to implementing the alternative. The current regulations do not apply to Prevention, Early Intervention and Innovation. As regulations for these components are developed, the Department anticipates that it will be necessary to amend existing regulations or exempt particular components from a specific regulation. See Response to Comment #33.

Section 3360(a)

35. Comment: Commenter #82 states that "Section 3360 (a) concerning program flexibility…should be revised to include housing.

Response: The Department appreciates the comment. The Program Flexibility regulations are intended to allow the county to fund demonstration projects and other programs, services and/or supports as long as the "intent" of the Mental Health Services Act is met. Housing is already recognized as an acceptable use of MHSA funds with the Full Service Partnership and Outreach and Engagement service categories where housing/shelter is identified as a service/support. Regulations specific to the use of MHSA for housing projects will be developed in the near future.

Section 3400 (b)(1)

36. Comment: Commenter #89 states support "for the following regulations Section 3400(b)(1)…"

Response: The Department appreciates the comment and thanks the commenter for his/her support.

37. Comment: Commenter #82 states "3400 (b)(1) concerning programs to be financed with MHSA funds should be revised to include housing".

Response: See Response to Comment #35.
Section 3400(b)(2)

38. Comment: Commenters #6, 7(Supports current language. Attachments opposed earlier language that has been revised), 10, 11, 13, 14, 17, 18, 19, 20, 22, 23, 24, 25, 27*, 28, 30, 31, 32, 35, 37, 39, 40, 42, 44, 46, 80, 81, 83, 84, 86, 89, 91, 93, 94, 95, 96, 97, 100 (consists of form letters from four individuals), 102 (consists of form letters from 12 individuals), 103 (consists of form letters from 155 individuals) 118/Exhibit 15A-H, and #126/Exhibit 23, (In testimony, many commenters indicated support for Section 3400(a)(2)- as there is no (a)(2), and evidenced by the comments, the Department assumes the support is for 3400(b)(2)) support this regulation allowing for participation

in programs and services, provided with MHSA funds, to individuals whose participation may be other than voluntary. Supporting comments include support for the language as proposed as the emphasis is on voluntary services while recognizing that an individual's legal status is not a basis for denying services. Many of the commenters, including the parents of the young woman for whom "Laura's Law" is named, cite this regulation as a way to fund Laura's Law. (Note: Laura's Law became effective with the passage of AB 1421 in 2004 and allows for court-ordered outpatient commitment of mental health clients who refuse voluntary treatment, provided specified requirements are met.)

Response: The Department appreciates the comments and thanks the commenters for their support.

The Department agrees that, under certain circumstances, MHSA funds may be used to fund programs that serve some individuals under AB 1421 (Laura's Law), that authorizes court-ordered outpatient commitment of mental health clients who refuse voluntary treatment. Enforcement of Laura's Law can only take place in counties that choose to enact outpatient commitment programs. Because AB 1421 did not include state funds for implementation, the decision to participate and fund the program was and continues to be up to the individual county. Eligible programs that offer AB 1421 services may be funded under the MHSA, provided the program is designed for voluntary participation and the requirements of Welfare and Institutions Code section 5345 et seq. are met.

***Although Commenter #27 asks that we not alter the final regulations, the commenter stated "…in Proposition 63 there is no mention of the words 'voluntary' or 'involuntary'. To now restrict funding to only voluntary programs would be to corrupt the intent of Proposition 63 and deny treatment to individuals who may be most in need of service."**

The following commenters oppose the use of MHSA funds for any type of programs and/or services that are not voluntary. Below are excerpts from written/oral testimony:

39. Comment: Commenter #1 states "Involuntary treatment is inconsistent with a recovery-based approach and **involuntary** is the antithesis of a client-driven approach."

Response: The Department appreciates the comment. Involuntary services are not prohibited by the language nor by the intent of the MHSA. Rather, the Department's policy regarding voluntariness of services under the MHSA is supported by the intent of the Act as well as by the plain language of the statutory scheme incorporated by reference into the Act. WIC Section 5840 of the MHSA requires DMH to "establish a program designed to prevent mental illness from becoming severe and disabling." (WIC Section 5840(a)) The intent of the MHSA is to increase programs and services for those in need. For that to occur, a full range of efficacious services should be available.

The MHSA contains provisions that acknowledge that some of the services it can fund may not be fully voluntary. For example, WIC Section 5847 of the Act imposes certain requirements on plans "for proposed facilities with restricted settings," clearly contemplating MHSA funding for facilities providing involuntary services. However, the law recognizes that there are times when involuntary treatment is necessary. WIC Section 5801(b)(5) states: "The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment."

The need for hospitalization is a decision made by licensed professionals. It is the Department's intent as well as that of individual county's to reduce hospitalization. However, one cannot rule out medical necessity. The definition of "Client Driven" states that the client has the "primary" decision-making role, not the "sole" decision-making role in identifying his/her needs, etc. and a "shared" decision-making role in determining the services and supports that are most effective.

"Involuntary treatment" is not inconsistent with a recovery-based approach to treatment. The premise for recovery-based is not predicated on the legal status of the client, be it voluntary or involuntary, but rather on the provision of the services that are to be based on a recovery-based model.

40. Comment: Commenter #9 states "The services that the MHSA are based on, AB 34/2034 services, are designed to be voluntary. Service standards for MHSA services require voluntary enrollment. Clearly, WIC 5600 services, upon which the MHSA is based, are designed to be voluntary. Section 3400(b)(2), requires that programs and services paid for with MHSA funds must be designed for voluntary participation. Section 3400(b)(2) was modeled after the wording of the DMH *Community Services and Supports Three-Year Program and Expenditure Plan Requirements* of August 2005, which stated: 'Programs funded under the Mental Health Services Act must be voluntary in nature.' Moreover, an intended outcome for the MHSA stated in DMH's *CSS Requirements* is '[r]eduction in involuntary services, reduction in institutionalization, and reduction in out-of-home placements'. The permitted use of involuntary treatment will destroy the consensus of the mental health stakeholders that created and promoted the MHSA."

Response: The Department appreciates the comment. Involuntary services are not prohibited by the language nor by the intent of the MHSA. WIC Section 5840 of the MHSA requires DMH to "establish a program designed to prevent mental illness from becoming severe and disabling." (WIC Section 5840(a)) The intent of the MHSA is to increase programs and services for those in need. For that to occur, a full range of efficacious services should be available.

The Act specifically references and incorporates a number of statutes, which, in turn, authorize, require or permit various forms of involuntary treatment, services and/or programs. Such code sections include: (1) the Adult and Older Adult

System of Care; (2) the Bronzan-McCorquodale Act; (3) the Mentally Ill Crime Reduction Grant programs; and (4) the Children's System of Care Act. WIC Section 5813.5 directs the Department to distribute funds "for the provision of services under sections 5801, 5803 and 5806 to county mental health programs." This section requires the use of MHSA funds to be "in accordance with the system of care for adults and seniors who meet the eligibility criteria in subdivisions (b) and (c) of WIC Section 5600.3."

WIC Section 5801(b)(5) states: "The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment." WIC Section 5806(a)(2) permits MHSA funding for "[o]utreach to adults . . . involuntarily hospitalized as a result of severe mental illness." Accordingly, involuntary treatment under the adult and older adult systems of care can be provided on a temporary basis, if the individual is a danger to self or others, or is gravely disabled.

WIC Section 5600.3, incorporated into the MHSA through section 5840(c), permits funding for the treatment of adults and older adults "who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality, or violence." WIC Section 5600.3(b)(2) refers to children who have "already been removed from the home", an involuntary situation. WIC Section 5600.3(b)(4)(B) refers to adults in state hospitals, "[p]ersons arrested or convicted of crimes" and persons "who require or are at risk of requiring acute psychiatric inpatient care, residential treatment or outpatient crisis intervention". WIC Section 5878(b) permits funding of involuntary treatment of minors with the consent of a parent or legal guardian.

The MHSA contains provisions that acknowledge that some of the services it can fund may not be fully voluntary. For example, WIC Section 5847(a)(5) of the Act imposes certain requirements on plans "for proposed facilities with restrictive settings", clearly contemplating MHSA funding for facilities providing involuntary services. Also, WIC Section 5813.5(f) authorizes the use of MHSA funds "to provide services similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program".

It is the Department's intent to allow individuals, regardless of their legal status, be it voluntary or involuntary, access to mental health programs. It is the design of the program that is to be structured for voluntary participation. As the original regulation was not clear on this point, the Department amended the regulation for the purpose of clarifying this policy.

41. Comment: Commenter #12 states "I oppose any use of the Mental Health Services Act Funds for involuntary mental health services using MHSA funds."

Response: The Department appreciates the comment. As no details for the opposition are provided, the Department is unable to respond.

42. Comment: Commenter #15 states "…as a mental health clients (sic) who are recovering and have worked hard for the recovery of others are appalled that you want to use funds we have worked hard for, for inappropriate funding for forced treatment."

Response: The Department appreciates the comment. As stated above, the Mental Health Services Act allows for involuntary treatment. See Response to Comment #40.

43. Comment: Commenter #21 states "Many promises have been made to mental health consumers, family members, and the communities at large that resources would go to voluntary community based services and it is imperative that the Department of Mental Health demonstrate leadership by developing regulations that promote the intent of the act."

Response: The Department appreciates the comment. The Department's regulation stating that programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status is supported by the intent of the Act. See Response to Comment #40.

44. Comment: Commenter #29 states "The proposal to use MHSA money to fund involuntary treatment is nothing more than a raid on MHSA funds….In the past I was hospitalized involuntarily and it was a waste of money because it was ineffective and a betrayal of trust."

Response: The Department appreciates the comment. It is the hope of the Department that through MHSA, programs and services can offer earlier intervention thus alleviating the need for involuntary hospitalization. However, as stated above, the Mental Health Services Act allows for involuntary treatment. See Response to Comment #40.

45. Comment: Commenter #41 states "…the MHSA is supposed (sic) to be for voluntary services only, per draft provisions as written in the initiative. I am opposed to ILLEGAL or other diversion of MHSA funding to involuntary services."

Response: The Department appreciates the comment. Draft versions of the Act are not in effect. Rather, it is the language of the Act as passed by the voters that is the law. The Department's regulations stating that programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status is supported by the intent of the Act. See Response to Comment # 40.

46. Comment: Commenter #43 acknowledges that the purpose of the regulation, as explained in the DMH statement of reasons, is consistent with the MHSA…services under the MHSA must be voluntary, and involuntary status should not affect voluntary receipt of services that are provided within the scope authorized by the MHSA. The commenter thanks DMH for proposing a regulation on this subject. However, the commenter states "The regulation needs to be clearer still. The language …is not clear enough because it refers to the design of the services rather than to the recipient of the services. It also refers to 'participation' without explaining what is meant by participation."

"The regulation must be clear enough to avoid the scenario in which an individual is told, 'We designed this service to be voluntary, but you are now refusing to participate, so we will now require you to receive the services that we have designed on an involuntary basis'."

"PAI proposes that the following sentence be added to the regulation in order to clarify that MHSA participants must volunteer for MHSA services: 'The client shall be fully informed [or give informed consent to] and volunteer for all services provided'."

Response: The Department appreciates the comment. Individuals with an involuntary legal status may be required to participate in MHSA-funded programs on an involuntary basis. The scenario that you provide assumes that the service provider would be the one making the decision as to the individual's involuntary participation. However, the regulation clearly states it is the individual's "involuntary legal status" that is the determining factor of participation. The word "participate" encompasses the inclusion of all individuals in the program regardless of how they are included. "Participate" is subjective in that it may be mere program attendance for some, while for others it may be a more intense level of commitment.

47. Comment: Commenter #47, 48, 49, 53 and 55 state that "MHSA was intended to fund voluntary treatment not forced."

Response: The Department appreciates the comment. The Department's regulations stating that programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status is supported by the intent of the Act. See Response to Comment #40.

48. Comment: Commenter #59 states "Sometimes forced treatment is warranted for the 'safety of self and others' but—don't use MHSA funds for this—try another route – This Act was not intended for this purpose."

Response: The Department appreciates the comment. The commenter is correct, sometimes "forced" treatment is warranted" and is evidenced by WIC Section 5801(b)(5) that states "the client should be fully informed and volunteer for all

treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment." (Emphasis added) The Department's regulation stating that programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status is supported by the intent of the Act. See Response to Comment #40.

49. Comment: Commenter #82 states "What does "legal status" in Section 3400(B) (sic) (2) mean?

Response: The Department appreciates the comment. Legal status refers to whether an individual is restricted in any way by any law because of his/her mental illness. Examples of individuals with an involuntary legal status are those under conservatorship, individuals subject to hospitalization pursuant to WIC Section 5150 et seq. and individuals found incompetent to stand trial.

50. Comment: Commenter #101 (consists of form letters from 109 individuals) states "We know that California's mental health system will only achieve true transformation with a commitment to voluntary, client-directed services which value and promote choice."

Response: The Department appreciates the comment. The Department's policy regarding voluntariness of services effectively and accurately carries out the intent of the MHSA, and is supported by the language of the Act and other applicable law. Neither the MHSA nor the Department's regulations alter the law regarding short-term involuntary hospitalization. However, the Department recognizes that in limited cases short-term hospitalization is required by law and is part of the mental health services provided to a client. MHSA programs are intended to be transformational and must be consistent with the principles and standards of the Act and the regulations, namely client-driven and family-driven services; programs that provide an integrated service experience; cultural competence; wellness, recovery and resilience; and community collaboration. Accordingly, hospitalization is limited to short term acute treatment and long-term institutionalization is prohibited with MHSA funding.

These regulations are a by-product of the law and are intended to promote the principles of an integrated recovery based system. The development of the regulations, policies and procedures are the result of collaboration between the Department and the stakeholders. Throughout this process the Department was conscious of the need to consider stakeholders input and not jeopardize the level of trust that has developed over the years. See Response to Comment #40.

Section 3410

51. Comment: Commenter #5 supports Section 3410 as proposed, and states"…it will accurately implement the non-supplant provisions of Welfare and Institutions Code section 5891."

Response: The Department appreciates the comment and thanks the commenter for his/her support.

The following commenters oppose the non-supplant language in the current regulations. Below are excerpts/summaries from written/oral testimony:

52. Comment: Commenters #1, 16, 29, 33, 34, 87, and 101 state that the law already requires that it is each county's responsibility to pay for mental health inpatient hospitalization for persons meeting the WIC Sections 5150 and 5250 criteria. Additionally, the MHSA was set up to fund new programs, not to subsidize services already in place therefore to pay for mental health inpatient hospitalization with MHSA funds constitutes supplantation.

Response: The Department appreciates the comments. It is correct that each county is responsible for providing mental health inpatient care for persons meeting the WIC Section 5150 or 5250 criteria. However, while the counties are responsible for the provision of this type of care the law does not contain a provision for specific funds to provide this care. Counties try to find sufficient Realignment funds to cover the costs of providing this care, but often fall short. There is nothing in the MHSA or in any other statute that bars the counties from fulfilling the responsibility of providing this care using any available source of funds. However, regulation Section 3620 (k) limits the use of MHSA funds for acute inpatient care to those clients in a Full Service Partnership and then only when the client is uninsured for this service or there are no other funds available for this purpose and the services provided are consistent with the requirements of the Act and the Department's regulations. See Response to Comment #69.

Regulation Section 3620(k) is amended in response to public comments. See Section 3620(k) for amendment rationale.

53. Comment: Commenter #43 states that the "MHSA's intent is to provide new and expanded services over and above the level of service provided at the time of the MHSA's enactment." The commenter further proposes that the Department's regulations be designed to carry out the purposes of MHSA in that they only require expansion of mental health services of the type authorized by MHSA. The unlawful impact of the regulations is to relieve the counties from the additional maintenance of effort requirements contained in the MHSA.

"The regulations would perpetuate inequities if counties are allowed to reduce mental health funds to the minimum levels provided for under the realignment system. The realignment allocation formulae are based on historical funding levels, not on the need for mental health services. The realignment allocations tend to provide more money to

counties that have historically provided mental health services. Counties that have not increased mental health spending in recent years using county funds would be able to reduce mental health services overall even with receipt of MHSA funding. The addition of MHSA funds will not be sufficient to serve the same number of people who were formerly being served."

"The devastating effect of the definition of maintenance of effort and non-supplant proposed by the Department's regulations is demonstrated by the Santa Clara County budget cut proposal. Santa Clara is proposing to cut $34 million in county funds, add $14 million in MHSA funds, and call it an expansion. There have been similar budget cuts in other counties; and, additional counties are proposing budget cuts. The Department should not make MHSA funds available to counties that are not maintaining mental health services at the level funded on November 2, 2004. It should provide MHSA funding only to counties that actually expand mental health services."

"Section 3410(b) proceeds to prohibit supplantation by the counties, but provides exceptions that obliterate the rule: 1) the ten percent of Realignment funds that the county may reallocate by transferring in or out of its mental health account; and 2) county funds exceeding the amount required to be deposited into the mental health account in Fiscal Year 2004-05. But, the MHSA contains no such exceptions."

Response: Section 3410, Non-Supplant, requires that "Funds distributed under this Chapter <u>shall not</u> be used to provide mental health programs and/or services that were in existence on November 2, 2004, except to" expand mental health services and/or program capacity. (Emphasis added) Regulations further provide that the amount of funds expended by the county during Fiscal Year 2004/05 on any mental health programs and/or services/supports that were in existence on November 2, 2004 must be maintained at the same expenditure level. MHSA funds can only be used for an existing program and/or service/support if the county exceeds the amount of funds used for a program and/or service/support beyond what was spent in FY 2004/05. This means that if a county, in this case, Santa Clara, reduces their funding level for a particular program and/or service/support, below that of FY 2004/05, MHSA money cannot be used to replace the deficit. At such time as the county attains the expenditure level of FY 2004/05, MHSA money can then be used for program and/or service/support enhancement beyond that level. Although the regulations refer to exceptions to this limitation, the exceptions merely acknowledge existing practice and/or law. However, if the county invokes the "exception provisions", the county is subject to Section 3410(a).

54. Comment: Commenter #90 states that "as proposed, the regulations illegally undercut the MHSA's goal of expanding mental health services and supports, and preventing supplantation of existing state and county funds with MSHA dollars. 3410(b) limits the MHSA's maintenance of effort and non-supplant effect by excepting two broad categories of existing funds for mental health services and supports: 10 percent of Realignment funds and funds exceeding the amount required to be deposited into the

mental health account as of Fiscal Year 2004-05. The DMH justification for the exception is to 'avoid conflict with other state statute (WIC Section 17600.20).' But the proposed regulation does not 'avoid conflict;' rather, it effectively repeals a major provision of the MHSA. In fact, there is not conflict with another state statute. Under the clear terms of the MHSA, counties that reduce mental health funds below the benchmark existing spending are prohibited from receiving MHSA funds. The impact of the DMH proposed regulation is to lower the benchmark spending threshold required by the MHSA by as much as $250 million statewide. It creates the likelihood that a county could receive MHSA funding even while cutting spending to produce an overall reduction in mental health services and supports (e.g., Santa Clara County). Commenter cites *County of San Diego v. State*, 15 Cal. 4th 68, 100 (1997), and recommends striking the exceptions to supplant."

Response: The Department appreciates the comment. See Response to Comment #53.

55. Comment: Commenter #104 proposes amendments to Section 3410. Current regulation language outlines exemptions to MHSA non-supplant language which states MHSA funds are not to be used to provide mental health programs or services that were in existence on November 2, 2004. These exemptions should be removed from the regulation language."

"Additional language should be added, more clearly defining exemptions for county relative to commitments of effort. The language should address the following: Counties must maintain the same funding levels that were in existence on November 2, 2004, including the county general fund amounts for mental health services program. Programs and services funded with MHSA dollars must add to the system capacity which existed within a given county on November 2, 2004, in keeping with the intent of the MHSA."

Response: The Department appreciates the comment. See Response to Comment #53.

56. Comment: Commenter #109 states that the "regulations are drafted so that counties can cut back to realignment, plus 10 percent county match funding, except MHSA funding, claiming that there's an expansion of services. Santa Clara County is going to propose a cutback of $34 million in county mental health funds, except $14 million in MHSA funds claiming that that's an expansion. But that simply is not an expansion by any ordinary definition of the word."

Response: The Department appreciates the comment. See Response to Comment #53.

57. Comment: Comment #111/Exhibit 8 states: "that services provided with MHSA funds must not supplant existing services."

Response: The Department appreciates the comment. Section 3410, Non-Supplant of the regulations support the commenter's statement.

58. Comment: Commenter #112 states: "I am also a client struggling within our (sic) county for these funds to be used appropriately, and not for services that are already provided from different revenue streams."

Response: The Department appreciates the comment. The commenter failed to provide specifics. The Department can, therefore, only reiterate the statutory and regulatory prohibition against using Mental Health Services Act (MHSA) funds to provide mental health programs and/or services that were in existence on November 2, 2004. The county can only use MHSA funds for those programs that were in existence on November 2, 2004, if the services and/or program capacity are expanded from what was previously provided. If this requirement is not met, the county is in violation of the non-supplant provision. The county is required to submit to the Department a Three-Year Program and Expenditure Plan. The Plan must include a justification for any program and/or service that was in existence on November 2, 2004 for which the county wants to use MHSA funds. This justification must show the additional services and/or supports that will be offered and/or the capacity increase that will be funded with MHSA funds. The Department is responsible for reviewing the Three-Year Program and Expenditure Plan to ensure the county's compliance with all statutory and regulatory provisions. See Response to Comment #3.

Section 3410 (d)

59. Comment: Commenter #82 states "Section 3410 (d) prohibits counties from loaning MHSA funds. This provision should be revised to permit counties to either loan or grant MHSA funds."

Response: The Department appreciates the comment. The Department is taking this issue under consideration. It appears the concern is related to the issue of housing. Regulations specifically addressing the use of MHSA money for housing will be developed in the near future.

Section 3500(d)

60. Comment: Commenter #82 states: "What is meant by 'bridge funding' in Section 3500(d)?"

Response: Bridge Funding is defined in Section 3200.020 as "funding that the County used which enabled the County to continue to provide services/programs from the date the funding for the program(s) or a portion of the program(s) specified below ended, until the County's initial Community Services and

Supports component of the County's Three-Year Program and Expenditure Plan was approved and Mental Health Services Act funds became available. The use of bridge funding is limited to the following programs:

(1) The Children's System of Care Services.
(2) Integrated Services for the Homeless Mentally Ill.
(3) The Mentally Ill Offender Crime Reduction Act."

This concession for the use of county funds was necessary to ensure the continuity of services and/or supports to clients for those services and/or supports that were facing elimination due to lack of funds. By allowing "bridge funding", the county was able to continue to support these services/supports until such time as the county's Three-Year Program and Expenditure Plan was approved by the Department and thereby allowing the use of MHSA funds.

Bridge funding will be repealed in a future package as the county's ability to use "bridge funding" is limited to specific circumstances; that is, continuation of programs that were facing elimination due to lack of funds and only until the county's Three-Year Program and Expenditure Plan is approved.

Section 3610 (c)

61. Comment: Commenter #104/Exhibit 1 states that "the provision allowing counties to provide substantial evidence when it is not feasible to establish a wrap-around program should be eliminated or more clearly defined with input from the OAC."

Response: The Department appreciates the comment. This particular language is contained in the Mental Health Services Act under WIC Section 5847 (a)(2). The specific language of the law states:

> **"The plan and update shall include all of the following:**
>
> *** * ***
>
> **(2) A program for services to children in accordance with Part 4 to include a program pursuant to Chapter 6 of Part 4 of Division 9 commencing with Section 18250 or provide substantial evidence that it is not feasible to establish a wrap-around program in that county." (Emphasis added)**
>
> **This requirement of the law is reflected in the proposed regulations in Section 3610(c) and any change to this requirement would require a statutory change. Section 3610(c) of the regulations carries out this mandate by requiring that the county incorporate a wrap-around program as defined in Welfare and Institutions Code (WIC) Section 18250 for children and youth into the mental health programs and/or services that are funded through the Community Services and Supports component of the**

Mental Health Services Act or provide evidence that such a program is not feasible. This regulation enables the Department to recognize that some counties, particular the smaller ones, may not be able to provide these specific wrap-around services due to a variety of local circumstances that include the lack of support within the county social services department, the lack of critical infrastructure to accommodate this program, the choice to provide similar community based services with stronger evidence of outcomes, or because the need for this type of service does not currently exist. The regulation does require that the Department be provided with evidence showing that the provision of wrap-around services as defined by Chapter 6 of Part 4 of Division 9 commencing with WIC Section 18250. is not feasible. This evidence will be reviewed to determine if in fact, program implementation and maintenance would not be a feasible approach for the particular county.

As stated above, the proposed regulation is carrying out the statutory mandate. Any regulatory amendment would require a statutory change to provide the necessary authority for the amendment. Should the Department contemplate any change to the regulation, input will be solicited from the OAC and the stakeholders.

Section 3615

62. Comment: Commenter #89 "supports Section 3615 a, (a)(1)-(a)(3)."

Response: The Department appreciates the comment and thanks the commenter for his/her support.

Section 3620(a)

63. Comment: Commenter #89 "supports this regulation."

Response: The Department appreciates the comment and thanks the commenter for his/her support.

Section 3620(k)

The Department has amended this regulation to read as follows:

"Notwithstanding Section 3400(b)(2), the County may pay for short term acute inpatient treatment for clients in Full Service Partnerships when the client in uninsured for this service or there are no other funds available for this purpose."

Two significant changes were made to this regulation:

1. The Department removed the 30-day payment limitation from this regulation as there was confusion as to what the 30 days was referring to -- was it 30 days per episode, 30 days per year, etc.? In order to meet the clarity requirement, this reference has been removed. Some stakeholders assumed that the 30 days represented the length of time that one could be hospitalized as opposed to the regulation being about the "funding" of necessary acute inpatient services. The determination of whether a client needs acute inpatient services (including 5150), is not made by the Department. This decision rests solely with the mental health professional based on established criteria contained in current law.

2. The word "services" is being replaced by the word "treatment". The word "services" is subject to broad interpretation as it can encompasses any care that a client is receiving beyond that considered acute, including "administrative" days. "Treatment" provides the necessary clarity that the client must be actively receiving care that addresses and alleviates the crisis. The MHSA funding is limited specifically to this crisis treatment and any other care provided in the acute setting will have to be funded through another source. This is consistent with the MHSA in that only services/supports to the mental health client can be funded.

In the public comments that follow, the issue of the 30-day stay is not being addressed individually. The above explanation is relevant to all of the comments.

The following Commenters are in <u>support</u> of this regulation. Below are excerpts from written/oral testimony:

64. Comment: Commenters #11, 13, 14, 17, 18, 19, 20, 22, 23, and 25 state …"These regulations preserve the option for the counties to provide a full continuum of necessary services for consumers enrolled in Full Service Partnership (FSP), including inpatient and court-ordered community services."

65. Comment: Commenters #28, 31, 32, 36, 39, 40, 42, 45, 83, and 84 state in part: "…support the use of MHSA funds for this purpose" but would like additional requirements such as: if hospitalization is necessary, assurance to include those with the greatest need, maintain treatment options, and the addition of appropriate safeguards. Commenters #46, 80, 81, 88 – "We applaud the decision…however, recommend that as a condition for MHSA funds being used for these short term hospital stays, that active involvement of the FSP staff in treatment goals and discharge planning be required." Commenters #86, 89, 93, 95, 96, 97, 100 (consists of form letters from four individuals), 102 (consists of form letters from 12 individuals), 103 (consists of form letters from 155 individuals), 115, 118/Exhibits 15A-H, 126/Exhibit 23, 128, 129, 131 acknowledge the need for both voluntary and involuntary short term inpatient services.

Response: The Department appreciates the comments and thanks the commenters for their support. The Department did not include any additional requirements for hospitalization as they are addressed in other laws and regulations placing them beyond the scope of these regulations.

The following commenters oppose the use of MHSA funds for any type of programs and/or services that are not voluntary. Below are excerpts from written/oral testimony:

66. Comment: Commenter #1 states "The Department's rationale for the proposed change is that not all persons in full service partnerships are (going to be) insured and their placement could be jeopardized when short term acute care is needed for stabilization or treatment of a previously unidentified/untreated need." …"One's insurance status has no bearing on the voluntariness of one's hospital stay."…"it is absence from the residence that jeopardizes a person's living situation. Where is the nexus between a three-day-30 day hospitalization and a person's tenancy/placement agreement?"

"The MHSA was not designed to provide greater access to 5150/5250 detentions."

Response: The Department appreciates the comment. The Department agrees that whether or not an individual in a Full Service Partnership should not affect his/her ability to access MHSA services. The regulation is specific in the use of MHSA funds to pay for short term acute inpatient treatment for clients in Full Service Partnerships by limiting the use of MHSA to those situations when the client is uninsured for this service or there are no other funds available for this purpose. Nothing in the MHSA or this regulation changes the obligation of the insurer to pay for this care. In fact, Welfare and Institutions Code Section 5813.5 (b) specifies that the MHSA funding shall only cover the portions of those costs of services that cannot be paid for with other funds, "including…public and private insurance…"

The Lanterman-Petris-Short Act (LPS) contains Welfare and Institutions Code (WIC) 5150 that states that an individual who is gravely disabled, or a danger to self or others may be placed in a facility for a treatment and evaluation for a period of 72 hours on an involuntary basis. Under certain conditions, hospitalization may be extended for a period of 14 days. (WIC Section 5250.) WIC Section 5270.15 permits continued hospitalization for a period not to exceed thirty days under specified conditions. Since this is short-term acute hospitalization, there is no provision under LPS for hospitalization beyond the thirty-day period set forth in WIC Section 5270.15. However, it must be pointed out that these regulations do not determine if an individual is in need of short-term acute inpatient treatment, but rather when it has been determined by a mental health professional that the need exists, the stay may be paid for with MHSA funds under specific conditions. Those conditions include the individual must be in a Full Service Partnership, be uninsured for this service or there are

no other funds available for this purpose. Note that this regulation does not state that hospitalization can only be on an involuntary basis.

MHSA programs are intended to be transformational in nature and as the Department's regulations require counties to provide a full range of services, the effect of MHSA programs will be to decrease, not increase, the number of individuals who require short-term involuntary hospitalization. AB 2034 programs, upon which MHSA programs should be modeled, have resulted in fewer such hospitalizations and it is expected that this trend will continue with the implementation of the MHSA.

67. Comment: Commenter #2 states "I oppose Emergency Regulation Section 3620(k)…It will diminish availability f(sic) funds for needed programs like "crisis homes".

Response: The Department appreciates the comment. The funds for crisis homes will not be jeopardized by the implementation of Section 3620(k). First, the use of MHSA funds for acute inpatient treatment is specific to clients in Full Service Partnerships who are uninsured for the service or when there are no other funds available for this purpose. Clients in Full Service Partnerships are to be provided the full spectrum of community services. With this full spectrum of community services available, the close relationship between the Case Manager/Personal Service Coordinator and the mental health client, should allow for early intervention reducing the need for hospitalization. Since it will not be necessary to use MHSA funds as often under these circumstances there will be funds available for other needed programs in the county.

68. Comment: Commenters #3 and 8 state that the use of MHSA funds for inpatient hospitalization defies the spirit and intent of the MHSA.

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law. See Response to Commenter #40.

69. Comment: Commenter #4 states "We feel that using MHSA dollars for 30 day involuntary hospitalization contradicts the intent of the Act… Involuntary hospitalization is contrary to individualized MHSA consumer- driven services. We believe very strongly that using MHSA dollars for involuntary services when other funds are available for that is a misuse of funds."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively

and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law.

Funding short-term acute inpatient hospitalization when an individual in a Full Service Partnership is not insured for this service or when there is no other source of funds available is not a misuse of MHSA funds. Further this regulation does not state that hospitalization can only be on an involuntary basis. See Responses to Comment #66 and #94.

70. Comment: Commenter #9 states "CARES (Coalition Advocating for Rights, Empowerment & Services) strongly opposes Emergency regulation 3620(k). MHSA funds are intended to develop alternative ways of helping people in emotional distress, not to fall back on the same old, unsuccessful answer as hospitalization."

"MHSA funds were clearly intended to be earmarked for voluntary community services and supports only, and this is underscored both in the promises that were made to key constituents and in the Act's underlying principles. The permitted use of involuntary treatment will destroy the trust that clients have cautiously developed related to the MHSA."

"Using MHSA funds for involuntary treatment will drive communities of color away from the mental health system…distrust of the 'system' because of involuntary treatment and bad treatment."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and is supported by the language of the Act and other applicable law. See Response to Comment #40.

Neither the MHSA nor the Department's regulations alter the law regarding short-term involuntary hospitalization. However, the Department recognizes that in limited cases, short-term hospitalization is required by law, and is part of the mental health services provided to a client. MHSA programs are intended to be transformational and must be consistent with the principles and standards of the Act and the regulations, namely client-driven and family-driven services; programs that provide an integrated service experience; cultural competence; wellness, recovery and resilience; and community collaboration. Accordingly, hospitalization is limited to short-term acute treatment and long-term institutionalization is prohibited with MHSA funding.

These regulations are a by-product of the law and are intended to promote the principles of an integrated recovery based system. The development of the regulations, policies and procedures are the result of collaboration between the Department and the stakeholders. Throughout this process the Department was

conscious of the need to consider stakeholders' input and not jeopardize the level of trust that has developed over the years.

71. Comment: Commenter #12 states "I oppose any use of the Mental Health Services Act Funds for involuntary mental health services using MHSA funds. And if used for voluntary hospital services." (Emphasis added as Department is assuming the Commenter is opposed to the use of MHSA funds for hospitalization regardless of whether on a voluntary or non-voluntary basis.)

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law.

72. Comment: Commenter #15 states "Please be informed that as a mental health clients (sic) who are recovering and have worked hard for the recovery of others are appalled that you want to use funds we have worked hard for, for inappropriate funding for forced treatment."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law.

Neither the MHSA nor the Department's regulations alter the law regarding short-term involuntary hospitalization. However, the Department recognizes that in limited cases short-term hospitalization is required by law and is part of the mental health services provided to a client. MHSA programs are intended to be transformational and must be consistent with the principles and standards of the Act and the regulations, namely client-driven and family-driven services; programs that provide an integrated service experience; cultural competence; wellness, recovery and resilience; and community collaboration. Accordingly, hospitalization is limited to short term acute treatment and long-term institutionalization is prohibited with MHSA funding.

73. Comment: Commenter #16 states "…we were alarmed to hear that California DMH has decided to allow counties to use Mental Health Services act(sic) money for involuntary hospitalization."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied

access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and is supported by the language of the Act and other applicable law.

Funding short-term acute inpatient hospitalization when an individual in a Full Service Partnership is not covered by Medi-Cal or private insurance, and where there is no other source of funds available is not a misuse of MHSA funds. Further this regulation does not state that hospitalization can only be on an involuntary basis.

74. Comment: Commenter #21 states "I am writing to express my opposition to the use of Mental Health Services Act funds for involuntary hospitalization. Counties are already mandated to provide emergency psychiatric services and are already providing involuntary psychiatric hospitalization to individuals in their communities."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law.

While it is true that the counties are responsible for the provision of "emergency psychiatric services", the law does not contain a provision for specific funds to provide this care. Counties try to find sufficient Realignment funds to cover the costs of providing this care, but often fall short. There is nothing in the MHSA or in any other statute that bars the counties from fulfilling the responsibility of providing this care using any available source of funding. However, regulation Section 3620 (k) limits the use of MHSA funds for short term acute inpatient treatment to those clients in a Full Service Partnership and then only when the client is uninsured for this service or there are no other funds available for this purpose.

75. Comment: Commenter #29 states "In the past I was hospitalized involuntarily and it was a waste of money because it was ineffective and a betrayal of trust."

76. Comment: Commenter #106/Exhibit 3 states "If Mental Health Services Act funding of inpatient hospitalization were adopted, the work thus far in developing trust with providers, your communities, and your supports would be undone and this process would be very difficult to start again. Involuntary patient hospitalization is not working in collaboration with the client."

77. Comment: Commenter #110 – "I don't ever want to go back to the hospital. And for this, I super implore the Commission not to adapt (sic) this as a permanent part of the funding.

But we worked long and hard to eliminate, you know, involuntary commitment or hospitalization that were not conducive to our wants and needs."

"In some areas, where self-help groups can be beneficial as a group of people, that's where this funding has to go. It cannot go to hospitalization involuntarily. Now, in some areas I've been on different boards, and I've seen where somebody will say, look, I have to go to the hospital. Now, what is that called? That's called voluntary. I need to go. I know what I feel like, so that's a voluntary service."

78. Comment: Commenter #112 states"…I would ask the Department of Mental Health to repeal this regulation and to work in concert with the clients and the California Network to help to provide a client driven system. We are the customers. It should not be a hospital driven system."

79. Comment: Commenter #127 states I was involuntarily treated on a few occasions no longer than 24 hours. …my experience was negative. People will avoid the system if they are fearful of coercion. And I think paying for involuntary treatment, I think, would feel defeat the purpose of Proposition 63."

80. Comment: Commenter #135 states "And people are going to continue to be hurt if they're, against their will, put into a hospital."

Response: The Department appreciates the comment. Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization. However if it is determined by a mental health professional that short term acute inpatient treatment is needed, MHSA funds can be used to pay for this care under specific conditions.

81. Comment: Commenter #33 states "I am very concerned to learn that the California Department of Mental Health has adopted an emergency regulation, Title 9, Section 3620(k), that allows counties to use Mental Health Services Act funds for up to 30 days of inpatient hospitalization, including involuntary hospitalization."

"MHSA funds are required to provide incentives for alternative answers, not support for the failed conventional ones. Involuntary Hospitalization is Discriminating…"

"…recent CNMHC focus group study, Normal People Don't Want to Know Us: First Hand Experiences and Perspectives on Discrimination and Stigma (D. Brody, 2007) found that many clients consider involuntary hospitalization to be both discriminatory and stigmatizing."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds

shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law.

Funding short-term acute inpatient hospitalization when an individual in a Full Service Partnership is not covered by Medi-Cal or private insurance, and where there is no other source of funds available is not a misuse of MHSA funds. Further this regulation does not state that hospitalization can only be on an involuntary basis. See Response to Comment #94.

82. Comment: Commenter #34 states "The California Network of Mental Health Clients (CNMHC) strongly opposes and urges the repeal of Section 3620(k) adopted by the State Department of Mental Health (DMH) as part of its second emergency regulations package…for the following reasons:

- Hospitalization is designed for involuntary treatment, whereas MHSA-funded programs must b designed for voluntary participation; hence the provision violates the letter and spirit of the MHSA.

- Thirty days' hospitalization is long-term, not short-term, and the rationale for necessity given to justify Section 3620(k) conflicts with Section 3620(l), which bars funding of long-term hospitalization.

- The legacy of race-based disparities in hospitalization may deter people of color from MHSA services if 3620(k) is retained."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and is supported by the language of the Act and other applicable law. Furthermore, section 3620(k) is not in conflict with section 3400(b)(2). All MHSA programs must be designed for voluntary participation, but individuals will not be denied coverage under the MHSA because of an involuntary legal status such as conservatorship.

Funding short-term acute inpatient hospitalization when an individual in a Full Service Partnership is not covered by Medi-Cal or private insurance, and where there is no other source of funds available is not a misuse of MHSA funds. Further this regulation does not state that hospitalization can only be on an involuntary basis. See Response to Comment #94.

The term "acute" is key. Acute inpatient services should not be of a long duration, but rather of a crisis nature. Once an "acute" episode subsides, if

further inpatient services are necessary the client enters into long-term care which is not to be paid for with MHSA funds.

It is difficult to predict whether or not people of color, or any other individuals, will be deterred if 3620(k) is retained. The Department is aware that disparities do exist within racial/cultural, ethnic, linguistic populations, etc. To address these disparities, "cultural competence" as defined in the regulations, is a standard that is to be met by counties in the implementation of MHSA programs and/or services.

83. Comment: Commenter #38 states "I am very alarmed by the Emergency Regulation Section 3620(k) – this sends a mixed message. It, negatively assumes that there will be many needed hospitalizations because of new clients brought into the FSP's. This contradicts everything that the Federal government and the MHSA have focused on as a critical area – the empowerment of clients with MH challenges to have services that are peer and family driven."

Response: The Department appreciates the comment. Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization and reducing the number of clients hospitalized. However if it is determined by a mental health professional that short term acute inpatient services are needed, these regulations allow MHSA funds be used to pay for this service under specific conditions.

84. Comment: Commenter #43 states "PAI disagrees that any involuntary hospitalization, or involuntary services or (sic) any kind, can be provided with MHSA funds."

"The purpose of MHSA funding has always been to reduce hospitalization by, among other things, providing outpatient services that will prevent hospitalization. The proposed regulation conflicts with this goal."

"The 30-day period in Section 3620(k) has no statutory basis. Nor is there anything in Section 5801(b)(5), or in any other section of the MHSA that refers to a 30 day time period, or otherwise supports DMH's attempt to define "temporary" as no more than 30 days."

"…there is nothing whatever in the statute that would support drawing a distinction between short-term and long-term care for the purposes of funding for inpatient hospitalization, or for drawing the line at 30 days."

"The same rationale that prohibits use of MHSA funds for long-term care also prohibits use of MHSA funds for any hospitalization."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and is supported by the language of the Act and other applicable law.

Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization and reducing the number of clients hospitalized. However if it is determined by a mental health professional that short term acute inpatient services are needed, these regulations allow MHSA funds be used to pay for this service under specific conditions.

Further, funding short term acute inpatient treatment when an individual in a Full Service Partnership is not covered by Medi-Cal or private insurance, and where there is no other source of funds available is not a misuse of MHSA funds. Further this regulation does not state that hospitalization can only be on an involuntary basis. The term "acute" is key. Acute inpatient treatment by its very nature, is not treatment of long duration, but rather is the specific treatment necessary to alleviate the crisis. Once an "acute" episode subsides, if further inpatient treatment is necessary, the client enters into long-term care that is not to be paid for with MHSA funds. See Response to Comment #90.

85. Comment: Commenters #51, 54, 56, 57, 61, 62, 63, 64, 66, 67, 68, 70, 71, 72, 74, 76, 77, and 119 state their opposition to the use of MHSA funds for inpatient hospitalization/involuntary treatment/forced treatment.

Response: The Department appreciates the comment. See Response to Comment #39 and #90.

86. Comment: Commenter #87 states "I strongly recommend against the adoption of Section 3620(k)…I object to Section 3620(k) on the basis of the following concerns:

1. … is inconsistent with, in conflict with, and contradictory to, other provisions in Title 9, Chapter 14, as well as the intent of the MHSA in the Welfare and Institutions Act Areas of inconsistency are:
a. MHSA funds must be designed for voluntary participation, and
b. MHSA funds must comply with Section 3410, Non-Supplant.

2. …the rationale for necessity to justify Section 3620(l) is incompatible with Section 3620(k).

3. The DMH Rulemaking contains flawed rationale regarding the basis for emergency to implement Section 3620(k).

4. Section 3620(k) encourages the use of involuntary inpatient hospital services, which is discriminatory toward persons of color."

Response: The Department appreciates the comments. The Commenter states that the Rationale for Necessity for Section 3620(l) is incompatible with Section 3620(k). The Department disagrees with this statement. Section 3620(k) allows for MHSA funds to be used for short term acute care <u>when the client is either uninsured or other funds are not available for this purpose.</u> (Emphasis added). This specific language prevents the use of MHSA funds when the client has insurance to cover this acute treatment or if the county has funds to pay for this care. The intent is to insure that the placement of the client in a Full Service Partnership is not jeopardized due to the inability to pay for the acute inpatient services. In contrast, Section 3620(l), the prohibition of the use of MHSA funds for long-term hospitalization and/or institutional care is necessary as other funding sources <u>are</u> available for this type of care and this regulation ensures the appropriate use of the MHSA funds. Also see Response to Comment #39, #69, #70 and #82.

87. Comment: Commenter #92 states "I would like to strongly (sic) protest diversion of MHSA funds for use in hospitals."

Response: The Department appreciates the comment. See Response to Comment #70.

88. Comment: Commenter #99 states "There is no way this regulation can cover involuntary treatment for 30 days."

Response: The Department appreciates the comment. The Lanterman-Petris-Short Act contains the law regarding involuntary short-term emergency hospitalization, which is the type of hospitalization that is causing concern among some stakeholders. However, it must be pointed out that these regulations do not determine if an individual is in need of short-term acute inpatient treatment, but rather when it has been determined by a mental health professional that the need exists the MHSA funds may be used to pay for the care under specific conditions. The conditions include the client must be in a Full Service Partnership, be uninsured for this service or there is no other funds available for this purpose.

89. Comment: Commenter #101 (consists of forms letters from 109 individuals) state "We write in strong opposition of the Department's emergency regulation regarding the use of Mental Health Services Act (MHSA) funds for the involuntary short-term hospitalization of adults participating in MHSA-funded Full-Service Partnership programs.

90. Comment: Comment #105 states “I’m here today because I have to say with the money that’s being funded going into the hospitals for involuntary authorization to the funds of the hospitalizations, that is not where the money is supposed to have been going for Proposition 63 for Mental Health Services Act.”

Response: The Department appreciates the comment. The Department’s regulations stating that “programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status” effectively and accurately carries out the intent of the MHSA, and is supported by the language of the Act and other applicable law.

Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization and reducing the number of clients hospitalized. However if it is determined by a mental health professional that short term acute inpatient treatment is needed, these regulations allow MHSA funds be used to pay for this care under specific conditions.

91. Comment: Commenter #104/Exhibit 1 states “Proposed change to Section 3620(k): Current regulations language allows counties to pay for short-term acute inpatient services not to exceed 30 days for clients in full service partnerships when the client is uninsured for the service or there are no other funds available for this purpose. This language should be removed. MHSA funds may not be used for involuntary services.

Response: The Department appreciates the comment. See Response to Comments #39 and #90.

92. Comment: Commenter #107 states “I don’t see why these funds should be used for hospitalization when I take my medicine.”

Response: The Department appreciates the comment. This regulation is specific to payment when short term acute inpatient treatment is necessary. Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization and reducing the number of clients hospitalized. However if it is determined by a mental health professional that short term acute inpatient treatment is needed, these regulations allow MHSA funds be used to pay for this care under specific conditions.

93. Comment: Commenter #108 states: “I just want to say what everybody has said about the funding for hospitalization, that I think when funding gets ear marked for a specific services, especially an expensive service, that’s where the services end up being, rather than starting new and innovative programs for crisis intervention or changes in how we really deliver services that meet our needs.”

Response: The Department appreciates the comment. This regulation is specific to payment when short term acute inpatient treatment is necessary. Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization and reducing the number of clients hospitalized. Since it will not be necessary to use MHSA funds as often under these circumstances there will be funds available for other needed programs in the county.

94. Comment: Commenter #109 states “…Protection and Advocacy appreciates the efforts of the Department of Mental Health to say that services must be provided on a voluntary basis – with the one exception that we’ll get to, there shouldn’t be that exception for inpatient hospitalization.”

“Finally, on the issue of use of funds for involuntary hospitalization under LPS, the MHSA does not allow that. The MHSA has provision that says that MHSA funding shall not supplant other county funding. Counties are obligated to provide funding for hospitalization initiated under LPS with realignment funds. Although the realignment statute is phrased in a way to give counties broad discretion to keep funding within the limitations of available funds when it comes to LPS hospitalization, the counties are obligated to pay for that.”

“If the mental health system is going to be transformed, inpatient hospitalization has to be reduced, and that means providing new services that will lead to a reduction of inpatient hospitalization, not diverting those funds to inpatient hospitalization itself.”

Response: The Department appreciates the comment. The Department’s regulations stating that “programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status” effectively and accurately carries out the intent of the MHSA, and is supported by the language of the Act and other applicable law.

While it is true that the counties are responsible for the provision of “emergency psychiatric services”, the law does not contain a provision for specific funds to provide this care. Counties try to find sufficient Realignment funds to cover the costs of providing this care, but often fall short. There is nothing in the MHSA or in any other statute that bars the counties from fulfilling the responsibility of providing this care using any available source of funds. However, regulation

Section 3620 (k) limits the use of MHSA funds for short acute inpatient care to those clients in a Full Service Partnership and then only when there are no other funds available for this purpose and the services provided are consistent with the requirements of the Act and the Department's regulations. See the Department's statement regarding the amendments made to this regulation at the beginning of this section.

The MHSA provision governing non-supplant, section 5891, prohibits the use of MHSA funds "to supplant existing state or county funds utilized to provide mental health services". Section 5891 further requires that all MHSA funds be used to expand mental health services.

Furthermore, the Department's regulation is consistent with the language of the Act regarding maintenance of effort. The maintenance of effort language in the MHSA applies to the state, not to the counties. It is the state that must "continue to provide financial support for mental health programs with not less than the same entitlements, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year that ended prior to the effective date of this Act". Nothing in the MHSA does anything to modify the maintenance of effort requirement that existed before the passage of the Act.

Section 3400 permits the use of MHSA funds only to "[e]xpand mental health services and/or program capacity beyond what was previously provided". This is consistent with the language of the Act, which requires that MHSA funding be "utilized to expand mental health services".

95. Comment: Commenter #111/Exhibit 8 states "Hospitalization is designed for involuntary treatment, whereas MHSA funded programs must be designed for voluntary participation. Hence the provision violates the letter and the spirit of the MHSA."

"…30 days hospitalization is long-term, not short-term, and the rational for necessity given to justify Section 3620(k) conflicts with Section 3620(l), which bars MHSA funding of long-term hospitalization."

"…in encouraging the increased use of involuntary hospitalization, Section 3620(k) is discriminatory towards persons of color and in conflict with cultural competency requirements and regulations, including one that was written into this new rulemaking."

"…involuntary treatment and hospitalization are incompatible with the acts(sic) mandate and promise to transform the mental health system into one based on client driven principles of recovery."

"…MHSA funding of involuntary hospitalization discriminates against clients and increases stigma conflicting with the acts (sic) mandate to reduce stigma discrimination against clients."- "

"…the threat of involuntary hospitalization in MHSA services may result in the erosion of client's trust."

"…the high cost of the hospitalization are exorbitant and would divert too much MHSA funding from voluntary services in community settings."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law. See Response to Comment #66, 72 and 94.

96. Comment: Commenter #113 states "I'm commenting on an opposing Emergency Regulations Section 3620(k). Protection Advocacy outlines legal issues. And I want to say this is a violation and betrayal of a legal as well as social compact."

"It also removes the incentive for counties to develop available alternatives to involuntary treatment."

Response: The Department appreciates the comment. See Response to Comment #94.

97. Comment: Commenter #115 states "Section 3620(k) surprised me when I first heard about it….If I were to imagine at that time what this regulation might look like, it would be something like this: Under the full service partnership category, the section would read something like, the county may pay for alternative, voluntary, community based, consumer run crisis houses and respite centers when people experience emotional crises."

Response: The Department appreciates the commenter's input. Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization and reducing the number of clients hospitalized. Neither the MHSA nor the Department's regulations alter the law regarding short-term involuntary hospitalization.

These regulations are a by-product of the law and are intended to promote the principles of an integrated recovery based system. The development of the regulations, policies and procedures are the result of collaboration between the Department and the stakeholders. Throughout this process the Department was conscious of the need to consider stakeholders input and not jeopardize the level of trust that has developed over the years. See Response to Comment #39.

98. Comment: Commenter #116 states "…the act is being amended to use the money to pay for hospitalization, including forced hospitalization, which was not what was originally written into the bill."

"…since hospitalization costs so much money compared to community based services, the bill, the changes that's recommended by the Department could potentially siphon off a lot of money from client run services and other voluntary services…"

Response: The Department appreciates the comment. See Response to Comment #94.

99. Comment: Commenter #117/Exhibit 14 (consists of one letter signed by 19 individuals) states "…Sections (sic) 3620(k) where the counties of the state (sic) of California to use the monies out of the Mental Health Services Act to admit mental health clients into the hospital involuntary against their will. …these tactics have not worked. They have failed to the extreme."

Response: The Department appreciates the comment. Under the provisions of these regulations, clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization and reducing the number of clients hospitalized. Neither the MHSA nor the Department's regulations alter the law regarding short-term involuntary hospitalization.

These regulations are a by-product of the law and are intended to promote the principles of an integrated recovery based system. The development of the regulations, policies and procedures are the result of collaboration between the Department and the stakeholders. Throughout this process the Department was conscious of the need to consider stakeholders input and not jeopardize the level of trust that has developed over the years. See Response to Comment #39.

100. Comment: Commenter #121 states "For a long time this Proposition 63 has passed; that the money should not be for involuntary services but for voluntary services because people are equal in their minds and know what they want when it comes to needs of the mentally ill. And I hope that this does not go the involuntary way."

Response: The Department appreciates the comment. The Department's regulations stating that "programs and/or services provided with MHSA funds shall be designed for voluntary participation and no person shall be denied access based solely on his/her voluntary or involuntary legal status" effectively and accurately carries out the intent of the MHSA, and it is supported by the language of the Act and other applicable law.

The Lanterman-Petris-Short Act contains the law regarding involuntary short-term emergency hospitalization, which is the type of hospitalization that is causing concern among some stakeholders. However, it must be pointed out that these regulations do not determine if an individual is in need of acute inpatient treatment, but rather when it has been determined by a mental health professional that the need exists the MHSA funds may be used to pay for the care under specific conditions. The conditions include the client must be in a Full Service Partnership, be uninsured for this service or there is no other funds available for this purpose.

101. Comment; Commenter #122 states "And we are against the specific 3620(k). …allowing MHSA funds for any use of involuntary treatment for hospitalization, I think, conveys a kind of flawed reasoning. The whole concept of the Mental Health Services Act, community services, and supports is to reduce hospitalization. …this is an opportunity to provide different kinds of ways of helping, not just hospitalization. So the idea of alternative ways of helping people when they're in that crises are extremely important and that's what the Mental Health Services dollar should be used for, not the same old response. It has to be client driven, not system driven. And, finally, not many people have talked about this is, (sic) hospitalization is exorbitant in terms of cost."

Response: The Department appreciates the comment. See Response to Comment #97 and #100.

102. Comment: Commenter #123 states "If you go with coercion as a solution, forced treatment, coercion breeds more coercion…that's a losing proposition. So I urge you to not use Mental Health Services Act funds for whatever involuntary hospitalization, even in the circumstances where it's necessary, and the rare circumstances where it's necessary, that emergency is not the emergency of the Mental Health Services Act. It is very clear that it's not meant for forced treatment under hospital circumstances."

Response: The Department appreciates the comment. See Response to Comment #82 and #100.

103. Comment: Commenter #124 states "I want to focus on my opposition of Section 3620(k) of the emergency regulations today. …it's very clear that the section is against the letter, the intent, and the spirit of the MHSA to fund hospitalization or to force anyone to do anything."

"The MHSA is supposed to fund community based, client lead programs which are culturally diverse and which build on the strengths of diverse cultures. I think it would be a disgraceful betrayal of the Californians in general and the clients in particular to use MHSA funds to support hospitals and the pharmaceutical industry."

Response: The Department appreciates the commenter's input. See Response to Comment #82 and #100.

104. Comment: Commenter #125 states “The TLC, Transitional Learning Center, and various other people who support housing redevelopment instead of hospitalizations.”

“The self-help centers are doing good things. If you start the hospitalizations, the closed doors is a lost doors (sic). It takes more money to lock the door in psych wards in the hospitals. It takes more money to lock the doors. And what goes on behind them, you would save more money opening them, giving it to housing…”

Response: The Department appreciates the comment. The funds for programs such as self-help centers will not be jeopardized by the implementation of Section 3620(k). First, the use of MHSA funds for short term acute inpatient services is specific to clients in Full Service Partnerships that are uninsured for the service or there are no other funds available for this purpose. Clients in Full Service Partnerships are to be provided the full spectrum of community services. When these types of services are available, the close relationship between the Case Manager/Personal Service Coordinator should allow for early intervention alleviating the need for hospitalization. Since it will not be necessary to use MHSA funds as often under these circumstances there will be funds available for other needed programs in the county. Regulations addressing the use of MHSA money for housing will be developed in the near future.

105. Comment: Commenter #130 states “This is a client driven system. If you have involuntary treatment, then you’re going to drive clients from the system.”

Response: The Department appreciates the comment. In the context of these regulations anyone, regardless of age, who is receiving or has received mental health services, is a client. In determining the services, supports and goals of the client, one must look at the legal status of that client. If the client is an adult the services and supports are “client driven”, that is the client has the primary decision-making role. If the client is under conservatorship the final decision-making authority rests with the conservator, however the client should participate in this process to the extent he/she is able. See Response to Comment #39 and #82.

106. Comment: Commenter #132 states “We are really scary (sic) about involuntary hospitalization and 3620(k). Involuntary hospitalization is not really permission. It’s continued the same old.

Response: The Department appreciates the comment. Neither the MHSA nor the Department’s regulations alter the law regarding short-term involuntary hospitalization. However, the Department recognizes that in limited cases short-term hospitalization is required by law and is part of the mental health services provided to a client. See Response to Comment #100.

107. Comment: Commenter #133 states “You know—I think they may in some cases, those kind of services may be necessary, but not with Mental Health Service Act

funding. …why can't they understand how important it is that that funding be left alone for client voluntary services?"

Response: The Department appreciates the comment. See Response to Comment #73.

108, Comment: Commenter #134 states "But I still know that I have a right to choose whatever it is that I want for myself. So, parent, I know you love your kids. But I'm the one with the disorder."

Response: The Department appreciates the comment. In the context of these regulations anyone, regardless of age, who is receiving or has received mental health services, is a client. In determining the services, supports and goals of the client, one must look at the legal status of that client. If the client is an adult the services and supports are "client driven", that is the client has the primary decision-making role. If the client is under conservatorship the final decision-making authority rests with the conservator, however the client should participate in this process to the extent he/she is able.

Conversely, if the client is a child, defined as birth through 17, then the decision-making role for determining which services and supports would be most helpful and effective for the child rests with the family.

Section 3620.05

109. Comment: Commenter #126/Exhibit 23 states: "…in section 3620.05(b)(1)(F) the criterion is described as: 'At risk of involuntary hospitalization or institutionalization." This seems like clear language. For some reason, it is left out of subsection (c)(1) and different, less inclusive language is used in subsection (c)(2)(C), in subsection (d)(1)(D), and in subsection (d)(2)(B). "

Response: The Department appreciates the comment. The eligibility criteria for participation in a Full Service Partnership is different among the various population groups of Transition Age Youth (TAY), Adults and Older Adults. The base for this criterion is established in Welfare and Institutions Code Section 5600.3 for children/adults/older adults. The Department further clarified the populations for Full Service Partnerships by defining "underserved" and "unserved". This clarification is necessary in order that a distinction is made between these two groups.

The criteria for each of the population groups addressed represents the unique situations/circumstances encountered by the specific population, not necessarily situations/circumstances that are relevant to all populations. Since not all clients needing these services can be treated initially, priorities were established through the stakeholder process. For example, a TAY must be either unserved or underserved and meet an additional criterion which could be "aging out of the

child welfare or juvenile justice system." This criterion is specific to the TAY and has no relevance or overlap to either adults or older adults. Likewise, criteria such as the reference to a "nursing home or out-of-home care" for older adults are not relevant to a TAY or adults. While it is recognized that some of the criteria is applicable to more than one population group, the intent is to address the issues within each population group that are unique and/or distinct to that population, while maintaining consistency with the Mental Health Services Act. However, please note that Section 3620.05(e) does not prevent the county from providing services to clients with co-occurring conditions and/or developmental disorders/disabilities. The criterion used in these regulations was developed in consultation with stakeholders and represents those issues of public concern and those most prevalent in each of the specific population groups.

Section 3630

110. Comment: Commenter #82 states "Section 3630, concerning what General Service Development Funds may be used for, should including (sic) housing development and subsidies."

Response: The Department appreciates the comment. These regulations provide for the use of MHSA money for housing under the provisions in the General System Development Section, where housing is identified as a supportive service. Regulations specifically addressing the use of MHSA money for housing will be developed in the near future.

111. Comment: Commenter 126/Exhibit 23 states "…section 3630(b)(1) identifies the mental health services and supports for which General System Development Funds may be used. Subsection (B) lists 'Peer support'. This may be intended to include peer education programs, but there is no definition and no explanation in the Statement of Reasons. Therefore, we propose to clarify the wording by adding peer education as follows:

(B) Peer support and <u>peer education.</u>"

Response: The Department appreciates the comment. The term "peer support" is a service/support that can be funded under the General System Development Service Category. The General System Development Service Category is defined in part to provide MHSA funds "to pay for specified mental health services and supports for clients." The "peer support" as referenced in this section is specific to a service provided to the client; i.e., the reference in General System Development to "supports to clients" thereby ensuring the infrastructure for a client's system of support as needed.

112. Comment: Commenter 126/Exhibit 23 states: "…section 3630(b)(1)(I) lists 'Family education services**'.** This is a rather narrow category and does not include equally important family services such as support and respite services. We

suggest that the goals of MHSA would be better met if this subsection were replaced with the following:

(I) Family support services, including family education and respite services."

Response: The Department appreciates the comment. Family education services are a mental health service/support that can be funded under the General System Development Service Category. General System Development is for services/supports, specific to the client. Therefore, the family education services include the education necessary to assist the family in understanding the mental health issues of their family member in order to better support and assist the recovery of the client. See response to Comment #111.

RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC.

Modified text was made available to the public from September 14, 2007 to October 2, 2007. The Department's summary and response to comments received during that period is below.

General Comments

The following comments cannot be attached to specific regulations but are being included as they were provided within the timeframe for comments.

1. Comments: Commenter #1 states "I urge you to repeal the above mentioned legislation. It is totally against the spirit of the Mental Health Services Act and the will of the people as expressed in Prop. 63. To continue with your plans, will erode confidence in the political system and its expressed "Recovery" based progress.

Response: The Department appreciates the comment. However, as the Department is unable to determine a specific regulation to which the comments are directed, no further response is provided.

2. Comments: Commenter #13 (represents the County Counsels' Association of California and the County Counsel for San Mateo County) questions the Department of Mental Health's position "that a county cannot constitutionally partner with a private and private nonprofit entity and expend Mental Health Services Act funds for capital facilities and technological needs."

Response: The Department appreciates the comments. The comments, however, are beyond the scope of the regulations published for the 15-day Renotice. These regulations are specific to the Community Services and Support component of the Three-Year Program and Expenditure Plan. The regulations for the Capital Facilities and Technological Needs component of the Three-Year Plan

are in the process of being developed. The Commenter(s) will have the opportunity to provide input to those regulations at the appropriate time.

Section 3400(b)(2)

3. Comments: Commenter #12 expresses appreciation to the Department for "preserving Section 3400 (b) (2) and Section 3620(k) as written in the regulations as was requested by NAMI CA and NAMI Orange County. These sections implement the intent of the Mental Health Services Act (MHSA) to provide better mental health services to all consumers, regardless of their voluntary or involuntary legal status. Involuntary treatment is needed for some of the mentally ill due to their inability to have insight into their illness, and we are please (sic) that MHSA programs will not discriminate on legal status."

Response: The Department appreciates the comment and thanks the commenter for his/her support.

Section 3615

4. Comments: Commenter #4 states "We also support the inclusion of the Mental Health Services Act Housing Program in Community Services and Supports.

Response: The Department appreciates the comment and thanks the commenter for his/her support.

Section 3620(k)

Support

5. Comments: Commenter #4 expresses appreciation of "the retention of Section 3620(k) in the regulations regarding Mental Health Services Act (2) which allows the County to pay for short-term acute inpatient treatment and the removal of a 30 day time limit for clients in Full Service Partnerships when the client is uninsured for this service or there are no other funds available for this purpose. On behalf of our members throughout California, please accept our gratitude for this provision."

   Commenter #5 states "Thank you so much for retaining 3620(k) in the regulations permitting MHSA funds to be used for short-term acute inpatient treatment for clients in Full Service Partnerships when the client is uninsured for this service or there are no other funds available for this purpose. (with no payment time limit). (sic)

   Commenter #7 states "Thank you for preserving the MHSA section 3620(k). It is much appreciated by family members of people with mental illness.

   Commenter #12 expresses appreciation to the Department for "preserving Section 3400 (b) (2) and Section 3620(k) as written in the regulations as was requested by NAMI CA and NAMI Orange County. These sections implement the intent of the Mental Health Services Act (MHSA) to provide better mental health services to all consumers, regardless of their voluntary or involuntary legal status. Involuntary

treatment is needed for some of the mentally ill due to their inability to have insight into their illness, and we are please (sic) that MHSA programs will not discriminate on legal status."

Response: The Department appreciates the comments and thanks the commenters for their support.

Opposition

6. Comments: Commenter #2 states "I am concerned about the Section 3620(k) of the State Department of Mental Health's (DMH) Emergency Regulations. Section 3620(k) allows MHSA funds – previously reserved for recovery-based, culturally competent programs designed for voluntary participation – to be used for involuntary inpatient hospitalization. The proposed revision to Section 3620(k) fails to address the important issues that mental health clients have raised, that involuntary hospitalization violates the recovery principles in the Act's Recovery Vision and the Department's, will erode client trust, and is not cost effective. In addition, the length of time that a person may be hospitalized remains unclear, because 'short-term' is now undefined, and no limits have been placed on MHSA funding of consecutive re-hospitalizations. I recommend that MHSA funds not be allowed to be used for involuntary hospitalizations.

   Commenter #3 states "Regulations making an exception for forced hospitalization betray the vision of Proposition 63 and the dream of those who worked for its passage. I am against this suggestion." (Note: the Commenter failed to direct this comment to a specific regulation. However, based on comment the Department assumes the opposition is to Section 3620(k) and the use of MHSA funds for acute in-patient treatment.

   Commenter #6 states "The purpose of this letter is to comment and oppose the proposed regulatory change regarding use of MHSA funds. The Department's rationale for the proposed change is that not all persons in full services partnerships are (going to be) insured and their placement could be jeopardized when acute care is needed for stabilization or treatment of a previously unidentified/untreated need."

   "The Department and proponents of this change attempt to justify it by combining three arguments. However, none of these arguments, alone, or together, sustain it: 1) Insurance status. One's insurance status has no bearing on the voluntariness of one's hospital stay—at least according to W&I Code criteria for involuntary detention and evaluation. More importantly, under current law, it is each county's responsibility to ensure that persons meeting the W&I 5150 and 5250 criteria receive evaluation and, if warranted, treatment. **To adopt the proposed change is to encourage supplantation-the antithesis of the Act's purpose."**

   "Furthermore, although the problems cause (sic) by lack of health insurance are real and discussion now fashionable, if long overdue, attempting to use the MHSA as a

remedy is disingenuous and deprives the public and the Legislature the opportunity to address the health insurance issue (lack of) in a comprehensive manner. 2) Jeopardizes client's (community?) placement."

"Where is the nexus between an involuntary hospitalization and a person's tenancy/placement agreement? Using MHSA funds to increase clients' opportunities to obtain and maintain housing, **not involuntary hospitalization,** is an excellent way for counties to use MHSA funds. Again, involuntary hospitalization is a responsibility of the counties. The MHSA was not designed to provide greater access to 5150/5250 **or any other detention. Any detention, whether inpatient or outpatient, is an invasion of liberty and is not 'voluntary in nature'**. 3) Previously unidentified/untreated need. Acute unmet needs that require hospitalization are the responsibility of the county. This is true for physical as well as mental health. The MHSA was not designed to remedy this."

"Permitting counties to use MHSA funds to increase involuntary or coercive services encourages supplantation and thwarts efforts to transform the mental health system. Involuntary treatment is inconsistent with a recovery-based approach and **involuntary** is the antithesis of a client-driven approach. The MHSA offers a myriad of opportunities for counties to address the needs cited above that are consistent with the Act, including, but not limited to, client run/selected respite houses, paying a person of the client's choice to stay with the client while the 'acute unmet need' is being addressed, and providing increased funds for housing."

"The MHSA was not passed to remedy the 'health insurance crisis.' It was promoted as a means to transform mental health services. Involuntary services/treatment is the antithesis of transformation."

Commenter #8 states "MHSA funds are scare (sic) resources and should only be utilized for effective levels of services, not traditional services which have established negative recovery records. Furthermore, the proposed verbiage (sic) gives the impression that services could be involuntary and such service levels are well established as ineffective. Developing motivational services which encourage voluntary recovery are needed."

Commenter #9 states "We urge you to rescind in its totality Emergency Regulation **3620(k).** For one thing, eliminating the 30-day limit on 'short-term acute care' could mean that people stay in the hospital longer than 30 days. Also, 'inpatient treatment services' in the revised regulation is a contradiction in terms. Providing recovery-based services to address real human needs, and subjecting someone to forced treatment, are so antithetical that conjoining them represents the ultimate oxymoron. Please rescind Emergency Regulations **3620(k).**

Commenter #10 states "Reinstituting the clause 3620(k) allowing use of Prop. 63 money for involuntary hospitalization is a violation of the spirit of the Prop. 63 initiative that many of us mental health client advocates worked hard getting

signatures for and urging other clients to vote for. Putting this into the full service partnerships will make my work doing homeless peer street outreach much harder because people will then feel I am working to aid a mental health system that seeks to deny our civil and human rights and sense of dignity."

Commenter #11 states "Attached please find the comments of the California Network of Mental Health Clients (CNMHC) in response to the California Department of Mental Health (DMH)'s (sic) proposed modifications to Mental Health Services Act (MHSA) Emergency Regulation 3620(k) concerning the use of MHSA funds for inpatient hospitalization.

Note: Following are excerpts from the attachment submitted by the California Network of Mental Health Clients(CNMHC) in opposition to Section 3620(k). Many of the comments are duplicative to those the Commenter presented at the public hearing held on April 16, 2007. The excerpts extracted from the comments submitted on October 2, 2007 do not repeat the comments initially provided at the public hearing. Also see the Department's response to the comments provided at public hearing. For purposes of the public hearing, this Commenter was #34 and #111.

"The California Network of Mental Health Clients (CNMH) continues to strongly oppose Emergency Regulation 3620(k), including the proposed modified language of September 14, 2007. We urge the California Department of Mental Health (DMH) to repeal this regulation, which allows Counties to use MHSA dollars for inpatient hospitalization of adult and older adults participating in Mental Health Services Act (MHSA) funded Full-Service Partnership programs, for a length of time described as 'short term' but otherwise undefined."

"The proposed revisions to Section 3620(k) fail to address the most important issues that mental health clients have raised, including the numerous issues cited in the April 15, 2007 CNMHC position paper in response to the regulation, summarized below. In addition, the length of time that a person may be hospitalized remains unclear, because 'short-term' is now undefined, and no limits have been placed on MHSA funding of consecutive re-hospitalizations, a concern we raised in April."

"The rationale for necessity given to justify Section 3620(k) conflicts with Section 3620(l), which bars MHSA funding of long-term hospitalization; the length of time that MHSA dollars may be used to pay for an individual's hospitalization is no longer specified, leaving the definition of 'short-term' wide open, along with the possibility of unlimited consecutive re-hospitalizations."

"Short-term" now undefined in modified language"
"Section 3620(k) provides that Counties may pay for 'short-term' hospitalization for FSP clients using MHSA funds. Whereas the regulation originally defined the duration of 'short-term' inpatient services as 'not to exceed 30 days', the proposed

modified language no longer specifies any length of stay. This revision would only leave the definition of 'short-term' up to the Counties to interpret."

"As we pointed out in our April comments, the California Hospital Association has said that the average length of stay for acute inpatient treatment is about eight days. Although one could reasonable assume that 'short-term' hospital stays would be shorter than the average stay, this point in not mentioned in the proposed modified regulation."

"Furthermore, this regulation would allow counties to use MHSA funding to pay for involuntary treatment for *concurrent* stays. If a client is discharged from a hospital and subsequently re-admitted, the regulation would permit payment for *additional cycles* of an unspecified length, resulting in MHSA funding of *de facto* long-term hospitalization."

"Clients and unserved/underserved populations will be adversely impacted if MHSA funds are used for this purpose, and such use conflicts with the letter and intent of the MHSA, the WIC, the *CSS Requirements,* and other existing guidelines, regulations and statutes."

Commenter #14 states: "With the proposed modifications, county mental health departments would be allowed to use MHSA funds for short-term acute hospitalization for an unspecified period of time. …section 3620(k) violates the basic understanding that stakeholders have about the MHSA, which is that funds are not going to be used to provide involuntary mental health services. Moreover, it is not consistent with Section 3400(b)(2) of the proposed regulations, which states that allowable costs and expenditures ' be designed for voluntary participation.' Furthermore, county mental health departments have other sources of funds to pay for involuntary commitment of Full Service Partnership clients should they require involuntary hospitalization."

Response: The Department appreciates the comments. It is correct that each county is responsible for providing mental health inpatient care for persons meeting the criteria in Welfare and Institutions Code section 5150 et seq. However, the law does not contain a provision for specific funds to provide this care. Counties try to find sufficient Realignment funds to cover the costs of providing this care, but often fall short. There is nothing in the MHSA or in any other statute that bars the counties from fulfilling the responsibility of providing this care using any available source of funds. However, regulation Section 3620 (k) limits the use of MHSA funds for short term acute inpatient care to clients in a Full Service Partnership and then only when there are no other funds available for this purpose and the services provided are consistent with the requirements of the Act and the Department's regulations.

This provision does nothing to provide greater access to 5150/5152 commitments. It does not change any law governing any type of commitment:

the same criteria for commitment still has to be met. Rather, this provision permits the use of MHSA funds to pay for medically necessary short-term treatment when such treatment is required and there is no other source of funds to pay for it.

Section 5813.5 provides for the use of MHSA funds to pay for medically necessary mental health treatment when no other funding, such as Medi-Cal or private insurance, is available. Further Section 3 of the MHSA, which sets forth the purpose and intent of the Act, in subdivision (d), states "State funds shall be available to provide services that are not already covered by federally sponsored programs or by individuals' or families' insurance programs." Accordingly, the intent of the Act and the statute permits the use of MHSA funds when an individual's treatment cannot be funded through other sources, such as Medi-Cal or private insurance, and such use of MHSA funds does not constitute supplantation.

Since Proposition 63 was passed by the voters and included section 5813.5(b), the public has not been deprived of the opportunity to address the health insurance issue, as contended by one commenter. Rather, this issue has already been determined by the people of California in favor of using MHSA funds to pay for medically necessary treatment where no other funding is available.

The Department concurs with the comment that the average length of stay is far less than 30 days. In fact, information obtained by the Department cites that "acute" hospital stays average approximately eight days. Accordingly, the thirty-day figure is arbitrary and not representative of short-term acute inpatient treatment. The Department has removed the thirty-day limit on short-term acute inpatient treatment because the number of days a client spends in acute treatment depends on the individual client. A thirty-day limit is not client-specific and therefore runs counter to the intent of the Act. Section 5813.5 of the Act requires services to "plan for each consumer's individual needs". (Welf. & Inst. Code § 5813.5, subdivision (d)(4).) Moreover, the thirty-day limit is not consistent with the Individualized Services and Supports Plan (ISSP) that forms the basis of Full Service Partnership (FSP) services. To limit the number of days and/or hospitalizations that may be necessary for an individual client would run counter to the goal of client-specific services tailored to each individual's strengths and needs.

The Department disagrees with the contention that short-term acute inpatient treatment has established negative recovery records. The evidence suggests the opposite is true. Many clients and families of clients have affirmed that such treatment has been invaluable in their Recovery process. The Department does not agree that short-term acute inpatient treatment is inconsistent with the Recovery Vision. Indeed, the United States Department of Justice is actively involved in transforming mental health services in state hospitals across the nation to Recovery-based services. Furthermore, for some, the concept of

transformation is meaningless unless they can receive medically necessary short-term treatment, since some clients and family members believe that the other services and supports available through the MHSA are simply inaccessible when one is gravely disabled or a danger to self or others.

The Department disagrees that section 3620 fails to address "the most important issues that mental health clients have raised". The Department developed the policy set forth in section 3620 through a process of intimate and intense involvement with clients, family members and entities representing client interests. Mental health services fundable under section 3620 include alternative and culturally specific approaches and treatments; peer support; supportive services to assist clients in obtaining and maintaining employment, housing, and education; wellness centers; personal service coordination and case management to assist clients to access needed medical, educational, social, vocational, rehabilitative and/or other community services; needs assessment; development of an Individualized Services and Supports Plan; family education services; food; clothing; housing; health care treatment; co-occurring disorders, such as substance abuse; respite care; and wraparound services.

The Department understands that some clients feel their trust in the system will be eroded by the use of MHSA funds for services pursuant to this provision. However, the client voice is not monolithic on this point. For other clients, the opposite has proved true. Indeed, for some clients in a state of grave disability or danger to self or others, trust in anyone or anything is virtually impossible and it is the short-term acute treatment that restores their ability to trust and avail themselves of other MHSA services.

Commenter #6 included in his/her opposition to Section 3620(k) a comment questioning the nexus between an involuntary hospitalization and a person's tenancy/placement agreement. The response to this comment is being provided below.

The comment is not about involuntary hospitalization, but rather, appears to be a concern that hospitalization could result in the loss of a person's housing arrangement, more specifically, his/her home. A review of the proposed amendments to these regulations points to the development of a new service category specifically addressing housing for clients with serious mental illness. The regulations that are being developed to implement the Housing Program will actually expand client housing options, not curtail them, as this comment contends. The MHSA Housing Program will provide permanent and stable housing for individuals who are homeless or at risk of homelessness. Additionally, these regulations, as being drafted, include specific provisions to ensure that when an MHSA eligible resident is in the hospital, an acute or long-term care facility, or other institution setting, and the MHSA eligible resident is expected to return within a three-month period, the tenant portion of the rent will be paid.