

**DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**

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TDD (916) 445-1942



August 8, 2008

**Notice of Rulemaking and Public Comment Period for  
Amendments to Regulations Contained in  
Chapter 3 (Commencing with Section 9795), Division 4, Title 9,  
California Code of Regulations  
Driving Under the Influence (DUI) Programs**

On June 27, 2008, the California Department of Alcohol and Drug Programs (ADP) provided notice of amendments to Chapter 3 (commencing with Section 9795), Division 4, Title 9, California Code of Regulations. That notice established a 45-day public comment period from June 27 through August 11, 2009. Unfortunately that notice did not reach everyone who wished to provide public comment. Therefore the original public notice of June 27, 2008 is hereby rescinded and notice is given that ADP will provide a second 45-day public comment period from August 8, 2008 through close of business on September 22, 2008. To avoid inconvenience to anyone who has already submitted comments, ADP will consider any comments received since the date of the original notice as being submitted during the 45-day public comment period. ADP has not made any additional changes to the regulations since they were originally noticed on June 27, 2008.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

Section 11836 of the Health and Safety Code (HSC) grants ADP statutory authority to license DUI programs. HSC Section 11836.15 requires ADP to adopt regulations needed to license DUI programs. Those regulations are contained in Chapter 3 (commencing with Section 9795), Division 4, Title 9 of the California Code of Regulations (CCR). This regulatory action amends Chapter 3 as summarized below. These changes were developed in collaboration with the DUI Advisory Work Group, which is composed of licensed providers of DUI program services, and representatives of the California Association of Alcohol and Drug Program Administrators (i.e. counties), and the Department of Motor Vehicles.

- The term "Drinking Driver Program" has been changed to "Driving Under the Influence Program" or "DUI" to maintain consistency throughout Chapter 3.



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- The term “significant other” was added and defined in order to maintain consistency with Health and Safety Code Section 11837(e).
- Within 150 days prior to expiration of a DUI license, county alcohol and drug administrators are asked to notify ADP whether the licensee has paid county administration and monitoring fees.
- Program enrollment and intake interviews have been combined, procedures for program enrollment have been added, and administrative or clerical staff may conduct the program enrollment and intake interview.
- Certified counseling staff shall conduct assessments of participants’ alcohol and drug problems.
- The licensee shall conduct the first face-to-face interview within 21 days of enrollment.
- Program services were increased from six months to nine months for participants ordered by the court to participate in a DUI program pursuant to Assembly Bill 1353 (Chapter 164, Statutes of 2005).
- Participants are prohibited from attending more than one group counseling session and one make up session per week.
- The maximum fine assessed for a missing Notice of Completion is limited to \$15,000.
- The option of testing for drug use with a chemical screening device has been added if program staff suspect a participant to be under the influence of drugs while attending program services. The licensee may charge the participant for the cost of a chemical test only if the result is positive. Chemical screening devices may already be used if program staff suspect a participant is under the influence of alcohol.
- The minimum participant fee for individuals eligible for general relief or general assistance has been raised from \$5 to \$10 per month. The program may charge participants an additional fee of no more than \$5 for failure to pay program fees on time. The program may charge participants a maximum fee of \$10 each time the participant is granted a leave of absence for vacation. The program may charge participants a maximum fee of \$10 for processing a transfer to another licensed DUI program. Ancillary fees have been limited and specified in regulation. The licensee must justify to ADP charges for ancillary services which exceed the minimum amount listed.

- The program director/administrator shall review requests for leave of absence.
- The licensee may require participants to make up all absences and pay all outstanding fees before granting a leave of absence for vacation.
- The inter-program transfer process has been updated to reflect actual practice.
- Standards for dismissal of participants have been clarified and strengthened to allow DUI programs to dismiss participants who act in a threatening manner toward staff or other participants.

**AUTHORITY:**

These regulations are being adopted pursuant to Sections 11755, 11835, and 11836.15 of the Health and Safety Code; and Section 23161(b) of the Vehicle Code

**REFERENCE:**

The statutory references for this regulatory action are Sections 11836, 11836.10, 11836.12, 11836.14, 11836.15, 11837, 11837.1, 11837.2, 11837.3, 11837.4, 11837.5, 11837.6, 11837.7, 11837.8, 11838.1, 11838.3, 11838.4, 11838.5, 11838.10, and 11838.11 of the Health and Safety Code; and Sections 13352.5, 13353.4523161, 23181, Vehicle Code.

**FISCAL IMPACT STATEMENTS:**

Anticipated costs or savings in federal funding to the Federal Government: None. ADP does not anticipate any cost to the federal government as the result of this regulatory action because this regulation does not impact any federally funded State agency or program.

Anticipated costs or savings to any State agency: None.

Anticipated costs to county or local government: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. ADP has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This regulatory action will not impose a cost on business, or eliminate businesses, small businesses, or jobs. The proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

Impact on Small Businesses: These regulations will impact small businesses, since most DUI programs are small businesses. However these regulations will not have a detrimental impact on small businesses.

Cost Impact on Representative Private Persons or Businesses: These regulations will impact individuals receiving services from DUI programs. ADP has determined that these regulations will impose a \$5/month increase in costs on approximately three percent (3%) of individuals receiving minimum fee services from DUI programs.

Impact on Housing Costs: None. ADP does not anticipate that this regulatory action will impact housing costs in any way.

Nondiscretionary cost or savings imposed on local agencies: None

### **LOCAL MANDATE DETERMINATION:**

ADP has determined that this proposed regulatory action will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

### **WRITTEN COMMENT PERIOD:**

Any interested person or his authorized representative may submit written comments on the proposed regulatory action. **The written comment period closes at 5 p.m. on September 22, 2008.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period. Please send written comments to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Comments may also be submitted by fax at (915) 323-5873 or e-mail at [MCONWAY@ADP.STATE.CA.US](mailto:MCONWAY@ADP.STATE.CA.US).

### **SCOPE OF TESTIMONY:**

Section 11346.8(c) of the Government Code prohibits the Department from making any changes to the text of a noticed regulation after the public hearing, unless the change was so sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action. Therefore please make your comments specific to the regulation discussed in this notice. Please indicate the number of the section you would like changed, the specific change requested, and the reason why you would like the section changed. Since the Department cannot make changes to sections of regulation which were not mentioned in this public notice, during the public comment period the Department will not consider testimony regarding changes which are outside the scope of this notice.

If you wish to request the Department to amend, adopt, or repeal additional sections of regulation, the Department is required to consider those changes in a separate regulatory action.

### **PUBLIC HEARING:**

The Department has not scheduled a public hearing on the proposed regulatory action. However, if any person wishes to submit oral comments, the Department will schedule a public hearing upon receipt of that person's written request. Such request must be received at the address shown above no later than 15 days prior to the close of the written comment period.

### **CONSIDERATION OF ALTERNATIVES:**

Pursuant to Section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory action was taken. The Department must also determine that no alternative would be as effective and less burdensome to affected private persons than the regulatory action taken. The Department will consider any alternatives presented during the public comment period.

### **ADDITIONAL CHANGES:**

The Department may modify the proposed regulation in response to testimony received during the 45-day public comment period, so long as any additional changes made are sufficiently related to the proposed regulatory action and within the scope of this notice. The Department will make available to any interested persons, for at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation, the full text of any regulation which is changed or modified from the express terms to this regulatory action. The Department will mail a copy of the additional changes to any person who testified or submitted comments during the public hearing (if one is requested), who submitted written comments during the 45-day public comment period, or who requested copies of additional changes. Please call the Department's regulations coordinator at (916) 327-4742 if you wish to receive a copy of any additional changes and you do not plan to present comments regarding the proposed regulatory action.

### **AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:**

The Department has prepared and has available for review upon request the text of the proposed regulations discussed in this notice, written in plain English; an initial statement of reasons, explaining the necessity for each regulatory change; and all the information upon which the proposed regulations were based. To obtain a copy, please call Mary Conway at (916) 327-4742 or write to her at the address shown on the first page of this notice. If you received this public notice in the mail, the text of the proposed regulation and the initial statement of reasons were enclosed. The proposed regulations and initial statement of reasons are also available on the Department's web site at <http://www.adp.ca.gov> .

### **PERSON TO CONTACT FOR ADDITIONAL INFORMATION:**

The Department's contact for this regulation package is Mary Conway, the Department's Regulations Coordinator, at (916) 327-4742. Millicent Gomes, Deputy Director, Office of Criminal Justice Collaboration (916) 445-7456 is the back up contact. Please direct any questions regarding the policy contained in the proposed regulatory action to Millicent Gomes. Please direct any questions regarding this public notice, the status of the proposed amendments, or the regulatory process to Mary Conway.

**FINAL STATEMENT OF REASONS:**

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, please call Mary Conway at (916) 327-4742.

The final statement of reasons will also be posted on the Department's web site at <http://www.adp.ca.gov>.