

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Amend Section 10518 and 10529, Repeal Sections 10532 and 10533, and Adopt Sections 10700 and 10701, Title 9, California Code of Regulations

LICENSURE AND CERTIFICATION FEES

Finding of Emergency for Readoption

The Department of Alcohol and Drug Programs (ADP) finds that an emergency exists and that the subject emergency readoption is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The information contained in the finding of emergency for the original emergency adoption is hereby incorporated by reference, updated as described below:

On June 29, 2009 emergency regulations took effect amending Sections 10518 and 10529, repealing Sections 10532 and 10533, and adopting Sections 10700 and 10701, Title 9, California Code of Regulations (CCR), to allow ADP to collect licensure and certification fees for residential alcoholism or drug abuse recovery or treatment facilities (residential facilities) and certification fees for outpatient alcohol and other drug programs (outpatient programs), regardless of the form of organization or ownership, as required by Health and Safety Code (HSC) Section 11833.02, added by Chapter 177 (Senate Bill 84), Statutes of 2007. The emergency regulations did not adopt new policy; they merely codified existing policy implemented in 2007 through ADP Bulletin 07-11, pursuant to HSC 11833.04.

ADP adopted the regulations on an emergency basis as required by HSC Sections 11831.5(g) and 11833.04(b). HSC Section 11831.5(g) stated in part: "...adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department. Nothing in this subdivision shall be interpreted to prohibit the department from adopting subsequent amendments on a nonemergency basis or as emergency regulations in accordance with the standards set forth in Section 11346.1 of the Government Code." HSC Section 11833.04(b) stated: "Notwithstanding any other provision of law, the adoption of regulations implementing this chapter shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare."

ADP immediately proceeded to make the emergency changes permanent, making them available for public comment from July 30 through September 15, 2009, holding a public

hearing on September 15, 2009, reviewing all public comments received, and considering every alternative recommended by the public.

However ADP cannot file the certificate of compliance by December 28, 2009, when the emergency regulations expire. HSC Section 11835 requires ADP to present all regulations for a vote by the county alcohol and drug program administrators, and the county administrators prefer to vote on final regulations immediately prior to final submission to the Office of Administrative Law. Due to state and county fiscal constraints, ADP presents regulations to the county alcohol and drug program administrators at quarterly meetings of the County Alcohol and Drug Program Administrators Association of California (CADPAAC). ADP could not present the regulations for vote by the county administrators at the previous quarterly CADPAAC meeting in September 2009, because the 45-day public comment period ended just prior to the meeting, leaving ADP without sufficient time to review the public comments prior to the CADPAAC meeting. The next quarterly CADPAAC meeting is not scheduled until January 26-29, 2010. Thus ADP is requesting emergency readoption of the subject regulations on December 27, 2009.

If these regulations are not readopted on an emergency basis, ADP and the State of California will not be able to charge licensure and certification fees in compliance with HSC Section 11833.01. Inability to charge licensure and certification fees as required by HSC Section 11833.01 would deprive ADP of the revenue it needs to provide sufficient staff resources to continue licensing and certifying residential facilities, certifying outpatient programs, and monitoring and ensuring the quality of AOD treatment services provided by residential facilities and outpatient programs. Without the ability to continue those activities, ADP could not ensure the quality of services provided, endangering not only the health, safety, and welfare of clients of those facilities and programs, but also the health, safety, peace, and welfare of neighborhoods and communities in which those residential facilities and outpatient programs are located.

HSC Section 11834.30 prohibits operation of a residential facility without a license. Without the continued revenue ADP needs to provide sufficient staff resources to extend biennial licensure, currently licensed residential facilities would be forced to close when their current two-year period of licensure expires unless they chose to operate in violation of law. Closure of existing residential facilities, combined with ADP's inability to license new residential facilities, would severely impact the availability of essential AOD treatment services in California. Without sufficient availability of AOD treatment services, the rate of alcoholism and addiction could increase, threatening individual and public health by increasing the prevalence of hepatitis B and C infection, HIV/AIDS, sexually transmitted diseases, and tuberculosis. An increase in alcoholism and addiction would impact the welfare system by decreasing individuals ability to support themselves and their families or to be responsible, productive members of society. An increase in alcoholism and addiction would impact public safety by increasing the incidence of driving under the influence. An increase in alcoholism and addiction would impact the criminal justice system by causing an increase in criminal activity.

Additionally, failure to readopt these regulations on an emergency basis could negatively impact the economy of California. If ADP were unable to extend existing licenses, facilities

would close, leaving owners and staff of those facilities unemployed and without income, increasing state costs for unemployment and welfare subsidies. At the same time, ADP could not license or certifying new facilities or programs, depriving the state of needed revenue from licensure and certification.