

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

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May 21, 2009

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**Adoption of Section 9550, Title 9, California Code of Regulations****OFFENDER TREATMENT PROGRAM****Notice of 15-day Public Comment Period and Full Text of Regulation with Changes Made in Response to 45-day Public Comment**

As required by Government Code Section 11846.8, the California Department of Alcohol and Drug Programs (ADP) hereby gives notice that it plans to make additional changes to Section 9550, Title 9, of the California Code of Regulations in response to a comment submitted during the 45-day public comment period.

Section 9550 interprets, implements, and makes specific Health and Safety Code (HSC) Section 11999.30 by establishing standards for the Offender Treatment Program (OTP). Specifically, Section 9550 establishes a process for distributing funds to enhance services for individuals sentenced to alcohol and other drug treatment in lieu of incarceration services under the Substance Abuse and Crime Prevention Act of 2000 (SACPA). Section 9550 allows counties to use OTP funds to enhance alcohol and drug treatment services; increase the proportion of sentenced offenders who enter, remain in, and complete treatment; and reduce delays in availability of appropriate treatment.

Rather than adopting new policy, Section 9550 codifies in regulation on a permanent basis OTP policy that has been in effect for quite some time through the statutory authority of Health and Safety Code (HSC) Section 11999.30 (2007), subsequent 2007 All County Letters [as permitted by HSC Section 11999.30(i)], and emergency regulation (effective November 18, 2008).

ADP initially made the full text of Section 9550 available for public comment for 45 days, from November 21, 2008 through January 5, 2009. During that time, only one individual provided comment on the regulation, asking how ADP intends to reallocate unspent funds. In response to the comment, ADP amended Section 9550(p)(4) to clarify that ADP will reallocate unspent OTP funds using the same methodology used to allocate all other OTP funds to counties, as described in Section 9550(h)(4). ADP made no other changes to the regulation. The full text of the final regulation is enclosed, with the change to Section 9550(p)(4) **highlighted**. Language to be added is shown in **bold underline**. Language to be deleted is shown in **~~bold strikethrough~~**.



Any interested person or his authorized representative may submit written comments on the proposed additional changes from the date of this notice through **5 p.m. on June 8, 2009**, when the 15-day written public comment period ends. Please submit any written comments before that time, because ADP cannot accept written comments after the close of the public comment period. If you would like to request any additional changes to the text of this regulation, please send your written comments electronically to www.mconway@adp.ca.gov, or by fax to (916) 323-5873, or by U.S. Postal Service to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Please restrict your comments to the additional changes highlighted in **bold** type. Please indicate the subsection you would like changed, the specific change requested, and the reason why you would like the section changed. ADP will consider any comments it receives requesting additional changes.

Enclosure

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Adoption of Section 9550, Title 9, California Code of Regulations

OFFENDER TREATMENT PROGRAM

Full Text of Regulation with Change Made in Response to 45-day Public Comment

NOTE: The Department of Alcohol and Drug Programs has made only additional change since the emergency regulation took effect. That additional change was made to Subsection (p)(4), which is **highlighted**. ADP made the change in response to a public comment from a county alcohol and drug program administrator, asking how ADP planned to reallocate unspent OTP funds. Original language adopted as an emergency is shown in plain underline. New Language to be added is shown in **bold underline**. Language adopted as an emergency but now to be deleted is shown in **bold underline plus strikethrough**.

ADOPT NEW SECTION 9550 AS SHOWN BELOW:

Chapter 2.6 Offender Treatment Program

§ 9550. Offender Treatment Program

- (a) “Offender Treatment Program (OTP)” means the county program established pursuant to Health and Safety Code (HSC) Section 11999.30
- (b) The Department of Alcohol and Drug Programs shall administer OTP funds.
- (c) After adoption of the State Budget Act, the Department shall notify each county of the amount of its OTP allocation. The notice shall specify an amount calculated using the methodology described in Subsection (h) of this regulation.
- (d) Within 30 days after the Department issues the notice of allocation, each county seeking OTP funds shall submit a written application to the Department by fax at (916)327-7308, electronically at www.adp.ca.gov/sacpa/srisindex or by mail at the following address:

California Department of Alcohol and Drug Programs
Office of Criminal Justice Collaboration
1700 K Street, 5th Floor
Sacramento, CA 95811

Approval of funding may be denied if the county does not submit its application within 30 days from the date of the notice of allocation.

- (e) The county's OTP application shall include:
- (1) The amount of OTP funds requested,
 - (2) A budget specifying how the county plans to use OTP funds for direct treatment and client services for Substance Abuse and Crime Prevention Act of 2000 (SACPA) offenders; and
 - (3) A statement ensuring that the county will comply with the requirements of this regulation and with HSC Section 11999.30(d).
 - (4) A statement ensuring that the county will not use OTP funds to supplant funds from any other fund source used to provide drug treatment services in the county.
 - (5) The amount and source of the county's matching funds as required by HSC Section 11999.30(c). A county shall not use any of the following sources of funds for the required match:
 - (A) State General Fund and federal funds received through any state agency, such as Substance Abuse Prevention and Treatment (SAPT) Block Grant funds;
 - (B) Substance Abuse Treatment Trust Funds (SATTF) funds; and
 - (C) Substance Abuse Treatment and Testing Accountability (SATTA) program funds.
- (f) The Department shall review the county application for OTP funding to assure compliance with the requirements of Subsection (e) of this regulation and HSC Section 11999.30(c), (d), and (f). Within 20 days of receipt of the application, the Department shall notify the county in writing if additional information is needed. The county shall provide the requested information within 20 days of the date of the notice. Within 20 days of receipt of all necessary information, the Department shall send the county notice of tentative approval or denial of the application.
- (g) Within 90 days of the date of notice of tentative approval, the county shall provide the Department with a signed copy of the county board of supervisors approval (e.g. resolution, minutes, order, motion, ordinance, or delegation of authority) stating that the county agrees to comply with the requirements of this regulation and Section 11999.30 of the Health and Safety Code. Within 20 days of receipt of the county board of supervisors' approval, the Department shall send a notice of final approval to the county.

(h) The Department shall allocate OTP funds as described below:

(1) From funds appropriated under the State Budget Act, the Department shall deduct its costs for administration of the OTP to determine the amount of state OTP funds available for allocation to counties.

(2) After deducting its costs of administering the OTP program, the Department shall allocate the remaining OTP funds to counties as shown below:

(A) No less than fifty percent (50%) of OTP funds shall be allocated based on county population, as described in Subsection (h)(4)(A) of this regulation.

(B) Up to twenty-five percent (25%) of OTP funds shall be allocated based on county show rate, as described in Subsection (h)(4)(B) of this regulation.

(C) Up to twenty-five percent (25%) of OTP funds shall be allocated based on county completion rate, as described in Subsection (h)(4)(C) of this regulation.

(D) Any remaining available OTP funds shall be allocated to counties as a supplemental allocation, as described in Subsection (h)(5) of this regulation.

(3) As used in this regulation, "show rate" means the percentage of SACPA -- eligible offenders sentenced to treatment who have commenced participation in treatment services, as reported through the California Outcome Measurement System (CalOMS), the Department's main data system for monitoring treatment clients. The Department shall calculate the show rate for the fiscal year using unique SACPA admissions of probationers and parolees reported through CalOMS for the fiscal year divided by referrals for the fiscal year, as reported by the counties through SACPA Reporting Information System (SRIS), the SACPA data system. "Completion rate" means the percentage of SACPA offenders admitted to treatment who complete all services specified in their treatment or recovery plan, as reported through CalOMS. The Department shall adjust the show rate allocation and the completion rate allocation by county population ratio, as described in Subsection (h)(4)(A) of this regulation, to distribute funds equitably among counties.

(4) The Department shall compute the OTP allocation for each county as described below:

(A) After the adjustments made in Subsection (h)(1) of this regulation, the Department shall distribute fifty percent (50%) of available OTP funds to counties based on county population. The Department

shall adjust the allocation by the ratio of each county's population to the total statewide population, based on county population and statewide population data obtained from the California Department of Finance.

For example:

If County X's population were 1,000,000, and the total statewide population were 10,000,000, the Department would divide County X's population of 1,000,000 by the total statewide population of 10,000,000 resulting in County X's population ratio of .1000. After the adjustments made in Subsection (h)(1) of this regulation, if the amount of available funds to be allocated were \$15,000,000, the Department would multiply that \$15,000,000 by fifty percent (50%) resulting in \$7,500,000. The Department would multiply that \$7,500,000 by County X's population ratio of .1000 to arrive at County X's allocation of \$750,000.

(B) After the adjustments made in Subsection (h)(1) above, the Department shall distribute up to twenty-five percent (25%) of the total OTP funds to counties based on each county's show rate. The Department shall multiply twenty-five percent (25%) of the OTP funds by each county's population ratio [as described in Subsection (h)(4)(A) of this regulation] to determine the maximum possible allocation for each county. The Department shall multiply each county's show rate [as described in Subsection (h)(3) of this regulation] by the maximum possible allocation to determine each county's show rate allocation.

For example:

After the adjustments made in Subsection (h)(1) of this regulation, if the amount of available funds to be allocated were \$15,000,000, the Department would multiply that \$15,000,000 by twenty-five percent (25%) resulting in \$3,750,000. The Department would multiply that \$3,750,000 by County X's population ratio of .1000, resulting in \$375,000 for County X's maximum possible show rate allocation. If County X's show rate were fifty percent (50%), the Department would multiply fifty percent (50%) by that \$375,000 to arrive at County X's show rate of \$187,500 for County X's show rate allocation.

After the adjustments made in Subsection (h)(1) of this regulation, the Department shall distribute up to twenty-five percent (25%) of the total OTP funds to counties based on each county's completion rate. The Department shall multiply up to twenty-five percent (25%) of the total OTP funds by each county's population ratio [as described in Subsection (h)(4)(A) of this regulation] to determine the maximum possible allocation for each county. The Department shall then multiply each county's completion rate [as described in Subsection (h)(3) of this regulation] by the maximum possible allocation to determine each county's completion rate allocation.

For example:

After the adjustments made in Subsection (h)(1) of this regulation, the amount of available funds to be allocated would be \$15,000,000. The Department would multiply that \$15,000,000 by twenty five percent (25%) resulting in \$3,750,000. The Department would multiply that \$3,750,000 by County X's population ratio of .1000, resulting in \$375,000 for County X's maximum possible completion rate allocation. If County X's completion rate were forty percent (40%), the Department would multiply forty percent (40%) by \$375,000, to arrive at County X's completion rate allocation of \$150,000.

- (D) The Department shall add each county's population allocation, show rate allocation, and completion rate allocation to determine each county's base allocation.

For example:

The Department would add County X's population allocation of \$750,000, its show rate allocation of \$187,500, and its completion rate allocation of \$150,000 to arrive at a base allocation for County X of \$1,087,500.

- (5) The Department shall compute the OTP supplemental allocation as described below:

If the total of the base allocations for all counties is less than the total OTP funds available, the Department shall distribute a supplemental OTP allocation. The Department shall add all counties' base allocations as determined in Subsection (h)(4)(D), and subtract that amount from the total OTP funds available, as described in Subsection (h)(1) above, to determine the amount available for a supplemental allocation. The Department shall divide each county's base allocation as determined in Subsection (h)(4)(D) of this regulation by the total base allocations for all counties to determine each county's supplemental allocation ratio. The Department shall multiply each county's supplemental allocation ratio by the total amount available for OTP supplemental allocations to determine each county's supplemental allocation.

For example:

If the total base allocations under Subsection (h)(4)(D) of this regulation were \$10,000,000, the Department would subtract that \$10,000,000 from state OTP funds available of \$15,000,000 as described in Subsection (h)(4)(A) of this regulation, to determine that \$5,000,000 were available for total supplemental OTP allocations. The Department would divide County X's total base allocation of \$1,087,500, as described in Subsection (h)(4)(D) of this regulation, by the total county OTP allocation of \$10,000,000, resulting in County X's supplemental allocation ratio of .10875. The Department would multiply the \$5,000,000 total supplemental OTP allocation by County X's supplemental allocation ratio of .10875 to arrive at County X's supplemental allocation of \$543,750.

- (6) The Department shall add each county's base allocation, as described in

Subsection (h)(4)(D) of this regulation, to its supplemental allocation, as described in Subsection (h)(5) of this regulation, to determine the total OTP allocation for each county.

For example:

If County X's base allocation were \$1,087,500 and its supplemental allocation were \$543,750, its total allocation would be \$1,631,250.

- (i) If the State reduces the amount of OTP funds currently available , the Department shall proportionately reduce allocations to all participating counties based on each county's population ratio as described in Subsection (h)(4)(A) of this regulation.
- (j) The county shall expend OTP funds in accordance with the requirements of (k) of this regulation, HSC Section 11999.30, and Title 9, California Code of Regulations, Sections 9530 (f), (g), (h), and (i).
- (k) OTP funds may be used to:
 - (1) Provide drug treatment services for SACPA--eligible offenders;
 - (2) Cover the costs of placing clients in drug treatment and providing drug treatment services provided by drug treatment programs as defined in Penal Code Section 1210 (b), and additional services supplemental to treatment as defined in Title 9, California Code of Regulations, Section 9505 (a)(2);
 - (3) Provide enhanced drug treatment services, such as residential treatment and narcotic replacement therapy, for those clients with assessed need for the services;
 - (4) Increase the percentage of clients who enter, remain in, and complete treatment, through activities and approaches such as locating assessment units or centers in or near the court, enhanced supervision, and enhanced services determined necessary through the use of substance abuse testing;
 - (5) Reduce delays in the availability of treatment services by improving coordination between criminal justice and treatment personnel with the goal of admitting SACPA--eligible offenders into treatment in the shortest possible time; increasing levels of criminal justice and treatment oversight and supervision; and expanding county treatment provider's service capacity;
 - (6) Organize dedicated court calendars with regularly scheduled reviews of the progress of SACPA--eligible offenders and conduct collaboration among the courts, probation, treatment, and other stakeholders;

- (7) Develop necessary innovative treatment services as indicated by drug test results; and
- (8) Support one or more staff positions dedicated to OTP services, such as a personnel position needed for treatment of a client (e.g., scheduling appointments, filing treatment-related documents), or a probation officer position if the work is directly tied to engaging and retaining SACPA--eligible offenders in treatment.
- (9) Provide mental health services for SACPA--eligible offenders with co-occurring disorders (COD), i.e., clients needing both mental health and alcohol and other drug treatment services. Counties may use up to five percent (5%) of their annual allocation for mental health services for SACPA--eligible offenders with COD.
- (l) The county shall expend OTP funds in accordance with the budget submitted with the OTP application approved by the Department pursuant to Subsection (e) of this regulation. Any single or cumulative budget change greater than ten percent (10%) must be reported to and approved by the Department prior to expenditure of funds.
- (m) The Department shall reimburse OTP expenditures quarterly in arrears. To claim reimbursement for OTP expenditures, the county shall submit to the Department:

 - (1) A quarterly data report specifying SACPA services and activities, and
 - (2) A quarterly invoice for reimbursement, detailing actual expenditures of OTP and matching funds. The county shall establish separate expenditure codes to differentiate costs between SACPA and OTP and among fiscal years.
- (n) The county shall submit the quarterly invoice and data report no later than:

 - (1) October 31 for the period beginning July 1 and ending September 30;
 - (2) January 31 for the period beginning October 1 and ending December 31;
 - (3) April 30 for the period beginning January 1 and ending March 31; and
 - (4) July 31 for the period beginning April 1 and ending June 30.
- (o) The Department shall review county invoices and quarterly data reports to ensure completion. If the invoice or quarterly report is incomplete, the Department shall notify the county that additional information is needed. The

Department may disallow any expenditure that fails to comply with the provisions of this regulation and shall so notify the county, in writing.

(p) Based on invoices submitted and approved for payment under Subsections (n) (1) and (2) of this regulation, the Department shall make an annual projection of OTP expenditures. If, based on its projection, the Department reasonably believes that the county will not expend its entire allocation, the Department shall:

(1) Notify the county in writing that the Department may reduce the county's allocation unless the county provides written justification within 10 days of the notification, detailing how it will expend its allocated OTP funds. Based on the county's justification and its prior OTP expenditures, the Department may adjust its projection;

(2) Reduce the county's OTP allocation by the amount projected to be unspent;

(3) Notify counties whose allocations were not reduced that additional funds may be available for reallocation and how to request reallocated funds;

(4) Based on its evaluation of justifications provided by the counties and county expenditure history and using the same allocation methodology described in Subsection (h) of this regulation, reallocate the amount of unspent funds to counties that have:

NECESSITY: Needed to clarify how unspent funds will be reallocated. ADP made change in response to public comment.

(A) Submitted timely invoices and data reports as required in Subsection (n) of this regulation, and

(B) Justified in writing to the Department that they can expend additional funds by the end of the fiscal year on activities allowed under Subsection (k) of this regulation.

NECESSITY: Needed to clarify how the Department will reallocate unspent funds. The Department used the same allocation methodology used for the initial OTP allocation [specified in Subsection (h)] to maintain consistency and to avoid any confusion that might result from using multiple allocation formulas.

(q) The county shall comply with the audit requirements of Section 9540.

(r) The Department shall audit the county's expenditure of OTP funds in accordance with the requirements of Section 9540, except that the Department may audit on other than an annual basis.

NOTE: Authority cited: Section 11755, Health and Safety Code. Reference: Section 11999.30, Health and Safety Code.