

**DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**

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January 28, 2010

**TO:** County Alcohol & Drug Program Administrators and Alcohol and Other Drug (AOD) Treatment Providers

**SUBJECT:** Requirement for Certification for Individuals Providing Counseling Services in AOD Programs Licensed and/or Certified by the Department of Alcohol and Drug Programs (ADP)

The purpose of this notice is to remind all AOD Programs Licensed and/or Certified by ADP of the April 1, 2010 effective date for counselor staffing requirements.

Section 13010, Title 9, Division 4, Chapter 8, Subchapter 2, California Code of Regulations requires that:

By April 1, 2010, at least thirty percent (30%) of staff providing counseling services in all AOD Programs Licensed and/or Certified by ADP shall be licensed or certified pursuant to the requirements of this Chapter. All other counseling staff shall be registered pursuant to Section 13035(f).

- ❖ Licensed professionals may include: LCSW, MFT, Licensed Psychologist, Physician, or registered Intern, as specified in Section 13015.
- ❖ All non-licensed and non-certified individuals providing counseling in an AOD program licensed and/or certified by ADP shall be registered to obtain certification as an AOD counselor with one of the certifying organizations currently approved by ADP.
- ❖ Registrants shall complete certification as an AOD counselor within five (5) years of the date of registration. An individual who has not completed certification within the five year time period may not be an AOD counselor at any AOD program licensed and/or certified by ADP.
- ❖ Effective April 1, 2010, any AOD program licensed and/or certified by ADP that allows less than 30% licensed professionals and/or certified counselors will be cited by ADP for non-compliance with Section 13010.
- ❖ An AOD program licensed and/or certified by ADP that allows an individual to provide services as an AOD counselor that is not a licensed professional, certified AOD counselor or has exceeded the five-year time limit as a registrant is out of compliance and will receive a deficiency citation from ADP.

If you have any questions regarding this matter, please contact the Counselor Certification Unit, Program Compliance Branch, Licensing and Certification Division, at (916) 324-2470.



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## **DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**

### **Adoption of Chapter 8 (commencing with Section 13000), and Amendment of Sections 9846, 10125, and 10564, Division 4, Title 9, California Code of Regulations**

#### **Final Statement of Reasons**

#### **STATEMENT OF NECESSITY**

This regulatory action adopts Chapter 8 (commencing with Section 13000), and amends Sections 9846, 10125, and 10564 of Division 4, Title 9 of the California Code of Regulations by establishing requirements for certification of staff who provide counseling services in alcohol and other drug (AOD) programs. The certification will establish standards for education, experience, conduct, and complaint investigation for AOD counselors, improving the quality of the services provided. These regulations are necessary to protect the health, safety, and welfare of AOD participants, patients, and residents.

Alcohol and other drug counselors work very closely with program participants, patients, and residents, and provide many critical services including assessments, counseling, treatment planning, and case management. However, counselors are not currently required to be certified or to have a minimum amount of education or experience. Most treatment programs use or employ a mixture of AOD counselors who have some formal education or personal experience with alcoholism, drug addiction, and recovery.

Thirty-seven (37) other states currently require certification or licensing of their AOD counselors. California has been harshly criticized for the lack of qualifications required to be an AOD counselor.

In considering the need for these regulations the Department convened a workgroup comprised of many coalitions, associations, county administrators, and providers that work in various areas of the substance abuse field. This group represents a myriad of treatment programs including driving-under-the-influence programs, narcotic treatment programs, residential and outpatient recovery and treatment programs, etc. This group concurred that certification standards be developed for all staff who provide counseling services in AOD programs that are funded, licensed, or certified by the Department.

The number of people seeking AOD treatment, who also have co-occurring mental health disorders, has steadily increased in recent years. It is estimated that individuals with co-occurring disorders now comprise twenty to fifty percent (20-50%) of the addiction treatment population. These problems make it extremely difficult to maintain sobriety. The Department strongly believes that if counselors were better qualified, they would be better prepared to accurately identify these co-occurring disorders earlier, treat the AOD addiction, and make appropriate referrals to treat the co-occurring mental health disorder.

The Substance Abuse and Crime Prevention Act of 2000 (SACPA) has increased admissions into AOD treatment programs by over 30,000. These individuals are adults, convicted of nonviolent drug possession offenses, who have been referred to AOD treatment in lieu of incarceration. This population also has complex needs. Approximately forty percent (40%) of these individuals have less than a high school education, and 10% are also homeless.

Homelessness is a significant factor in the treatment of AOD problems and addiction. Estimates of the rates of AOD abuse among the homeless reach as high as fifty to seventy percent (50-70%). Research suggests that rates of AOD addiction and co-occurring mental illness among the homeless have significantly increased in recent years. Co-occurring AOD problems and mental health disorders among persons who are homeless is a problem that has long been recognized by providers, professionals, and advocates of treatment. Research indicates that it is becoming a more complex and pervasive problem. The multifaceted nature of homelessness, including AOD problems and mental health disorders, requires knowledge to effectively provide AOD treatment services and produce more successful outcomes.

These regulations require counselors to complete a nationally recognized curriculum of study that includes information about co-occurring disorders, treatment for non-violent offenders, homelessness and substance abuse. These regulations require certified AOD counselors to comply with a strict code of conduct, which will protect and enhance the health, safety, and welfare of AOD participants, patients, and residents by preventing verbal, psychological, physical, or sexual abuse. These regulations also provide a complaint investigation process to investigate and take corrective action following allegations of abuse.

The regulations require registration within six (6) months of the effective date of the regulations and certification within five (5) years. Immediate certification was not required in order to prevent a workforce shortage, as few AOD counselors are certified at the present time and the Department did not want to put existing AOD counselors or existing AOD programs out of business for inability to meet the new requirements by the effective date of the regulations. To do so would make even fewer AOD counselors available to meet the current demand for substance abuse services. The proposed regulations require a minimum standard that can be met by all organizations currently certifying AOD counselors. As more AOD counselors become certified, the Department anticipates that it may be able to raise these minimum standards. All times specified are arbitrary and the Department will consider changing them if it receives public comment requesting such a change.

The specific necessity for each regulatory change noticed for 45 days is described in the annotated text of regulatory changes attached to the initial statement of reasons, which is hereby incorporated by reference. The specific necessity for each post hearing change noticed for 15 days is described in the annotated text of regulatory changes attached to this final statement of reasons. It is hereby incorporated by reference.

## **FISCAL IMPACT STATEMENTS:**

Costs or Savings in Federal Funding to the State: None. No federal funding is involved.

Costs or Savings to Any State Agency: None in the current State Fiscal Year. Anticipated annual costs are estimated at \$324,729. Costs during the current fiscal year are expected to be lower due to mid-year implementation and “ramping up” considerations. Current fiscal year costs will be absorbed within existing resources. ADP anticipates using federal funds for budget year 2004-05 and beyond, and may ultimately charge fees to support the program. Additional legal and program staff positions will be needed to handle increased workload of reviewing and investigating consumer complaints of violations of the code of conduct and of handling appeals of denial, temporary suspension, or revocation of certification. These additional functions are needed to protect the health, safety, and welfare of AOD clients.

Costs or Savings to Any Local Agency or School District: Counties that operate licensed or certified AOD programs may choose to pay higher salaries to certified AOD counselors. Any resulting costs may be recouped by increasing fees for AOD treatment.

Nondiscretionary Costs or Savings Imposed on Local Agencies: This regulatory action will not result in any nondiscretionary costs or savings to local agencies.

Local Mandate Determination: The Department has determined that this 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.

Cost Impacts on Representative Private Persons or Businesses: Approximate cost of \$100-\$800 for individuals seeking certification as an AOD counselor. Costs may be recouped in higher salary.

Effect on Business: The Department has made an initial determination that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses because any cost resulting from these regulations may be recouped by increasing fees for providing AOD treatment. This regulatory action will not affect the ability of California businesses to compete with businesses in other states, as other states already require certification of AOD counselors. This regulatory action will not affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Effect on Small Businesses: The proposed regulatory action will affect small businesses because many AOD programs are small businesses as defined in Government Code Section 11342.610. The Department anticipates that AOD programs may be able to recoup any resulting costs through increased fees for AOD treatment.

Effect on Housing Costs: This regulatory action will not affect housing costs in any way.

**LOCAL MANDATE DETERMINATION:**

The Department 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.

**45-DAY PUBLIC COMMENT PERIOD AND PUBLIC HEARING:**

The Department mailed a public notice and a copy of the initial statement of reasons and the proposed changes to all licensed and certified alcohol and drug programs, to all known certifying organizations, to all county alcohol and drug administrators, and to everyone else who had requested a copy of the proposed regulations. The Department also posted the public notice, the initial statement of reasons, and the proposed regulations on its web site. The Department made the proposed regulations available for public comment from February 13 through April 2, 2004. On April 2, 2004, the Department also held a public hearing to accept oral testimony. All comments are summarized below:

**SUMMARY OF WRITTEN COMMENTS:**

**Comments 1 through 60:**

Summary of Comment:

Section 13035 lists organizations which may certify AOD counselors. Commentors 1 through 60 requested the Department to include the Certified Addiction Specialist Credential issued by the American Academy of Health Care Providers in the Addictive Disorders as certified AOD counselors.

Departmental Response:

The Department made the requested post hearing change by adding the American Academy of Health Care Providers as one of the approved certifying organizations listed in Section 13035.

**Comment 61:**

Summary of Comment:

Commentor 61 objected to the fact that the Breining Institute was not included as an approved certifying organization.

Departmental Response:

The Breining Institute is already included in the list of certifying organizations specified in Section 13035.

**Commentors 62 through 79:**

Summary of Comment:

Section 13040 requires each certifying organization to require registrants to obtain a minimum of 155 AOD education in order to become certified as AOD counselors. Commentors 62 through 79 commented that 155 hours is too low a standard.

Departmental Response:

The Department had originally considered requiring more than 155 hours of education. The Department lowered the number of required hours to avoid excluding any of the organizations that currently certify AOD counselors in California and to avoid hardship to AOD counselors certified before the regulations took effect. The Department made that decision so that the regulations would be business friendly and to avoid a workforce shortage because AOD programs could not find certified counselors or because existing AOD counselors were not certified at the time the regulations take effect. In developing these regulations the Department focused on improving the quality of services, without putting any existing AOD counselors out of work, or putting any existing AOD programs out of existence for failure to meet too stringent qualifications. As a post hearing change, the Department amended Section 13040 to specify that all hours of education must be classroom hours, to be supplemented by 160 hours of supervised AOD training. This is a minimum requirement, and certifying organizations are free to require more hours of classroom education and AOD training at their discretion. Also employers are free to require the counselors they hire to have completed more hours of classroom education and training than Section 13040 requires.

**Comment 80:**

Summary of Comment:

Commentor 80 stated that Section 13040 should require 155 hours of education, but that requiring a higher standard would eliminate many good and qualified counselors.

Departmental Response:

The Department agrees. Please refer to the Departmental Response for Comments 62 through 78, directly above.

**Comments 81 through 162:**

Summary of Comment:

Section 13015(d) requires licensed professionals, who provide counseling services in an AOD program, to complete 40 hours of continuing education every two years. Commentors 81 through 162 stated that 40 hours of continuing education is excessive.

Departmental Response:

The Department made a post hearing change to Section 13015(d), reducing the number of hours of continuing education required for licensed professionals. The Department lowered the hours of continuing education to 36 hours in order to maintain consistency with hours of continuing education required by the Department of Consumer Affairs for licensed clinical social workers and other licensed mental health professionals. The Department kept the number of required hours of continuing education relatively high in order to maintain consistency with the hours of continuing education required for non-licensed AOD counselors, because the Department believes it is important for anyone providing counseling services in an AOD program to have continuing education in AOD issues in order to continuously improve quality of service by staying sensitive to the needs of the clients they serve.

**Comment 163:**

a. Summary of Comment:

Commentor 163 asked the Department to update the name of the Board of Science Examiners to the Board of Behavioral Sciences in Section 13015 (a).

Summary of Comment:

The Department has made the requested post hearing change.

b. Summary of Comment:

Commentor 163 opposed the requirement in Section 13015(d) that licensed professionals complete 40 hours of continuing education.

Departmental Response:

This is essentially the same comment presented by Commentors 81 through 162. Please see the Departmental response to those comments above.

**Comment 164:**

Summary of Comment:

Commentor 164 asked the Department to amend Section 13015(a) and (b) to clarify that those requirements also apply to interns registered to obtain licensure.

Departmental Response:

The Department has made the requested post hearing change in order to improve clarity.

**Comment 165:**

a. Summary of Comment:

Commentor 165 stated that his agency generally supports the Department's proposal to establish counselor certification regulations and that he feels that programs across the state will benefit from the regulations.

Departmental Response:

The Department thanks Commentor 165 for his support.

b. Summary of Comment:

Section 13025(b) requires individuals seeking to become certified as AOD counselors by testing to provide written documentation to the certifying organization that they have been employed to provide counseling services in an AOD program for the equivalent of 40 hours per week for a minimum of five years preceding the effective date of the regulation. Commentor 165 requested the Department to make a post hearing change to Section 13025(b) to allow individuals who have supervised and trained counselors for 40 hours per week to become certified by testing.

Departmental Response:

The Department did not make the requested change to this section because it did not seem to meet the necessity requirement of Government Code (GC) 11349. Section 13025(b) already allows an individual to obtain certification if



he/she can provide documentation he/she has been employed as a counselor in an AOD program for five of the last ten years, and he/she achieves a passing score on the appropriate exam.

**Comments 166 through 170:**

a. Summary of Comment:

Commentors 166 through 170 stated that the proposed counselor certification requirements would impose a hardship on individuals currently providing counseling in AOD programs. The commentors suggested that the Department consider “grandfathering in” currently certified counselors.

Departmental Response:

Section 13020 has been amended to grandfather in all AOD counselors certified by the effective date of the regulations.

b. Summary of Comment:

Commentor 170 stated that the requirement for licensed professionals to complete 40 hours of continuing AOD education is excessive, since they are already required to complete 36 hours of continuing education in order to retain licensure.

Departmental Response:

The Department made a post hearing change to Section 13015(d), reducing the number of hours of continuing education required for licensed professionals. The Department lowered the hours of continuing education to 36 hours in order to maintain consistency with hours of continuing education required by the Department of Consumer Affairs for licensed clinical social workers and other licensed mental health professionals.

**Comment 171:**

Summary of Comment:

Commentor 171 recommended against adopting Chapter 8 and amending Section 9846, because he did not believe that counselors working in a driving-under-the-influence program should be required to be certified.

Departmental Response:

The Department developed the proposed regulations in collaboration with workgroup comprised of many coalitions, associations, county alcohol and drug administrators, and providers that work in various areas of the substance abuse field, including driving under the influence programs, narcotic treatment programs, and residential and outpatient recovery and treatment programs. The Department and the workgroup believe that the proposed regulations will benefit the public, as well as counselors. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents.

**Comment 172:**

Summary of Comment:

Commentor 172 stated that he supported recommendations made by the California Association of Addiction Recovery Resources. He stated that AOD programs would not be able to offset any potential cost from the regulations by increasing program fees.

Departmental Response:

The Department has determined that these regulations will not have an adverse significant statewide economic impact, affect the ability of programs to compete with businesses in other states, or eliminate any jobs. The Department is not mandating that counselors be paid higher salaries, only suggesting that AOD programs may increase fees if they desire to pay certified counselors a higher salary than they now receive. An AOD program may decide not to increase salaries and/or program fees if it is not feasible to do so.

**Comment 173:**

a. Summary of Comment:

Commentor 173 recommended against amending Section 9846 or adopting Chapter 8 because he stated that his DUI program would be forced out of business by the proposed regulations because they would have difficulty finding part time AOD counselors.

Departmental Response:

It is not the intent of the Department to force programs out of business. The Department has made an initial determination these regulations will not have an adverse significant statewide economic impact, and that this regulatory action will not affect the ability of programs to compete with businesses in other states or eliminate any jobs. This is essentially the same comment made by Commentor 171. Please see the Department's response to that comment above.

b. Summary of Comment:

Commentor 173 stated that part time DUI counselors are unable to complete 155 hours of education and 160 hours of internship, followed by 2,080 hours of work experience. He recommended that they be required to complete only 40 hours of education, through classroom study or home study, 80 hours of supervised AOD training, 200 hours of paid or unpaid work experience, and pass a written examination.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors in California at the time the regulations take effect. These standards were chosen in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

c. Summary of Comment:

Commentor 173 stated that certified counselors should be able to complete continuing education hours in a classroom or electronically, and that no minimum hours of continuing education should be required.

Departmental Response:

Section 13055(a) does not prohibit a certifying organization from providing continuing education electronically. The Department lowered the hours of continuing education to 36 hours in order to maintain consistency with hours of continuing education required by the Department of Consumer Affairs for licensed clinical social workers and other licensed mental health professionals.

**Commentors 174,175, and 176:**

Summary of Comment:

Commentors 174, 175, and 176 stated that they support the recommendations of the California Association of Alcohol and Drug Counselors (CAADAC) (Comment 185) because they go much further than the proposed regulations in protecting the public health and welfare.

Departmental Response:

The Department believes that the proposed regulations will benefit the public, as well as counselors. Although some commentors requested higher standards, the Department chose the proposed minimum standards for education, experience, and conduct for AOD counselors in order to reduce a possible workforce shortage while protecting the health, safety, and welfare of AOD participants, patients, and residents. Thirty-seven other states currently require certification or licensing of their AOD counselors. California has been harshly criticized for the lack of qualifications required to be an AOD counselor. Nothing in the proposed regulations would prevent a certifying organization or employing AOD program from requiring more stringent standards.

**Commentor 177:**

Summary of Comment:

Commentor 177 opposed the proposed regulations, stating that they are a total embarrassment to the AOD field, and that California deserves better.

Departmental Response:

The standards required in the proposed regulations are minimum standards, proposed to reduce a possible workforce shortage while improving the quality of the services provided and protecting the health, safety, and welfare of AOD participants, patients, and residents. Nothing in the proposed regulations would prevent a certifying organization or employing AOD program from requiring more stringent standards.

**Commentor 178:**

a. Summary of Comment:

Commentor 178 stated that the counselors at her agency are already CAS or CADC certified, and that to require them to become re-certified should be

repetitive and time consuming, and would result in financial hardship to the counselors.

Departmental Response:

Section 13020 has been amended to grandfather in all AOD counselors certified by the date these regulations take effect.

b. Summary of Comment:

Commentor 178 stated that her agency cannot afford the cost of re-certifying counselors because their funding has been cut due to the State financial crisis. Additionally she stated that they cannot offset any potential costs of re-certifying counselors by raising fees because their fees are approved by the county and the State.

Departmental Response:

The Department is not mandating that counselors be paid higher salaries, only suggesting that AOD programs may increase their fees if necessary to cover the cost of increased salaries, should they decide to pay certified counselors at a higher rate. An AOD program may decide not to increase salaries and/or program fees if it is not feasible.

c. Summary of Comment:

Commentor 178 asked the Department to “grandfather in” currently certified counselors.

Departmental Response:

Section 13020 has been amended to grandfather in all AOD counselors certified by the date these regulations take effect.

**Comment 179:**

Summary of Comment:

Commentor 179 stated that she understood that DUI classes are intended to provide DUI education rather than outpatient AOD counseling, that AOD certification does not necessarily guarantee the ability to educate or communicate with people, and that there is no need for continuing education.

Departmental Response:

The Department chose the curriculum in TAP 21 because it is a nationally recognized curriculum used for certification of AOD counselors. The Department believes that AOD counselors need continuing education to keep them informed of new issues and trends in the AOD treatment field, in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents.

**Comment 180:**

Summary of Comment:

Commentor 180 opposed amending Section 9846, stating that the proposed requirements are more appropriate for full time counselors in an in-patient or outpatient treatment program. Commentor 180 also objected to adopting Chapter 8, stating that they are duplicative and inappropriate for counselors who have college certification and work experience in the field.

Departmental Response:

The Department chose the standards contained in the proposed regulations in order to provide consistent, statewide, minimum standards for all AOD counselors, regardless of the type of program. These standards were chosen in order to reduce a possible workforce shortage while improving the quality of AOD services provided, protecting the health, safety, and welfare of AOD participants, patients, and residents.

**Comment 181 and 182:**

Summary of Comment:

Commentors 181 and 182 objected to the proposed regulatory changes, stating that AOD programs could not offset the cost of certification by raising program fees, because clients cannot afford to pay higher fees.

Departmental Response:

The Department is not mandating that counselors be paid higher salaries, only suggesting that AOD programs may increase their fees if necessary to cover the cost of increased salaries, should they decide to pay certified counselors at a higher rate. An AOD program may decide not to increase salaries and/or program fees if it is not feasible.

**Comment 183:**

Summary of Comment:

Commentor 183 stated that the proposed regulations should not apply to Department certified community care licensing (CCL) group homes because they cannot offset increased cost by raising client fees.

Departmental Response:

The Department decided to apply the same minimum standards to all individuals performing counseling services in an AOD program, regardless of the type of facility that is maintained, in order to maintain consistency throughout the AOD field. The Department is not mandating that counselors be paid higher salaries, only suggesting that AOD programs may increase their fees if necessary to cover the cost of increased salaries, should they decide to pay certified counselors at a higher rate. An AOD program may decide not to increase salaries and/or program fees if it is not feasible.

**Comment 184:**

Summary of Comment:

Commentor 184 objected to the use of the term “addiction” in the proposed regulations and stated that the term “physical and psychological dependency” should be used instead.

Departmental Response:

The Department used the term “addiction” because it is more frequently used and understood by the public, AOD program providers, and county alcohol and drug program administrators, who collaborated with the Department in the development of the proposed regulations and who will be regulated by them.

**Comment 185:**

a. Summary of Comment:

Commentor 185 opposes the costs associated with implementation of the regulations.

Departmental Response:

The Department has determined that these regulations will not have an adverse significant statewide economic impact, affect the ability of programs to compete with businesses in other states, or eliminate any jobs. The Department is not

mandating that counselors be paid higher salaries, only suggesting that AOD programs may increase fees if they desire to pay certified counselors a higher salary than they now receive. An AOD program may decide not to increase salaries and/or program fees if it is not feasible to do so.

b. Summary of Comment:

Commentor 185 objects to 155 hours of education, stating that the regulation does not specify whether it must be classroom, workshop, or online education, and that there is no basis or scientific validation of why this amount is sufficient (Section 13040).

Departmental Response:

The Department made a posthearing change to Section 13040 requiring the 155 hours of education to be classroom hours. That change is needed for clarity. The Department chose 155 hours of classroom education, 160 supervised hours, and 2,080 hours of work experience to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These standards were chosen in order to reduce a possible workforce shortage while improving the quality of the services provided, which is necessary to protect the health, safety, and welfare of AOD participants, patients, and residents.

c. Summary of Comment:

Commentor 185 objects to 160 hours of training, stating that the supervisor is not required to be onsite, it is not clear who is expected to pay for such training, and that there is no scientific basis for why this amount is sufficient (Section 13040).

Departmental Response:

The supervisor may either be on site or at an immediately adjacent site. The supervisor would not be able to constantly be in the same room when he supervises more than one counselor, therefore, mandating supervisors be at every site in the direct presence of a counselor would create a hardship beyond comprehension by significantly increasing operational costs to the program. It is not the intention of the Department to force programs out of business.

d. Summary of Comment:

Commentor 185 objects to 2080 hours of experience, stating that there is no scientific basis for why this amount is sufficient (Section 13040).



Departmental Response:

A minimum of 155 hours of education, 160 supervised hours, and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations, to avoid putting any certifying organizations out of business. These regulations these standards were chosen in order to reduce a possible workforce shortage while improving the quality of the services provided, which is necessary to protect the health, safety, and welfare of AOD participants, patients, and residents.

e. Summary of Comment:

Commentor 185 objects to allowing either written or oral testing to determine competency (Sections 13025 and 13040).

Departmental Response:

Both oral or written testing is allowed to allow flexibility for the certifying organization and the applicant for certification.

f. Summary of Comment:

Commentor 185 objects to the fact that Section 13040 does not require a particular percentage for passage of the written examination.

Departmental Response:

Section 13040 allows each certifying organization to determine what it considers a passing score in order to provide flexibility; however, since each certifying organization must be accredited, they must conform to the requirements of the National Commission for Certifying Agencies, and justify the scores that they require.

g. Summary of Comment:

Commentor 185 objects to allowing methods of testing that are not approved through NCCA (Section 13040).

Departmental Response:

Each certifying organization must be accredited and they must conform to the requirements of the National Commission for Certifying Agencies

h. Summary of Comment:

Commentor 185 objects to using a nationally recognized test other than that used by the International Consortium and Reciprocity for Counselors (IC & RC) or the National Association of Alcohol and Drug Abuse Counselors (NAADAC) (Section 13025).

Departmental Response:

The Department deleted Section 13025(c)(2), which includes the ATTC exam, as a posthearing change, because ATTC does not currently offer such a test. To allow flexibility, each certifying organization may develop its own test. Since the NCCA, a national accrediting agency, will review the test given by the certifying organization as part of the accreditation process described in Section 13035(c) to ensure that each test covers the curriculum described in TAP 21, the Department believes the tests used by the various certifying organizations will ensure counselor competency.

i. Summary of Comment:

Commentor 185 objects to referencing TAP 21 and not including the 12 core functions (Section 13040).

Departmental Response:

The Department chose the certifying organizations listed in Section 13040 because they are known to provide quality services, they have a long-standing relationship with the Department, and their curriculum is based on TAP 21. Section 13040(a)(1) mandates all counselors to have 155 documented classroom hours of education, based on the TAP 21 curriculum, which includes the 12 core functions. Therefore no additional change is necessary.

j. Summary of Comment:

Commentor 185 objects to allowing 5 years to become certified and 2 additional years for a leave of absence for medical problem or other hardship (Section 13035).

Departmental Response:

The Department chose those time frames in order to permit individuals currently employed as AOD counselors to obtain certification while working full time, to prevent workforce shortages and hardships that may be experienced by counselors currently working in the field.

k. Summary of Comment:

Commentor 185 objects to allowing until January 1, 2007 to become NCCA certified (Section 13035).

Departmental Response:

The Department has allowed what it believes to be a reasonable period of time for organizations to become accredited with NCCA, in order to prevent workforce shortages.

l. Summary of Comment:

Commentor 185 opposes allowing counselors or registrants to informally appeal denial, suspension, or revocation to the Department (Section 13070).

Departmental Response:

The Department must maintain the overall administration of the counselor certification program. The Department conducts all informal conferences with the counselor. The certifying organizations do not conduct the conferences. The counselor would appeal any decision from the informal conference with the Director of the Department. Counselors and applicants for certification must be allowed to appeal negative actions in order to provide due process, as required by the Constitution of the United States.

m. Summary of Comment:

Commentor 185 objects to exempting licensed professionals from the requirement to become certified as AOD counselors (Section 13015).

Departmental Response:

Licensed medical and clinical professionals are not required to complete all the training required of an AOD counselor because they have already been trained in counseling techniques and AOD issues.

n. Summary of Comment:

Commentor 185 objects to certification being valid for 2 years (Section 13050).

Departmental Response:

The length of certification was chosen for consistency with the length of licensure or certification in other counseling fields.

o. Summary of Comment:

Commentor 185 objects to allowing other certifying organizations to certify individuals whose certification has previously been denied, revoked, or rescinded for violation of the code of conduct.

Departmental Response:

The Department cannot permanently revoke a certification when an investigation has determined an accusation to be unfounded. The Department has made a posthearing change to Section 13065, prohibiting certifying organizations from recertifying a counselor for five years if his/her certification is been suspended or revoked.

p. Summary of Comment:

Commentor 185 opposes allowing counselors or registrants to informally appeal denial, suspension, or revocation to the Department (Section 13070).

Departmental Response:

This appears to be the same comment as stated in Comment 185(l) above. Please refer to that response.

q. Summary of Comment:

Commentor 185 states that the code of conduct should be called a “code of ethics”.

Departmental Response:

The Department chose the term “conduct” because it cannot legally enforce ethics, while it can legally enforce conduct.

r. Summary of Comment:

Commentor 185 states that Section 13060(c)(4) should clarify how long a counselor is prohibited from having business dealings with a past client.

Departmental Response:

The Department has established minimum standards in its code of conduct; therefore, each certifying organization, at its discretion, may meet or exceed these requirements. Each certifying organization may establish its own time

frame for business dealings with past clients. The Department did not establish a time period in order to allow flexibility for the certifying organizations.

s. Summary of Comment:

Commentor 185 states that Section 13060(c)(5) should clarify how long a counselor is prohibited from having sexual relations with a past client.

Departmental Response:

The Department has established minimum standards in its code of conduct; therefore, each certifying organization, at its discretion, may meet or exceed these requirements. Each certifying organization may establish its own time frame for business dealings with past clients. The Department did not establish a time period in order to allow flexibility for the certifying organizations.

t. Summary of Comment:

Commentor 185 objects to the restrictive language used for continuing education required for renewal of certification (Section 13055).

Departmental Response:

The Department is unable to respond to this objection because the commentor did not specify which portion of the regulation he/she found to be restrictive; however, Section (b) has been amended to establish clarity.

u. Summary of Comment:

Commentor 185 objected that Section 10564(d) allows employers only 3 days in which to report ethical infractions to the Department.

Departmental Response:

The Department allowed only 3 days in order to protect the health and safety of clients by ensuring a speedy investigation.

v. Summary of Comment:

Commentor 185 objects that there is no mention of a scope of practice anywhere in the regulations.

Departmental Response:

Section 13005(a)(4) lists the counseling services that a certified AOD counselor may provide.

w. Summary of Comment:

Commentor 185 objects that Section 13025 requires certifying organizations to allow an individual to become certified if he/she has been employed as an AOD counselor for 5 years and achieves a passing score on an oral or written examination.

Departmental Response:

The Department allows individuals previously employed as AOD counselors to become certified in order to prevent a workforce shortage by prohibiting current AOD counselors from working.

**Comment 186:**

a. Summary of Comment:

Commentor 186 recommends that an organization of California AOD counselor certifying organizations be developed through legislation to maintain standards for certification of AOD counselors.

Departmental Response:

The Department suggests that the commentor contact a member of the Legislature if he/she wishes such legislation, as the Department does not have authority to initiate legislation.

The document issued with the regulations, "Notice of Rulemaking and Public Comment Period" included a financial impact statement asserting there would no costs or savings to any state agency. The current fiscal emergency in the State does not allow the Department to create significant expenditures.

b. Summary of Comment:

Commentor 186 recommends that credentialing organizations certified by NCCA be allowed to determine the number of hours of education necessary to obtain certification so long as the hours of education cover all 8 competencies described in TAP 21.

Departmental Response:

The regulations proposed for adoption in Chapter 8 merely constitute minimum statewide requirements. Each certifying organization may require more stringent requirements for certification if it chooses to do so.

c. Summary of Comment:

Commentor 186 recommends that testing of potential AOD counselors be aligned with NCCA certification requirements and be psychometrically designed and validated by a qualified psychometrician.

Departmental Response:

The Department has chosen NCCA because it is a nationally recognized organization which accredits various types of licensing or certifying organizations. If the State was to create an accrediting agency, the costs of such accreditation would far exceed what is required for NCCA accreditation.

The document issued with the regulations, "Notice of Rulemaking and Public Comment Period" included a financial impact statement asserting there would no costs or savings to any state agency. The current fiscal emergency in the State does not allow the Department to create significant expenditures. Certifying organizations may choose, as their option, to contract the services of a psychometrician.

d. Summary of Comment:

Commentor 186 recommends the use of TAP 21 as a curriculum for education and the use of the 12 core functions as a basis for training and experience.

Departmental Response:

No additional change is required because Section 13040(a)(1) mandates all counselors to have 155 documented classroom hours of education, based on the TAP 21 curriculum, which includes the 12 core functions.

e. Summary of Comment:

Commentor 186 recommends that Section 13070 be amended to allow the Department to review certifying organizations decisions to deny, suspend, or revoke certification and make recommendations, rather than allowing the Department to overturn such a decision.

Departmental Response:

The Department must maintain the overall administration of the counselor certification program. The Department conducts all informal conferences with the counselor. The certifying organizations do not conduct the conferences. The counselor would appeal any decision from the informal conference with the Director of the Department.

f. Summary of Comment:

Commentor 186 recommends that all licensed behavioral health professionals, who are currently working as counselors in AOD programs, become certified by testing.

Departmental Response:

Licensed professionals providing counseling sessions in an AOD program will be required to complete 36 hours of continuing education every two years to ensure they receive the same types of current training as other AOD counselors and remain current on the latest trends and techniques in counseling and treatment of AOD problems. The hours of continuing education currently required by the Department of Consumer Affairs may be transferable to meet these requirements. Licensed professionals are already trained in counseling techniques and treatment of AOD issues.

g. Summary of Comment:

Commentor 186 recommends not allowing certifying organizations to recertify an individual whose certification was denied, suspended, or revoked for ethical infractions.

Departmental Response:

The Department cannot permanently revoke a certification when an investigation has determined an accusation to be unfounded. The Department has made a posthearing change to Section 13065, prohibiting certifying organizations from recertifying a counselor for five years if his/her certification is been suspended or revoked.

h. Summary of Comment:

Commentor 186 recommends that the code of conduct be called a “code of ethics” and that each certifying organization be required to incorporate a code of ethics with a set of minimum requirements as written in Section 13060.



Departmental Response:

The Department chose the term “conduct” because it cannot legally enforce ethics, while it can legally enforce conduct.

i. Summary of Comment:

Commentor 186 recommends that Section 13060 prohibit AOD counselors from engaging in business or sexual relationships with former clients forever.

Departmental Response:

The Department has established minimum standards in its code of conduct; therefore, each certifying organization, at its discretion, may meet or exceed these requirements. Each certifying organization may establish its own time period for business dealings and sexual relationships with past clients in order to provide flexibility for the certifying organization.

j. Summary of Comment:

Commentor 186 recommends that “language used for continuing education be aligned with the requirements and that the overall topics be left up to each organization with minimum topics to be addressed as explained in the regulation.” (sic).

Departmental Response:

The proposed regulations establish minimum, consistent, statewide standards of education, experience, and supervision required of a certified counselor. Certifying organizations may exceed these standards if they chose to do so.

k. Summary of Comment:

Commentor 186 recommends allowing each certifying organization to establish elements for certification by testing, and to require at least five years of full time experience in providing AOD counseling.

Departmental Response:

155 hours of education, 160 supervised hours, and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while improving the quality of the services provided, which is necessary to protect the health, safety, and welfare of AOD participants, patients, and residents.

I. Summary of Comment:

Commentor 186 recommends that previous certification as an AOD counselor be recognized as having met the minimum requirements of Section 13020.

Departmental Response:

Section 13020 clearly establishes the “grandfathering clause” for those persons previously certified with an ADP approved certifying organization.

m. Summary of Comment:

Commentor 186 recommends that each certifying organization be allowed to determine the scope of work that the AOD counselors they certify may perform.

Departmental Response:

Section 13005(a)(4) already clearly establishes the scope of work for counseling services that may be provided by a certified counselor.

**Comments 187 through 190:**

Summary of Comment:

Commentors 187 through 190 generally supported the proposed regulations.

Departmental Response:

The Department thanks Commentors 187 through 190 for their support.

**Comment 191:**

Summary of Comment:

Commentor 191 stated that there should be an exemption from the requirements of Chapter 8 for community mental health agencies.

Departmental Response:

The proposed regulations apply only to individuals performing counseling services in an AOD program.

**Comment 192:**Summary of Comment:

Commentor 192 stated that there appears to be confusion about what is acceptable in the area of counselor certification. She stated that she would appreciate some clarity quickly.

Departmental Response:

The regulations clearly establish the minimum criteria for a certified counselor. Unfortunately the commentor did not specify what area of the regulations she found unclear.

**Comments 193 and 194:**Summary of Comment:

Commentors 193 and 194 supported CAADAC's recommendations.

Departmental Response:

Please see the Department's response to Commentors 185 and 186. The proposed regulations establish consistent, statewide, minimum standard for counselor certification. Each certifying organization may require more than the minimum requirements if it chooses to do so.

The Department anticipates that these regulations will benefit the public, as well as counselors. These regulations were established in order to reduce a possible workforce shortage while improving the quality of the services provided, which is necessary to protect the health, safety, and welfare of AOD participants, patients, and residents.

The Department developed the proposed regulations in collaboration with a workgroup comprised of county alcohol and drug program administrators, providers that work in various areas of the substance abuse field, certifying organizations, and others in the AOD field. This group represented a myriad of treatment programs, including driving under the influence programs, narcotic treatment programs, and residential and outpatient recovery and treatment programs. The Department developed the proposed regulations based on input received from its workgroup, and made posthearing changes based on public comments received.

**Comment 195:**

Summary of Comment:

Commentor 195 asked if the Department could amend the counselor certification regulations to ensure that Section 729 of the Business and Professions Code would be enforced. Section 729 prohibits an AOD counselor and other professionals from engaging in a sexual relationship with a client.

Departmental Response:

The Department does not have statutory authority to enforce the Business and Professions Code, however Section 13060(c)(5) clearly establishes that a counselor may not engage in sexual contact with participants, patients, residents, their family members, or other persons significant to the client.

**Comment 196:**

Summary of Comment:

Commentor 196 supported CAADAC's recommendations.

Departmental Response:

See response to 193 and 194 above.

**Comment 197:**

Summary of Comment:

Commentor 197 requested the Department to include Certified Addiction Specialists as certified AOD counselors.

Departmental Response:

The Department considers Certified Addiction Specialists to be AOD counselors. As such they must comply with the requirements of Chapter 8.

**Comments 198 and 199:**

Summary of Comments:

Commentors 198 and 199 supported CADAAC's recommendations.

Departmental Response:

See response to 193 and 194 above.

**Comment 200:**

Summary of Comment:

Commentor 200 stated that the requirements of Chapter 8 should not apply to group homes licensed by the Department of Social Services (DSS) Community Care Licensing Division because such group homes are not able to increase their fees to cover costs resulting from implementation of the regulations.

Departmental Response:

The regulations apply only to individuals performing counseling services in an AOD program, regardless of the type of facility that is maintained. Counselors in CCL facilities must only be certified pursuant to Chapter 8 if the facility is also certified by the Department of Alcohol and Drug Programs. Programs are not required to raise their fees; the Department merely suggested that they may wish to raise their fees if they choose to pay certified counselors at a higher salary.

**Comment 201:**

Summary of Comment:

Commentor 201 asked the Department to base the regulations in Chapter 8 on industry wide best practices.

Departmental Response:

The Department developed the proposed regulations in collaboration with a workgroup comprised of county administrators, certifying organizations, and providers that work in various areas of the substance abuse field. This group represented a myriad of treatment programs, including driving under the influence programs, narcotic treatment programs, and residential and outpatient recovery and treatment programs. The Department developed the proposed regulations based on the recommendations of that workgroup, modified to prevent a workforce shortage. The Department believes that the proposed regulations are based on industry wide best practices.

**Comment 202:**Summary of Comment:

Commentor 202 stated that the legislature should be cognizant of the need for such regulations, and that it is important that such standards not exclude the AOD workforce that has been recruited from successful graduates.

Department Response:

The proposed regulations were designed to avoid excluding current AOD counselors and provide several ways for current AOD counselors to become certified, as described in Sections 13015, 13020, 13025, 13030, and 13040.

**Comments 203 and 204:**Summary of Comment:

Commentors 203 and 204 stated that the Department should consider recognizing certificates issued by national certifying organizations.

Departmental Response:

The Department did not include national certifying organizations because they may not meet the requirements of Chapter 8. Section 13030 was drafted in order for out-of-state counselors to be certified in California.

**Comment 205:**Summary of Comment:

Commentor 205 stated that previously certified counselors should be “grandfathered in”.

Departmental Response:

In order to reduce workforce shortages, Section 13020 has been amended to allow previously certified counselors to become certified.

**Comment 206:**

Summary of Comment:

Commentor 206 asked the Department to amend Section 10125 to include psychiatric technicians as licensed professionals who could obtain certification to provide AOD counseling.

Departmental Response:

The Department has decided against “grandfathering” in psychiatric technicians because their level of training required is not comparable with that of other licensed professionals.

**Comment 207:**

a. Summary of Comment:

Commentor 207 requested a public hearing.

Departmental Response:

A public hearing was held on April 2, 2004.

b. Summary of Comment:

Commentor 207 stated that they were not notified of the proposed regulations as soon as they were available for public comment, and stated that “there may have been a desire to not encourage public comment”.

Departmental Response:

The Department complied with the public notice requirements of the Government Code. A public notice was sent to the Office of Administrative Law for publication; the public notice, initial statement of reasons, and text of the proposed regulations were made available on the Department’s website; and the Department mailed copies of the public notice, the initial statement of reasons, and the text of the proposed regulations to all licensed or certified AOD programs in California, to all known certifying organizations, to all members of the advisory group which had participated in development of the proposed regulations, and to everyone else known to be interested in the proposed regulations.

b. Summary of Comment:

Commentor 207 stated that the terms “licensee, licensure, licensed, certification, certified, certificate, registrant, registered, or registration, and counseling services” should be specifically defined. Commentor 207 asked if counseling services are to treat solely alcohol or drug problems or other mental health issues as well. Commentor 207 asked what professionals may treat what types of disorders.

Departmental Response:

The terms stated above are either defined in the regulations or used in accordance with standard public usage, as defined in any dictionary. Certified AOD counselors may provide only the counseling services described in Section 13005(a)(4). Licensed professionals may perform other duties in accordance with their license. AOD counselors provide only AOD counseling services as defined in Section 13004(a)(4), related to alcoholism or other drug abuse; they may not provide counseling for other issues, such as mental health issues, but may refer clients to licensed professionals who do provide mental health counseling.

c. Summary of Comment:

Commentor 207 requested that the scope of practice of an AOD counselor be defined in the regulations.

Departmental Response:

Certified AOD counselors may provide only the AOD counseling services described in Section 13005(a)(4).

d. Summary of Comment:

Commentor 207 stated that it is not necessary in Section 9846(c) to specify what requirements DUI counselors must have prior to the effective date of the proposed regulations. Commentor 207 also asked if existing staff would be terminated if they did not meet the requirements of the proposed regulations as of the effective date. The commentor added that all staff that provide counseling services should be licensed or certified.

Departmental Response:

Existing Section 9846 specified requirements for DUI counselors, which are slightly higher than the proposed requirements for counselors in narcotic



treatment programs or residential programs. The requirement for DUI programs was left higher at the request of the DUI providers participating in the advisory committee which helped the Department develop these proposed regulations, because they did not want to lower existing standards. No existing staff should be terminated due to a lack of certification.

e. Summary of Comment:

Commentor 207 stated Section 9846(d) should be amended to include "...licensed, certified or registered..."; "...conduct to the licensing or certifying organization or entity that licensed, certified or registered the individual..."; and, the last sentence of sections 9846(e) should be modified, "...to obtain certification or licensure pursuant to..."

Departmental Response:

Section 9846(e)(previously Section 9846(d) has been amended for clarity. Section 9846 has been amended to reflect its original language.

f. Summary of Comment:

Commentor 207 asked whether the interns noted in Section 9846(f) are AOD interns, MFT, interns, etc.

Departmental Response:

A posthearing change has been added in Section 9846(f) to define "intern" as an entry level position in a DUI program. Interns are only used in DUI programs.

g. Summary of Comment:

Commentor 207 noted that Sections 9846(g)(3)(A) and 10125(b) should include registration to obtain licensure, and that the Section 9846(g)(3)(A) should be (i).

Departmental Response:

The Department did not make the requested change because it did not understand the comment.

h. Summary of Comment:

Commentor 207 noted that Sections 10125(c), 10564, and 13005(a)(3) should include licensing entities and boards as well as certifying organizations.

Departmental Response:

The Department did not make the requested change because it has no statutory authority over licensing entities and boards, which are regulated by the Department of Consumer Affairs.

i. Summary of Comment:

Commentor 207 stated that Section 13005(a)(4) should specify that counseling is limited to AOD counseling, and that AOD counselors should not be permitted to work beyond the scope of their license, registration, or certificate, and that anyone doing so should be disciplined.

Departmental Response:

The Department thought the requested change would be duplicative, and therefore unnecessary, since Section 13005(a)(4) defines the type of counseling services an AOD counselor may provide, and Section 13060 prohibits AOD counselors from providing any other type of services.

j. Summary of Comment:

Commentor 207 asked what would happen with the other 50 percent of program staff who will not be required to be certified, and if such a standard did not establish unfair and unequal standards for staff.

Departmental Response:

The Department made a posthearing change to Section 13035, to require only 30% of counselors to be certified by January 1, 2010. Section 13035 requires all non-certified counseling staff must be registered to become certified by July 1, 2005. Within six months of the date of hire, newly hired staff must be registered to become certified. Based on public comments the Department feared a workforce shortage might result if the percentage of counseling staff required to be certified were too high; thus the number of certified staff was lowered to 30%, to give counseling staff a reasonable time to become certified

k. Summary of Comment:

Commentor 207 stated that Section 13015(a) should include licensed physicians, psychologists and psychological assistants, clinical social workers and associates, and marriage and family therapists and interns, who should be able to provide AOD counseling services without becoming registered or certified AOD counselors.

Departmental Response:

Section 13015(a) already includes physicians, psychologists, clinical social workers, and marriage and family therapists. In response to the comment the Department made a posthearing change to include interns registered with the Board of Psychology or the Board of Behavioral Sciences.

I. Summary of Comment:

Commentor 207 stated that 40 hours of continuing education is excessive, especially for licensed professionals, and that continuing education should be approved by the licensed professional's licensing board.

Departmental Response:

Continuing education for licensed professionals has been amended to 36 hours, and the hours currently required for the license issued by the Department of Consumer Affairs may be transferable to meet these requirements. The Department lowered the number of required hours of continuing education because licensed professionals must already complete continuing education requirements in order to renew their professional license. The Department did not lower the number of hours required of all other counseling staff because they do not receive any other type of continuing education. Based on verbal input provided by the advisory group that participated in the development of these regulations, the Department believes that 40 hours of continuing education is necessary for all non-licensed counselors so that they can stay current on new methods of AOD treatment and new ways of providing counseling.

m. Summary of Comment:

Commentor 207 stated that Section 13025(b) should be amended to specify that "counseling services" means AOD counseling services.

Departmental Response:

The Department did not make the requested change because it would have been duplicative and therefore unnecessary. Section 13000 already states that the regulations contained in Chapter 8 apply only to individuals providing counseling in an AOD program.

n. Summary of Comment:

Commentor 207 stated that it seems curious that oral exams may be allowed to obtain certification as an AOD counselor.

Departmental Response:

The regulations allow for testing in writing or by oral exam to provide flexibility for the certifying organization and the registrant, since some individuals currently employed as counselors may have years of experience in the AOD field, but lack advanced education.

o. Summary of Comment:

Commentor 207 stated that Section 13035(b) should clarify that “counselors” means AOD counselors.

Departmental Response:

The Department did not make the requested change because it would have been duplicative. Section 13000 already states that Chapter 8 applies only to individuals providing counseling services in AOD programs.

p. Summary of Comment:

Commentor 207 asked what “maintaining a business office in California” means, as used in Section 13035(c)(1).

Departmental Response:

“Maintaining a business office in California” means that the organization does business in California. The requirement was added to prevent individuals from becoming certified by mail or the internet.

q. Summary of Comment:

Commentor 207 requested that the curriculum identified in TAP 21 be incorporated into Section 13040(a)(1).

Departmental Response:

The Department chose to cross reference TAP 21 rather than repeating it in the regulations because repeating the requirements of TAP 21 would have been lengthy and cost prohibitive. Section 13040 incorporates the curriculum of TAP 21.

r. Summary of Comment:

Commentor 207 requested that Section 13040(a)(3) be broadened to include a study of law and ethics.

Departmental Response:

Ethics has already been established as part of the required curriculum in Section 13040(a)(3). Each certifying organization may include law as part of its curriculum. It is not clear to the Department what about the law the commentor would like to include in Section 13040.

s. Summary of Comment:

The Department did not make the requested change because it would have been duplicative and therefore unnecessary. Section 13040(f) be clarified to require 2,080 hours of “paid work as an employee” or unpaid work experience.

Departmental Response:

This section was modified for clarification; however, the suggested wording was not amended because Section 13040(f) already requires 2,080 hours of paid or unpaid work experience.

t. Summary of Comment:

Commentor 207 questioned the need for an oral examination in Section 13040(d).

Departmental Response:

Section 13040 allows testing by written or oral exam to provide flexibility for certifying organizations and registrants who may not be comfortable taking a written examination..

u. Summary of Comment:

Commentor 207 questioned the logic and rationale for 40 hours of continuing education.

Departmental Response:

Continuing education for licensed professionals has been amended to 36 hours, and the hours currently required for the license issued by the Department of

Consumer Affairs may be transferable to meet these requirements. The Department lowered the number of required hours of continuing education because licensed professionals must already complete continuing education requirements in order to renew their professional license. The Department did not lower the number of hours required of all other counseling staff because they do not receive any other type of continuing education. Based on verbal input provided by the advisory group that participated in the development of these regulations, the Department believes that 40 hours of continuing education is necessary for all non-licensed counselors so that they can stay current on new methods of AOD treatment and new ways of providing counseling.

v. Summary of Comment:

Commentor 207 requested Section 13055(b)(3) be amended to include law and ethics.

Departmental Response:

Ethics has already been established as part of the required curriculum in Section 13055(b)(3). Each certifying organization, at its option, may include law as part of its curriculum.

w. Summary of Comment:

Commentor 207 stated that Section 13060(c)(2) should include providing services beyond the scope of a counselor's certificate, license, or registration.

Departmental Response:

This section has been amended, as suggested, for clarity.

x. Summary of Comment:

Commentor 207 stated that, for clarity, requests for investigation of violations should only be made in writing, but not by telephone.

Departmental Response:

The Department currently accepts complaints in any manner that a complainant may communicate the issue to the Department. Requiring complaints in writing would discriminate against those persons with missing extremities and/or an impediment of the written English language.

The Department will conduct a thorough and appropriate investigation, determine the outcome of an allegation, and notify the appropriate certifying organization.

y. Summary of Comment:

Commentor 207 stated that Section 13070 should differentiate between AOD counselors and licensed professionals.

Departmental Response:

Section 13070 describes the process for requesting administrative review in case an AOD counseling certificate is suspended or revoked. The Department has no authority to suspend or revoke a professional license.

z. Summary of Comment:

Commentor 207 questioned the Department's ability to provide oversight and enforcement of the proposed regulations and asked from where the funding would come to provide such oversight and enforcement.

Departmental Response:

The document issued with the regulations, "Notice of Rulemaking and Public Comment Period" included a financial impact statement asserting there would no costs or savings to any state agency as the result of these proposed regulations. The current fiscal emergency in the State does not allow the Department to adopt regulations which would require significant expenditures. Oversight and enforcement will be conducted during regular licensing and certification site reviews and complaint investigations.

**Comment 208:**

a. Summary of Comment:

Commentor 208 opposed certification, stating that the Department's assumption that certification of counselors will improve treatment has no basis in fact.

Departmental Response:

These regulations were established with the intention of improve the quality of the services provided, thereby protecting the health, safety, and welfare of AOD participants, patients, and residents. The Department is following the example of 37 other states which already require certification.

b. Summary of Comment:

Commentor 208 noted that the fiscal impact statement states that no federal funding is involved, and yet states that ADP anticipates using federal funds for 2004-05 and beyond. He asked if federal funds are involved. He also noted that the fiscal impact statement stated that the Department may ultimately charge fees to support the program. He asked what the fees would be for and who would pay them, commenting that certification would have a cost to AOD programs which are struggling to make ends meet.

Departmental Response:

No federal funds are involved in the implementation of the regulations. Oversight and enforcement will be conducted during regular licensing site reviews and complaint investigations. The Department has determined that there would be minimal cost of \$100-\$800 for counselors seeking certification.

The document issued with the regulations, "Notice of Rulemaking and Public Comment Period" included a financial impact statement asserting there would no costs or savings to any state agency. The current fiscal emergency in the State does not allow the Department to create significant expenditures. The Department will have direct oversight of all certifying organizations, including certified counselors.

c. Summary of Comment:

Commentor 208 stated that adequate funding should be provided for the Department to handle complaints about certified counselors.

Departmental Response:

The Department cannot request additional funding due to the current State fiscal crisis. Thus oversight and enforcement will be conducted during regular site reviews and complaint investigations, and will be absorbed in the current workload without incurring any significant expenditures.

d. Summary of Comment:

Commentor 208 stated that it cannot raise client fees in order to pay the cost of higher salaries and insurance required by certified counselors because its clientele are unable to pay for services.



Departmental Response:

The Department is not mandating that counselors be paid higher salaries, only suggesting that programs may increase fees if they chose to pay higher salaries to certified counselors. An AOD program may decide not to increase salaries and/or program fees if it is not feasible to do so.

**Comment 209:**

a. Summary of Comment:

Commentor 209 commented that the various dates in the proposed regulations seem inconsistent.

Departmental Response:

All dates have been updated and amended to allow six months for registration and five years for certification.

b. Summary of Comment:

Commentor 209 stated that Section 13010 refers only to certification, not to licensure.

Departmental Response:

Section 13010 specifically refers to the requirements of certification, because the Department is mandating certification rather than licensure. The requirement to have at least 30% of all counseling staff to become licensed or certified is contained in Section 13035(a).

c. Summary of Comment:

Commentor 209 stated that Section 13020(a) does not make sense.

Departmental Response:

Section 13020(a) establishes a “grandfathering” clause which recognizes certification obtained prior to the promulgation of these regulations.

d. Summary of Comment:

Commentor 209 stated that it seems inconsistent to require a certifying organization to verify that a counselor’s certification has never been revoked, while only requiring certifying organizations to keep records for five years.

Departmental Response:

The Department chose to mandate record retention for five years in order to maintain consistency with record retention requirements for other licensed professionals and the record maintenance requirements of the California Government Code.

e. Summary of Comment:

Commentor 209 stated that it seems overly punitive to ban a counselor from the field if his/her certification has ever been revoked. He added that “revoke” and “suspend” should be defined.

Departmental Response:

Section 13065 has been amended to state revocation will be for a period of five years. The Department did not define “revocation” or “suspension” as they are used according to standard definition found in any dictionary.

f. Summary of Comment:

Commentor 209 stated they are confused if all grace periods and leeway permitted in Chapter 8 applies to NTPs. The omission of dates in Section 10125(b) is made more confusing because there are dates established in Section 9846 governing DUI programs.

Departmental Response:

All dates and requirements in Chapter 8 apply to all individuals providing counseling in an AOD program licensed or certified by the Department, unless otherwise specified.

**Comment 210:**

a. Summary of Comment:

Commentor 210 noted that psychologists in California are licensed by the Board of Psychology, rather than the Board of Behavioral Sciences, as stated in Section 13015(a).

Departmental Response:

The Department has made the requested posthearing change. The Board of Behavioral Sciences licenses Marriage and Family Therapists, Licensed Clinical

Social Workers, Licensed Educational Psychologists, MFT Interns, and Associate Clinical Social Workers.

b. Summary of Comment:

Commentor 210 stated that licensed psychologists are already trained in chemical dependency and that requiring 40 hours of continuing education every two years will present a financial burden to licensed professionals, who are already required to complete continuing education requirements to maintain their licenses.

Departmental Response:

Section 13015(d) has been amended to 36 hours. Licensed professionals providing counseling sessions in an AOD program will be required to complete 36 hours of continuing education every two years to ensure they receive the same types of current training as other AOD counselors so that they remain current on the latest trends and techniques in counseling and treatment of AOD problems; however, the hours currently required for the license issued by the Department of Consumer Affairs may be transferable to meet these requirements.

c. Summary of Comment:

Commentor 210 stated that Section 13055(b)(2) should refer to “diverse populations” rather than “special populations”.

Departmental Response:

The Department made the requested posthearing change.

d. Summary of Comment:

Commentor 210 stated that the term “HIV Disease” should be used instead of “Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS)” in Section 13044(b)(4).

Departmental Response:

This section has been amended as recommended.

**Comment 211:**

a. Summary of Comment:

Commentor 211 asked if there is any required format (e.g. e-mail, certified mail, etc.) for notification if a counselor violates the code of conduct.

Departmental Response:

Any person, including AOD programs, may request the Department conduct a code of conduct investigation, in accordance with regulations Section 13065. These notifications may be in person, by telephone, in writing, or by an automated or electronic means, i.e., fax, e-mail, etc. It is not a requirement for the written request to be sent by certified mail.

b. Summary of Comment:

Commentor 211 noted that the dates specified in Section 13010(a) does not allow five years for implementation of the regulations.

Departmental Response:

All dates in the regulations have been updated to allow six months to become registered and five years to become certified.

c. Summary of Comment:

Commentor 211 stated use of the word “similar” contained in Section 13020(c)(2) is not clear.

Departmental Response:

As defined in a standard dictionary, “similar” means consistent with. Thus the education and experience of a previously certified counselor must be reasonably consistent with those required to obtain certification.

d. Summary of Comment:

Commentor 211 asked if a counselor, who had been certified prior to January 1, 2005, would need to complete the requirements of Section 13040 in order to be recertified.

Departmental Response:

If a counselor is certified with an organization that is not ADP approved, he/she may apply for certification with one of the certifying organizations listed in Section

13035. If a counselor is certified with an organization that is ADP approved, he/she will qualify for the “grandfathering” provision stated in Section 13020. All counselors renewing certification after the regulation effective date will have to meet the requirements established in Section 13055 (formerly Section 13040)

**Comment 212:**

Summary of Comment:

Commentor 212 stated that he had researched AOD counselor certification standards for the rest of the country, and that those standards proposed by ADP are barely above the minimum standards for other states. Commentor 212 stated that, while it is cost effective to employ counselors with little formal training or education, many of those counselors are likely to relapse (i.e., to resume use of alcohol or drugs). Commentor 212 recommended that the Department base its counselor certification standards on ones used by Delaware, Oregon, or Pennsylvania, which require more formal education and training.

Departmental Response:

The current standards were chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations, in order to prevent a workforce shortage. These standards are meant as minimum standards. Any certifying organization or AOD program may require higher standards, and the Department may raise these standards in the future as more AOD counselors become certified. The Department did not require higher standards at this time to avoid putting existing AOD counselors out of work, thereby creating a workforce shortage.

**Comment 213:**

a. Summary of Comment:

Commentor 213 noted that Section 9846 limits interns to 20% of the DUI program’s counseling staff prior to January 1, 2005, but does not limit the number of interns after January 1, 2005.

Departmental Response:

The DUI regulation section limiting the ratio of interns to 20% of the counseling staff was erroneously changed and has been restored to its original language.

b. Summary of Comment:

Commentor 213 stated that Section 9846 would appear to allow interns to conduct services without direct supervision.

Departmental Response:

In accordance with proposed regulation Section 9846(f)(4), interns must observe at least three hours of face-to-face interview, 12 hours of educational classes, and 20 hours of group counseling prior to conducting services without direct supervision.

c. Summary of Comment:

Commentor 213 noted that Section 9846 appears to contain two subsections (f).

Departmental Response:

The Department has corrected this typographical error.

d. Summary of Comment:

Commentor 213 stated that Section 9846(h) would require annual training and continuing education for DUI counselors.

Departmental Response:

The regulation section has been amended to its original language.

e. Summary of Comment:

Commentor 213 noted that the definition of “certified AOD counselor” is confusing in Section 13005(2), that there is an extraneous “this”, and that the organization is not “qualified to provide AOD counseling services.”

Departmental Response:

The Department has made a posthearing change to improve clarity.

f. Summary of Comment:

Commentor 213 noted that Section 13010 does not appear to ever require a program to have more than 51% of its counselors licensed or certified.

Departmental Response:

In order to prevent future workforce shortages, the regulations have been amended to require no more than 30% of staff to be certified; however, all

counseling staff must be registered to obtain certification within five years of the date of hire.

g. Summary of Comment:

Commentor asked if licensed professionals do not have to be certified because they are already trained in AOD problems and counseling.

Departmental Response:

Yes, that is correct.

h. Summary of Comment:

Commentor 213 noted that the word “similar” is not defined in Section 13020(c)(2), and that a certifying organization would have to renew certification of a previously certified counselor unless it were prepared to prove that the education and experience required by the prior certifying organization was not similar to the standards contained in Section 13040.

Departmental Response:

As defined in a standard dictionary, “similar” means consistent with. Thus the education and experience of a previously certified counselor must be reasonably consistent with those required to obtain certification.

i. Summary of Comment:

Commentor 213 stated that that Section 13025 should not allow an individual to become certified by taking a test unless a uniform test was used by all certifying organizations.

Departmental Response:

The Department allowed each certifying organization to develop its own test to allow flexibility.

j. Summary of Comment:

Commentor 213 stated that Section 13030(a)(3) appears to allow a certifying organization to certify by reciprocity an unqualified individual so long as the requirements of the organization which previously certified the individual out of state were similar to the requirements of Section 13040.

Departmental Response:

In order to qualify for reciprocity, a counselor would have to meet all the requirements of Section 13030(a)(1-3); however, in accordance with Section 13030(d), the certifying organization is not required to grant certification by reciprocity.

k. Summary of Comment:

Commentor 213 noted inconsistencies between the dates on pages 15 and 20 of the regulations, and noted that the regulations do not appear to ever require more than 51% of all AOD counselors in a program to be certified.

Departmental Response:

All dates have been updated for consistency. In order to prevent future workforce shortages, the regulations have been amended to no more than 30% of staff will be required to be certified; however, an employer may, at its discretion, exceed the mandated requirements at any time. All AOD counselors must register within six months from date of hire, and then have five years to obtain certification.

l. Summary of Comment:

Commentor 213 noted that CAADE's name had been inadvertently misstated in Section 13035.

Departmental Response:

The regulations have been amended to correct this typographical error.

m. Summary of Comment:

Commentor 213 noted that Section 13035(c) stated that certifying organizations which offer classroom AOD education through California colleges should be exempt from the requirement to become accredited through the NCCA.

Departmental Response:

The Department has chosen NCCA because it is a nationally recognized organization, which accredits various types of licensing or certifying organizations and can ensure that all certifying organizations adhere to a set of minimum standards. All certifying organizations provide classroom AOD education and no bases exist to exempt any one agency from the requirement.



- n. Commentor 213 noted that Section 13035 would appear to allow an individual to register with a certifying organization and to work for another five years without obtaining any education. Commentor 213 stated that registrants should be required to complete at least six hours of classroom AOD education each year prior to certification.

Departmental Response:

Each non-licensed or non-certified counselor must register within six months from date of hire, and obtain certification within five years from date of registration.

- o. Summary of Comment:

Commentor 213 stated that Section 13040 should require no less than 420 hours of classroom education.

Departmental Response:

These regulations were established in order to prevent a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to protect the health, safety, and welfare of AOD participants, patients, and residents. 155 hours of education was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations.

- p. Summary of Comment:

Commentor 213 questioned how one could supervise a counseling session without being physically present, pursuant to Section 13040(b)(3).

Departmental Response:

Supervising counselors and provide oversight, direction and guidance to their staff by reviewing process notes of counselor sessions and conferring with the assigned counselor. It is not necessary for the supervising counselor to be present in the same physical location as the staff at all times. Mandating supervisors be at every site would significantly increase operational costs to the program and be unnecessary.

- q. Summary of Comment:

Commentor 213 stated that Section 13040(c) should require supervised work experience.

Departmental Response:

Section 13040(b) already establishes that the counselor must complete 160 hours of documented supervised AOD training.

r. Summary of Comment:

Commentor 213 noted that Section 13055 does not require a particular number of hours of continuing education in any of the subjects specified in (b).

Departmental Response:

Section 13055(b) has been amended to clearly establish that the required education can be obtained using a combination of subjects.

s. Summary of Comment:

Commentor 213 stated that Section 13060(d) would not allow certifying organizations to make exceptions for any type of conviction other than for use or possession of drugs or alcohol. Commentor 213 stated that certifying organizations should not have to perform background checks on registrants.

Commentor 213 stated that Section 13060 should not preclude anyone with a prior criminal conviction from being certified as an AOD counselor.

Departmental Response:

Each ADP approved certifying organization is required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, as defined in Penal Code Section 290. This is necessary to protect the health and safety of residents, participants, visitors, and dependent children. The Department welcomes the opportunity for all qualified persons to apply for certification. Section 13060(d) simply clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization.

t. Summary of Comment:

Commentor 213 stated that Section 13075 should allow three days for certifying organizations to update the information in their electronic databases, rather than requiring them to update such information daily.

Departmental Response:

The time frame to ensure that information contained in the database is current and applicable in order to protect the health and safety of clients.

u. Summary of Comment:

Commentor 213 stated that the draft regulations are unprofessional and unethical and that CAADE would prefer to have no regulations for certification of counselors.

Departmental Response:

These regulations were developed in collaboration with a workgroup including county alcohol and drug program administrators, providers of AOD services, and representatives of certifying organizations. They were established as minimum standards that would improve the quality of services provided without causing a workforce shortage by making existing AOD counselors unemployable. Certifying organizations and providers of AOD services may impose more stringent requirements, and the Department may amend these regulations in the future once the field has had time to adjust to these minimum requirements.

**Comment 214:**

a. Summary of Comment:

Commentor 214 wholeheartedly supported the regulations.

Departmental Response:

The Department thanks the commentor for his encouragement.

b. Summary of Comment:

Commentor 214 stated that the regulations should define the expected scope of practice for AOD counselors.

Departmental Response:

Section 13005(a)(4) already specifies the scope of practice of AOD counselors, by defining “counseling services”.

c. Summary of Comment:

Commentor 214 stated that education and training in co-occurring disorders should be required.

Departmental Response:

Section 13040(a)(2) and 13055(b)(2) already require part of the 155 documented hours of formal education include co-occurring disorders training.

**Comment 215:**

Commentor 215's letter appears to be a duplicate of Comment 173. Please see the summary and response to those comments above.

**Comment 216:**

a. Summary of Comment:

Commentor 216 stated that 40 hours of continuing education (Section 13015) is more than is required by professional licensing boards.

Departmental Response:

The Department has established 40 hours of continuing education every two years so that counselors obtain ongoing education in AOD issues and treatment methodology. The 40 hours of continuing education is consistent with other licensed professionals.

b. Summary of Comment:

Commentor 216 stated that training on prevention of sexual harassment is already required of AOD providers who have public funds.

Departmental Response:

The Department believes that it is necessary for all AOD counselors to receive training in prevention of sexual harassment in order to protect the health and welfare of participants, patients, and residents.

c. Summary of Comment:

Commentor 216 stated that if fees for services increase there will be fewer people in treatment, resulting in closure of AOD programs.

Departmental Response:

The Department is not mandating that program fees be increased, only suggesting that providers may increase fees if they chose to pay certified AOD counselors at a higher rate. An AOD program may decide not to increase program fees if it is not feasible.

d. Summary of Comment:

Commentor 216 stated that the definition of AOD program in Section 13005(a)(1)(F) could be interpreted to mean that only programs funded with drug recovery monies have to comply with the requirements of Chapter 8, Title 9, CCR.

Departmental Response:

Section 13005(a)(1) lists various types of alcohol and other drug programs licensed or certified by the Department. Section 13005(a)(1)(F) lists only one type of AOD program. All licensed or certified AOD programs, including for profit, non-profit, foster care, and publicly funded programs, are required to comply with the requirements of Chapter 8.

e. Summary of Comment:

Commentor 216 asked the Department to explore the legality of allowing AOD programs to determine which of the certifying organizations it will recognize.

Departmental Response:

The regulations were reviewed for potential legal issues prior to release for public comment. Section 13010(b) allows each AOD program flexibility as to which ADP approved certifying organizations it will accept.

f. Summary of Comment:

Commentor 216 stated that the statement that “certification does not confer any right to practice any other profession for which licensure is required” is not clear.

Departmental Response:

Section 13010(b) specifies that certification as an AOD counselor does not allow the counselor to provide any services for which a license is required. This is necessary to protect the health and safety of participants, patients, and residents.

g. Summary of Comment:

Commentor 216 stated that Section 13015(a) does not clarify whether interns or master level staff can work without being certified as AOD counselors.

Departmental Response:

Licensed professionals, including registered interns, providing counseling services in an AOD program are not required to be certified in accordance with Section 13015(b). Master level staff must also be registered with the Department of Consumer Affairs, Board of Behavioral Sciences in order to be exempt from certification.

h. Summary of Comment:

Commentor 216 stated that 40 units of education for licensed professionals are more than is required by most licensing boards. Commentor 216 also stated that it is not clear how completion of continuing education will be monitored.

Departmental Response:

The Department made a posthearing change to Section 13015(d), lowering the number of hours of continuing education from 40 to 36 hours for licensed professionals. During on-site licensing or certification reviews ADP staff will review personnel files to determine if completion of continuing education has been documented.

i. Summary of Comment:

Commentor 216 commented that Section 13030 would appear to allow certifying organizations to refuse to certify individuals certified or licensed in other states.

Departmental Response:

Yes, that is correct. Section 13030 was drafted in order for out-of-state counselors, and counselors having the experience but not certified, to have reciprocity in California. If one of the ADP approved certifying organizations, as listed in Section 13035, feels someone has met or exceeded the requirements established in this section then certification may be granted; however, again, each organization has the option of not granting reciprocity if they feel the prior experience does not meet the standards set forth in this Chapter.

j. Summary of Comment:

Commentor 216 stated that Section 13035 does not address what should happen if a certified counselor is fired for unethical or illegal practices, what the code of ethics is, how ethical violations should be reported, or the process for revocation of certification.

Departmental Response:

The code of conduct is defined in Section 13060, while revocation and suspension of certifications is covered in Section 13065. The AOD program (employer) must report the code of conduct violations within three business days to the appropriate certifying organization. The certifying organization will report the violations to the Department, which will conduct a thorough and appropriate investigation. The Department will determine the outcome of an allegation, and notify the appropriate certifying organization.

k. Summary of Comment:

Commentor 216 stated that Section 13040 should require more documented hours of education.

Departmental Response:

The standards contained in the proposed regulations are merely minimum requirements, designed to protect the health and safety of AOD program participants, patients, and residents, while preventing a workforce shortage by allowing as many currently employed AOD counselors as possible to obtain certification. Any certifying organization or AOD program provider may require more hours of education if they chose to do so.

l. Summary of Comment:

Commentor 216 stated that Section 13040(a)(5) should specify if education in prevention of sexual harassment should be to prevent harassment of co-workers/staff or clients.

Departmental Response:

The prevention of sexual harassment would apply equally to everyone, regardless if they are a client or staff, and the training would apply in any situation, regardless of relationship.

m. Summary of Comment:

Commentor 216 noted that Section 13040(b)(1) does not specify what percentage of time supervisors must be onsite or if being “physically present and available” includes being available by pager, cell phone, etc.

Departmental Response:

Being “physically present and available” means that the supervisor may be out of the room, but must be available by pager, cell phone, etc whenever a registrant is providing counseling services.

n. Summary of Comment:

Commentor 216 stated that Section 13040(d) should allow a written or oral exam.

Departmental Response:

No post hearing change is needed because Section 13040(d) already allows the exam to be either written or oral.

o. Summary of Comment:

Commentor 216 stated that Section 13040(f) should require a standardized code of conduct and an overseeing board to file complaints, revoke certification, etc.

Departmental Response:

Section 13060 specifies a standardized, minimum code of conduct that must be adhered to by all certifying organizations; however, each organization may exceed the minimum requirements. The Department will have direct oversight of all certifying organizations, including certified counselors.

p. Summary of Comment:

Commentor 216 stated that Section 13045(a) does not outline the procedure to be used to verify if a registrant’s certification was ever revoked.

Departmental Response:

Section 13045(a) states the certifying organization must contact all other certifying organizations to determine if certification has ever been revoked. The certifying organization may determine the most appropriate method of contact,



e.g., phone, letter, e-mail, etc; however, in accordance with Section 13075, each certifying organization must have an electronic database that is accessible by the Department and public.

q. Summary of Comment:

Commentor 216 stated that Section 13045 should clarify how many different certifying organizations an individual may go to in order to become re-certified. Commentor 216 stated that Section 13045 gives the certifying organizations too much flexibility in deciding whether to approve or deny certification.

Departmental Response:

The Department cannot limit the number of certifying organizations to which a counselor may apply; however, Section 13035(e)(3) does not allow a certifying organization to register an individual, who previously registered with another organization and did not complete AOD certification, for one year from the date they left the previous certifying organization.

r. Summary of Comment:

Commentor 216 stated that Section 13055 should clarify who revokes certification.

Departmental Response

Section 13065(e) states the Department would order the certifying organization to revoke certification, after the Department has conducted an investigation. This section has been amended to state revocation will be for a period of five years.

s. Summary of Comment:

Commentor 216 stated that Section 13055(i) contradicts (f).

Departmental Response:

Section 13055(g) (previously "f") establishes the requirements of the certifying organization to notify the Department of revocation, while Section (i) mandates the certifying organization send written notification to the counselor that renewal of certification has been denied.

t. Summary of Comment:

Commentor 216 stated that a standardized code of conduct should be used and that a board needs to oversee all certifying organizations.

Departmental Response:

See response to Comment “o” above.

u. Summary of Comment:

Commentor 216 noted that Section 13060 allows the certifying organization to exclude prior convictions for use or possession of drugs or alcohol, and that it allows certifying organizations to adopt more stringent standards at their discretion. Commentor 216 stated that it is possible that all certifying organizations will not exclude drug charges.

Departmental Response:

Each ADP approved certifying organization will be required to conduct a search of the Megan’s Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, as defined in Penal Code Section 290. Anyone who is a registered sex offender will not be allowed certification. Criminal background checks will not be required due to excessive costs, time, and tracking associated with the process. Each ADP approved organization may choose, at its own discretion, to perform criminal background checks on registering and registered counselors. Each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060.

v. Summary of Comment:

Commentor 216 stated that the Department will not be able to investigate violations of the code of conduct, as specified in Section 13065, unless a standardized code of conduct is required. Commentor 216 asked the Department to clarify who an individual could contact to complain about a certifying organization.

Departmental Response:

Section 13060 specifies a standardized minimum code of conduct. Section 13065(a) states an individual may report violations of the code of conduct to the Department. Violations may be reported by any means in which the complainant wants to communicate the information. The AOD program (employer) must report the code of conduct violations within three business days to the appropriate certifying organization. The certifying organization will report

violations to the Department, which will conduct a thorough and appropriate investigation. The Department will determine the outcome of an allegation, and notify the appropriate certifying organization.

**Comment 217:**

a. Summary of Comment:

Commentor 217 stated the regulations do not have sufficient authority to be promulgated because creating a new class of certified health professionals requires clear statutory authority that does not appear to exist. The regulations should be withdrawn because of a lack of authority.

Departmental Response:

The Department has full statutory authority to promulgate the regulations under Health and Safety Code Sections 11833, 11834.27, 118136, 11836.15, 11876, and 11880.

b. Summary of Comment:

Commentor 217 stated the proposed regulations are inconsistent with and overlap the existing laws and rules of health professionals within the Department of Consumer Affairs. This licensing board is in a better position to regulate the quality of services.

Departmental Response:

The Department does not have authority to require the Department of Consumer Affairs to monitor AOD counselors. The Department has attempted to make the regulations in Chapter 8 as consistent as possible with the existing laws and rules of health professionals.

c. Summary of Comment:

Commentor 217 stated because of the new costs associated with setting up and administering a new bureaucracy, and the State's fiscal crisis requiring reduction and elimination of existing critical health programs, this is the worst possible time to begin an entirely new, expensive program and to create new mandates. Psychologist will be required to spend at least \$2,000 during each licensing renewal cycle.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents. Thirty-seven other states currently require certification or licensing of their AOD counselors. California has been harshly criticized for the lack of qualifications required to be an AOD counselor.

The Department will not require licensed professionals to incur any additional costs. Licensed professionals providing counseling sessions in an AOD program will be required to complete 36 hours of continuing education every two years to ensure they receive the same types of current training as other AOD counselors so that they remain current on the latest trends and techniques in counseling and treatment of AOD problems; however, the hours currently required for the license issued by the Department of Consumer Affairs may be transferable for these requirements.

**Comment 218:**

a. Summary of Comment:

Commentor 218 stated sole authority for professional credentialing belongs to state government (Department of Alcohol and Drug Programs or Department of Consumer Affairs) and should not be delegated.

Departmental Response:

Due to the current State fiscal crisis, the Department is not able to incur the cost of additional staff to certify AOD counselors. Although counselors will be certified by individual certifying organizations, oversight will be provided by the Department using existing staff and existing resources.

b. Summary of Comment:

Commentor 218 stated that anyone who works in an AOD setting must be certified pursuant to regulations, including licensed clinical social workers, marriage and family therapist or psychologist.

Departmental Response:

Licensed professionals providing counseling services in an AOD program are not required to be certified in accordance with Section 13015(b). In accordance with Section 13015(d), they will be required to complete 36 hours of continuing

education every two years; however, the continuing education currently required for their license issued by the Department of Consumer Affairs may be applicable to this section.

c. Summary of Comment:

Commentor 218 stated licensed professionals should have the option of “testing-out” even without the five (5) years of experience, but should be held to the 40-hour continuing educational requirements.

Departmental Response:

This section has been amended to 36 hours to maintain consistency with requirements of the Department of Consumer Affairs. Licensed professionals providing counseling services in an AOD program will not be required to “test-out” unless they desire to become certified with one of the ADP approved certifying organizations; however, in accordance with Section 13015(d), they will be required to complete 36 hours of continuing education every two years. The continuing education currently required for their license issued by the Department of Consumer Affairs may be applicable to this section.

d. Summary of Comment:

Commentor 218 stated if a counselor is already certified by a listed organization that meets TAP 21 requirements, they should not be required to test-out or obtain a new certification.

Departmental Response:

Section 13020 has been amended to clearly establish that a counselor certified by the promulgation of the regulations with an ADP approved organization, as established in Section 13035, will be “grandfathered-in.” The “testing-out” option will be for those who are not currently certified with an organization but have been employed as a counselor in an AOD program.

e. Summary of Comment:

Commentor 218 stated the sole authority for credentialing in California belongs with ADP or the Department of Consumer Affairs, and the responsibility should not be delegated. If treatment is regarded as a professional health field, its practitioners should be credentialed in the same manner as other health care professionals.

Departmental Response:

Because of the current State fiscal crisis, the Department cannot afford to hire additional staff so that it can certify AOD counselors. The Department will provide oversight for counselor certification using existing staff and resources.

f. Summary of Comment:

Commentor 218 stated 360 hours of classroom education should be the statewide standard, with any below unacceptable.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

g. Summary of Comment:

Commentor 218 stated AOD counselors should receive a minimum of 2,080 hours of work experience and 1,040 internship hours.

Departmental Response:

Section 13040(c) already states counselors will receive 2,080 hours of work experience. The internship hours are included in the work experience and supervised training hours.

h. Summary of Comment:

Commentor 218 stated 40 hours of continuing education every two years should be the minimum standard.

Departmental Response:

The Department is in agreement and has established 40 hours of continuing education every two years so that counselors obtain ongoing education in AOD issues. The Department has reduced to 36 hours the number of hours of continuing education for licensed professionals to maintain consistency with requirements of the Department of Consumer Affairs.

i. Summary of Comment:

Commentor 218 stated there should be one statewide standardized exam which can be taken by anyone with five years of experience.

Departmental Response:

The Department has not amended Section 13055(c) to establish a standardized exam in order to allow certifying organization flexibility.

**Comment 219:**

Summary of Comment:

Commentor 219 asked if Bachelor's and Masters of Arts in counseling degrees, along with years of experience negate the need for certification.

Departmental Response:

No. Certification or licensure is still required. If an individual can provide documentation he/she has been employed in an AOD program providing counseling services for five of the last ten years, and achieves a passing score on the appropriate exam, he/she will be able to obtain certification in accordance with Section 13025.

**Comment 220:**

a. Summary of Comment:

Commentor 220 stated the language in Section 9846(d) should be changed to fifteen (15) days to report code of conduct violations in order to give program time to research complaint, eliminate unfounded reports of violations, and obtain legal consultation.

Departmental Response:

This section was not changed to protect the health and welfare of participants, patients, and residents by requiring a speedy investigation.

b. Summary of Comment:

Commentor 220 stated Section 9846(e)(3) should be deleted so that interns and volunteers could have the same training requirements. Having a staff member present eliminates the usefulness of volunteers.

Departmental Response:

The Department has made a posthearing change returning Section 9846(e)(2) its original language.

c. Summary of Comment:

Commentor 220 questioned whether Section 9846(g)(2) is necessary if someone is already certified?

Departmental Response:

Yes, in order for the Department to substantiate counselor certification during a routine site visit. Having certification does not negate the fact personnel records must be maintained.

d. Summary of Comment:

Commentor 220 stated the requirement of Section 13010(a) should be changed to 30% in order to allow individuals employed as AOD counselors to obtain certification while working full time, and to prevent workforce shortages.

Departmental Response:

Section 13010(a) has been amended to 30% for reasons specified in above comments.

e. Summary of Comment:

Commentor 220 stated Section 13010(b) should have wording added to state, "...approved certifying organizations..."

Departmental Response:

The Department has made the requested change.

f. Summary of Comment:

Commentor 220 stated the wording in Section 13020(a) is unclear, and believes it means that on January 1, 2008, existing certifications will be void, and suggest extending the date by one year to allow individuals to be recognized during the transition.

Departmental Response:



Current certifications will not be voided. When the regulations are promulgated, any counselor that was previously certified by an ADP approved certifying organization, prior to regulation effective date, will be “grandfathered-in.”

g. Summary of Comment:

Commentor 220 stated the wording in Section 13020(c) should be changed from “renew” to “reissue” and wording should be added to state the certified counselor should register within six months of the effective date of the regulations.

Departmental Response:

Section 13020(c) has been amended to state a counselor must register within six months of the effective date of the regulations in order to invoke the “grandfathering” clause, as suggested. The “renew” wording has not been changed in order to maintain clarity.

h. Summary of Comment:

Commentor 220 wants ADP to provide a full three years to take a test in Section 13025.

Departmental Response:

The Department has amended all time frames to allow six months from the date of hire to become certified and five years from the date of hire (or the effective date of the regulations) to obtain certification.

i. Summary of Comment:

Commentor 220 stated the date of requirements in Section 13035(a) should be changed to January 1, 2010.

Departmental Response:

The Department has amended all time frames to allow six months from the date of hire to become certified and five years from the date of hire (or the effective date of the regulations) to obtain certification.

j. Summary of Comment:

Commentor 220 stated the date in Section 13035(c) should be changed to January 1, 2007.

Departmental Response:

The Department has amended all time frames to allow six months from the date of hire to become certified and five years from the date of hire (or the effective date of the regulations) to obtain certification.

k. Summary of Comment:

Commentor 220 stated the time frame in Section 13035(d) should be changed to, "...within five days..."

Departmental Response:

This section has been amended, as requested, to reflect a five working day time period in order to prevent undue hardship for the certifying organizations.

l. Summary of Comment:

Commentor 220 stated Section 13035(e)(3) should, at the beginning of the section, state "After July 2005..."

Departmental Response:

The Department has amended all time frames to allow six months from the date of hire to become certified and five years from the date of hire (or the effective date of the regulations) to obtain certification.

m. Summary of Comment:

Commentor 220 stated Section 13040(a) should be amended, and change "Complete" to "A" and "at least" to "minimum."

Departmental Response:

The Department has not made the requested change to maintain consistency with terminology used in the rest of Chapter 8.

n. Summary of Comment:

Commentor 220 stated there should be an amendment in Section 13040(b)(1), and change "physically present and" to "readily available."

Departmental Response:

Section 13040(b)(1) already states the supervisor must be readily available.

o. Summary of Comment:

Commentor 220 stated there should be wording added at the end of each sentence in Sections 13060(c)(4), (5), and (6), to "...within two years of program participation."

Departmental Response:

This section was not changed because it is needed to protect the health and safety of participants, patients, and residents, without limits to a specified time period.

p. Summary of Comment:

Commentor 220 stated complaint requests in Section 13065(a) should be submitted in writing to ensure credibility of complaints.

Departmental Response:

The Department currently accepts complaints in any manner that a complainant may communicate the issue to the Department. Requiring complaints in writing would discriminate against complainants who are unable to write due to physical handicap or language difficulty.

q. Summary of Comment:

Commentor 220 stated the information in Section 13075(d) should be retained for ten (10) years.

Departmental Response:

This section was not amended to maintain consistency with other record retention requirements in Title 9.

r. Summary of Comment:

Commentor 220 stated the wording in Section 13075(c) should be changed from "daily" to "in a timely manner."

Departmental Response:

This section was not amended because it is needed to ensure that information contained in the database is current and applicable in order to protect the health and safety of clients.

**Comment 221:**

a. Summary of Comment:

Commentor 221 stated each certifying organization should be allowed to create its own exam.

Departmental Response:

In accordance with section 13025(c)(1), each certifying organization may develop its own exam which it feels would meet the competence of a counselor that has the required education and years of experience.

b. Summary of Comment:

Commentor 221 stated the minimum number of classroom hours should be no less than 420.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

c. Summary of Comment:

Commentor 221 stated there needs to be at least 1000 hours of supervision.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to

improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

**Comment 222:**

a. Summary of Comment:

Commentor 222 stated an unreasonable burden would be placed upon certification organizations to provide finances, brainpower, and time to meet these requirements. Christian organizations have traditionally operated on a shoestring with low or no pay.

Departmental Response:

The Department is not mandating a certifying organization to become ADP approved. There has to be a level of oversight, monitoring, and accountability for a certifying organization to validate its competence, which is established by being accredited with the National Commission for Certifying Agencies (NCCA). One of the many requirements for accreditation is maintaining a certain level of fiscal stability.

b. Summary of Comment:

Commentor 222 stated NCCA is only interested in documentation, but the best documentation does not insure compliance to its contents, and the fee for services would be \$3000 a year.

Departmental Response:

The Department has chosen NCCA because it is a nationally recognized organization which accredits various types of licensing or certifying organizations. If the State was to create an accrediting agency, the costs would far exceed what is mandated by NCCA accreditation.

c. Summary of Comment:

Commentor 222 stated there is no comprehensive agreement on the theories, practices, and concepts of drug and alcohol counseling that would make a test valid under TAP 21.

Departmental Response:

TAP 21 has been established and recognized as having a nationally renowned curriculum that is used for certification of counselors.

d. Summary of Comment:

Each certifying agency should be allowed to conduct its certification assessment in the way it deems best. Each certifying organization should not be expected to resolve issues and form policy if they have basic value differences.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

e. Summary of Comment:

Commentor 222 stated the current proposal does more harm than good, as there would be an unreasonable burden upon certifying organizations to provide the finances, brainpower, and time to meet these requirements.

Departmental Response:

The Department is not mandating certifying organizations to become ADP approved. Certifying organizations are in existence to certify qualified, competent counselors, and should already have established the finances, brainpower, and time to meet the minimum standards established by the Department.

f. Summary of Comment:

Commentor 222 stated TAP 21 is not adequate or sufficient to know or provide with certainty good behavior, as a professional counselor would be in all possible situations; however, to the Christian professional counselor, the Bible is sufficient for this purpose.

Departmental Response:

TAP 21 was chosen because it is a nationally recognized curriculum used for certification of AOD counselors.

**Comment 223:**

a. Summary of Comment

Commentor 223 stated Section 13015(b) should also include (wording offered in original text) licensed professionals be in good standing with their licensing agency by completing the recommended hours of continuing education required of their license.

Departmental Response:

This section has been amended, as suggested, for clarity.

b. Summary of Comment:

Commentor 223 recommend 425 documented hours of education in order to be more consistent with the majority of stakeholders' feedback and complete TAP 21 education.

Departmental Response:

This section was not changed because 155 hours of education was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations, in order to prevent a workforce shortage.

**Comment 224:**

a. Summary of Comment:

Commentor 224 stated psychiatric technicians should be included as licensed professionals.

Departmental Response:

Psychiatric technicians have not been included because they do not have the same educational requirements in counseling as other licensed professionals.

b. Summary of Comment:

Commentor 224 stated the Department and counties should offer a website informing counselors and employers of TAP 21 seminars and training.

Departmental Response:

ADP currently has information on its website at [www.adp.ca.gov](http://www.adp.ca.gov) regarding training, seminars, and technical assistance.

c. Summary of Comment:

Commentor 224 stated that clarification is needed on Section 13020(c)(2) regarding previously certified AOD counselors.

Departmental Response:

The commentor did not specify what he wanted clarified in Section 13020(c)(2).

d. Summary of Comment:

Commentor 224 stated he is confused about the grandfathering provision of Section 13020. Is 315 documented hours of AOD education required or not. To ensure a continued labor force, grandfathering is necessary without requiring an additional 315 hours of education.

Departmental Response:

This section has been amended to establish that a previously certified counselor will be “grandfathered-in.” If the counselor is not eligible to be “grandfathered-in”, and becomes certified in accordance with Section 13040, 155 documented hours of education would be required.

**Comment 225:**

a. Summary of Comment:

Commentor 225 stated the regulations are filled with discrepancies that must be addressed before implementation. CAADAC believes the regulations will completely undermine the system of credentialing it has sought for decades to maintain.

Departmental Response:

All discrepancies have been identified and amended, where appropriate. There is no attempt to undermine current requirements of certifying organizations. The Department is attempting to establish minimum standards, which certifying organizations may exceed if they chose to do so.



b. Summary of Comment:

Commentor 225 stated CAADAC is the state affiliate of the International Certification Reciprocity Consortium (IC&RC) which certifies over 35,000 in 39 states. The standards of the IC&RC have been formulated and tested by accepted scientific methodologies, and the lack of reference to these standards and competency testing is a serious flaw in the proposed regulations.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage by establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

**Comment 226:**

a. Summary of Comment:

Commentor 226 is concerned that the regulations do not take into consideration different levels of education and experience required by various providers, and those providers who are not certified in addiction. Her previous certification in Maryland was based on level of certification and number of hours worked, and she is concerned she will not make the 200 hours within five-year time period.

Departmental Response:

To allow flexibility, each provider of AOD services may choose the level or education and experience it wants its counselors to complete. The regulations were drafted in an attempt to establish minimum standards that can be used by all certifying organizations.

b. Summary of Comment:

Commentor 226 stated because of Jewish faith, she would not be able to attend required 16-28 consecutive Saturday trainings.

Departmental Response:

Each certifying organization will conduct classes conducive to the needs of the majority of its members, which may include classes at various times and days in order to meet these needs. The regulations do not require completion of classes on Saturdays.

c. Summary of Comment:

Commentor 226 stated some associations require an Associate's degree. Frustrated because Master's degree has been obtained, and previous education is not taken into consideration.

Departmental Response:

If certification has already been obtained through one of the approved certifying organizations, then the commentor may be "grandfathered in" as allowed in Section 13020. Another option would be the use of Section 13025, which allows an individual to obtain certification by "testing-out." These regulations were developed as minimum requirements, designed to prevent a workforce shortage, while improving services and protecting client health and safety.

d. Summary of Comment:

Commentor 226 stated certification programs need to be accessed by all people, no matter their ethnic and cultural background, and some areas and communities have limited access to certification programs.

Departmental Response:

The regulations do not specify where the certifying organizations will offer their services. It is possible that individuals in remote areas may need to travel to more urban areas to obtain certification.

**Comment 227:**

a. Summary of Comment:

Commentor 227 stated Therapeutic Community counselors begin work in the field following their own treatment and recovery without extensive education. Requiring college level course work as a condition of employment would severely decrease the staffing levels. It would be helpful to require training within the first year of hiring, rather than as a prerequisite to employment.

Departmental Response:

The proposed regulations were intended as minimum standards, which would allow existing AOD counselors to obtain certification within five years. The standards are sufficiently low enough to include all programs currently certifying counselors, even those from social model or therapeutic community programs.

b. Summary of Comment:

Commentor 227 stated training should be allowed in other than a college setting, such as training conferences provided by certified trainers. Section 9846(f)(3) would significantly hamper the Department's ability to serve large number of clients, and would add no value.

Departmental Response:

The Department does not believe that registrants can obtain the needed education and training in a one-day or several-day training session because the registrant must be able to establish, in a classroom setting, that he/she understands the material. The value would be that the population that is served would have an AOD counselor that has been appropriately trained.

c. Summary of Comment:

Commentor 227 stated Section 10564(g) should be modified to mandate Therapeutic Community participants perform routine work assignments as part of their treatment; however, they should not be required to perform duties exclusive to staff members, they should not be used in lieu of hiring required staff, and they shall not perform medical, counseling, or custody functions in a criminal justice setting.

Departmental Response:

It is not the Department's intention that program participants be substituted for qualified staff. Additionally the requirements in Chapter 8 apply only to AOD counselors, not to participants, patients, or residents.

d. Summary of Comment:

Commentor 227 stated there should be clear language allowing individuals with prior criminal records the ability to apply for certification (directly relating to individuals working in a Therapeutic Community) with a disclosure that states previous convictions will not result in ineligibility for certification. Section 13060(d) wording should be deleted because it may appear to condone excluding potential counselors. Candidates should be required to disclose convictions; however, the disclosure will not result in their ineligibility for certification.

Departmental Response:

Each ADP approved certifying organization will be required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and

13055(g), to determine if the registrant is a registered sex offender, to protect the health and safety of participants, patients, and residents and their minor dependents. The regulations do not prevent someone with a criminal record from becoming a certified counselor; however, each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. The Department welcomes the opportunity for all qualified persons to apply for certification. Section 13060(d) does not exclude anyone convicted of a crime, but clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization. This section allows certifying organizations to allow persons convicted of these crimes the opportunity to apply for certification.

**Comment 228:**

a. Summary of Comment:

Commentor 228 stated there should be clear language allowing individuals with prior criminal records the ability to apply for certification (directly relating to individuals working in a Therapeutic Community) with a disclosure that states previous convictions will not result in ineligibility for certification. Section (d) wording should be deleted because it may appear to condone excluding potential counselors. Candidates should be required to disclose convictions; however, the disclosure will not result in their ineligibility for certification.

Departmental Response:

Please see response to Comment 227(d) immediately above..

b. Summary of Comment:

Commentor 228 stated It is unclear if a counselor joins a certifying agency, has five years experience, and waits one year to test out and fails, does the counselor then have four years to become certified, five years from the date they failed, or have another opportunity to study and then attempt to test out?

Departmental Response:

Each counselor would have five years from the date of first registration to obtain certification, regardless of passing or failing an exam. To allow flexibility, each certifying organization may establish its own rules on the number of times a counselor may take an exam.

c. Summary of Comment:

Commentor 228 stated the regulations are not specific enough, which would cause various organizations to interpret the regulations differently, with each of the certifying organizations having various standards and requirements. Uniformity is needed.

Departmental Response:

These regulations merely establish minimum standards of education, experience, and supervision required of a competent counselor, and attempt to provide flexibility to allow every organization currently certifying AOD counselors to stay in business to avoid a workforce shortage. Each organization may exceed these minimum requirements if it chooses to do so.

d. Summary of Comment:

Commentor 228 stated counselors certified by the California Association of Drinking Driver Treatment Programs (CADDTP) will be certified by an agency not accredited by the National Commission for Certifying Agencies (NCCA).

Departmental Response:

Currently, none of the certifying organizations listed in these are accredited with NCCA. Each certifying organization will have two years from the effective date of the regulations to become accredited.

e. Summary of Comment:

Commentor 228 stated the Psychological Association and/or the American Psychiatric Association's code of ethics should be adopted.

Departmental Response:

The proposed code of ethics was developed in collaboration with a workgroup comprised of many coalitions, associations, county administrators, and providers that work in various areas of the substance abuse field. Each certifying organization may develop a more stringent code of ethics if it chooses to do so.

f. Summary of Comment:

Commentor 228 stated ADP should implement additional requirements in the Code of Ethics of each certifying body, i.e. "Counselors must be trained in how to handle separation anxiety and how to terminate relationships gracefully."

Departmental Response:

Each certifying organization may, at its discretion, adopt more stringent standards in accordance with Section 13060(f).

**Comment 229:**

a. Summary of Comment:

Commentor 229 stated all currently certified counselors should be “grandfathered in” by any of the approved certifying agencies.

Departmental Response:

A posthearing change was made to Section 13020 to allow previously certified counselors to be “grandfathered-in.”

b. Summary of Comment:

Commentor 229 stated Section 13020(c)(2) should be completely deleted.

Departmental Response:

Although previously certified counselors may be grandfathered in, it is necessary for previously certified counselors to meet the same renewal requirements as all other AOD counselors so that they remain aware of current trends in AOD treatment and counseling.

c. Summary of Comment:

Commentor 229 stated that Section 13020(a) should be changed to state that individuals who were certified by a certifying organization prior to January 1, 2005, shall be deemed to have been certified pursuant to ADP.

Departmental Response:

Section 13020(a) has been changed to specify that previously certified counselors will be “grandfathered-in.”

d. Summary of Comment:

Commentor 229 stated the regulations will have a definite significant additional cost to doing business because of the assistance that will be required of employers in paying for certification fees, continuing education, and increased

salaries. Organizations will be forced to layoff and eliminate some jobs, make the certified staff work harder, and cause staff burnout.

Departmental Response:

The Department is not mandating that counselors be paid higher salaries, only that providers may raise program fees if necessary to cover the cost of paying higher salaries to certified staff should they chose to do so. An AOD program may decide not to increase salaries and/or program fees if it is not feasible.

**Comment 230:**

a. Summary of Comment:

Commentor 230 stated the requirement to have interns complete post-secondary education prior to providing services would disrupt an important training opportunity and prevent trainees from obtaining the required two years of necessary experience. Recommend interns be allowed to fulfill educational requirements during their period of internship either through a post-secondary school or through a program approved by a certifying body.

Departmental Response:

Regulation Section 9846 to delete this requirement.

b. Summary of Comment:

Commentor 230 stated that Therapeutic Communities (TC) have required participants to perform work duties as part of regimen. TC's have also provided in-house training and feels someone with two years of education would not be understand nor be prepared to work in a TC environment.

Departmental Response:

It is not the Department's intention that program participants be substituted for program staff. Each ADP licensed and/or certified program may establish more stringent requirements regarding counselor experience; however, each counselor must meet the minimum standards established in Section 13040.

c. Summary of Comments:

Commentor 230 stated that many therapeutic community counselors have been convicted of drug and alcohol related crimes; therefore, the language should make it clear that candidates who have prior criminal convictions are welcome to apply for certification.

Departmental Response:

Each certifying organization will be required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, in order to protect the health and safety of participants, patients, and residents and their minor children.

The proposed regulations do not specifically prevent someone with a criminal record from becoming a certified counselor; however, each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. The Department welcomes the opportunity for all qualified persons to apply for certification.

**Comment 231:**

Same comments as Comment 226.

**Comment 232:**

a. Summary of Comment:

Commentor 232 stated licensed professionals should be "grandfathered in" and permitted broad exemption of reciprocity.

Departmental Response:

There is no need to "grandfather" licensed professionals. Licensed professionals providing counseling services in an AOD program are not required to be certified in accordance with Section 13015(b).

b. Summary of Comment:

Commentor 232 stated that continuing education should be at the option of an employer or individual licensed professional. Commentor 232 supports the concept that licensed professionals working in the AOD field be encouraged to include continuing education related to TAP 21 or other AOD related education.

Departmental Response:

Licensed professionals providing counseling sessions in an AOD program will be required to complete 36 hours of continuing education every two years to ensure they receive the same types of current training as other AOD counselors so that they remain current on the latest trends and techniques in counseling and treatment of AOD problems; however, the hours currently required for the license



issued by the Department of Consumer Affairs may be transferable to meet these requirements.

c. Summary of Comment:

Commentor 232 stated that the Department should oversee a statewide test for “testing-out” of individuals to ensure proficiency of individuals currently holding a certification and at least three years of experience.

Departmental Response:

The Department did not make the requested change because it would have a substantial cost impact. Because of the State fiscal crisis the Department cannot promulgate regulations that would generate cost. Provisions for “testing-out” have been established in Section 13025.

d. Summary of Comment:

Commentor 232 is in favor of exam requirements to confirm competence; however, the State should administer the exam with knowledge of the competencies of TAP 21.

Departmental Response:

The Department is not in the position, under the current fiscal emergency, to develop a standardized exam for use by all the certifying organizations. Each certifying organization may develop its own exam which it feels would meet the competence of a counselor that has the required education and years of experience. Due to the requirements of initial certification established in Section 13040, it is anticipated that each ADP approved certifying organization will include TAP 21 competencies as part of the exam.

e. Summary of Comment:

Commentor 232 stated they previously supported 420 classroom hours, but compromised to 360, and strongly oppose 155 hours.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum

standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and to protect the health, safety, and welfare of AOD participants, patients, and residents.

f. Summary of Comment:

Commentor 232 supports a minimum supervised practicum or internship period of one year (2,080 hours).

Departmental Response:

The Department did not make the requested change because the internship period is included in the 160 documented hours of supervision and the 2,080 hours of work experience.

g. Summary of Comment:

Commentor 232 supports the 40 hour continuing education requirement.

Departmental Response:

The Department is in agreement and has established 40 hours of continuing education every two years so that counselors obtain ongoing education in AOD issues.

h. Summary of Comment:

Commentor 232 supported a system of reciprocity to allow continuing education from any approved training vendor.

Departmental Response:

The Department added Section 13035(f) as suggested.

i. Summary of Comment:

Commentor 232 stated that the sole authority for credentialing, issuing certificates, and overseeing and monitoring continuing education and consumer complaints belongs with the Department or the Department of Consumer Affairs.

Departmental Response:

Due to the current State fiscal crisis the Department cannot promulgate regulations that would result in expenditures to the State.

**Comment 233:**

a. Summary of Comment:

Commentor 233 stated all counselors should be clean and sober for at least five years prior to certification, and with no history of violent or sexual offenses (no waivers).

Departmental Response:

Each certifying organization is required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, as defined in Penal Code Section 290. Section 13060 establishes a code of conduct, however, each certifying organization may exceed the requirements of this section by requiring five years of sobriety if it chooses to do so.

b. Summary of Comment:

Commentor 233 stated training should be provided by a combination of experienced drug experts, ex-addicts, psychiatric social workers, psychiatric nurses, physicians, and psychiatrists.

Departmental Response:

To provide flexibility, each certifying organization may determine who will provide training, so long as the training provided complies with Chapter 8.

**Comment 234:**

a. Summary of Comment:

Commentor 234 stated sole authority for professional credentialing belongs to state government (Department of Alcohol and Drug Programs or Department of Consumer Affairs) and should not be delegated.

Departmental Response:

Due to the current State fiscal crisis the Department cannot promulgate regulations that would result in expenditures to the State.

b. Summary of Comment:

Commentor 234 stated anyone who works in an AOD setting must be certified pursuant to regulations, including licensed clinical social workers, marriage and family therapist or psychologist.

Departmental Response:

Licensed professionals, providing counseling services in an AOD program, are not required to be certified in accordance with Section 13015(b).

c. Summary of Comment:

Commentor 234 stated licensed professionals should have the option of “testing-out” even without the five (5) years of experience, but should be held to the 40-hour continuing educational requirements.

Departmental Response:

Section 13015 has been amended to 36 hours for continuing education to maintain consistency with Department of Consumer Affairs licensing renewal requirements.. Licensed professionals providing counseling services in an AOD program are not required to “test-out” unless they desire to become certified with one of the ADP approved certifying organizations, because their training and education already includes AOD issues and counseling.

d. Summary of Comment:

Commentor 234 stated that persons currently certified should not be required to test-out or obtain new certification.

Departmental Response:

Section 13035 has been changed to allow previously certified counselors to be “grandfathered-in.”

e. Summary of Comment:

Commentor 234 stated that criminal background checks should be required of all applicants; however, a waiver process should be available for those convicted of felonies, except sex offenders.

Departmental Response:

Each ADP approved certifying organization will be required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, in order to protect participant, patient, and resident health and safety. Criminal background checks are not required due to excessive costs, time, and tracking associated with the process, however any certifying organization may choose, at its own discretion, to perform criminal background checks.

f. Summary of Comment:

Commentor 234 stated that 360 hours of classroom education should be the statewide standard.

Departmental Response:

In order to prevent a workforce shortage, 155 hours of education was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations.

g. Summary of Comment:

Commentor 234 stated counselors should receive a minimum of 2,080 hours of work experience and 1,040 internship hours.

Departmental Response:

Section 13040(c) already states counselors will receive 2,080 hours of work experience. The internship hours are included in the work experience and supervised training.

h. Summary of Comment:

Commentor 234 stated 40 hours every two years should be the minimum standard for continuing education.

Departmental Response:

The Department is in agreement and has established 40 hours of continuing education every two years so that counselors obtain ongoing education in AOD issues.

i. Summary of Comment:

Commentor 234 stated there should be one statewide standardized exam which can be taken by anyone with five years of experience.

Departmental Response:

Due to the current State fiscal crisis the Department cannot promulgate regulations that would result in expenditures to the State. Thus the Department cannot certify counselors. To provide flexibility, each certifying organization may develop its own exam.

**Comment 235:**

a. Summary of Comment:

Commentor 235 stated there should be additional wording in Section 9846(d) to state, "The report shall include a statement of the facts regarding the alleged violation."

Departmental Response:

The change has been incorporated into the regulations as suggested.

b. Summary of Comment:

Commentor 235 stated the wording in Section 9846(f)(1) should be changed from "Until" to "After."

Departmental Response:

The entire phrase was erroneously added and has been deleted.

c. Summary of Comment:

Commentor 235 stated Section 13020(a), as worded, could cause a workforce shortage, and the date should be changed to January 1, 2007.

Departmental Response:

Section 13020 has been amended to clearly establish that a previously certified counselor may be "grandfathered-in."

d. Summary of Comment:

Commentor 235 stated the signed code of conduct should be added to the file, as it pertains to Section 13020(b), so the employer will know the terms.

Departmental Response:

This section has not been amended because the signed code of conduct issued by the certifying organization is required to be maintained by the AOD program (employer) in the personnel file of the certified counselor, as already specified in Section 10564(l)(3)(B).

e. Summary of Comment:

Commentor 234 stated that “similar” should be defined using terminology that is less subjective, as stated in Section 13020(c)(2).

Departmental Response:

As defined in a standard dictionary, “similar” means consistent with. Thus the education and experience of a previously certified counselor must be reasonably consistent with those required to obtain certification.

f. Summary of Comments:

Commentor 235 stated that Section 13020(c)(2), as worded, could render more than 1000 certifications obsolete for persons who have been certified under existing Section 9846(b) requirements.

Departmental Response:

Section 13035 has been amended to “grandfather-in” previously certified counselors.

g. Summary of Comments:

Commentor 235 stated that Section 13035(c)(2) does not provide a two-year window for entities to be accredited.

Departmental Response:

The Department changed all dates and time periods to allow a reasonable time to register and obtain certification or accreditation.

h. Summary of Comment:

Commentor 235 stated the choice of the National Commission for Certifying Agencies (NCCA) appears to ignore the requirements of Government Code 11346.3 which referred to Executive Order S-2-03. There should be qualified organizations within California to perform the functions of NCCA.

Departmental Response:

To the Department's knowledge, there were no other nationally recognized organizations identified that can perform the required functions.

i. Summary of Comment:

Commentor 235 stated the Department would have no authority to enforce the provisions of Section 13035(d).

Departmental Response:

The statutory references for these regulation actions are contained in Health and Safety Code Sections 11833, 11834.27, 118136, 11836.15, 11876, and 11880.

j. Summary of Comment:

Commentor 235 stated that the Department should be more involved in the accreditation of certifying organizations.

Departmental Response:

Due to the current State fiscal crisis the Department cannot promulgate regulations that would result in expenditures to the State.

k. Summary of Comment:

Commentor 235 stated the Department should have the ability to levy civil fines and penalties.

Departmental Response:

The Department cannot levy fines and penalties without specific statutory authority to do so.



I. Summary of Comment:

Commentor 235 stated Section 13045(a) is cumbersome, inefficient, and costly. The Department should maintain a central registry of issued, suspended, revoked, and un-renewed certifications and charge a fee for this service.

Departmental Response:

Due to the current State fiscal crisis the Department cannot promulgate regulations that would result in expenditures to the State.

m. Summary of Comment:

Commentor 235 stated Section 13055(e) is cumbersome, inefficient, and costly. The Department should maintain a central registry of certifications issued, suspended, revoked, or not renewed and charge a fee to cover its expenses.

Departmental Response:

Due to the current State fiscal crisis the Department cannot promulgate regulations that would result in expenditures to the State.

n. Summary of Comment:

Commentor 235 stated he supports Section 13065 however any substantive change would be opposed.

Departmental Response:

There were no substantive changes in this section of the regulations.

o. Summary of Comment:

Commentor 235 stated the certifying organization should be notified of actions taken by the Department and allowed to represent the individual at the informal hearing.

Departmental Response:

The Department notifies the certifying organization when an action is taken against the counselor, in accordance with Section 13060(e). Whenever a request is made by the counselor to the Department for an informal conference, the counselor may be represented by counsel and may call witnesses on his/her behalf, in accordance with Sections 13060(f)(1) and (i), respectively.

**Comment 236:**

a. Summary of Comment:

Commentor 236 stated the sole authority for professional credentialing belongs to state government (Department of Alcohol and Drug Programs or Department of Consumer Affairs) and should not be delegated.

Departmental Response:

Due to the current State fiscal crisis the Department cannot promulgate regulations that would result in expenditures to the State.

b. Summary of Comment:

Commentor 236 stated anyone who works in an AOD setting must be certified pursuant to regulations, including licensed clinical social workers, marriage and family therapist or psychologist.

Departmental Response:

Licensed professionals, providing counseling services in an AOD program, are not required to be certified because they are already trained in AOD issues and counseling techniques.

c. Summary of Comment:

Commentor 236 stated licensed professionals should have the option of “testing-out” even without the five (5) years of experience, but should be held to the 40-hour continuing educational requirements.

Departmental Response:

Section 13015(d) has been amended to 36 hours in order to maintain consistency with licensing requirements of the Department of Consumer Affairs. Licensed professionals do not need to test out because they do not need to be certified.

d. Summary of Comment:

Commentor 236 stated that previously certified counselors should not be required to test-out or obtain new certification.

Departmental Response:

A posthearing change was made to grandfather in previously certified counselors.

d. Summary of Comment:

Commentor 236 stated criminal background checks should be required of all applicants; however, a waiver process should be available for those convicted of felonies, except sex offenders.

Departmental Response:

Each ADP approved certifying organization will be required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, in order to protect the health and safety of participants, patients, and residents. Criminal background checks will not be required due to excessive costs, time, and tracking associated with the process. Each ADP approved organization may choose, at its own discretion, to perform criminal background checks on registering and registered counselors.

e. Summary of Comment:

Commentor 236 stated their organization was led to believe 315 hours would be the minimum, however, 360 hours should be the statewide standard. AOD counselors should have a minimum of 2,080 hours of work experience and 1,040 internship hours.

Departmental Response:

In order to prevent a workforce shortage, 155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. The internship period is included in the 160 documented hours of supervision and the 2,080 hours of work experience.

f. Summary of Comment:

Commentor 236 stated 40 hours of continuing education should be the minimum.

Departmental Response:

The Department is in agreement and has established 40 hours of continuing education every two years so that counselors obtain ongoing education in AOD issues.

g. Summary of Comment:

Commentor 236 stated provisions should be included that allow for the continuing education hours to apply to other professional licensing and TAP 21 requirements.

Departmental Response:

Licensed professionals, as defined in this section, providing counseling services in an AOD program are not required to be certified in accordance with Section 13015(b). In accordance with Section 13015(d), they will be required to complete 36 hours of continuing education every two years; however, the continuing education currently required for their license issued by the Department of Consumer Affairs may be applicable to this section.

**Comment 237:**

a. Summary of Comment:

Commentor 237 stated licensed professionals should require 18 hours of AOD specific continuing education.

Departmental Response:

Licensed professionals, providing counseling services in an AOD program, are not required to be certified in accordance with Section 13015(b). In accordance with Section 13015(d), they will be required to complete 36 hours of continuing education every two years; however, the continuing education currently required for their license issued by the Department of Consumer Affairs may be applicable to this section.

b. Summary of Comment:

Commentor stated AOD certified staff should require 36 hours of continuing education.

Departmental Response:

The Department has established 40 hours of continuing education every two years so that counselors obtain ongoing education in AOD issues. The 40 hours of continuing education is remaining consistent with other licensed professionals.

**Comment 238:**

a. Summary of Comment:

Commentor 238 is concerned that regulations would permit individuals with five years experience to test out by passing an exam administered by a certifying organization, and the organization with the easiest test would unfairly benefit.

Departmental Response:

To provide flexibility Section 13025(c)(1) establishes that each ADP approved certifying organization may develop and administer its own exam, whether it is written or oral. An AOD employer may choose, at its discretion, to decline acceptance of an ADP approved certifying organizations' certified counselors, in accordance with Section 13010(b), if it feels that a certifying organizations' exam was not sufficient for counselor competency. Since each certifying organization must be accredited with the National Commission for Certifying Agencies (NCCA), the exams of the organizations will be validated.

b. Summary of Comment:

Commentor 238 stated that 155 hours is too low and does not specify classroom hours, which can lead to on-line or correspondence classes. 420 classroom hours should be the minimum.

Departmental Response:

A posthearing change was made to mandate formal classroom hours. To prevent a workforce shortage, 155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations.

**Comment 239:**

Summary of Comment:

Commentor 239 wanted to know if there will be a certifying body that will require less continuing education than the regulations. If so, will it be the employer's

responsibility to make sure the employee acquires the required continuing education?

Departmental Response:

In accordance with Section 13055(a), the certifying organization will require each certified counselor to obtain the 40 hours of continuing education every two years. In accordance with Section 10564(l)(2), each AOD program (employer) must maintain personnel records that include education required to meet the requirements of the regulations.

**Comment 240:**

a. Summary of Comment:

Commentor 240 questions how certifying organizations will address cultural competency. It should be addressed in certification, examinations, renewals, code of conduct, and revocation.

Departmental Response:

In accordance with Section 13040(a)(2), each counselor must have completed 155 documented hours of AOD classroom education, which includes cultural differences.

b. Summary of Comment:

Commentor 240 stated emergency or temporary compliance should be granted to an agency for six months if they are suddenly without a certified staff person, and should be written into the regulations.

Departmental Response:

An individual would have five years from date of counselor registration to become certified. If the Department conducted a site review and discovered there were currently no counselors certified with an ADP approved certifying organization, the licensed and/or certified program would submit a corrective action plan (to state its plan for hiring certified counselors).

c. Summary of Comment:

Commentor 240 stated there should be a definition of “grandfathering” (suggested definition in original text).

Departmental Response:

The term “grandfathering” is not used in Chapter 8, and does not therefore need to be defined.

d. Summary of Comment:

Commentor 240 stated the State and counties must conduct a cost analysis to determine implementation costs.

Departmental Response:

The costs to implement the counselor certification program will be approximately \$100 - \$800 for individuals seeking certification as an alcohol and drug counselor.

e. Summary of Comment:

Commentor 240 wanted to know if there needs to be standardized rates in counties.

Departmental Response:

The commentor did not provide enough information for the Department to properly answer the question.

f. Summary of Comment:

Commentor 240 wants a representative from their network to be appointed to state workgroup to represent small and midsize minority providers.

Departmental Response

The Department developed the regulations in Chapter 8 in collaboration with a workgroup comprised of many coalitions, associations, county administrators, and providers that work in various areas of the substance abuse field. This group represented a myriad of treatment programs, including driving under the influence programs, narcotic treatment programs, and residential and outpatient recovery and treatment programs. The workgroup is no longer conducting meetings regarding the regulations.

## **Comment 241**

a. Summary of Comment:

Commentor 241 states that there seems to be a trend for people who have completed treatment be taught to become productive, responsible members of society and gravitate towards the counseling field. They do not have what it takes and cause the client a great disservice.

Departmental Response:

Counselors come from all walks of life and those who were previous clients of the AOD community can offer extremely valuable life experiences. The Department would not exclude anyone because they previously completed a program, which would eliminate a total population of extremely qualified individuals.

b. Summary of Comment:

Commentor 241 stated the timing of having recovering addicts participating in this process, going to work and school, is a conflict.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents.

## **Comment 242**

a. Summary of Comment:

Commentor 242 stated the regulations are filled with discrepancies that must be addressed before implementation. CAADAC believes the regulations will completely undermine the system of credentialing it has sought for decades to maintain.

Departmental Response:

The discrepancies have been identified and amended, as appropriate, in posthearing changes. There is no attempt to undermine current requirements of certifying organizations. The Department is attempting to establish minimum standards, which may be exceeded by each certifying organization.



b. Summary of Comment:

Commentor 242 stated CAADAC is the state affiliate of the International Certification Reciprocity Consortium (IC&RC) which certifies over 35,000 in 39 states. The standards of the IC&RC have been formulated and tested by accepted scientific methodologies, and the lack of reference to these standards and competency testing is a serious flaw in the proposed regulations.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents. Thirty-seven other states currently require certification or licensing of their AOD counselors. These regulations were developed in collaboration with a workgroup comprised of many coalitions, associations, county administrators, and providers that work in various areas of the substance abuse field. This group represented a myriad of treatment programs, including driving under the influence programs, narcotic treatment programs, and residential and outpatient recovery and treatment programs.

**Comment 242**

a. Summary of Comment:

Commentor 242 stated the most qualified counselors have been certified by CAADAC, which has delivered a standard of superior care.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and to protect the health, safety, and welfare of AOD participants, patients, and residents. Thirty-seven other states currently require certification or licensing of their AOD counselors.

b. Summary of Comment:

Commentor 243 stated it is imperative to require AOD counselors to have as much experience and education as possible, which can be obtained through TAP 21 and the expertise required in the Global Criteria from the 12 Core Functions.

Departmental Response:

TAP 21 curriculum is included as part of the 155 hours of classroom education. 155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations.

**Comment 244**

a. Summary of Comment:

Commentor 24 stated the regulations are filled with discrepancies that must be addressed before implementation. CAADAC believes the regulations will completely undermine the system of credentialing it has sought for decades to maintain.

Departmental Response:

The discrepancies have been identified and amended, as appropriate, in posthearing changes. There is no attempt to undermine current requirements of certifying organizations. The Department is attempting to establish minimum standards, which may be exceeded by each certifying organization.

b. Summary of Comment:

Commentor 244 stated CAADAC is the state affiliate of the International Certification Reciprocity Consortium (IC&RC) which certifies over 35,000 in 39 states. The standards of the IC&RC have been formulated and tested by accepted scientific methodologies, and the lack of reference to these standards and competency testing is a serious flaw in the proposed regulations.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents. Thirty-seven other states currently require certification or licensing of their AOD counselors. The proposed regulations were developed in collaboration with a workgroup comprised of many coalitions, associations, county administrators, and providers that work in various areas of the substance abuse field. This group represented a myriad of treatment programs, including driving under the influence programs, narcotic treatment programs, and residential and outpatient recovery and treatment programs.

c. Summary of Comment:

Commentor 244 objects to the enormous costs associated with the regulations.

Departmental Response:

The Department has made the determination the regulations will not have a significant statewide adverse economic impact directly affecting businesses.

d. Summary of Comment:

Commentor 244 objects that there is no mention of a scope of practice in the regulations.

Departmental Response:

Section 13005(a) defines “counseling services”, which provides the scope of practice of an AOD counselor.

e. Summary of Comment:

Commentor 244 objects to the length of certification.

Departmental Response:

The length of certification was chosen for consistency with the length of licensure or certification in other counseling fields.

f. Summary of Comment:

Commentor 244 objects to mandating employers to only have three (3) days to report infractions.

Departmental Response:

Three days was established in order to protect the health and safety of clients by initiating an investigation in a reasonable and expedient time period.

g. Summary of Comment:

Commentor 244 objects to exempting licensed professionals from the certification requirements.

Departmental Response:

Licensed medical and clinical professionals are not required to be certified because they are already trained in AOD issues and counseling techniques.

h. Summary of Comment:

Commentor 244 objects to referring to a nationally recognized test without reference to a testing used by the International Consortium and Reciprocity of Counselors and the National Association of Alcohol and Drug Abuse Counselors.

Departmental Response:

Section 13025(c)(2), which includes the ATTC exam, has been deleted because currently there is no developed exam from ATTC; however, when an exam is established, the Department may revise the regulations to include this testing option.

i. Summary of Comment:

Commentor 244 objects to the requirements of mandating certifying organizations to offer “testing out” because an individual has five years experience.

Departmental Response:

The Department is allowing individuals who are currently employed as AOD counselors to become certified by testing out to prevent a workforce shortage.

j. Summary of Comment:

Commentor 244 objects to allowing five (5) years and then another two (2) years to become certified, and allowing two (2) years to become NCCA certified.

Departmental Response:

The Department is allowing five years in order to permit individuals currently employed as AOD counselors to obtain certification while working full time. This will reduce workforce shortages and hardships that may be experienced by counselors currently working in the field. Due to the extensive NCCA accreditation requirements, Section 13035(c)(2) has been updated to require certifying organizations to obtain accreditation within two years of regulation promulgation.

k. Summary of Comment:

Commentor 244 stated organizations credentialed by NCCA should be allowed to determine the necessary hours of education as long as TAP 21 competencies are covered.

Departmental Response:

The regulations establish minimum standards of education, experience, and supervision required of a competent counselor. Each certifying organization is free to exceed the minimum requirements if it chooses to do so.

l. Summary of Comment:

Commentor 244 stated to alleviate costs, an organization of California certifying organizations should be created, through legislation, solely for the purpose of maintaining certification standards, along with ethical infractions, for individuals and organizations.

Departmental Response:

The Department cannot adopt legislation through the regulatory process.

m. Summary of Comment:

Commentor 244 stated all certifying organizations should meet TAP 21 curriculum requirements. The use of TAP 21 as a curriculum for education and the use of the 12 core functions as the basis for training and experience is recommended.

Departmental Response:

All certifying organizations were chosen because they are known to provide quality services, they have a long-standing relationship with the Department, and their curriculum is based on TAP 21.

n. Summary of Comment:

Commentor 244 objects to 155 hours of education because there is no scientific basis to why this amount is sufficient. No scientific validation for 2,080 hours of experience.

Departmental Response:

The Department agrees that there is no scientific basis for choosing 155 hours of education, 160 supervised hours, and 2,080 hours of work experience. These requirements were chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations, in order to prevent a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors.

o. Summary of Comment:

Commentor 244 stated supervisors should not be required to be onsite, and who is expected to pay for the supervisor's time to train interns.

Departmental Response:

The Department agrees. That is why a supervisor may be on site or available at an immediately adjacent facility.

p. Summary of Comment:

Commentor 244 objects to the language used concerning written or oral testing to determine competency.

Departmental Response:

A certifying organization may test orally or in writing to allow flexibility for registrants who may be physically handicapped or unable to write.

q. Summary of Comment:

Commentor 244 objects to the lack of determination of a passing percentage in reference to passing a written exam.

Departmental Response:

Each ADP approved certifying organization may establish its definition of a passing score; however, since each certifying organization must be accredited, they must conform to the requirements of the National Commission for Certifying Agencies (NCCA), and justify the scores that have been developed.

r. Summary of Comment:

Commentor 244 objects to allowing other methods of testing that have not been approved through NCCA.

Departmental Response:

There is no reference to a NCCA testing requirement in the regulations. NCCA will accredit the certifying organizations, as required in Section 13035; therefore, each certifying organization and the instruments and criteria they use to certify counselors will be NCCA approved.

s. Summary of Comment:

Commentor 244 objects to referring to a nationally recognized test without referencing the testing used by the International Consortium and Reciprocity of Counselors and the National Association of Alcohol and Drug Abuse Counselors.

Departmental Response:

TAP 21 was chosen because it is a nationally recognized curriculum used for certification of AOD counselors and will be accepted by the ADP approved certifying organizations to satisfy the requirements of this section, as well as Section 13055 for certification renewal.

t. Summary of Comment:

Commentor 244 stated there should be no more than one year to become certified.

Departmental Response:

The Department has allowed a reasonable period of time for counselors to become certified in order to prevent workforce shortages. Many individuals who are currently employed as counselors must obtain certification on a part time basis while working full time.

u. Summary of Comment:

Commentor 244 states the level of experience should be left up to each certifying organization.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents. Thirty-seven other states currently

require certification or licensing of their AOD counselors. Allowing each certifying organization to set its own requirements for education, experience, and conduct would not establish a minimum standard.

v. Summary of Comment:

Commentor 244 objects to the restrictive language used for continuing education.

Departmental Response:

The Department cannot respond to the comment because the commentor did not state what he/she considers restrictive.

w. Summary of Comment:

Commentor 244 objects to allowing other certifying organizations the ability to issue certifications to individuals if they have been previously denied or had their credentials rescinded due to ethical complaints.

Departmental Response:

The Department cannot revoke a certification when an investigation has determined an accusation to be unfounded. Section 13065 has been amended stating there is a five-year period of certification revocation.

x. Summary of Comment:

Commentor 244 stated the Code of Conduct denotes a paraprofessional and should be changed to Code of Ethics.

Departmental Response:

The Department can legally enforce conduct, whereas it cannot enforce ethics.

y. Summary of Comment:

Commentor 244 stated the Code of Conduct is not specific in relation to stipulating how long a counselor cannot have business dealings and sexual relations with a past client.

Departmental Response:

The Department has established minimum standards in its code of conduct; therefore, each certifying organization, at its discretion, may meet or exceed



these requirements. Each certifying organization may establish its own time period for business dealings and sexual relationships with past clients.

z. Summary of Comment:

Commentor 244 stated the Department should not have the authority to overturn decisions made by certifying organizations.

Departmental Response:

The Department must review decisions made by certifying organizations in order to provide due process.

aa. Summary of Comment:

Commentor 244 objects to allowing individuals the right to appeal to ADP if they are unsatisfied with the ruling of the certifying organization.

Departmental Response:

The Department must review decisions made by certifying organizations in order to provide due process.

bb. Summary of Comment:

Commentor 244 objects to the enormous costs associated with the regulations.

Departmental Response:

The Department has made the determination the regulations will not have a significant statewide adverse economic impact directly affecting businesses.

cc. Summary of Comment:

Commentor 244 objects mandating employers to only have three (3) days to report infractions.

Departmental Response:

Three days was established in order to protect the health and safety of residents by initiating an investigation in a reasonable and expedient time period.

**Comment 245:**

a. Summary of Comment:

Commentor 245 stated DUI and PC1000.2 programs are State regulated with established fees, and cannot be increased to compensate for additional training and education costs required under these regulations. Current fees are frozen, has not been increased in almost nine years.

Departmental Response:

The Department has not mandated salary increases for certified staff. Each AOD program is free to determine salary levels for its counseling staff.

b. Summary of Comment:

Commentor 245 stated all of their counselors are already CAS or CADC certified. Requiring counselors to be recertified would be repetitive, time consuming, and a financial burden. The cost of treatment cannot be raised because the amount is set by the County and State.

Departmental Response:

Section 13020 has been amended to allow previously certified counselors to be grandfathered in.

**Comment 246:**

a. Summary of Comment:

Commentor stated if a counselor becomes certified with CADDTP prior to the regulations effective date, less experience will be required, which defeats purpose.

Departmental Response:

Any counselors certified with one of the ADP approved certifying organizations prior to the promulgation of the regulations will be “grandfathered-in” in accordance with Section 13020. When the counselor renews the certification, they will have to comply with the minimum standards established in Section 13055.

b. Summary of Comment:

Commentor 246 stated counselors will be certified by an agency that is not accredited by the National Commission for Certifying Agencies (NCCA).

Departmental Response:

At the present time, none of the ADP approved certifying organizations are accredited with NCCA; however, in accordance with Section 13035, each ADP approved certifying organization must be accredited by NCCA no later than two years after the promulgation of the regulations. If the certifying organization fails to become accredited, each counselor registered with that organization must register with one of the other ADP approved certifying organization. If a counselor has been registered for two years with an organization that fails to become accredited, they will then have three years to complete certification, in accordance with Section 13035(e)(1). If the ADP approved certifying organization loses accreditation, all certified counselors registered with that organization will have one year (or upon expiration of certification, whichever is sooner) to become registered with another ADP approved certifying organization.

c. Summary of Comment:

Commentor 246 stated there are only 1,776 hours or 1 year required by the California Association of Drinking Driver Treatment Program (CADDTP) while the regulations require 2,080, and CADDTP lets you substitute 1 year for school enrollment. Strongly oppose any certification issued from (CADDTP) due to the lack of experience and continuing education units required.

Departmental Response:

When the regulations are promulgated, each certifying organization must with the minimum standards required in the regulations.

d. Summary of Comment:

Commentor 246 stated it is unclear if a counselor joins a certifying agency, has five years experience, and waits one year to test out and fails, does the counselor then have four years to become certified, five years from the date they failed, or have another opportunity to study and then attempt to test out?

Departmental Response:

Each counselor would have five years from the date of first registration, regardless of passing or failing an exam. Each ADP certifying organization will establish its own rules on the number of times a counselor may take an exam.

e. Summary of Comment:

Commentor 246 stated regulations are not specific enough, which would cause various organizations to interpret the regulations differently, with each of the certifying organizations having various standards and requirements. Uniformity is needed.

Departmental Response:

The Department is establishing minimum standards of education, experience, and supervision required of a competent counselor. These standards must be adhered to by all ADP approved certifying organizations; however, each organization may meet or exceed what has been established.

f. Summary of Comment:

Commentor 246 stated counselors certified by the California Association of Drinking Driver Treatment Programs (CADDTP) will be certified by an agency not accredited by the National Commission for Certifying Agencies (NCCA). Strong opposition that the state or any certified facility will recognize prior certification by CADDTP.

Departmental Response:

Currently, none of the certifying organizations listed in Section 13035 are accredited with NCCA. Each certifying organization will have two years from the effective date of the regulations to become accredited.

g. Summary of Comment:

Commentor 246 stated the Psychological Association and/or the American Psychiatric Association's code of ethics should be adopted.

Departmental Response:

The code of conduct was developed in collaboration with a workgroup comprised of many coalitions, associations, county administrators, and providers that work in various areas of the substance abuse field. This group represented a myriad of treatment programs, including driving under the influence programs, narcotic treatment programs, and residential and outpatient recovery and treatment programs.

h. Summary of Comment:

Commentor 246 stated ADP should implement additional requirements in the Code of Ethics of each certifying body, i.e. "Counselors must be trained in how to handle separation anxiety and how to terminate relationships gracefully."

Departmental Response:

Each certifying organization may, at its discretion, adopt more stringent standards in accordance with Section 13060(f).

**Comment 247:**

Summary of Comments:

Commentor 247 stated there should be continued education required in ethics.

Departmental Response:

In accordance with Section 13055(b)(3), ethics are required as part of the 40 hours of continuing education.

**Comment 248:**

a. Summary of Comment:

Commentor 248 stated Section 13005(a)(2) should be amended to read "...qualified to certify individuals as AOD counselors..."

Departmental Response:

The definition has been changed to improve clarity.

b. Summary of Comment:

Commentor 248 stated two new sections should be added to Section 13020(c) stating the counselor should complete the deficient requirements or pass a written and/or oral exam given by the current certifying organization, if it has been determined that the education or experience required by the current certifying organization is less than the previous organization.

Departmental Response:

Section 13020(c)(2) already mandates that a person previously certified must meet the minimum requirements of Section 13040, while Section 13030 already establishes that an ADP approved certifying organization has the option of accepting the certification of an organization that is not listed in Section 13035.

c. Summary of Comment:

Commentor 248 stated Section 13025(c)(2) should be deleted so that each certifying organization can develop and administer its own test which is germane to its Scope of Practice consistent with NCCA accreditation. There is no need for ATTC to develop another test because it would be costly, redundant, unnecessary, and not appropriate for all program modalities.

Departmental Response:

Section 13025(c) allows each certifying organization to develop and administer its own exam, whether it is written or oral. Section 13025(c)(2) has been deleted because currently there is no developed exam from ATTC.

d. Summary of Comment:

Commentor 248 wants to add a Section 13030(4) stating the applicant would have to complete the deficiencies or pass an examination in order to be consistent with Section 13020 if experience required by the previous certifying body is less than the current certifying organization.

Departmental Response:

Section 13030(c) already establishes that a certifying organization may establish additional terms and conditions for certification by reciprocity, and Section 13020(d) allows the certifying organization to deny certification by reciprocity.

e. Summary of Comment:

Commentor 248 stated the wording in Section 13040(c) should be deleted because of grammatical error. Section 13040(c) should be prior to or at the same time as Sections 13040(a) and (b) since persons seeking certification will also be working in the AOD field.

Departmental Response:

Section 13040(c) has been amended to state persons may complete the 2,080 documented hours of work experience while completing the classroom education and supervised training.

f. Summary of Comment:

Commentor 248 stated the wording in Section 13055(b) should be amended to say 40 hours of continuing education can include any combination of the listed requirements. To include all five categories would be difficult to accomplish.

Departmental Response:

This section has been amended as recommended to improve clarity.

g. Summary of Comment:

Commentor 248 wants to add Section 13055(b)(5) to include confidentiality for continuing education requirements.

Departmental Response:

Confidentiality is already required by Title 42 of the Code of Federal Regulations, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

h. Summary of Comment:

Commentor 248 stated the “Informative Digest/Policy Statement Overview” states the actions of these regulations will not have a significant statewide adverse economic impact directly affecting businesses is totally specious by ignoring facts because there will be initial costs to pay for education requirements, certification of staff, relief staff of residential programs to cover shifts for normal staff to attend training, and raises as result of increased skills. Counties are projecting decreases in available funds. There are no new funds to pay for any increase in fees and they cannot be absorbed by many of the clients.

Departmental Response:

The Department is not mandating that counselors be paid higher salaries, only suggesting that fees may be increased if the provider wishes to pay higher salaries to certified staff. An AOD program may decide not to increase salaries and/or program fees if it is not feasible.

i. Summary of Comment:

Commentor 248 stated the “Statement of Necessity” indicating that certification will establish standards is an assumption and is not validated by fact. Research by the Alcohol Research Group at U.C. Berkeley concluded there is no significant difference in outcomes measurements between “clinical” programs staffed by licensed therapists and individuals with little formal education.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

j. Summary of Comment:

Commentor 248 stated the “Cost Impacts on Representative Private Persons or Business” approximate the cost of \$100 - \$800 for persons seeking certification is underestimated, but the lost time from work, recertification, and continuing education have to be factored. Increases in salaries will mean counties will have to increase fees paid to funded programs.

Departmental Response:

The Department is not mandating that counselors be paid higher salaries, only suggesting that fees may be increased if the provider chooses to pay higher salaries to certified staff. An AOD program may decide not to increase salaries and/or program fees if it is not feasible.

**Comment 249:**

a. Summary of Comment:

Commentor 249 stated the language should be changed in Section 10564(d) to make programs report code of conduct violations to ADP in order to protect the health and safety of residents.



Departmental Response:

The program must report the code of conduct violations within three business days to the appropriate certifying organization. The certifying organization will report the violations to the Department, which will conduct a thorough and appropriate investigation. The Department will determine when an allegation is substantiated or unfounded and notify the appropriate certifying organization of all outcomes.

b. Summary of Comment:

Commentor 249 stated programs may not report violations of the code of conduct if they feel these reports would subject their program to undue liability.

Departmental Response:

A program not reporting a code of conduct violation would defeat the purpose of conducting an investigation, and would not preclude the program from suffering liability. The Department will determine when an allegation is unfounded, and notify the appropriate certifying organization of all outcomes. The certifying organization will notify the counselor and employer of the investigation results, as specified in Section 13065.

c. Summary of Comment:

Commentor 249 stated the definition of “counseling services” in Section 13005(a)(4)(A) and (a)(4)(D) should be changed because of numerous department stakeholder recommendations, the elimination of screening for admissions and intake (data input – section (4)(A)), and documentation of other client related data, observations, incidents and other miscellaneous matters, that should be noted in the progress note to be performed by non-counseling staff is a necessary flexibility for night and weekend staff when such matters need to be recorded as a means of communication and risk management.

Departmental Response:

The definition established in Section 13005(a)(4) has been amended for clarity, as suggested.

d. Summary of Comment:

Commentor 249 stated licensed professionals should only be mandated to serve 20 hours of continuing education, which is needed to insure they receive the same or similar training for AOD services but not be overburdened with their own

licensing requirements. This will limit them from leaving the field by not adding to the significant continuing education burden they have under current licensing requirements.

Departmental Response:

Section 13015 has been amended to 36 hours to coincide with the current licensing requirements of the Department of Consumer Affairs. Licensed professionals providing counseling sessions in an AOD program will be required to complete 36 hours of continuing education every two years to ensure they receive the same types of current training as other AOD counselors so that they remain current on the latest trends and techniques in counseling and treatment of AOD problems; however, the hours currently required for the license issued by the Department of Consumer Affairs may be transferable to meet these requirements.

e. Summary of Comment:

Commentor 249 stated that Section 13035(f) should be added to discuss the cross acceptance of continuing education credits, in that continuing education credits provided by any State approved certifying organization shall be accepted by all State approved certifying organizations in order to prevent undue hardship so that adequate capacity may be provided and to recognize and provide a statewide standard.

Departmental Response:

Section 13035(f) has been added for clarification, as requested.

f. Summary of Comment:

Commentor 249 stated the completion of 420 documented hours of AOD education should be the minimum.

Departmental Response:

To prevent a workforce shortage, 155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to improve the quality of the services provided and to protect the health, safety, and welfare of AOD participants, patients, and residents. Nothing in the regulations would prevent the Department from establishing more stringent standards in the future.

g. Summary of Comment:

Commentor 249 stated the wording in Section 13060(d) should be deleted because it does not recognize the relapse nature of addiction, is worded in such a way that other convictions associated with addiction would exclude someone from being eligible for certification, and does not take into account the extended period of time someone is given to be certified.

Departmental Response:

The regulations do not prohibit someone with a criminal record from becoming a certified counselor; however, each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. The Department welcomes the opportunity for all qualified persons to apply for certification. Section 13060(d) does not exclude anyone convicted of any crime, but clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization. This section allows certifying organizations to allow persons convicted of these crimes the opportunity to apply for certification.

h. Summary of Comment:

Commentor 249 wants to amend the wording in Section 13060(c)(4) to separate “social” and “business” relationships into two distinct sections.

Departmental Comment:

Social, sexual, and business relationships are forbidden with program participants to protect participant health and safety by preventing abuse of authority.

**Comment 250:**

a. Summary of Comment:

Commentor 250 stated the training should include knowledge of the 12 Core Functions of a Counselor, as outlined by Stanley F. Kulewicz.

Departmental Response:

TAP 21 is a nationally recognized curriculum used for certification of AOD counselors and will be required by the ADP approved certifying organizations to

satisfy the requirements of Section 13040, as well as Section 13055 for certification renewal.

b. Summary of Comment:

Commentor 250 stated the educational hours should be expanded to 315.

Departmental Response:

To prevent a workforce shortage 155 hours of education and 2,080 hours of work experience were chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established to provide minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

**Comment 251:**

a. Summary of Comment:

Commentor 250 stated that 155 hours of education is inadequate. TAP 21 and the 12 Core Functions need to be included.

Departmental Response:

TAP 21 is a nationally recognized curriculum used for certification of AOD counselors and will be required by the ADP approved certifying organizations to satisfy the requirements of this section, as well as Section 13055 for certification renewal. To prevent a workforce shortage 155 hours of education and 2,080 hours of work experience were chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

**Comment 252:**

a. Summary of Comment:

Commentor 252 stated the regulations ignore the national standards of the International Certification and Reciprocity Consortium (ICRC), which have been scientifically tested.

Departmental Response:

The accrediting agency, NCCA, may choose to adopt the standards of the ICRC as part of the accreditation process, if it chooses to do so.

b. Summary of Comment:

Commentor 252 stated the California Association of Alcoholism and Drug Abuse Counselors has been considered the standard of excellence and is the only association in the state affiliated with the National Association of Alcoholism and Drug Abuse Counselors.

Departmental Response:

There were many organizations in which to choose accreditation; however, the Department has chosen NCCA because it is a nationally recognized organization that accredits various types of licensing or certifying organizations, and does not limit its focus to drug and alcohol counselors.

c. Summary of Comment:

Commentor 252 stated the regulations are filled with discrepancies that must be addressed before implementation. CAADAC believes the regulations will completely undermine the system of credentialing it has sought for decades to maintain.

Departmental Response:

The discrepancies have been identified and amended through posthearing changes. There is no attempt to undermine current requirements of certifying organizations. The Department is attempting to maintain minimum standards, which may be exceeded by each certifying organization.

**Comment 253:**

Summary of Comment:

Commentor 253 stated that 155 hours of education is not adequate.

Departmental Response:

To prevent a workforce shortage 155 hours of education and 2,080 hours of work experience were chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations establish minimum standards for education, experience, and conduct for AOD

counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

**SUMMARY OF ORAL COMMENTS PRESENTED AT PUBLIC HEARING:**

**Comment OC:1:**

a. Summary of Comment:

Commentor stated that stakeholders met for a year and a half regarding the number of educational hours, in which a compromise of 420 hours was agreed upon; however, the new regulations state only 155 hours, and it seems a deal was made. The trans-disciplinary competencies have 87 distinct knowledge areas which are learned in eight dimensions, and list 451 skills for counselor competency. These skills cannot be learned in only 155 hours.

Departmental Response:

California does not currently require certification of AOD counselors, and many AOD counselors do not currently have a significant amount of formal education. Even without requiring certification, California does not have enough AOD counselors to provide service on demand. The Department anticipates that it will take five years for even 30 percent of AOD counselors to become certified. To avoid putting existing AOD counselors out of work and creating a workforce shortage, the Department has chosen to adopt minimal standards to begin with. 155 hours of education and 2,080 hours of work experience were chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. Although the minimum standards selected are lower than some certifying organizations would like, certifying organizations are free to impose higher standards.

b. Summary of Comment:

Commentor stated the work groups voted for a regulation stating prior criminal convictions shall not preclude an individual from being certified; however, the regulations state only those convicted of drug crimes shall not be excluded. 90 percent of staff working in the treatment field is recovering; many have been convicted of criminal offenses, most not involving drug crimes, and could exclude the individuals presently working in the field. This could lead to taking hope away from a large group.

Departmental Response:

In order to protect the health and safety of participants, patients, residents, and their dependent children, each ADP approved certifying organization will be

required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, as defined in Penal Code Section 290. The proposed regulations do not prevent someone with a criminal record from becoming a certified counselor; however, each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. The Department welcomes the opportunity for all qualified persons to apply for certification. The verbiage in Section 13060(d) does not exclude anyone convicted of any crime, but clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization. This section allows certifying organizations to allow persons convicted of these crimes the opportunity to apply for certification.

## **Comment OC 2:**

### Summary of Comment:

Commentor stated the California Certification Board of Chemical Dependency Counselors would like to be added to the initial list of certifying organizations. Their guidelines exceed or meet the proposed state regulations.

### Departmental Response:

The regulations have been amended to include The California Certification Board of Chemical Dependency Counselors as an ADP approved certifying organization.

## **COMMENTOR OC 3:**

### a. Summary of Comment:

Commentor stated many counselors have been effective and began their careers immediately post treatment by beginning a supervised internship in the therapeutic community. Requiring a semester of college prior to their internship would completely disrupt this important training opportunity, which also contributes to the work force need in the therapeutic communities. Interns should be allowed to fulfill educational requirements during, not before, their period of internships.

### Departmental Response:

No change appears necessary since the regulations allow six months from the date of hire to become registered and five years from the date of registration to become certified so that individuals can obtain the education necessary for certification while working in an internship.

b. Summary of Comment:

Commentor stated, in reference to Section 10564(g), that therapeutic communities have participants performing work duties as part of the therapeutic regimen. Recommends that participants in a therapeutic community be required to perform work activities as part of the treatment program, but are not to perform duties exclusive to staff members.

Departmental Response:

These regulations establish requirements for certification of counselors, not requirements for participants of AOD programs. It is not the Department's intention that programs substitute participants in lieu of paid staff in order to cut costs.

c. Summary of Comment:

Commentor stated many therapeutic community counselors have been convicted of drug and alcohol related crimes. The language in this section should be clear that candidates who have prior convictions are welcome to apply, and the certification board welcomes applications from those who are recovering role models.

Departmental Response:

The regulations do not prohibit someone with a criminal record from becoming a certified counselor; however, each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. Section 13060(d) does not exclude anyone convicted of any crime, but clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization. This section allows certifying organizations to allow persons convicted of these crimes the opportunity to apply for certification.

d. Summary of Comment:

Commentor stated a dynamic group of providers use the therapeutic community modality, and it plays a critical role in helping Californians who are addicted to drugs and alcohol; therefore, it is important the regulations recognize the importance of the therapeutic community, and not hamper or thwart practices that are employed and employing effectively.



Departmental Response:

The Department is not attempting to thwart what any organization has taken years to develop. Therapeutic communities are a valuable commodity, and has been instrumental in developing counselors throughout the years, and is highly recognized by the Department. The educational and experience requirements for certification were set at a minimum level to include all organizations currently certifying AOD counselors in California so that the therapeutic community would not be excluded.

**COMMENTOR OC 4**

a. Summary of Comment:

Commentor stated the stipulation that 50 percent of staff be credentialed is advantageous because it gives a mix of people who come through and those who are trained in alcohol and drug studies.

Departmental Response:

This was needed to phase out existing requirements, to maintain consistency with Chapter 8 and improve quality of counseling; however, Section 13010 and 13035 have been amended to a 30% requirement.

b. Summary of Comment:

Commentor stated 155 educational hours is too low to cover all the competencies. We have supported CAADE as a standard for their staff.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

c. Summary of Comment:

Commentor stated educational hours should be specified as formal education because it is too vague.

Departmental Response:

To improve clarity, the regulation has been amended to require classroom hours of education.

d. Summary of Comment:

Commentor stated it would not be appropriate for people working in this field to exclude people with a criminal background.

Departmental Response:

The proposed regulations do not exclude individuals with a criminal background. Each ADP approved certifying organization will be required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and 13055(g), to determine if the registrant is a registered sex offender, as defined in Penal Code Section 290. Criminal background checks will not be required due to excessive costs, time, and tracking associated with the process. Each ADP approved organization may choose, at its own discretion, to perform criminal background checks on registering and registered counselors. Each certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. The Department welcomes the opportunity for all qualified persons to apply for certification. The verbiage in Section 13060(d) does not exclude anyone convicted of any crime, but clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization. This section allows certifying organizations to allow persons convicted of these crimes the opportunity to apply for certification.

**COMMENTOR OC 5:**

a. Summary of Comment:

Commentor stated 420 classroom hours should be the minimum. It is unethical and unprofessional for DADP to propose only 155 hours and 160 training hours. 1,000 supervised internship hours and 2,080 work experience should be the minimum.

Departmental Response:

155 hours of education, 160 supervised hours, and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while

attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents.

b. Summary of Comment:

Commentor stated the educational hours are not specified as classroom education, which means you can write away for it, go down to the corner coffee shop, or to a place on El Camino.

Departmental Response:

This section has been amended for clarity to mandate formal classroom hours.

c. Summary of Comment:

Commentor stated the grandfathering period should be for no more than two years.

Departmental Response:

Any counselor wishing to use the provisions of the “grandfathering” option must register within six months with an ADP approved certifying organization, as amended in this section.

d. Summary of Comment:

Commentor stated the Addiction Technology Training Center should be the testing-out vehicle.

Departmental Response:

Section 13025(c)(2), which includes the ATTC exam, has been deleted because currently there is no developed exam from ATTC; however, when an exam is established, the Department may revise the regulations for inclusion of this testing option.

e. Summary of Comment:

Commentor stated there should be a standardized exam.

Departmental Response:

NCCA will review the certifying exam used by each certifying organization as part of its accreditation process.

**COMMENTOR OC 6**

a. Summary of Comment:

Commentor stated only one or two sentences in the whole curriculum go into methadone maintenance or methadone detoxification, or dealing with opiate addictions.

Departmental Response:

No training of any kind is required at the moment. Thus the minimum standards established in the proposed regulations are an improvement over the current lack of training and education required of AOD counselors. The TAP 231 curriculum is expected to be expanded at a future date. In the meantime, certifying organizations are free to require more education or training than is required in the regulations.

b. Summary of Comment:

Commentor stated they are unsure if curriculum would be adequate to have counselors doing therapy with their patients.

Departmental Response:

The regulations establish minimum requirements. Certifying organizations and employing AOD programs are welcome to exceed these minimum requirements.

c. Summary of Comment:

Commentor stated they believe the Department should accept other educational venues, including life experiences.

Departmental Response:

Life experience is difficult to quantify or document. All AOD education must be documented classroom hours with the curriculum contained in Sections 13040(a).

d. Summary of Comment:

Commentor stated they are in a country built on second chances, and want to make clear that we are all looking for a second chance. It would be very hard to start new counselors off by saying we are excluding people because they cannot have a second chance.

Departmental Response:

The regulations do not prevent someone with a criminal record from becoming a certified counselor. Each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. The Department welcomes the opportunity for all qualified persons to apply for certification. The verbiage in Section 13060(d) does not exclude anyone convicted of any crime, but clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization. This section allows certifying organizations to allow persons convicted of these crimes the opportunity to apply for certification. Clients that come to their facilities are generally poor, and the cost of accreditation process has to be passed to the patients; however, they do not believe this cost would be helpful getting people to treatment and making it affordable.

e. Summary of Comment:

Commentor stated clients that come to their facilities are generally poor, and the cost of accreditation process has to be passed to the patients; however, they do not believe this cost would be helpful getting people to treatment and making it affordable.

Departmental Response:

The Department is not mandating that counselors be paid higher salaries, only suggesting that fees may be increased if the program chooses to pay certified counselors at a higher rate. An AOD program may decide not to increase salaries and/or program fees if it is not feasible to do so.

f. Summary of Comment:

Commentor stated addiction is a process of recovering, with a start and a gradual reduction in harm and a gradual reduction in use. The curriculum for accreditation does not incorporate this approach, as well as many other different approaches to substance abuse.

**Departmental Response:**

Every organization, entity, and profession associated with drug and/or alcohol treatment has various approaches to recovery. The Department chose TAP 21 because it is a nationally recognized curriculum used for certification of AOD counselors. Each certifying organization and employing AOD program is welcome to provide additional education and training if it chooses to do so.

g. **Summary of Comment:**

Commentor stated this certification process is being rushed a bit, and there is not enough time and thought and energy going into the regulations before its initiation.

**Departmental Response:**

The proposed regulations have been in development for over 25 years, and have been developed in collaboration with an advisory group composed of all types of AOD providers, representatives of certifying organizations, and county alcohol and drug administrators.

h. **Summary of Comment:**

Commentor stated a lot of valuable life experience is being discounted in this process.

**Departmental Response:**

The Department is requiring completion of classroom education, training, and experience because life experience is difficult to quantify or document.

**COMMENTOR OC 7:**

a. **Summary of Comment:**

Commentor is against supervising at an adjacent building or across town. Since your dealing with people's lives, it is unethical and opens up a liability to directly supervise someone.

**Departmental Response:**

The Department currently licenses and/or certifies over 1800 programs. Many programs have multiple facilities, with some facilities being diminutive in size, i.e. five or six bed facilities, when the main program is down the street. Mandating supervisors be at every site would create a hardship by significantly increasing

operational costs to the program. It is not the intention of the Department to force programs out of business. Adequate supervision can be accomplished by reviewing treatment plans and progress notes, and through communication by phone or computer.

b. Summary of Comment:

Commentor stated TAP 21 talks about skills of a counselor and recognizing the needs for the supervisor's assistance. How can you know what assistance you need if your supervisor is not there to tell you what mistakes you are making?

Departmental Response:

The supervisor would not be able to constantly be in the same room when he supervises more than one counselor, therefore, mandating supervisors be at every site in the direct presence of a counselor would create a hardship by significantly increasing operational costs to the program. It is not the intention of the Department to force programs out of business. Adequate supervision can be accomplished by reviewing treatment plans and progress notes, and through communication by phone or computer.

c. Summary of Comment:

Commentor is against Section 13040 of the regulation because supervising at an adjacent building or across town is not feasible. Since your dealing with people's lives, it is unethical and opens up a liability to directly supervise someone.

Departmental Response:

This is essentially the same comment made immediately above. Please see the Department's responses to those comments.

**COMMENTOR OC 8:**

a. Summary of Comment:

Commentor stated there is no way someone can become a competent counselor in 155 hours, especially with issues around charting. We can be shut down by the State, and need competent individuals who can come in and deal with it. The skills necessary and the population we are dealing with are more complicated. They do not have the technical experience to understand what the person needs. There needs to be at least 480 hours of education.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

b. Summary of Comment:

Commentor stated the regulations do not specify whether the hours are classroom hours, as they should.

Departmental Response:

A posthearing change has been made to require classroom hours.

c. Summary of Comment:

Commentor stated there needs to be some oversight to look at what the person is being able to accomplish rather than just an eight-hour seminar on a specific subject.

Departmental Response:

The regulations require an individual to become certified within five years of registration, which requires them to complete courses with a passing score.

d. **Summary of Comment:**

Commentor stated there needs to be standardized, supervised internships to see how the counselor is applying the skills that were learned in the classroom.

Departmental Response:

Each AOD program (employer) will determine training and internship that provides the most benefit to their organization. The Department includes the 2,080 hours of work experience as an internship period.



e. Summary of Comment:

Commentor stated the cost to the employer will drive up costs; however, it means being more effective with the clients, less recidivism, and better outcomes. This should be based on the fact we are going to be providing quality treatment.

Departmental Response:

The regulations are being established to protect the health, safety, and welfare of AOD participants, patients, and residents. The goal of the Department is to provide quality treatment. The Department is not mandating that counselors be paid higher salaries, or that employers pay all costs associated with certification. An AOD licensed and/or certified program may decide not to increase salaries and/or program fees, or pay for counselor certification, if it is not feasible to do so.

**COMMENTOR OC 9:**

a. Summary of Comment:

Commentor was shocked to hear there is only 155 classroom hour requirement. Saving a life is worth more than 155 hours of education. Workgroups have supported the 420 hour requirements. Even 315 or 520 hours are not enough. It is impossible to ethically teach with current knowledge, science and research, about the disease of addiction. A barber requires more training than would be required to help other human beings. It is unethical to help others without certain knowledge and skills.

Departmental Response:

These regulations establish a minimum standard in order to prevent a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. 155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. .

b. Summary of Comment:

Commentor stated it appears that ADP is catering to the requirements of this one organization: CAARR. CAARR should raise their standards to at least 315 or 420 educational hours.

Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

c. Summary of Comment:

Commentor stated this profession has been the laughing stock of the helping professions because the code of ethics has never been enforced and never had decent educational requirements, which is why there is such low funding and AOD treatment cannot be reimbursed by insurance companies.

Departmental Response:

The Department is establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents, while preventing a workforce shortage. Each certifying organization and employing AOD program is free to require higher standards if it chooses to do so.

**COMMENTOR OC 10:**

a. Summary of Comment:

Commentor stated the standards need to be equitable to the standards of other fields. Counselors in the addiction field have a higher burnout rate than the fire and police department because of a lack of training. The reason for proposing the regulations is that all certifying organizations do not have adequate certifications.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization is free to impose higher standards.

b. Summary of Comment:

Commentor stated the statement of necessity is not congruent with the standards.

Departmental Response:

The Statement of Necessity outlines the provisions that have been established in the proposed regulations. The Department could not more thoroughly respond to the comment because it is vague and does not specify how the statement of necessity is incongruent with the regulations.

c. Summary of Comment:

Commentor stated the regulations are just half measures, a stop-gap.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

d. Summary of Comment:

Commentor stated counselors need to be able to recognize if a client is taking their medications, and you cannot get that training, along with the counseling theories and psychopharmacology and ethics in 585 hours. The proposed hours are inadequate to accomplish this task.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

## **COMMENTOR OC 11:**

### Summary of Comment:

Commentor is in total disagreement with the regulations because they are watered down. The bar needs to be raised.

### Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

## **COMMENTOR OC 12:**

### a. Summary of Comment:

Commentor stated 315 hours has never been validated as being significant enough to pass a competency test.

### Departmental Response:

155 hours of education and 2,080 hours of work experience was chosen to accommodate all organizations currently certifying AOD counselors at the time of adoption of the regulations. These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

### b. Summary of Comment:

Commentor stated no one has enforced the educational committee to evaluate whether or not what is being taught in the classroom meets these standards. There should be a law that would force the system to move from a quantitative to a qualitative measure that could evaluate what we are doing and seeing if it works.

### Departmental Response:

The Department cannot fully respond to the comment, because it does not understand what change to commentor wants.

**COMMENTOR OC 13:**

Summary of Comment:

Commentor stated it took graduate school and 3,000 hours just to submit an application for marriage-family therapist licensure, which makes 155 hours a joke and an insult. It is unethical to sit with a population of people who are multiply-diagnosed without the proper education.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

**COMMENTOR OC 14:**

Summary of Comment:

Commentor stated in meetings with Kathy Jett, they had come to an agreement to have higher standards, 410 hours at the minimum. To see it lowered to 155 hours was upsetting. Our requirements called for 480 education hours, and our commission is very unhappy that the standard was lowered.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

**COMMENTOR OC 15:**

a. Summary of Comment:

Commentor stated their organization called for 480 academic hours, which added a cultural component, and the 155 hours are not enough and is a stretch. Academic requirements and the need for certification is a time frame about the same length of a junior college alcohol and drug studies or chemical dependency program.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

b. Summary of Comment:

Commentor stated there is a potential for a counselor to be revoked from one organization and obtain certification with another.

Departmental Response:

Section 13065 has been amended to state that counselors who have been revoked for good cause within the previous five years may not obtain certification with any ADP approved certifying organization.

c. Summary of Comment:

Commentor stated there should be 60 continuing education units every two years, not 20 or 30 a year.

Departmental Response:

The Department is attempting to make these requirements as easy as possible on all counselors in order to prevent a workforce shortage. As written, a counselor may take all 40 hours in one year, or they may take the 40 hours over two years, as long as the number of hours is completed within the two-year time period. The 40 hours of continuing education remain consistent with other licensed professionals. Certifying organizations are free to require additional hours of continuing education if they choose to do so.

d. Summary of Comment:

Commentor stated the potential to exclude someone due to a criminal background should be changed to exclusion due to violent felonies regarding children or violent crime regarding children.

Departmental Response:

Each ADP approved certifying organization will be required to conduct a search of the Megan's Law database, in accordance with Sections 13045(c) and

13055(g), to determine if the registrant is a registered sex offender, as defined in Penal Code Section 290. Criminal background checks will not be required due to excessive costs, time, and tracking associated with the process. Each ADP approved organization may choose, at its own discretion, to perform criminal background checks on registering and registered counselors. The regulations do not prevent someone with a criminal record from becoming a certified counselor; however, each ADP approved certifying organization may establish its own rules for accepting counselors with a criminal history, and may impose more stringent standards at their discretion, in accordance with Section 13060. The Department welcomes the opportunity for all qualified persons to apply for certification. The verbiage in Section 13060(d) does not exclude anyone convicted of any crime, but clarifies that certifying organizations may exclude drug or alcohol related convictions if they occurred prior to the time the counselor registered with the certifying organization. This section allows certifying organizations to allow persons convicted of these crimes the opportunity to apply for certification.

e. Summary of Comment:

Commentor stated there is a lot of work that has gone into the regulations so far; but, there is a lot more work that needs to be done. These requirements are inadequate to cover what we have the potential to do and what we have the potential to be. We want to raise the bar for ourselves, not out of reach, but where we have to stretch a little to get it, and once it is reached, keep stretching and keep going.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

f. Summary of Comment:

Commentor is willing to keep working on this draft to make sure it works for everybody.

Departmental Response:

These regulations have been in development for over 25 years. The Department cannot keep working on the regulations until they please everyone because the Government Code requires us to submit the rulemaking file to the Office of Administrative Law within one year of the date of public notice. These

regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

g. Summary of Comment:

Commentor is glad for all the effort that has gone into the work that has been done, but there is more work to be done. These regulations need to be done over again and upgraded.

Departmental Response:

This is essentially the same comment as (f) immediately above. Please see the Department's response to that comment.

**COMMENTOR OC 17:**

a. Summary of Comment:

Commentor stated during the meetings, there was a compromise number of between 420 and 500 educational hours; however, we need a starting point, and these standards are a starting point.

Departmental Response:

These regulations are merely a starting point, establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents, while preventing a workforce shortage. Each certifying organization may impose higher standards.

b. Summary of Comment:

Commentor stated they support and understand the needs for the standards, and are glad to see it happening. We need a starting point.

Departmental Response:

The Department appreciates the commentor's support.



c. Summary of Comment:

Commentor stated it is really important to have combinations of book knowledge, classes, and heart and understanding for the people we serve.

Departmental Response:

The Department is using various tools, i.e. education, supervision, and work experience, in to increase counselor competency in order to better serve the needs of its clients.

d. Summary of Comment:

Commentor stated they think it is important that we raise the standards, to look at how we are going to make it happen because it is necessary and needed.

Departmental Response:

At some point in the future, the Department may raise the number of hours of education and training required for certification. These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards.

**COMMENTOR OC 17:**

a. Summary of Comment:

Commentor stated what is missing from Section 13005(a)(4) would be a coherent scope of practice for Section (A) and (D) counselors. As drafted, it is very vague, broad, and encroaches on the scope of practice of MFTs, social workers, and psychologists. Section 13005(a)(4) is problematic in that it seemingly allows licensees, alcohol and drug counselors, and registrants to perform, “counseling services” and should be limited to providing alcohol and drug counseling services.

Departmental Response:

Section 13005(a)(4) defines the term “counseling” as used in these regulations and establishes the scope of practice of an AOD counselor. It refers only to AOD counseling since these regulations apply only to counselors in an AOD program.

Chapter 8 does not establish the scope of practice of other kinds of counselors or authorize AOD counselors to perform any services other than AOD counseling services.

b. Summary of Comment:

Commentor stated Sections 13005(a)(4)(A) and (D) are seen as helping individuals curb the overpowering physical and emotional urges to use alcohol and drugs. MFTs are the only ones statutorily empowered by law to examine the relationships with the family members that substance abuse and alcohol abuse have in society.

Departmental Response:

Chapters 3,4, and 5 of Title 9 of the California Code of Regulations allow alcohol and drug counselors to conduct AOD counseling sessions with families, as an alcoholism or drug abuse recovery or treatment service

c. Summary of Comment:

Commentor stated there is no degree requirement, and 155 educational hours and 2,080 hours of experience is inadequate preparation to enable people to analyze and work with interpersonal relationship problems.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while establishing minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents. Each certifying organization may impose higher standards. Chapter 8 does not authorize AOD counselors to provide any type of services other than AOD counseling services, as defined in Section 13005(a)(4).

d. Summary of Comment:

Commentor stated they applaud the efforts to try and end drug and alcohol abuse, and adopting some standards to bring coherence and a minimum level of competence.

Departmental Response:

The Department thanks the commentor for his support.

e. Summary of Comment:

Commentor stated the scope of practice really needs to be reconstructed. The scope of practice and scope of competence issues need to be readdressed, with a carving out of particular niches for people to play within this teamwork approach.

Departmental Response:

Please see the Department's response to comment a. immediately above.

f. Summary of Comment:

Commentor stated another problem is the scope of competence, which is the education, training and experience that a person has to have in whatever they are licensed to do.

Departmental Response:

It is the responsibility of the AOD licensed and/or certified program to monitor competence, as a condition of employment. The Department has established minimum standards that must be adhered to by all certified counselors and all ADP approved certifying organizations.

**COMMENTOR OC 19:**

a. Summary of Comment:

Commentor stated there is no objection to the basic concept of establishing minimum education requirements, but the appropriateness of applying these additional educational requirements to the mental health agencies is questioned.

Departmental Response:

The proposed regulations apply only to individuals providing counseling services in an AOD program, not to individuals providing counseling services in a mental health agency.

b. Summary of Comment:

Commentor stated the applicability of the regulations to programs primarily serving the dually-diagnosed population is questioned because of the already specialized training that is received.

Departmental Response:

The regulations apply to individuals performing counseling services in an AOD program. AOD programs should refer patients with a dual diagnosis to a qualified licensed professional for treatment of mental health issues, since it would be beyond the scope of practice for an AOD counselor to provide such services.

c. Summary of Comment:

Commentor stated the existing educational requirements currently required are adequate and appropriate to the employers and counties that contract with the mental health agencies.

Departmental Response:

The Department appreciates the commentor's support.

d. Summary of Comment:

Commentor stated there should be an exception for these requirements for community health agencies as defined in Section 5667 of the Welfare and Institutions Code.

Departmental Response:

The proposed regulations apply only to individuals performing counseling services in an AOD program, not to counselors in non-AOD programs.

e. Summary of Comment:

Commentor stated the timeliness of adding new significant financial burden to publicly-funded programs is questioned. Imposing additional requirements would result in reducing the number of people served, given the limited resources.

Departmental Response:

The proposed regulations do not impose an additional cost on AOD programs. The Department merely suggested that AOD programs that choose to incur a higher cost by paying higher salaries could recoup that expense by raising program fees.

## **ADDITIONAL (15-DAY) CHANGES:**

The Department made additional changes based on the written comments received during the 45-day comment period, as discussed above. On August 20, 2004 the Department complied with Section 44, Title 1, CCR, by mailing a 15-day notice and text of the additional changes to everyone specified in subsections (a)(1) through (4) of Section 44. The additional changes were made available for public comment from August 20 through September 7, 2004. Fifteen (15) individuals provided public comments, which are summarized below:

### **Commentor PH1:**

a. Summary of Comment:

Commentor PH1 requested a “grandfathering” clause to any worker hired prior to the promulgation of the regulations.

Departmental Response:

Section 13020 contains a “grandfathering” clause, which allows continued certification of previously certified AOD counselors.

b. Summary of Comment:

Commentor PH1 requested that each person providing counseling services be given one (1) year to register with a certifying organization due to time and costs involved.

Departmental Response:

The comment is outside the scope of the 15-day notice.

c. Summary of Comment:

Commentor PH1 stated that the documentation of employment was too onerous and should be amended to 20 hours per week (from 40 hours) for a minimum of three years (from five years), between January 1, 1995, and January 1, 2005.

Departmental Response:

In order to protect the health and safety of AOD clients, the Department has to ensure that counselors have been properly trained and employed for a minimum of five years. Working part-time for only three of the last ten years is not sufficient to maintain minimum counselor competency.

d. Summary of Comment:

Commentor PH1 stated any continuing education credits obtained by licensed professionals should be appropriate, with no discretion of the employing AOD program.

Departmental Response:

Although the Department understands licensed professionals should have some flexibility in their educational choices, the employing AOD program has the ultimate discretion to ensure that their employees are completing courses that are beneficial to the AOD field as well as to the licensed professional.

e. Summary of Comment:

Commentor PH1 requested a reduction in the number of continuing education hours (from 40 to 36) for renewal of certification.

Departmental Response:

The comment is outside the scope of the 15-day notice.

**Commentor PH2:**

a. Summary of Comment:

Commentor PH2 expressed concern about the lack of distinction between licensed professionals and non-licensed professionals.

Departmental Response:

Section 13005(a)(4) defines “counseling services”, which are the only services a non-licensed AOD counselor may perform. The scope of practice of licensed professionals is determined by the Department of Consumer Affairs.

b. Summary of Comment:

Commentor PH2 stated concern that language in the proposed regulations remains vague and ambiguous in certain sections, and lacks substantive criteria.

Departmental Response:

The Department made 15-day changes to improve clarity. The Department cannot fully respond to the comment, since the commentor did not specify where he considers the regulations to be vague and ambiguous.

c. Summary of Comment:

Commentor PH2 expressed concern over the process of drafting the regulations, including limiting the public comment to only those sections that were amended.

Departmental Response:

The initial 45-day comment period that ended on April 2, 2004, provided an opportunity for any interested person to make comments on all sections of the proposed regulations. As allowed by the Government Code, the 15-day comment period was limited only to changes made after the public hearing and 45-day comment period.

d. Summary of Comment:

Commentor 2 stated the deletion of Sections 9846(f) and (e)(3) eroded the purpose of creating a qualified, educated, and credentialed workforce.

Departmental Response:

These sections were deleted to maintain consistency and bring parity with Sections 9846(f)(3) and 13040.

e. Summary of Comment:

Commentor PH2 stated the standards are being lowered with the deletion of Section 9846(h).

Departmental Response:

This section was deleted to maintain consistency and bring parity with Sections 9846(f)(3) and 13040 so that DUI counselors would not have more stringent requirements than other counselors, and to prevent workforce shortages.

f. Summary of Comment:

Commentor PH2 expressed concern that personnel skills listed in Section 10564 are vague and go beyond the certified counselor scope of practice.

Departmental Response:

The comment is outside the scope of the 15-day notice.

g. Summary of Comment:

Commentor PH2 stated the lack of substantive criteria and protocol is a concern, and the regulations do little to assure and monitor the standard of care.

Departmental Response:

These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided, which are needed to protect the health, safety, and welfare of AOD participants, patients, and residents. The Department cannot more fully respond to the comment, since Commentor PH2 did not specify what changes he would like the Department to make.

h. Summary of Comment:

Commentor PH2 expressed concern about the lack of definitive qualifications or requirements for certifying organizations.

Departmental Response:

In accordance with Section 13035(c)(1-3), each certifying organization must become accredited with the National Commission for Certifying Agencies (NCCA) within two years of regulation promulgation.

i. Summary of Comment:

Commentor PH2 stated many of the counseling services described in Section 13005(a)(4) are well beyond the scope of practice for certified paraprofessionals.

Departmental Response:

Section 13004(a)(4) describes the scope of practice of certified AOD counselors. Certification is intended to qualify AOD counselors to perform these services.

j. Summary of Comment:

Licensed professionals should also include Associate Clinical Social Worker's (ASWs) that are registered with the Board of Behavioral Sciences.

Departmental Response:

Section 13015(a) includes interns, including ASWs who must be registered with the Board of Behavioral Sciences.



k. Summary of Comment:

Commentor PH2 stated any continuing education credits obtained by licensed professionals should be appropriate, with no discretion of the employing AOD program.

Departmental Response:

Although the Department understands licensed professionals should have some flexibility in their educational choices, the employing AOD program has the ultimate discretion to ensure that their employees are completing courses that would be beneficial to the AOD field.

l. Summary of Comment:

Commentor PH2 stated too much discretion is being given to the certifying organization regarding the passing score of a written and/or oral examination.

Departmental Response:

Because of the current State fiscal crisis the Department is not able to certify AOD counselors or accredit certifying organizations. Thus it has delegated responsibility for accreditation to NCCA. NCCA will approve the certification exam used by certifying organizations as part of the accreditation process.

m. Summary of Comment:

Commentor PH2 expressed concern about the lack of definitive qualifications or requirements for certifying organizations.

Departmental Response:

In accordance with Section 13035(c)(1-3), each certifying organization must become accredited with the National Commission for Certifying Agencies (NCCA) within two years of regulation promulgation.

n. Summary of Comment:

Section 13040(a)(2) inappropriately mixes special populations with diverse populations, which are two distinct populations.

Departmental Response:

Based on public comment received during the 45-day public comment period, the Department amended Section 13040(a) as a posthearing change to refer to “diverse populations”.

o. Summary of Comment:

Commentor PH2 stated the 40 hours of continuing education should be reduced to 36 hours to remain consistent with other licensed professionals.

Departmental Response:

The Department amended Section 13015(e) to require only 36 hours of continuing education for licensed professionals, because they are already trained in AOD issues and counseling techniques.

**Commentor 3:**

a. Summary of Comment:

Commentor PH3 requested the Department to change the wording in Section 10125(c) to let the employing organization conduct the code of conduct investigations.

Departmental Response:

The licensee must report the code of conduct violations within three business days to the appropriate certifying organization. The certifying organization will report the violations to the Department, which will conduct a thorough and appropriate investigation. The Department conducts all investigations because they are a neutral party, whereas the AOD program may have a vested interest in the allegations made against one of its counselors. The Department will determine when an allegation is unfounded, and notify the appropriate certifying organization of all outcomes. In addition, each AOD program may not have the resources available to conduct an investigation on every complaint received.

b. Summary of Comment:

Commentor PH3 stated that it will be highly impractical for employers to keep track of all the codes of conduct that applies to counselors, and there should only be one standard code of conduct.

Departmental Response:

Section 13060(c) establishes a minimum statewide standard; however, each certifying organization or employing AOD program may, at its discretion, adopt more stringent standards in accordance with Section 13060(f).

c. Summary of Comment:

Commentor PH3 stated Section 10125(d)(3)(B) should be deleted because the employer cannot be responsible for maintaining current copies of the various codes of conduct.

Departmental Response:

This is essentially the same as the comment immediately above. Please see the Department's response to that comment.

**Commentor PH4:**

a. Summary of Comment:

Commentor PH4 stated the "Notice of Additional Changes" implies that no further changes will be made to the regulations prior to submission to the Office of Administrative Law for final adoption.

Departmental Response:

The Department fully intends to consider all comments received, however due to the need to implement these regulations by January 1, 2005, the Department will make any further changes in a subsequent regulatory action.

b. Summary of Comment:

Commentor PH4 asked the rationale for requiring two years of experience for DUI counselors, while AOD counselors only require one year.

Departmental Response:

The standards for DUI counselors were established prior to this regulatory action and were maintained at the oral request of DUI providers, who called the Department asking to keep the existing standards.

c. Summary of Comment:

Commentor PH4 stated the deletion allowing one year of education for one year of experience is irrational.

Departmental Response:

The previous Section 9846(f) was deleted to maintain consistency with the new Section 9846(f)(3), to prevent workforce shortages, and to maintain consistency with new certification requirements in Section 13040.

d. Summary of Comment:

Commentor PH4 stated since many counselors work part-time, they could not accumulate five years of experience in ten years.

Departmental Response:

The comment is outside the scope of the 15-day notice.

e. Summary of Comment:

Commentor PH4 stated Section 13035(d)(2) does not take into consideration Section 11346.3 of the California Government Code, and Executive Order S-2-03.

Departmental Response:

The Department does not understand the comment, and it is outside the scope of the 15-day notice, since Section 13035(d)(2) was not changed as a posthearing change.

f. Summary of Comment:

Commentor PH4 stated the use of 2,080 hours is a measurement of one year's full-time experience, without any consideration for time off. 1,776 hours per year should be the standard.

Departmental Response:

The Department defined one year's experience in Section 9846(g) as 1,776 hours of full or part time work experience; therefore, two years work experience would be defined as 3,552 hours, not 2,080 as you suggested.

g. Summary of Comment:

Commentor PH4 objects to the blanket requirement for certifying organizations to accept continuing education credits for the specified entities.

Departmental Response:

The Department is not limiting the acceptance of continuing education credits (ceu's) from merely those entities listed in Section 13055(d). A certifying organization may choose to accept ceu's from any entity they deem credible. This section was intended to mandate that certifying organizations accept ceu's from the listed entities. Section 13055(d) was added in order to allow counselors flexibility in which courses they may attend, and to reduce hardship for those working in areas where continuing education is provided by county AOD programs.

**Commentor PH5:**

a. Summary of Comment:

Commentor PH5 is concerned about the deletion of Section 9846(f)(3) allowing the substitution of one year of college-level education for one of the two years of experience required in Sections 9846(a)(1), (b), or (c).

Departmental Response:

The previous Section 9846(f) was deleted to maintain consistency with the new Section 9846(f)(3), in order to prevent workforce shortages and maintain consistency with new certification requirements in Section 13040. A requirement to have interns complete post-secondary education prior to providing services would disrupt an important training opportunity and prevent trainees from obtaining the required two years of necessary experience.

b. Summary of Comment:

Commentor PH5 stated there is no consistency when 100% of DUI counselors are required to be certified by January, 1, 2010, while AOD counselors have only a 30% requirement.

Departmental Response:

Currently standards for DUI counseling staff are higher than for all other types of AOD counselors, at the request of the DUI advisory committee which collaborates with the Department on the development of DUI regulations. That

committee is composed of licensed providers of DUI services and county alcohol and drug program administrators, who chose not to lower standards for DUI programs.

c. Summary of Comment:

Commentor PH5 stated since many counselors work part-time, they could not accumulate five years of experience in ten years, and the time period should be deleted.

Departmental Response:

The comment is outside the scope of the 15-day notice, since Section 13025 was only change to allow for a full ten years for completion of experience.

d. Summary of Comment:

Commentor PH5 stated the costs of initial accreditation is between \$25,000 and \$30,000, and is not based on TAP 21 standards. The Department should obtain bids from alternate organizations.

Departmental Response:

The Department has chosen the National Commission for Certifying Agencies (NCCA) because it is a nationally recognized organization which accredits various types of licensing or certifying organizations.

**Commentor PH6:**

a. Summary of Comment:

Commentor PH6 stated there is no consistency when 100% of DUI counselors are required to be certified by January, 1, 2010, while AOD counselors have only a 30% requirement.

Departmental Response:

Currently standards for DUI counseling staff are higher than for all other types of AOD counselors, at the request of the DUI advisory committee which collaborates with the Department on the development of DUI regulations. That committee is composed of licensed providers of DUI services and county alcohol and drug program administrators, who chose not to lower standards for DUI programs.

b. Summary of Comment:

Commentor PH6 remains opposed to DUI staffing that would permit interns with minimal training to conduct services without supervision.

Departmental Response:

Interns must first observe at least three hours of face-to-face interviews, 12 hours of educational sessions, and 20 hours of group counseling prior to conducting services. The requirements are only a minimum, and may be exceeded by an employer.

c. Summary of Comment:

Commentor PH6 stated the DUI program intern education has been “dumbed down.”

Departmental Response:

The requirement for interns was changed because the position of DUI intern is a beginning, entry level position. The regulation was changed to prevent a workforce shortage. Individual DUI providers may require more experience or education at their discretion.

d. Summary of Comment:

Commentor PH6 opposes the reduction from 50% to 30% of all counselors having to be certified.

Departmental Response:

In order to prevent future workforce shortages, the regulations have been amended to no more than 30% of staff will be required to be certified; however, an employer may, at its discretion, exceed the mandated requirements at any time.

e. Summary of Comment:

Commentor PH6 objects to the lower continuing education requirements to 36 hours for licensed professionals. Also, the employer may, at their discretion, use credits required by Consumer Affairs to meet this requirement.

Departmental Response:

The Department lowered the hours of continuing education required for licensed professionals since they are already trained in AOD issues and counseling techniques.

f. Summary of Comment:

Commentor PH6 stated that a certifying organization would have to renew a previously certified counselor's certification if the education and experience required by the certifying organization which previously granted certification was "similar" to the counselor certification regulations. It raises the specter of consumer fraud in that a poorly educated counselor would seek certification from an organization that had higher standards than the previous organization.

Departmental Response:

The comment is outside the scope of the 15-day notice.

g. Summary of Comment:

Commentor PH6 remains opposed to the lack of a uniform statewide test applicable to Section 13025.

Departmental Response:

The Department is not in the position, under the current fiscal emergency, to develop a standardized exam for use by all the certifying organizations. Each certifying organization may develop its own exam which it feels would meet the competence of a counselor that has the required education and years of experience.

h. Summary of Comment:

Commentor PH6 opposes the reduction from 50% to 30% of all counselors having to be certified.

Departmental Response:

Please see response to comment "D" above.



i. Summary of Comment:

Commentor PH6 opposes the requirements of certifying organizations to be accredited by the National Commission for Certifying Agencies. This responsibility rests with a California entity.

Departmental Response:

This comment is outside the scope of the 15-day notice.

j. Summary of Comment:

Commentor PH6 stated there is no requirement that a registrant be working to complete the educational and training requirements during the five year registration period.

Departmental Response:

This comment is outside the scope of the 15-day notice.

k. Summary of Comment:

Commentor PH6 remains opposed to only 155 hours of formal AOD education.

Departmental Response:

This comment is outside the scope of the 15-day notice.

l. Summary of Comment:

Commentor PH6 stated the "Statement of Necessity" fails to mention the vast majority of the workgroup recommended in June 2003 there should be a minimum of 420 hours of classroom education.

Departmental Response:

This comment is outside the scope of the 15-day notice.

m. Summary of Comment:

Commentor PH6 stated the "supervised AOD training" is inconsistent and inadequate.

Departmental Response:

This comment is outside the scope of the 15-day notice.

n. Summary of Comment:

Commentor PH6 objects to the omission of “supervised” in Section 13040(c).

Departmental Response:

“Supervised” was not deleted from this provision of the regulations.

o. Summary of Comment:

Commentor PH6 is concerned regarding the change to work experience being “prior to or at the same time,” and believes the change would preclude someone from gaining work experience after their education.

Departmental Response:

The purpose of the amendment to Section 13040(c) is to permit an individual more flexibility in gaining work experience. This section allows an individual to complete his/her education and supervised training prior to or at the same time as the work experience.

p. Summary of Comment:

Commentor PH6 stated Section 13055(d) mandating certifying organizations accept continuing education credits “by any agency that provides services through a contractual arrangement with a State agency,” would only apply to and benefit the California Association of Addiction Recovery Resources (CAARR).

Departmental Response:

CAARR is one of many organizations that provide contractual services to the State.

q. Summary of Comment:

Commentor PH6 stated that Section 13060(d) is confusing and objectionable.

Departmental Response:

This comment is outside the scope of the 15-day notice.

r. Summary of Comment:

Commentor PH6 stated not allowing other organizations to certify someone for five years is of concern since there is no uniformed code of ethics.

Departmental Response:

Section 13060(c) establishes a minimum statewide code of ethics, however, each certifying organization may, at its discretion, adopt more stringent standards in accordance with Section 13060(f). Five years was drafted to maintain consistency with standards for licensed professionals.

s. Summary of Comment:

Commentor PH6 stated the requirement to electronically document completion of all education and work experience will increase costs for certifying organizations.

Departmental Response:

This comment is outside the scope of the 15-day notice.

t. Summary of Comment:

Commentor PH6 stated it is unreasonable for certifying organizations to update information on a daily basis. The requirement should be "within three business days."

Departmental Response:

This comment is outside the scope of the 15-day notice.

**Commentor PH7:**

a. Summary of Comment:

Commentor PH7 stated the Board of Psychology does not register interns. Psychology interns practice under an exemption.

Departmental Response:

The website of the California Board of Psychology lists information regarding internship.

b. Summary of Comment:

Commentor PH7 stated that the Department inappropriately changed the language in Section 13055(b)(2) regarding the Gay, Lesbian, Bisexual and Transgendered Community (LGBT) to “diverse populations,” which is offensive to the LGBT community.

Departmental Response:

The commentor’s previous statement, as well as other suggestions, during the 45-day comment period requested the change to “diverse population.”

**Commentors 8 and 9:**

a. Summary of Comment:

Commentors 8 and 9 were dismayed that the Department sent the 2<sup>nd</sup> “Notice of Additional Changes,” but did not provide a name, address, fax number, or e-mail address to send comments. Commentor is also concerned there is a desire to expedite the passage of the regulations.

Departmental Response:

The information stated above was erroneously deleted from the “Notice of Additional Changes” during the editing process, and in no way was intentional, however the Department’s address was printed on the letterhead on which the notice appeared. The Department is eager to implement the proposed regulations, which have been in development for over 25 years, and which will improve the quality of AOD services provided, protecting the health and safety of participants, patients, and residents. Although the Department is eager to implement these regulations, it has taken care to comply with the promulgation requirements of the Administrative Procedure Act portion of the Government Code.

b. Summary of Comment:

Commentors 8 and 9 stated there is a name that should be corrected in Section 13040(a)(1).

Departmental Response:

The Department will correct the name as requested.

c. Summary of Comment:

Commentors stated the word “in” is missing from Section 13055(b)(1).

Departmental Response:

The Department will correct this nonsubstantive typographical error in a subsequent regulatory action.

e. Summary of Comment:

Commentors 8 and 9 stated there would be greater latitude provided if Section 13055(b)(2) was reworded to include, “but not limited to.”

Departmental Response:

It was not possible to include every group in the regulations; therefore, only the most prominent ones were mentioned. However, the wording “such as” and “etc.” includes any groups not mentioned in this section.

f. Summary of Comment:

Commentors stated Section 13055(b)(4) should include the wording, “but not limited to” in reference to communicable diseases.

Departmental Response:

Communicable disease can mean any number of disorders; therefore, only the most prominent ones were mentioned.

g. Summary of Comment:

Commentors provided an amended definition for Section 13005(a)(4)(E).

Departmental Response:

This comment is outside the scope of the 15 day notice.

h. Summary of Comment:

Commentors 8 and 9 provided an amended definition for Section 13015(d).

Departmental Response:

The Department did not make the requested change in order to maintain consistency with the requirements of the Department of Consumer Affairs.

i. Summary of Comment:

Commentors 8 and 9 stated the January 1, 2005, date is too soon for the regulations to be operative, and two-year license renewal period should be coincided with the two-year continuing education period.

Departmental Response:

The Department hopes that these regulations can take effect by January 1, 2005, as they have been in development for over 25 years and are necessary to improve the quality of AOD services provided. The Department expects the regulations to be effective January 1, 2005. Each licensed professional and counselor must provide proof they have completed the continuing education prior to renewal of their license or certificate.

j. Summary of Comment:

Commentors 8 and 9 stated too much preference is given to education provided by entities that may be questionable, and eliminates other good and already approved providers of continuing education.

Departmental Response:

The Department is not limiting the acceptance of continuing education credits (ceu's) from merely those entities listed in Section 13055(d). A certifying organization may choose to accept ceu's from any entity they deem credible. This section was intended to mandate that certifying organizations must accept ceu's from the listed entities.

k. Summary of Comment:

Commentors 8 and 9 stated the name of a certifying body, "California Certification Board of Chemical Dependency Counselors" is misleading and appears to be a governmental body. The Department should not recognize organizations that have misleading titles.

Departmental Response:

The same comment can be said for most organization that lists "California Association" in its name, as do 40% of the certifying organizations mentioned in

Section 13035(a). The Department does not believe the name of the organization is leading persons to believe it is a governmental entity. This section states in its text that the listed entities are certifying organizations.

**Commentor PH10:**

a. Summary of Comment:

Commentor PH10 expressed concern that CAADPAC has the final vote on the counselor certification regulations.

Departmental Response:

Sections 11835 and 11864 of the Health and Safety Code require the Department to present all regulations for CAADPAC's vote prior to adoption.

b. Summary of Comment:

Commentor PH10 is not in favor of lowering their standards to certify counselors.

Departmental Response:

The Department is not mandating certifying organizations to lower their current standards. The regulations are establishing minimum standards, which may be exceeded by any certifying organization. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

**Commentor PH11:**

a. Summary of Comment:

Commentor PH11 stated there should be a minimum of 450 documented hours of formal AOD education.

Departmental Response:

The comment is outside the scope of the 15-day notice.

b. Summary of Comment:

Commentor PH11 stated there should be 480 documented hours of supervised AOD training based on TAP 21 curriculum.

Departmental Response:

The comment is outside the scope of the 15-day notice.

**Commentor PH12:**

Summary of Comment:

Commentor PH12 suggests we add Marriage and Family Trainee to licensed professionals since they are not officially interns.

Departmental Response:

The Department is not making the requested change because a trainee is unlicensed, while the intern is required to complete 3,000 hours of supervised experience and has more stringent requirements.

**Commentor PH13:**

a. Summary of Comment:

Commentor PH13 stated there are not ten qualified certifying organizations, and only CAADAC is extremely qualified. Most organizations require no more than a membership fee, or inadequate education or experience requirements.

Departmental Response:

No doubt many of the certifying organizations listed feel they are the most qualified to certify counselors. Each organization must be accredited within two years of regulation promulgation with the National Commission for Certifying Agencies. Each certifying organization may require higher standards at its discretion. These regulations were established in order to reduce a possible workforce shortage while attempting to establish minimum standards for education, experience, and conduct for AOD counselors in order to improve the quality of the services provided and protect the health, safety, and welfare of AOD participants, patients, and residents.

b. Summary of Comment:

Commentor PH13 stated the 155 hours of documented education, 160 hours of supervised AOD training, and 2,080 hours of work experience seems very inadequate.



Departmental Response:

The comment is outside the scope of the 15-day notice.

c. Summary of Comment:

Commentor PH13 stated an examination approved only by the certifying organizations seems open to conflicts of interest and overly inclusive.

Departmental Response:

Section 13025(c) clearly establishes that each ADP approved certifying organization may develop and administer its own exam, whether it is written or oral. NCCA will approve the examination as part of its accreditation process. An AOD employer may choose, at its discretion, to decline acceptance of an ADP approved certifying organizations' certified counselors, in accordance with Section 13010(b), if it feels that a certifying organizations' exam was not sufficient to ensure counselor competency.

d. Summary of Comment:

Commentor PH13 does not believe 36 hours of continuing education is sufficient for licensed professionals.

Departmental Response:

The Department lowered the requirement because licensed medical and clinical professionals are already trained in AOD issues and counseling techniques. The requirement for 36 hours of continuing education is remaining consistent with current licensing requirements with the Department of Consumer Affairs.

e. Summary of Comment:

Commentor PH13 does not agree with the reduction to 30% of counselors being certified by January 1, 2010, and 70% would be more sufficient.

Departmental Response:

In order to prevent future workforce shortages, the regulations have been amended to no more than 30% of staff will be required to be certified; however, an employer may, at its discretion, exceed the mandated requirements at any time.

**Commentor PH14:**

Summary of Comment:

Commentor PH14 stated counties should be included in Section 13055(d) in regards to accepting continuing education credits (ceu's), which would allow people to receive services from many agencies.

Departmental Response:

The Department is not limiting the acceptance of continuing education credits (ceu's) from merely those entities listed in Section 13055(d). A certifying organization may choose to accept ceu's from any entity they deem credible. This section was intended to mandate that certifying organizations must accept ceu's from the listed entities. If the county has a contract with the State, the Department, as a matter of policy, will allow ceu's to be used for purposes of this section. Section 13055(d) was added in order to allow counselors flexibility in which courses they may attend, and to reduce hardship for those working in areas where continuing education is provided by county AOD programs.

**CADPAAC VOTE:**

As required by Sections 11835 and 11864 of the Health and Safety Code, on August 20, 2004 the Department mailed to all county alcohol and drug program administrators a notice of intent to present the subject regulations for vote at the quarterly county administrators (CADPAAC) meeting to be held September 22, 2004, in Sacramento, CA. Twenty-eight (28) of the county administrators present at the meeting voted to approve the regulations for adoption; three (3) disapproved adoption.

**CONSIDERATION OF ALTERNATIVES:**

Pursuant to Section 11346.5(a)(12) of the Government Code, the Department has determined that no alternative would be more effective in carrying out the purpose for which this regulatory action was taken. The Department has also determined that no alternative would be as effective and less burdensome to affected private persons than the regulatory action taken. The Department has considered all alternatives presented during the public comment periods.

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