

AMENDED

INITIAL STATEMENT OF REASONS

Title 9. Rehabilitative and Developmental Services
Division 4. Department of Alcohol and Drug Programs
Chapter 3. Programs for Alcohol and Drug Impaired Drivers
[commencing with Section 9795]

SPECIFIC PURPOSE AND NECESSITY OF EACH REGULATORY CHANGE

The Department of Alcohol and Drug Programs (ADP) is amending regulations concerning Programs for Alcohol and Drug Impaired Drivers contained in Chapter 3 (commencing with section 9795), Division 4, title 9 of the California Code of Regulations. These regulations will implement, interpret and make specific Health and Safety Code sections 11837(c)(2) as enacted by AB 1353 (Chapter 164, Statutes of 2005); section 11837(e), and section 11837.4, as well as Vehicle Code sections 23540 and 23542, and Penal Code sections 191.5. In addition, these changes are necessary to simplify administrative procedures for Driving Under the Influence (DUI) programs and to improve clarity, consistency, and continuity throughout.

This regulatory action arises from the passage of Assembly Bill 1353 in 2005, amendments to Health and Safety Code sections 11837(e), amendments to the Vehicle Code section 23540, effective September 20, 2005, and various policy changes supported by the former DUI Advisory Workgroup. The specific purpose of each amendment of the proposed text and the rationale supporting the Department of Alcohol and Drug Programs' (ADP) determination that each amendment is reasonably necessary to carry out the purpose for which the amendment is proposed as follows:

Proposed amended 9 CCR, § 9795. Application and Purpose of Regulations.

The term "drinking driver" has been replaced by Driving-Under-the-Influence (DUI) to maintain consistency throughout Chapter 3. The term "drinking driver" pertains to drivers under the influence of alcohol, whereas, driving-under-the-influence pertains to drivers under the influence of alcohol and/or drug use.

Proposed amended 9 CCR, § 9800, Definitions.

This proposed regulation modifies section 9800, (19) to comport with the modifications to the Vehicle Code section 23540 which became effective September 20, 2005.

The term “Multiple Offender” definition has been modified to reflect changes in the Vehicle Code section 23103.

The definition of “Significant Other” was added to comport with the amended Health and Safety Code section 11837(e).

The definition of “Working Days” has been added to distinguish from “Days” which are calendar days. The Department added “working” days to give the provider more programmatic flexibility at the local level.

Proposed amended 9 CCR, § 9801.5. County Responsibilities.

This text has been modified to reflect the complete title of the County Administrator which is the “County Alcohol and Drug Program Administrator.” These changes also affect 9 CCR § 9816. The Department made the change to make it consistent with the actual title. CADPAAC stands for County Alcohol and Drug Program Administrators’ Association of California. They are a statutory body that consults with the Department regarding the various alcohol and drug programs throughout the State of California.

Proposed amended 9 CCR § 9801.6. DUI Program Responsibilities

Drinking driver has been changed to Driving Under the Influence (DUI) and DUI replaces all references to drinking driver. These changes affect 9 CCR, § 9801.6; § 9812; § 9838; §9852; §9862; § 9876; §9795; §9800; §9801.5; and § 9816. The term “drinking driver” pertains to drivers under the influence of alcohol, whereas, driving-under-the-influence pertains to drivers under the influence of alcohol and/or drug use.

Proposed amended 9 CCR § 9804. Content of Application.

The term 3 month has been modified to “first offender” as the first offender program also includes a 6 month program and a 9 month program. The first offender program can be for 3, 6 or 9 months depending on the judge’s discretion in review of the blood alcohol content of the first offender.

The Department modified program to DUI program to make a distinction between the operational business entity that is licensed, and the type of program an offender is enrolled in, a 3-month, 6-month, 9-month, 18-month or 30-month program. In addition, not all DUI programs offer each of the various “programs” listed above.

The department modified the term “licensee” to “applicant” since they are an applicant before they are actually approved or denied a license. After they are licensed, they would be considered a DUI program.

Proposed amended 9 CCR § 9812. State Review and Approval.

The Department added Section 9805 to part (a) of this section because the state application requirements are contained in both sections 9804 and 9805.

The Department modified program to DUI program to make a distinction between the operational business entity that is licensed, and the type of program an offender is enrolled in, a 3-month, 6-month, 9-month, 18-month or 30-month program. In addition, not all DUI programs offer the various “programs” listed above.

Proposed amended 9 CCR 9816. Approval/Denial of Licensure

The Department added “working” days to give the provider more programmatic flexibility at the local level. The Department modified drinking driver to DUI because the term “drinking driver” pertains to drivers under the influence of alcohol, whereas, driving-under-the-influence pertains to drivers under the influence of alcohol and/or drug use. The Department changed the term licensee to applicant since they are an applicant before they are actually approved or denied a license. After they are licensed, they would be considered a DUI program.

Proposed amended 9 CCR § 9820. Extension of Period of Licensure.

Corrected the code section references to the Health and Safety Code and to other sections of Title 9 as the initial references were incorrect.

Proposed amended 9 CCR § 9822. Program Licensing Fees.

This revision is necessary to clarify the notification pertaining to licensing fees. The change in section 9822(c) was necessary for operational efficiency because the licensing fee does not change often. It was also necessary to accommodate Department staffing shortages due to state budget crisis. The DUI programs will be notified whenever the licensing fee changes.

In addition, the Department changed the word “licensee” to “DUI program” for consistency standards throughout the regulations. The promulgated text refers to these programs in varying ways.

Proposed amended 9 CCR § 9829. Unlicensed Programs.

Changes were implemented to curtail the practice of unlicensed programs doing business until and if they submitted a license application to the Department. As

currently promulgated, if an unlicensed program had a license application pending, they could still provide services. Now, these programs will not be allowed to operate in the area of providing DUI services. They must cease program activity immediately when they receive notice from the Department. In addition, for the safety and protection of the public, the participants will not receive credit for services received in an unlicensed DUI program. These changes reflect the same business practices for the Department's other alcohol and drug treatment providers.

Proposed amended 9 CCR § 9836. Administrative Review of Licensing Actions.

The Department made non-substantive grammar and zip code corrections.

Proposed amended 9 CCR § 9838 Contingency Service Plan.

The Department added "and drug" to the county alcohol and drug program administrator title to make it consistent with the actual title. CADPAAC stands for County Alcohol and Drug Program Administrators' Association of California. They are a statutory body that consults with the Department regarding the various alcohol and drug programs throughout the State of California.

The term drinking driver was changed to DUI because the term "drinking driver" pertains to drivers under the influence of alcohol, whereas, driving-under-the-influence pertains to drivers under the influence of alcohol and/or drug use.

Proposed amended 9 CCR § 9846. Staff Qualifications and Function.

The Department made revisions in this section for consistency with Sections 13000 and 13005 of title 9. Section 9846(b) and (c) were added to clarify that licensed, registered or certified counselors and interns, are allowed to provide both educational and group counseling services. These are not new requirements.

Proposed amended 9 CCR § 9848. Participant Enrollment.

The Department removed and section (e) and (f) and reworded it to provide clarity for the DUI providers. Since the intake interview is essentially a counseling activity, it must be conducted by trained counseling staff, who meet the requirements of 9846 (c) and (d).

In addition, the Department changed the term licensee to DUI program for consistency throughout these regulations. The promulgated text is inconsistent sometimes referring to the entity as licensee and sometimes as DUI program,

sometimes just simply as program. It also makes the distinction between the operational business entity that is licensed, and the type of program an offender is enrolled in, a 3-month, 6-month, 9-month, 18-month or 30-month program.

Proposed amended 9 CCR § 9849. Assessment of Participant's Alcohol or Drug Program.

The additional language was inserted to clarify what must be discussed during the assessment of a participant. These items are chosen so that treatment can be designed to meet the individual participant's needs.

Proposed amended 9 CCR § 9851. Program Services to be Provided.

Language was inserted into section 9851((b)(4) reflecting "21 days of enrollment." This language replaces "at the beginning" which is considered too vague. Additionally, it is consistent with section 9848(i) which requires commencement of program services to begin within 21 days of enrollment.

The text has been divided in order to clarify the various types of DUI programs. Section 9851(b) speaks to a 3-month first offender program. Section 9851 (c) refers to a first offender who has been ordered to a longer program, i.e. 6 months or longer. Section 9851(d) refers to a first offender ordered to 9 months or longer as ordered by the court. 9851(e) refers to a multiple offender who is ordered to an 18-month program and Section 9851(f) refers to a multiple offender who is ordered to a 30-month program.

Section 9851 (d) was added because the nine-month program was added to the Vehicle Code statute in 2005 to include those requirements. In addition, the requirements listed in the regulations for the multiple offenders in a 30-month program as promulgated are incomplete and incorrect. The Department added the requirements as listed in the statute for clarity purposes.

In addition, the Department revised the term licensee to DUI program for the reasons set forth above in Section 9822. The Department inserted the words "and drug" into the county alcohol program administrator title for the reasons set forth above.

Proposed amended 9 CCR § 9852. Educational Sessions.

The Department added (g) that an instructor must be present during the entire educational session. This was added to ensure accountability for the counselor and the participant. The Department wanted to ensure DUI providers maintain the safety of the participants and the integrity of the educational session.

The Department also added clarity to the section (h) which refers to the consequences for family members if they fail to comply with program rules that they may not be allowed to participate in future sessions.

In addition, amendments were made to the terms “friend,” and “significant other” to maintain consistency with Health and Safety Code section 11837(e).

Proposed amended 9 CCR § 9854. Group Counseling Sessions.

As mentioned above under 9 CCR §9822, the term “licensee” was changed to “DUI program” for consistency throughout as these programs are referred to in the promulgated regulations in varying ways.

Amendments made to the terms “friend,” and “significant other” to maintain consistency with Health and Safety Code § 11837(e).

Proposed amended 9 CCR § 9858. Face-to-Face Interviews.

The Department conformed this section to match Section 9851. Section (b) was deleted as the face-to-face criteria are already outlined in Section 9851. This section did not have a reference to 9 month programs which were ordered by the court subsequent to the last revision of these regulations. Therefore, the Department included additional text in (c)(3) so that the complete list of the various lengths of programs would be referenced in this section.

Proposed amended 9 CCR § 9862. Referral to Ancillary Services.

The revisions in this section are necessary to clarify the types of ancillary services to which the DUI program may refer the participant. The Department replaced the term “recovery home” and “inpatient services” language to use nationally recognized terminology for alcohol and drug treatment modalities.

The word “licensee” and the word “drinking driver” changed to DUI program for the reasons set forth above.

Proposed amended 9 CCR § 9866. Organization and Maintenance of Participant Records.

The Department inserted numbers (1), (2) and (3) in section 9866(b) to emphasize exactly what completion of services in this section refers to.

The department made changes of the term “drinking driver program” to “DUI program” for the reasons set forth above.

Proposed amended 9 CCR § 9867. Notice of Completion Certificates.

Revisions relate to the use, the procedure, and/or the withholding of these certificates. The former text did not refer to the probability of “electronic” submission of completion certificates and other business with the Department of Motor Vehicles. The department inserted text that references this option in order to provide more efficiency for the DUI providers.

The term “Certificate” was added to Notice of Completion throughout this section to make clear that the Notice is in actual certificate form, and not a simple notification. The DMV Form DL 101, was revised 7/2006 and the Department updated this date from 6/2003.

In addition, language was added for the programs to have the option to complete their program log in electronic format and the DUI program can electronically access the enrollment log generated by DMV to obtain DMV assigned numbers.

The Department added the section on the maximum fines for all missing certificates to discourage the selling of completion certificates without being onerous to the DUI provider.

Proposed amended 9 CCR § 9868. Proof of Enrollment Certificates.

The DMV Form DL 101, was revised 7/2006 and the Department updated this date from 6/2003.

The term “Certificate” was added to the Proof of Enrollment to conform with the Notice of Completion certificate. In addition, language was added for the programs to have the option to complete their program log in electronic format and the DUI program can electronically access the enrollment log generated by DMV to obtain DMV assigned numbers.

Proposed amended 9 CCR § 9874. Program Sobriety.

The revision in Section 9874 (2)(d)(1) and (2) were necessary to allow DUI programs flexibility in testing program participants for drug use while attending program activities. This is also necessary to comply with part (a) of this section as participants are not able to benefit from attending program services if they are intoxicated. The provisions for chemical testing are added because inexpensive

drug testing devices approved by the National Institute for Drug Abuse are now available.

We deleted language that incorporates the CHP manual. The manual is a reference for the DUI program staff in determining that a participant may be under the influence of alcohol or drugs. The latest version is 1995. The department simply inserted "latest version" to reference this manual in case it is updated again. The phone number and address are stricken for the same reason. If the phone number or address changes, then the text would immediately be outdated. The phone number in this section is already outdated. Despite the reference to the manual, the specific behaviors to be observed in participants by the DUI program staff are also listed in the regulations.

The department inserted the text that DUI programs shall not conduct testing on a random basis. The reason is that the DUI services are primarily educational services. If a participant's alcohol and drug assessment indicates they need additional treatment services in addition to the DUI program services, the DUI program can refer the participant to treatment. Random drug testing is not encouraged at the national level for DUI programs that have primarily educational services for alcohol and drug treatment.

Additional revisions were made by the Department changing the word licensee to DUI program for the reasons set forth above.

Proposed amended 9 CCR § 9876. Participant Attendance.

Text referring to the definition of "Period of Enrollment" is added to prevent participants from transferring from one program to another in order to avoid dismissal for excessive absence. With this change, absences will follow participants if they transfer to another DUI program.

Multiple offender program is changed to 18-month DUI program to remove redundancy.

Proposed amended 9 CCR § 9876.5. Leave of Absence.

The department made a change of adding "DUI" term to program for the reasons set forth above.

The department deleted the section 9876.5(d) because the County Alcohol and Drug Program Administrator no longer reviews requests for leaves of absence. The language was modified to reflect that the DUI program administrator or his designee will review all such requests.

Proposed amended 9 CCR § 9878. Participant Fees.

- The definition of “participant” is moved to the beginning of this section;
- The Department moved Section 9878(b) relating to the program fees being set at a level sufficient to cover the cost of program services, etc. to the front of the regulation.
- Standardized payment schedule was added to the list the DUI program must submit to the department when requesting an increase to the program fees or additional fees. This was done for more complete program fee information which was necessary for monitoring and accountability.
- Section (G) was added to clarify and list all the additional fees that can be charged by the DUI program because the Department has determined that the fees listed are sufficient to cover all additional services for participants. Prior to this change, the Department reviewed fee increases requests on a case-by-case basis. This language clarifies for DUI providers the type of additional fees that will be approved.
- Section (1)(C) text adding a \$5 fee for process a transfer was added to help defer the cost of transferring a participant to another DUI program..
- Section (C) (4)(b) was stricken and simply moved to (o) of this section.
- Section (C) (4)(c) was stricken and simply moved to (b) of this section.

The department changed the term “licensee” to DUI program, throughout this section for the reasons set forth above.

Proposed amended 9 CCR § 9879. Financial Assessment to Determine Participant’s Ability to Pay Program Fees.

The Department added the term DUI to program for the reasons set forth above.

It also added the term “individual” to counseling to make a distinction between individual and group counseling.

A new sentence was added to (5) stating that a suspension time does not count as active time in the program. This was for clarification purposes and protection of the participant from incurring additional fees. It also protects the participant from the DUI program dismissing the participant for lack of attendance.

Proposed amended 9 CCR § 9884. Interprogram Transfer.

Revisions to (b)(1) through (b)(6) are necessary to reflect the current transfer process used by the DUI programs. Written approvals of transfers are not

obtained from the county alcohol and drug administrator. Transferring participants from one program to another is the responsibility of the DUI programs involved. Under current procedures, the county alcohol and drug program administrators are not required to be involved in approving transfers.

Proposed amended 9 CCR § 9886. Dismissal of Participants.

The 21- day attendance rule for the re-entry period is not practical to enforce because of the way re-entry services are provided. The strikeouts in (d) are necessary to allow programs flexibility to work with individuals enrolled in the program on a voluntary basis. The additions in (c) were added to clarify DMV reporting requirements.

The revisions include the words “and drug” to county alcohol administrator to conform with the statute and for the reasons set forth above. The term “DUI is added to program and the term DUI program replaces the term “licensee” for the reasons set forth above.

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 these regulations do 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 Business: These regulations will impact small businesses, since most DUI programs are small businesses. However, these regulations will not have a detrimental economic impact on small business.

Cost Impact on Representative Private Persons or Businesses: These regulations will not impact individuals receiving services from DUI programs.

Pursuant to Government Code section 11346.2(b)(4), the Department of Alcohol and Drug Programs states that there is no fiscal impact by relying on the fact that there is no fee increase to participants of the programs, to the Department, or to the programs themselves in connection with these proposed regulations. These regulations will allow the AOD programs to use their resources more appropriately to improve their level of services to the participants and to the community.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely on any technical, theoretical, or empirical studies in consideration of this proposed regulation.

CONSIDERATION OF REASONABLE ALTERNATIVES

The Department has not identified any alternatives to the proposed regulatory changes that would fully meet the objectives of the statute.

EFFECT ON SMALL BUSINESS

The subject of this regulatory action does not adversely affect small business.