

# **INITIAL STATEMENT OF REASONS**

## **California Code of Regulations**

### **Title 9. Rehabilitative and Developmental Services**

#### **Division 1. Department of Mental Health**

#### **Chapter 14. Mental Health Services Act**

California voters approved Proposition 63 during the general election held November 2004. Proposition 63 took effect on January 1, 2005 as the Mental Health Services Act (MHSA). The MHSA imposes a 1 percent tax on personal income in excess of \$1 million in order to increase funding to expand mental health services to children/youth, adults and older adults who have severe mental illnesses/serious emotional disturbances and whose service needs are not being met through other funding sources. Further, the MHSA seeks to establish prevention and early intervention programs, as well as develop innovative programs. The MHSA provides the opportunity for the Department of Mental Health (DMH) to increase funding for personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children/youth, adults, older adults and families.

The MHSA, at Welfare and Institutions Code (WIC) Section 5847, directs the county mental health programs to develop and submit a three-year plan, which the Department has called the Three-Year Program and Expenditure Plan (Plan). WIC Section 5848, subdivision (c), requires DMH to establish requirements for the content of the Plan. The Plan is comprised of five components of activities and/or services for which the funding established under the Act can be spent. The components are: Community Services and Supports (referred to in the MHSA as services to adults, older adults, children and transition age youth); Capital Facilities and Technological Needs; Workforce Education and Training; Prevention and Early Intervention; and Innovative Programs.

Given the scale of each component, DMH is implementing each component on a sequential and/or staggered basis. The first component of the Plan to be implemented was Community Services and Supports (CSS). To accomplish this, the Department has adopted Chapter 14, "Mental Health Services Act," in Division 1 of Title 9 of the California Code of Regulations (CCR).

This Statement of Reasons accompanies the draft regulations for the Community Services and Supports General System Development Service Category contained in the California Code of Regulations Title 9, Division 1, Chapter 14, Article 6, Community Services and Supports, which expands on the MHSA regulations currently in effect. This regulation package expands an existing service category within the already existing component of the Community Services and Supports. Adoption of these regulations is necessary to implement the provisions required by the MHSA and to allow expansion of a service category within the CSS component. Pursuant to the Administrative Procedures Act, DMH has prepared this Statement of Reasons which presents the purpose and the rationale for necessity for each regulation.

## Article 2: DEFINITIONS

### **Section 3200.028. “Capitalized Operating Subsidy Reserve”.**

**Specific Purpose:** Section 3200.028 defines the term “Capitalized Operating Subsidy Reserve” to mean funds set aside for the purpose of supplementing income for the Project-Based Housing for the payment of operating expenses.

**Rationale for Necessity:** This definition is necessary to explain the existence of a funding source that can be utilized to supplement the income of Project-Based Housing as defined in these regulations. Due to the high housing costs in California, it is expected, that even the application of rental subsidies such as Section 8 and HUD McKinney program funds will not be sufficient to cover the rent and operating expenses for the Project-Based Housing. The establishment of the Capitalized Operating Subsidy Reserve will provide the supplemental income necessary to cover the monthly operating expenses of said units.

## **Section 3200.252. “Project-Based Housing”.**

**Specific Purpose:** Section 3200.252 defines the term “Project-Based Housing” to mean the unit(s) of an apartment complex, duplex, etc. leased or purchased by the County for the purpose of providing housing.

**Rationale for Necessity:** This definition is necessary to define what types of “units” are considered Project-Based Housing. The Mental Health Services Act (MHSA) created various components or types of programs/projects for expanding the mental health system within California. One component is Community Services and Supports. Within this component, are four distinct service categories: Full Service Partnership, Outreach and Engagement, MHSA Housing Program and General System Development. Each of these service categories allows for monies to be used for a specific type of housing. For example, the MHSA Housing Program is designed specifically to allow counties to purchase single family homes and/or apartment buildings/units for the purpose of permanent supportive housing. Full Service Partnership funds, which provide all necessary services and supports to clients, can be used for rent subsidies and temporary housing for clients on an as-needed basis. Aforementioned housing arrangements are client specific, this means that these housing expenses are tied to the specific service needs of an individual, and when appropriate, their family. General System Development uses MHSA funds to improve the County’s mental health service delivery system for all clients and/or to pay for specified mental health services and supports for clients, and when appropriate for their families. Consistent with this definition, housing expenditures under General System Development are allowable when they expand housing resources to support and improve the County’s mental health service delivery system. This distinction is necessary to ensure that counties are using the various housing funding sources correctly to avoid any disallowance by the Department of Mental Health.

## Article 6: Community Services and Supports

### Section 3630. General System Development Service Category.

#### Section 3630, subdivision (b)(1)(J).

**Specific Purpose:** Section 3630, subdivision (b)(1)(J) adds to the list of allowable expenditures of General System Development (GSD) funds to include the Project-Based Housing program.

**Rationale for Necessity:** This regulation is necessary in order to expand the list of allowable expenditures of GSD funds to include the Project-Based Housing program. Section 3630, subdivision (b) specifies how the GSD funds can be used. Therefore, in order for the Project-Based Housing program to be an allowable expenditure of GSD funds, it is necessary to expand the current list. General System Development is one of the four service categories under the Community Services and Supports component. Each of the other three service categories allow for housing as an allowable expense. However, as allowed in two service categories (Full Service Partnership, Outreach and Engagement), the housing expenses represent a service to a specific client. In contrast, the Project-Based Housing program will allow the County to expand the housing resources available to individuals within the mental health system through the use of apartments, duplexes, etc. thereby broadening the range of available housing options to a population who often have difficulty securing affordable, stable housing.

## **Section 3630.05. Project-Based Housing Program.**

### **Section 3630.05, subdivisions (a), (a)(1), (a)(2), (a)(2)(A), (a)(3), (a)(4), (a)(5), (a)(5)(A) and (a)(5)(B).**

**Specific Purpose:** Section 3630.05, subdivisions (a) through (a)(5)(B) introduces a list of the types of costs associated with a Project-Based Housing program that may be paid for with GSD funds. Each of the specific expenditures is justified below.

**Rationale for Necessity:** These regulations are necessary to identify the allowable costs for a Project-Based Housing program which are different from the housing costs reimbursable under the other two service categories, (Full Service Partnerships and Outreach and Engagement) which as stated above, are client-specific housing costs.

#### **(a)(1) Purchasing/renovating/constructing Project-Based Housing.**

**Rationale for Necessity:** This regulation is necessary as Project-Based Housing is not specific to a particular individual. Therefore, the County will need to acquire housing that can be used for individuals with mental health needs as necessary. In order to accomplish this goal, the County may avail itself of several options. One option is the purchasing/renovating/constructing of housing. In this way the County can purchase and/or renovate an existing apartment building, duplex, etc. depending on the needs of the County and the amount of funds available for this purpose. The ability of some counties to purchase land and then build the necessary housing structure may be cost prohibitive. However, given the current real estate market, the ability to purchase land in certain geographical areas and then construct the housing may now be a viable alternative for a County.

#### **(a)(2), (a)(2)(A) Master Leasing.**

**Rationale for Necessity:** Master leasing allows the County the flexibility to use GSD funds to lease Project-Based Housing rather than only allowing Project-Based Housing on a purchase-only basis. The advantage of master leasing is twofold: (1) The County will be able to stretch the purchase power of their GSD funds as leasing is a less-costly alternative to land-building purchases; and (2) leasing will offer the County more flexibility in terms of the geographic areas in which housing is available. For example, master leasing will afford the County the ability to lease units in multiple parts of the County thereby allowing service to a more diverse population and meet the clients' needs for accessibility to transportation, family services, etc.

The County is responsible for ensuring that the master lease contains language that allows the County to perform tenant selection and collect the rent payments for those units under the County's control. These provisions are necessary as the County has paid for the units under the master lease and, therefore, should have the ability to select the individuals for placement in the Project-Based Housing. It is often difficult for individuals with mental illness to obtain housing. By allowing the County the ability to select tenants, those most in need are able to be housed. Additionally individuals will be able to be housed more quickly because they will not be subjected to the normal

rental process such as utility deposits, credit checks and personal references. Limiting the collection of rental payments further allows the County to collect only the amount of rent that the tenant can afford thus furthering the fundamentals of the MHSA by meeting the needs of the individual.

**(a)(3) Repair damage to the Project-Based Housing**

**Rationale for Necessity:** Subdivision (a)(3) allows the County the ability to use GSD funds to pay for repairs of damages to Project-Based Housing that occur during the tenancy of a client. This will allow the County greater leverage when securing properties through master leasing as the property owner is guaranteed that damages to Project-Based Housing will be repaired.

**(a)(4) Establishing/maintaining a Capitalized Operating Subsidy Reserve.**

**Rationale for Necessity:** A Capitalized Operating Subsidy Reserve allows the County to set aside GSD funds in a reserve for the purpose of providing an additional source of subsidy for Project-Based Housing. (Refer to section 3630.15 for specifics on the requirements and limitations for the establishment and use of the Capitalized Operating Subsidy Reserve.)

**(a)(5), (a)(5)(A), (a)(5)(B) Establishing a Project-Based Housing Fund.**

**Rationale for Necessity:** The Project-Based Housing Fund is established when a transfer of GSD funds is made to a local government housing entity for a specific housing program. The local government housing entity holds and disburses the funds to purchase land and construct the housing for a specific program. The transfer must be irrevocable. Therefore, if the County and local government housing entity determine that completion of the program (project), for which the Fund was established, is not feasible, the monies remain in the Fund to be used only for other approved Project-Based Housing programs.

**Section 3630.05, subdivision (b)**

**Specific Purpose:** This regulation is necessary to inform the County of client-specific expenditures associated with housing for which GSD funds shall not be used.

**Rationale for Necessity:** This regulation is necessary as current regulations allow for the payment of housing expenditures under Full Service Partnerships and Outreach and Engagement. However, the housing expenditures allowed under these two service categories are client specific. This means that these expenses are tied to the specific service needs of a client, and when appropriate, their family. These types of client-specific expenses associated with housing are not allowable expenses under GSD. Housing expenditures under GSD are allowable when they expand housing resources to support and improve the County's mental health service delivery system.

## **Section 3630.10. Requirements for a Project-Based Housing Program.**

### **Section 3630.10, subdivisions (a), (a)(1), (a)(1)(A) and (a)(2)**

**Specific Purpose:** These regulations inform the County of the requirements when GSD funds are used for a Project-Based Housing program and the responsibility of the County to ensure compliance with these requirements.

**Rationale for Necessity:** These regulations are necessary as there are specific requirements that must be adhered to when using GSD funds for a Project-Based Housing program. It is necessary to make the County responsible for adherence to these requirements as there may be situations where the County is not the direct overseer of a Project-Based Housing program. General System Development funds may be given to a local housing authority for the purchase and operation of a Project-Based Housing program. However, if GSD funds are used, there is a 20 year obligation for the use of the property (see section 3630.10, subdivision (a)(1)) and it is the County's responsibility to ensure the compliance with this requirement as well as all other applicable requirements for the expenditure of GSD funds for a Project-Based Housing program.

These regulations establish a definitive time period for the public good and, the Department feels, satisfy its fiduciary responsibility to the taxpayers, stakeholders and California communities regarding publicly funded activities. The Department feels the 20 year service requirement is in keeping with the stated goals for the use of GSD funds for a Project-Based Housing program. The Department is currently writing regulations to govern the MHSA Housing Program which will provide permanent supportive housing to individuals with mental illness. These regulations will require a minimum 20 year commitment to serving clients when MHSA monies are used for the funding of the housing.

Failure by the Department to require a 20 year obligation for a Project-Based Housing program on land purchased with GSD funds could potentially allow the County to purchase land with GSD funds with no obligation for the use of any "housing" subsequently constructed on the land. This regulation will ensure that any use of GSD funds will place a mandate on the County on the use of the buildings for a minimum of 20 years. It is also necessary to specify that the 20 year obligation is not waived if funds other than GSD funds are used to construct the Project-Based Housing. The use of GSD funds to purchase land carries a 20 year obligation for the use of the land, regardless of the funding source for the construction of the housing.

### **Section 3630.10, subdivisions (b), (b)(1) through (b)(6)**

**Specific Purpose:** These regulations are necessary to inform the County that federal, state, and local laws apply to buildings acquired, constructed and/or renovated with GSD funds. The list of applicable laws and regulations is not all inclusive but rather provides examples of federal, state, and local laws that may be applicable.

**Rationale for Necessity:** These regulations are necessary to inform the County that federal, state, and local laws apply to all buildings constructed, acquired, and/or renovated with GSD funds. The Department expects the County to abide by laws in existence and to comply with any new laws that may impact the proposed building.

Generalization has been used regarding zoning and building codes, fire safety requirements, environmental reporting and requirements, and hazardous materials requirements as some requirements may vary from county to county. The regulation requiring compliance with the Americans with Disabilities Act (ADA) is to inform the County of the necessity to comply with the ADA, when applicable. The Department does not have direct oversight of projects funded with MHSA funds. It is expected that the County will act independently to ensure compliance with any and all applicable laws. Additionally, depending on variables, such as the age of a building, the ADA may not be applicable. It is expected that the County will research and comply with the ADA as required.

Again, specific reference is made to the discrimination laws specified in California Government Code Section 11135. This specific reference is necessary to inform the County that California law regarding discrimination based on race, national origin, ethnic group identification, religion, sex, color, or disability is applicable and enforceable. This law is relevant as it speaks to "...any program or activity that is conducted, operated, or administered by the state or by the state agency, is funded directly by the state, or receives any financial assistance from the state." Although the Department allocated State MHSA funds to the County, the County is the entity that has the duty and obligation to ensure that funds under the Community Services and Supports component comply with relevant regulations.

### **Section 3630.10, subdivision (c)**

**Specific Purpose:** This regulation requires that the Project-Based Housing acquired with GSD funds shall have appropriate fire, disaster, and liability insurance.

**Rationale for Necessity:** This regulation is necessary to protect the public interest in case of a disaster in which the housing acquired with GSD funds is damaged or totally destroyed. By having the appropriate insurance, the County investment in the property is protected. The responsibility for ensuring that the property has the appropriate insurance rests with the County. Therefore, in those situations where the County is not the owner of the property, the County is responsible for ensuring that the requirements of this regulation are met.

### **Section 3630.10, subdivisions (d) and (d)(1)**

**Specific Purpose:** These regulations require the County to ensure that the owner of the Project-Based Housing applies for rental/operating subsidies from all applicable and appropriate sources. Subdivision (d)(1) provides an exemption to this requirement when the housing is under a lease agreement with the County.

**Rationale for Necessity:** The provision that the owner of the Project-Based Housing apply for rental or operating subsidies from all other applicable and appropriate sources, including project-based Section 8 and HUD McKinney programs and local rental subsidy programs is necessary to inform the County of the responsibility to ensure that the owner of the Project-Based Housing take these actions in order to maximize the use of GSD funds for housing. Operating subsidies are necessary to contribute to the fiscal success of a Project-Based Housing program. This regulation is necessary as the amount of funds available in the GSD fund is limited. In order to maximize the operating subsidy usage, the Project-Based Housing owners are required to access all other sources of subsidy prior to receiving Capitalized Operating Subsidies.

Section 3630.10, subdivision (d)(1) is necessary in order to exempt owners of Project-Based Housing from the requirement of applying for rental/operating subsidies in situations where the housing is under a lease agreement with the County. This exemption is necessary as a master lease guarantees the property owner a monthly income for the specific unit(s) under the lease agreement. Additionally, the lease agreement makes the County responsible for specific units and therefore is not appropriate to require the property owner to seek subsidies for those units not under their direct control.

### **Section 3630.10, subdivision (e)**

**Specific Purpose:** This regulation requires the County to report to the Department, within 60 days of discovery, a violation of the use of the Project-Based Housing.

**Rationale for Necessity:** This regulation is necessary as local entities, other than the County, may be the recipient of GSD funds for the purpose of constructing/operating Project-Based Housing. Section 3630.10, subdivision (a)(1) requires that Project-Based Housing purchased with GSD funds is to be used for the purpose of providing housing as specified in the County's approved Three-Year Program and Expenditure Plan for a minimum of 20 years. The County is held accountable to ensure that this obligation is fulfilled. However, it is the Department that is charged with overseeing the disbursement of public funds for the enactment of the Mental Health Services Act (MHSA) and must ensure accountability to the requirements for the use of MHSA funds. As the entity ultimately responsible for the public funds, the Department is requiring that the misuse of said funds be reported to the Department.

### **Section 3630.10, subdivisions (f), (f)(1), and (f)(2)**

**Specific Purpose:** These regulations inform the County and the owner of the Project-Based Housing that the Department is authorized to audit applicable tenant records. Additionally, the County and the owner of the Project-Based Housing are notified that for the purposes of conducting the audit, records may be subject to copying and if said copying cannot be done on-site, the Department retains the ability to remove the records for this purpose.

**Rationale for Necessity:** These regulations are necessary as the County and the owner of the Project-Based Housing must be informed of the requirement to make available, upon demand, specific tenant information and/or financial information in order that the Department can conduct audits as necessary.

There may be situations where the ability to copy relevant files/information cannot be accomplished as the necessary equipment is not available on-site. The Department, therefore, must have the ability to remove the records from the site in order to copy relevant records as part of the audit process. The audit responsibility cannot be hampered or compromised by the inability of the auditor to remove necessary records for the purpose of making copies. The County and the owner of the Project-Based Housing are, via this regulation, given notification of the Department's ability to remove records as deemed necessary for copying purposes.

### **Section 3630.10, subdivision (g)**

**Specific Purpose:** This regulation gives the Department the authority to reclaim the public funds given for a Project-Based Housing program if the program is not serving the purpose(s) as specified by the County.

**Rationale for Necessity:** This regulation is necessary as the Department is charged with oversight of the public funds provided to the County in order to implement the various components of the MHSA. The County, in conjunction with stakeholders, determines how the MHSA funds allocated to the County are to be spent. The "plan" for affecting change in the local mental health system is delineated in the County's Three-Year Program and Expenditure Plan/update and approved by the Department. This Three-Year Program and Expenditure Plan becomes the blueprint of how and where the County will be spending the MHSA funds allocated. If the County fails to comply with the purpose(s) of a Project-Based Housing program as specified in the work plan, the Department needs to have the ability to reclaim the misappropriated public funds.

## **Section 3630.15. Capitalized Operating Subsidy Reserve.**

### **Section 3630.15, subdivisions (a) and (a)(1)**

**Specific Purpose:** These regulations inform the County that GSD funds may be used to establish a Capitalized Operating Subsidy Reserve and the requirements for the establishment of the Reserve.

**Rationale for Necessity:** These regulations are necessary to inform the County that GSD funds may be used to establish a Capitalized Operating Subsidy Reserve and the criteria to be followed when establishing the Reserve. The monies for a Capitalized Operating Subsidy Reserve must be deposited into an account that is County-administered. This is necessary to protect the integrity of the investment of public money. By holding the reserve and investing the money, the earning power of the funds will be optimized because of the amount of interest that can be earned on the money.

### **Section 3630.15, subdivisions (a)(2) and (a)(2)(A)**

**Specific Purpose:** These regulations specify the formula that will determine the amount of the subsidy to be deposited into the reserve account and that the amount of the subsidy shall be calculated on a 20-year projection.

**Rationale for Necessity:** These regulations are necessary to inform the County of the formula used to calculate the operating subsidy and that the amount of the subsidy is based on a 20-year projection. Although the calculation is based on a 20-year projection, it may not result in funds actually being available for the full 20 years. A 20-year projection is used as this is consistent with amount of time required for the use of Project-Based Housing for mental health clients when using MHSA funds. (See section 3630.10, subdivision (a)(1)). These regulations also provide the County with the formula to be used in order to determine the amount of money to be deposited in the Reserve. The amount placed in the Reserve is based on a 20 year projection of the revenue received from the tenants of the Project-Based Housing minus the revenue lost due to anticipated vacancies and the operating expenses of the subsidized units. As these amounts are “projections” it is necessary to state that based on these calculations, funds in the reserve account may not be available for the full 20 years.

**Section 3630.15, subdivisions (b), (b)(1), (b)(2), (b)(2)(A) and (b)(3)**

**Specific Purpose:** These regulations establish the circumstances under which Capitalized Operating Subsidies may be reduced or terminated.

**Rationale for Necessity:** These regulations are necessary to provide the County with the specific situations under which Capitalized Operating Subsidies may be reduced or terminated. The Capitalized Operating Subsidies are funds that the County can use to supplement the payment of the Project-Based Housing when the amount of the rent payment and other rental subsidies are not sufficient to cover the full/actual cost of the monthly operating expenses. The Capitalized Operating Subsidies fill the gap to ensure that the monthly rental obligation is fulfilled which ensures the financial viability of the GSD Housing program.

**(b)(1) Tenant has subsidy from another source.**

**Rationale for Necessity:** There are situations where a rental subsidy is attached to a specific individual, rather than to the unit of housing. Therefore, if an individual placed in Project-Based Housing has a rental subsidy which is sufficient to cover the monthly rental obligation, the Capitalized Operating Subsidy fund should not be used for any additional monies that may result in the Project-Based Housing being compensated beyond the agreed to monthly fee.

**(b)(2) and (b)(2)(A) Project-Based Housing receives rental subsidies.**

**Rationale for Necessity:** Section 3630.10, subdivision (d) requires the owner of the Project-Based Housing to apply for rental and/or operating subsidies. Therefore, if the rental subsidy from other source, coupled with the rent payment made by tenant is sufficient to meet the monthly rental obligation, Capitalized Operating Subsidy funds should not be used. The intent of the subsidy is to meet the monthly obligation for the housing, not exceed it. If the subsidy received by the Project-Based Housing is not sufficient to meet the monthly rental obligation, the Capitalized Operating Subsidies fund can be accessed for the additional monies needed to meet the monthly rental obligation. The intent is to ensure that owners are fully compensated when their property is used for Project-Based Housing. The ability of the County to provide compensation to property owners will assist in efforts to obtain needed housing for this vulnerable population.

**(b)(3) Project-Based Housing Program not meeting purpose as stated in the Work Plan.**

**Rationale for Necessity:** The Department is charged with oversight of the public funds provided to the County in order to implement the various components of the MHSA. The County delineates in their Three-Year Program and Expenditure Plan/update how the MHSA funds allocated will be spent. Therefore, if public funds are directed to a specific Project-Based Housing program that is not meeting the purpose(s) as outlined in the work plan in the approved Three-Year Program and Expenditure Plan, there is an obligation to reduce or even terminate the continued expenditure of MHSA funds for non-MHSA tenants.

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

**Section 3650, subdivisions (a)(6)(B)(1)**

**Specific Purpose:** This regulation requires that the county provide a narrative explanation in the work plan budget when a Capitalized Operating Reserve in a Project-Based Housing program is established.

**Rationale for Necessity:** This regulation is necessary to provide the County with the requirement to provide specific detail in the budget narrative. If the County has a Project-Based Housing program and establishes a Capitalized Operating Reserve, the county needs to provide an explanation of the amount that is to be dedicated to ensure that the Capitalized Operating Reserve follows the requirements of section 3630.15.