

## California Association of Addiction Recovery Resources (CAARR)

January 26, 2009

### Issues and Recommendations in ADP's Draft Counselor Certification Language

Unmentioned in the draft of proposed language is a statement of proposed Legislative Intent.

**RECOMMENDATION:** CAARR believes a statement of intent should be included. It should state clearly that it is recognized that AOD counselors are a unique set of counselors who treat a distinct group of clients who have addictions, that such treatment is non-medical, that counselor training as specified in TAP-21 includes issues of co-occurring disorders, that counselors often come into the field as a second career and most frequently from the ranks of (former) treatment clients, and therefore that a special set of circumstances require that counselor education and certification requirements be adopted recognizing these facts and that they not be based on standards for mental health specialists or psychotherapists.

#### **11975.03** – Department's authority to adopt regulations

- (e) The language states that the Department may establish continuing education requirements by regulation

**RECOMMENDATION:** CE requirements should be specified in the bill, not in regulations

- (f) The Department may establish procedures for investigating complaints.

**ISSUE:** The draft bill language already contains a partial set of procedures and adopting a regulatory framework leads to delay and uncertainty.

**RECOMMENDATION:** Procedures and time limits for investigating complaints should be fully specified in the bill in Sections 11975.18 – 11975.24.

- (g) The Department determines whether the curriculum of an “educational institution” meets the “requirements” established in statute ---

**ISSUE:** There are no “requirements” specified in the draft statutory language;

**ISSUE:** The term “educational institution” is undefined;

**ISSUE:** Several references in the draft language to WASC-approved institutions seem intended to, or have the potential to lead to, exclusivity in education providers, shutting out providers like the CAARR Institute, and may end up requiring counselors to take courses

exclusively at Community Colleges at a time when the Community College system is retrenching due to state budget pressures.

RECOMMENDATION: Create a definition of “educational institution” in the bill; Delete specific references to Community Colleges OR include CCs and the CAARR Institute, Breining, perhaps others in the definition of an “educational institution”.

(j) The language states that the Department establishes education and supervision requirements for “registrants”.

ISSUE: The bill already does this, and the way it does so is a problem [see 11975.04 (g) below].

RECOMMENDATION: This subdivision should be deleted.

## 11975.04 – Definitions

### (d) Licensed Counselors

ISSUE: The definition of a Licensed Counselor includes a brief, “no limits”, and tangential reference to operating an independent practice if a person is a “Licensed Counselor”.

RECOMMENDATION: The notion of “Independent practice” also needs to be very specifically defined in the bill, including items such as practice parameters, a requirement that the Licensee must be on-site whenever an “employee” is counseling clients, that any employees engaged in counseling clients must be registered or certified, stringent client notification requirement, limits on the number of counselor employees, facility inspection by ADP, etc. The bill must **also** define the differences or distinctions between such an “independent practice” and a certified outpatient program, because **there is no apparent difference**.

(g) Registrant --- This subdivision specifies that a registrant is a person who has already completed 12 semester hours (or 18 quarter hours) of “education specified in this part”.

ISSUE: It is unclear which provision of this “part” is being referred to.

ISSUE: Do the 12 units have to be counseling-specific? AOD-specific? Can they be in geography? Flower-arranging? Remedial pre-algebra?

ISSUE: Again, using terms like “semester hours” implies the education **must** be obtained in a community college, which exclusive-izes these institutions for AOD education AND which consequently prevents people from working in the AOD field.

ISSUE: In 11975.06, certified counselors don’t need 12 “semester units”, so why do registrants???

ISSUE: Finally, it is unclear if the intention here is to require that a person must be a registrant prior to becoming certified, because there is no direct statement to that effect.

**RECOMMENDATION: The proposed draft definition of “Registrant” should be deleted. Instead, a Registrant should be defined as someone who is registered with the department, who works in a licensed or certified program or in an independent practice operated by a Licensed Counselor, and who is pursuing education and work requirements that lead to certification.**

RECOMMENDATION: There should also be a time limit between registration and certification, and each year there should be reported progress toward that goal. That is why the current approved certification bodies should track and register the participants and just notify the State as to who is registered since the CO’s can do it more efficiently and at less cost.

### **11975.05 – Provisional Certification**

(b) This subdivision allows the department to “provisionally” certify people who are already certified, presumably during a “transition period” between the existing counselor certification system and the certification system contemplated in the draft language, and it sets a 4 year limit on provisional certifications.

ISSUE: The draft language completely fails to specifically address the question of what the existing workforce does after the “provisional” certificates expire. This language therefore implies that the existing workforce must, within that 2 to 4 year provisional period, meet the proposed new standards in terms of education and experience. This will drive out a major percentage of the existing workforce.

ISSUE: By issuing “provisional” certifications to the existing workforce, the Department is DEMOTING all currently certified counselors by calling them “provisionally certified”. At the same time the Department is essentially declaring their existing CAS, RAS, CADC etc certifications to be inconsequential and of no use. Offering a “provisional certification” to the existing counselors is INSULTING.

RECOMMENDATION: Delete the proposed language. Instead, all counselors and registrants who are currently in good standing and who obtained certification within the existing certification system (which most recently was determined by the Department’s own regulations adopted in 2005 and only fully implemented 2 years ago) **must be fully certified within any proposed new system.**

(d) This subdivision gives the Dept authority to determine conditions regarding who will be provisionally certified as an “advanced” or “supervising” counselor.

ISSUE: There is not enough time to do this in regulation before 1/1/2011.

RECOMMENDATION: See recommendation under (b), above. This should be specified in statute

ISSUE: The bill is silent on “private practice” between now and 2011.

RECOMMENDATION: The department may want to consider what to do with unlicensed people operating “private practices” between now and 2011.

**11975.06** – Education and experience requirements for the first 3 levels of counselors

(a) Counselors – Education obtained thru either route (A) or (B), below:

(1)(A) 350 hours of AOD education, and high school or GED –

ISSUE 1: How did the department arrive at 350 hours as the standard? It seems like overkill. CAARR knows of no scientific basis suggesting that 350 (classroom?) hours improves counselor quality relative to current standards OR to CAARR’s newly-adopted 270-hour standard, OR that the current 155 hour requirement is inadequate. The adequacy of the test to cover all elements of TAP 21 should be the deciding factor since in theory the adequacy or quality of the education would be reflected in the test results.

RECOMMENDATION: The department needs to **define the inadequacy of the current curriculum/hours** regulation before setting some apparently arbitrary new standard. The Department also needs to justify any new classroom-hours standards it wants to set in statute. The so-called “national standard”, which could perhaps be defined as NAADAC’s standard, is 270 classroom hours. CAARR suggests that in addition to these 270 hours there should be a 160 hour “practicum”.

ISSUE 2: What will it cost to purchase 350 hours of education, and who will pay?

RECOMMENDATION: The department should survey current education providers, determine costs for their education programs, and extrapolate to estimate the cost of any proposed new requirement. The department should also assess the extent to which County AOD programs will be further drained of resources while paying for their employees and/or their contractors’ employees to get these hours.

ISSUE 3: It is unclear in the draft language whether the 350-hour standard is intended to mean “classroom” hours, or whether it includes some portion of “practicum” hours.

RECOMMENDATION: Clarify the intent and costs of establishing an arbitrary 350-hour requirement. .

ISSUE 4: It is also unclear how “clock hours” translate into “semester hours”. Most 3-unit “semester hours” courses involve 2.5 hours actually in the classroom per week for 15 weeks, *i.e.* 37.5 “clock” hours. Extrapolating, it would take 28 semester hours in a “college” to reach the 350 “clock”-hour proposed requirement, and that’s essentially an entire year of college courses in the subject matter.

RECOMMENDATION: Specify what would be required in the “semester hours” route in terms of classroom hours of AOD coursework.

OR, Route (B)

**(1)(B)** Associates Degree in alcohol and drug counseling or “equivalent degree” ---

ISSUE: There seems to be a real shortage of institutions offering an Associates degree in AOD Counseling. Furthermore, it is extremely unclear what may be deemed an “equivalent degree”.

RECOMMENDATION 1: “Equivalent degree” must be specified in the bill;

RECOMMENDATION 2: The Department should specifically identify schools that offer a specific “AOD Counseling” degree, identify those that currently offer such a degree, identify the costs to attend the identified institutions, and determine where they are located, all as a way of assessing the actual availability of achieving certification via Route (B). Additionally the Department should begin to determine how much “on-line” education is acceptable for counseling-specific education. Based on the outcome of this research effort, the department should reassess the “Route (B)” draft language.

**(a)(3)** This paragraph specifies 250 hours of supervised experience.

ISSUE: It is unclear as to time limits for when the experience may be gained, *e.g.* whether this can be accomplished as a registrant.

RECOMMENDATION: Clarify that supervised hours gained as a “registrant” count toward this requirement.

**(b)** Advanced Counselors – meet education requirement through Route (A) or Route (B)

**(1)(A)** Bachelors degree in alcohol and drug counseling or “equivalent degree”;

ISSUE and RECOMMENDATION: **See (a)(1)(B) above**, only stronger, because we believe there are less than a dozen colleges and universities in the entire country that offer a Bachelors Degree in AOD Counseling. Based on the outcome of the research effort recommended in (a)(1)(B) above, the department should reassess the “Route (A)” draft language.

OR, Route (B)

**(1)(B)** 10,000 hours of experience within the prior 10 years and a GED.

ISSUE: The draft language is silent on questions of who supervised this experience, and who documented it.

RECOMMENDATION: The bill should specify that this experience must have been in a licensed facility or certified program, and documented by the facility or program, and that both the counselor and the facility / program are currently licensed / certified and in good standing.

The draft language also specifies a requirement for an extra 150 hours of supervised experience in addition to the 250 hours required for counselors.

ISSUE: The draft is unclear as to who would supervise.

RECOMMENDATION: The bill needs to further clarify who would supervise these hours, and most especially during the “transition” period as existing certified counselors are moved into the new certification regime. This same ISSUE applies to ALL 4 levels, but especially the “top” 3.

(c) Supervising Counselors -

The draft language proposes a separate tier of “Supervising Counselors”. The education requirement is specified as a Bachelors degree in alcohol and drug counseling or an “equivalent degree”.

ISSUE and RECOMMENDATION: **Again, See (a)(1)(B) and (b), above including a specification of an “equivalent degree”.** We believe there are less than a dozen colleges and universities in the entire country offering a Bachelors Degree in AOD Counseling. Based on the outcome of the research effort recommended in (a)(1)(B) above, the department should reassess the draft language, **particularly in light of the fact that EVERY counselor in the state would be 100% reliant on supervised work hours that could be obtained in this proposed new regime ONLY under the supervision of “Supervising Counselors” (or Licensed Counselors).**

The draft language also requires a person must get 40 continuing education hours.

ISSUE: The draft language on these CE units references proposed new Section 11975.30 (b) (3) regarding the education requirement for expired license renewal. This is garbled and seems to have nothing to do with TAP 21-A.

RECOMMENDATION: Eliminate the reference to 11975.30 and just spell out TAP-21A.

ISSUE: By referencing this in a CE requirement section of the bill, instead of as a 1-time requirement, it is unclear whether it’s intended to be an ongoing CE requirement, a 1-time requirement, and whether 40 CE units are required annually or bi-annually. It also fails to specify whether education in TAP-21A taken within any previous time span is accepted.

RECOMMENDATION: Clarify.

The draft language also specifies a requirement for an extra 150 hours of supervised experience in addition to the 150 hours required for Advanced Counselors and the 250 hours required for counselors.

ISSUE: Again, as above, the draft is unclear as to who would supervise.

RECOMMENDATION: The bill needs to further clarify who would supervise these hours, and most especially during the “transition” period as existing certified counselors are moved into the new certification regime. This same ISSUE applies to ALL 4 levels, but especially the “top” 3.

**ISSUE: OVERALL APPRAISAL OF THE “SUPERVISOR” LEVEL:** This entire code section is highly problematic for reasons that will also be directly addressed below in commentary on section 11975.10 regarding “supervised work experience”. But again, the context of the proposal contained in the draft language means that EVERY counselor in the state would be 100% reliant on supervised work hours that could be obtained in this proposed new regime **ONLY** under the supervision of “Supervising Counselors”. Based on all the issues and comments identified above, CAARR does not believe this “tier” of “supervising counselor” is at all workable in actual practice.

**RECOMMENDATION: The “tier” of “supervising counselor” should be deleted from the draft language.** One possible alternative might be creating a definition of “supervisor” in the definitions section, and that definition should be based on workplace responsibilities.

#### **11975.07 – Licensed Counselors**

The draft language requires a Masters Degree in alcohol and drug counseling or “equivalent degree”.

**ISSUE and RECOMMENDATION: Again, See (a)(1)(B) and (b) and (c), above, including a specification of an “equivalent degree”.** We believe there are very few colleges and universities in the entire country offering a Masters Degree specifically in AOD Counseling. Consequently, the department is proposing to define in regulation the “private practice” set of acceptable Masters Degrees and this is objectionable.

Based on the outcome of the research effort recommended in (a)(1)(B) above, the department should reassess the draft language, **particularly in light of the fact that EVERY counselor in the state would be 100% reliant on supervised work hours that could be obtained in this proposed new regime ONLY under the supervision of “Supervising Counselors” and Licensed Counselors.**

The draft language also stipulates that licensees must complete a course in clinical supervision.

ISSUE: There is again a garbled reference CE requirements in 11975.30 (b)(3).

RECOMMENDATION: Eliminate the reference to 11975.30 and just spell out TAP-21A.

The draft language also stipulates that licensees must complete 2000 hours of supervised experience and 6000 hours of other experience as laid out in Sections 11975.10 and 11975.11.

RECOMMENDATION: The bill needs to specify who supervised or documented these hours, because especially during the “transition” period to the new regime, this is extremely unclear.

RECOMMENDATION: The department needs to determine and to specify in the bill the conditions and programs under which experience had to be gained, *e.g.* in licensed facilities or certified programs or perhaps in teaching hospitals or in a set of approved mental health settings. CAARR would **strongly object** if the department intends to allow those currently operating nominally illegal “private practices” to have “supervised” their own work over the past years.

### 11975.08 Curriculum requirements –

#### (a) Education Must include TAP-21 and TAP-21A –

ISSUE: The “A” part of TAP-21 is inappropriate for what are construed in the draft language as counselors and advanced counselors.

RECOMMENDATION: Some degree of training in TAP-21A should be required of anyone whose work responsibilities include supervising counselors and registrants and who therefore would be eligible to document supervised work hours to the Department.

ISSUE: The draft language allows other materials in addition to OR **in lieu of TAP-21** as the department determines by regulation. **The “in lieu of” is totally inappropriate.**

RECOMMENDATION: TAP 21 must be the core curriculum. Additions may be made, **but “in lieu of” must be deleted** from the draft language and any potential bill. For CAARR, this point is non-negotiable.

#### (c) The draft language specifies that education can be provided by a WASC-accredited institution, but that the department “may” approve others.

ISSUE: This is utterly discriminatory. On what basis did the Department determine that, for example, the CAARR Institute is inferior to the education program in AOD provided by Community Colleges? What did the department’s recent survey of accrediting bodies show? Just because a particular Community College, or the entire California Community College system is WASC-accredited does that say anything specifically about the AOD / counseling / human behavior courses?

RECOMMENDATION: Require every potential education provider to meet a set of requirements that are specified in the bill and that could be based partly on the efficient and intact portion of the regulatory model developed for the existing system for “certifying bodies” for counselor certification purposes.

### 11975.09 – Examinations –

(a) – This proposed draft language statutorily locks in the IC&RC as an acceptable exam.

ISSUE: CAARR strongly objects to this utterly discriminatory proposal. IC&RC has a CAADAC-specific exam in California. CAADAC has monopolistic contractual rights to administer it in this state. The department has made no determination or finding that we know of that the IC&RC exam is in any way superior to CAARR’s exam or Breining’s exam, for example. The Department’s existing regulations specify NOCA accreditation of the exams, and this process made the CAS and RAS tests equal to the IC&RC. There is also a “National test” given by NADAAC. Finally, something could happen to the IC&RC making it invalid and that would affect the Statute.

RECOMMENDATION: **Delete subdivision (a) as currently drafted.** Justify why it was included in your draft language. This issue needs complete reconsideration from the ground up.

(b) Allows the Department to develop an exam.

ISSUE: This will be expensive and likely won’t be accomplished in time.

RECOMMENDATION: Delete this option.

(c) Allows the department to approve other exams.

ISSUE: The Department already has regulations in place regarding “certifying bodies” in which NOCA approved certain organizations to certify counselors. Exams are at the heart of the accrediting process. The Department recently undertook a review of those accrediting bodies including their exams.

RECOMMENDATIONS:

**First**, the Department must act on the information it gained in conducting its barely-completed review of the certifying bodies. If any certifying body is acting outside the existing regulations that specify NOCA accreditation, OR outside the parameters they represented to NOCA, then the Department should take remedial steps with, or disciplinary action against, those bodies.

**Second**, the Department already has enough information about the exams currently in use to allow or disallow them.

**Third**, if the IC&RC exam or any other exam is statutorily specified, then all approved exams should be statutorily specified as well.

## 11975.10 – Supervised work experience

(a) Specifies that supervised experience work requirements may be gained under supervision of an “supervisor counselor” or a “licensed counselor” OR “another mental health professional specified by the department by regulation”. At least 70% of the work must be in actual counseling, and at most 30% on case management, all within a period of 1

year (250 hours) and not more than 6 years from the time of application for certification. It also says that supervised experience cannot exceed 40 hours in one week.

ISSUE: Specifying other “mental health professionals” in regulation is very highly objectionable. AOD is distinct from “mental health”.

RECOMMENDATION: Delete “other mental health professionals”. Or at least, get very specific and state it in the bill. This cannot be left to regulations.

ISSUE: CAARR may have an issue with the 40-hours in a week limitation.

(b) Defines “supervision”.

(c) “Supervisors” must meet dept’s specifications (in the transition time) prior to supervising anybody. The draft language limits supervised work to be at least 1 hour per week, but not more than 5 hours per week of supervised work.

ISSUE: The time limits contradict the 40-hour limit in subdivision (a), and are internally inconsistent with the requirement that a counselor must have 250 hours of supervised work in a single year.

RECOMMENDATION: **Delete** these limits.

ISSUE: There will be one year, at most, for the Department to establish requirement for supervisors and for aspiring supervisors to meet those requirements. We don’t believe that’s enough time. We are CERTAIN that it will leave aspiring Counselors and Advanced Counselors completely out in the cold.

RECOMMENDATION: This needs a lot more consideration and discussion; it should probably be **deleted**.

(d) Supervisors and supervisees must develop a “supervisory plan” for each one of them and submit them to the department.

ISSUE: This will create nothing but a truckload of paperwork and nothing but “make-work” for the department. It will require dozens of file cabinets holding reams of documents that the Department will virtually never use.

RECOMMENDATION: This requirement should be **deleted**. At bare minimum, the department needs to draft a pro-forma model supervisory plan that’s almost entirely ready for submission after a few boxes have been checked.

(f) People being supervised must register with the department as “supervisees”.

ISSUE: This is redundant and unnecessary.

RECOMMENDATION: **Delete**.

(i) Programs can contract out for supervisors.

ISSUE: It is entirely unclear as to where enough supervisors for start-up by 1/1/2011 will come from, but this subdivision seems to suggest they will magically appear in the form of “contractors”. Is the department suggesting that an abundance of Supervisors will appear from the ranks of the LCSW’s, and if so how will the department determine their fitness to do this work, how will publicly funded programs pay for them, and what incentive does the department believe these approved “contractors” will have to provide adequate documentation to actual AOD counselors who would want to be “supervisors” under the department’s proposed new regime?

ISSUE: there are very few LCSW’s that have AOD experience, and certainly not enough for the 30,000 counselors that need the supervisor hours.

RECOMMENDATION: This Subdivision should be **deleted**. In fact, **this entire Section should be deleted** until a great deal more thought has been put into it and agreement reached with counselors and program providers.

RECOMMENDATION: Re-define supervisor as someone who is certified/licensed in good standing and who actually supervises those aspiring toward a like certification/license in the workplace.

(k) The department can regulate the number of “registrants” any 1 supervisor can supervise, the number that can be supervised in any particular program or setting, and the proportion of any workforce that may be registrants.

ISSUE: It is entirely unclear why this provision includes only “Registrants”, and why the Department should establish this number in regulation as opposed to in the bill.

ISSUE: If the Department is merely trying to assure that a program does not employ only registrants, then it should so state. But this would be more appropriate in the program standards.

RECOMMENDATION: Clarify the need, the intent, and then following discussion with stakeholders, specify any agreed-upon limits in the bill and do not defer it to regulation.

### **11975.11 – Unsupervised work experience**

This section on **unsupervised** work experience begins with a sentence regarding **supervised** work experience, stating that **supervised** experience meets all the conditions laid out in subdivisions (a) – (d). But supervised experience was purportedly laid out in 11975.10.

ISSUE: Beginning Section 11975.11 in this way makes the entire section completely confusing and it borders on being intentionally misleading.

RECOMMENDATION: Clarify whether this section deals with supervised or unsupervised experience, and redraft the entire section.

Beyond the above Issue and Recommendation, we offer the following:

- (a) The draft language states that a counselor can't be credited for more than 40 hours of experience in any 7-day period. It also specifies a 6-year time limit on gaining experience.

ISSUE: This ridiculous limitation prohibits flexibility in scheduling counselors and gaining experience, and there is no need for it.

RECOMMENDATION: **Delete subdivision (a).** Alternatively, use something realistic and fair to the counselors, such as gaining 200 hours of experience in a calendar month and delete the rest.

- (c) The draft language specifically states that **all work experience** must be gained under supervision of a Supervisor.

ISSUE: This is utterly preposterous. According to this language, there is no difference between "supervised work experience" and "work experience", making it seem that the opening sentence in 11975.11 is 100% intentional.

ISSUE: Section 11975.06 (a) sets "work experience" requirements for counselors at 2080 hours spanning at minimum 1 calendar year. Under the provisions of this draft language, every single one of them will have to be supervised every one of those hours by a "Supervisor". Where does the Department intend to find all these "supervisors"? There are 900 licensed facilities operating essentially 24 hours a day – at least 16 "awake" hours a day – and perhaps 2000 certified outpatient programs. There are approximately 20,000 counselors in addition to the registrants. This requirement serves ONLY as evidence that the entire "Supervisor" category is nothing but "full employment act" for LCSWs and MFTs. And supervising can be done contractually???. This makes no sense at all.

RECOMMENDATION: **Delete subdivision (c); re-think the entire issue.**

### **11975.18 – Unprofessional Conduct**

Defines unprofessional conduct

RECOMMENDATION: The Department should consider adding as another act of unprofessional conduct the use of, or being under the influence of, any amount of alcohol or illegal drug when the counselor is in contact with clients.

### **11975.20 – Disciplinary action – Revocation for sexual contact with a client**

Revocation procedure for sexual contact must be done in accordance with Government Code 11500 which gives Directors broad authority to hold hearings, compel testimony, etc.

ISSUE: What about revocation procedure for unprofessional conduct that has nothing to do with sexual contact? The draft language is silent.

RECOMMENDATION: Clarify and specify. Set strict time limits via department investigation benchmarks.

### **11975.22** – Immediate Temporary Suspension

The draft language states that the Director may temporarily suspend any registration, certification or license prior to any hearing for cause.

ISSUE: This draft language does not specify a time limit on when a complaint is filed and when the suspension is ordered.

RECOMMENDATION: Specify a strict, short time frame during which the department must investigate and act, *e.g.* 10 days.

The language also states that if accused person files a “notice of defense”, the Director has 15 days to set a hearing and it shall be conducted “as soon as possible”.

ISSUE: “As soon as possible” is meaningless. Data from the Board of Behavioral Sciences from a few years ago proves that their average “case” is resolved in 2 years. That is about 1.7 years too long. The AOD field does not want to be similarly embarrassed.

RECOMMENDATION – Speed it up a LOT. We suggest setting strict benchmarks that require the department and counselor to proceed very swiftly through the hearing process.

If the director fails to make a decision within 30 days after the hearing, the temporary suspension is vacated.

ISSUE: In cases when a temporary suspension is vacated, it is unclear whether the draft language still allows the Director the opportunity to revoke or impose other “disciplinary terms”.

RECOMMENDATION: Clarify to assure that the Director can impose other “disciplinary terms” pending the outcome of additional investigation and hearing process.

### **11975.24** Disciplinary terms

Allows the department to set terms and conditions on a disciplinary action.

ISSUE: The language is unclear as to what conduct is covered.

RECOMMENDATION: Clarify whether the Department intends to cover every aspect of “unprofessional conduct”, or only the “sexual contact” parts of unprofessional conduct, or whether this may include things outside the scope of unprofessional conduct. Also clarify what happens when a counselor breaks the “terms”.

**11975.16 and .17** Necessity to have a certificate to “practice”, and 11970.30 License Renewal

ISSUE: What happens when the Department fails to timely renew certificates?

RECOMMENDATION: Address this potentiality by allowing people to continue working if their renewals have been sent to the department within a reasonable period of time – we suggest one month -- before expiration.

**11975.26** AOD counselor trust fund

RECOMMENDATION: This fund should ideally be continuously appropriated.

**11975.27** Fees

ISSUE: The fees are too high and will place a very unfair burden on an already-underpaid workforce. It adds up to about \$600 to the department to for each individual to get certified.

RECOMMENDATION: The Department must justify any fee structure, and then fees must ONLY be set in statute based on a “cost of service” requirement. The department should not have the opportunity to modify them by regulation. **Additionally, this section should include a statement that the Department shall contract out for these services whenever it is possible, based on existing language in HSC 11812(b)(1) regarding county provision of services.**

**11975.28** Reexamination Fees

NO RE-EXAM FEE SHOULD BE COLLECTED BY THE DEPARTMENT.

**11975.29** Background checks

- (e) The department **shall deny or revoke a license, certification or registration** to an individual if at the time of the department’s determination the person would be ineligible to be sentenced to probation pursuant to Penal Code Section 1210.1, subject to the following conditions:

ISSUE: The lifetime prohibition on being certified except under the exception for PC 1210.1 seems entirely unjustifiable. Most of the workforce – probably 90% - are recovering alcoholics and drug addicts. Almost all of the workforce works in public settings – licensed facilities and certified outpatient programs. The Department should not advocate for giving background checks to that will clearly deny certification to many, many counselors.

RECOMMENDATION: A great deal of work is needed on this. Only the “Licensed” cadre of counselors should be background-checked. **In the meantime, this requirement should be deleted and NOT included in an “As Introduced” piece of legislation.** Once you’ve done your time, you should be DONE.

(f) Notwithstanding the provisions of subdivision (e) and (f) above, and unless the individual concerned has obtained a certificate of rehabilitation as provided in Penal Code Section 4852.01, et seq., **the department shall permanently deny or revoke a license, certification or registration to a person convicted of driving under the influence of any alcoholic beverage or drug,** or under the combined influence of any alcoholic beverage and drug, as specified in Vehicle Code section 23153, **until a period of ten years has passed** since that conviction, during which period the individual remained free of both prison custody and the commission of an offense that results in a felony conviction other than a nonviolent drug possession offense, or a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

ISSUE: This is preposterous. Think about how this will affect the field. Justify why a DUI makes a person unfit to counsel others for 10 years, and go survey the field to find out how many existing counselors would be impacted.

RECOMMENDATION: **DELETE THIS PROVISION.** Once you’ve done your time, you should be DONE. .

GENERAL ISSUE 1: The draft language provides exceptions for burglary and robbery. What about receiving stolen property? B&E? Public intoxication? Driving an unregistered vehicle? Resisting arrest? Simple assault? There are a lot of non-drug convictions that may not be eligible for the treatment / sentencing option under Prop 36’s section 1210.1, but that nonetheless were committed at the time by an addict who is now – or who may become – a great counselor.

GENERAL ISSUE 2: There isn’t even a “waiver” provision in here, such as “the department *may consider denying, for cause*” ---- just a blanket, lifetime prohibition.

GENERAL RECOMMENDATION: Re-Think the entire notion of background checks, including eliminating the proposed requirement altogether. And if some version of background checks makes it into a bill at some point, the presumption should be that the Department decides, based on individual cases, when denial is appropriate and when a person should be certified anyway. **Do not make certification denial a statutory certainty.**

GENERAL RECOMMENDATION: Background checks and limitations would be more appropriately placed in program standards: for example, you might have more requirements on someone working with children, or women, etc.

### **11975.39 – Statute of limitations**

ISSUE: Is a 7-year limitation appropriate? Even for murder? Raping a client?

**GENERAL COMMENT REGARDING THIS PROPOSAL:** By the time DADP collects all the information required of this ACT and monitors it, it is going to be outrageously expensive and unnecessary. DADP needs to concentrate on complaint investigation and centralized data issues. DADP needs to tighten up the existing regulations, raise the bar if it must, and then leave it to the existing QUALIFIED organizations to carry it all out.