STATE OF CALIFORNIA

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DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS

INTERNAL REVIEW OF REGULATION PROCEDURES

March 1, 2019

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR

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March 1, 2019

Honorable Toni Atkins
Senate President Pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

Honorable Anthony Rendon
Speaker of the Assembly
State Capitol, Room 219
Sacramento, CA 95814

Re: Department of Consumer Affairs: Internal Review of Regulation Procedures

Senate President Pro Tempore Atkins and Speaker Rendon:

The Budget Act of 2018 required the Department of Consumer Affairs to conduct a two-year review of its centralized services and report back to the Legislature.

The report enclosed is the Department of Consumer Affairs' first report to the Legislature pursuant to Senate Bill 840, by Senator Holly Mitchell (Chaps. 29, Stats. 2018). The Department of Consumer Affairs identified six main areas of centralized services, which were prioritized by the Pro Rata Work Group, that will be reported to the Legislature: (1) regulations, (2) investigations, (3) information technology support, (4) human resources, (5) business services and facilities, and (6) fiscal operations. This report is the Department of Consumer Affairs' review of centralized services for regulations.

This report is the result of stakeholder outreach, research and analysis conducted by the Department of Consumer Affairs' Legal Affairs Division staff and Organizational Change Management team. There are many recommendations in this report that the department will be implementing in addition to many initiatives the department has already begun.

I appreciate the opportunity to share this report. I look forward to continued collaboration and welcome feedback on ways in which the department can improve its service to the 37 boards and bureaus it oversees.

If you have any questions or comments about this summary report, please contact Dennis Cuevas-Romero, Deputy Director of Legislation, at (916) 574-7800 or dennis.cuevas-romero@dca.ca.gov.

Sincerely,

Dean R. Grafilo

Director, Department of Consumer Affairs

cc:
- Senator Steve Glazer, Chair, Senate Committee on Business, Professions and Economic Development
- Senator Maria Elena Durazo, Chair, Senate Budget Subcommittee No. 4
- Senator Jerry Hill, Member, Senate Committee on Business, Professions and Economic Development
- Assemblymember Evan Low, Chair, Assembly Committee on Business and Professions
- Assemblymember Jim Cooper, Chair, Assembly Budget Subcommitee No. 4
- Anthony Williams, Legislative Affairs Secretary, Office of the Governor
- Alexis Podesta, Secretary, Business, Consumer Services, and Housing Agency
- Melinda Grant, Undersecretary, Business, Consumer Services, and Housing Agency

EXECUTIVE SUMMARY

This report is the first report in a series that the Department of Consumer Affairs (DCA or Department) will provide to the Legislature. The Budget Act of 2018 required the Department of Consumer Affairs to conduct an organizational change management review of the centralized services it provides to the 37 boards and bureaus it oversees. Senate Bill 840, by Senator Holly Mitchell (Chaps. 29, Stats. 2018), provides that the Department of Consumer Affairs, in consultation with the Pro Rata Work Group, shall identify and prioritize the most critical services to be reviewed and reported to the Legislature. The Department of Consumer Affairs is required to make the results of the reviews available to the Legislature as they are completed. These reports will describe existing processes and identify opportunities to achieve efficiencies.

The Department of Consumer Affairs analyzed data gathered through interviews, surveys, and process mapping. The Department of Consumer Affairs surveyed other state agencies to identify best practices and reasonable timelines for processing regulations. Additionally, the Department of Consumer Affairs reviewed 18 regulation packages that had been disapproved by the Office of Administrative Law. The purpose of reviewing the disapproved regulations was to identify common issues, determine whether disapproval could have been avoided, and how a new process can facilitate successful packages in the future.

Recommendation Highlights

This report contains findings and recommendations to improve the Department of Consumer Affairs' regulation procedures. The recommendations detailed in this report include:

1. **Improve communication and increase process transparency.** DCA needs to create a reliable system to manage and track regulations from concept through adoption. DCA should ensure that board and bureau staff have access to this tracking system. This will increase transparency and foster communication about progress and potential delays.

2. **Create master calendar with deadlines and milestones.** DCA should create and share a master calendar that includes key milestones, deadlines, and responsible parties. A shared master calendar will allow staff to track deadlines and increase the likelihood that regulations are submitted to the Office of Administrative Law with sufficient time for comments and questions.

3. **Provide comprehensive and ongoing regulations training.** The DCA Legal Affairs Division should continue to offer and expand on its current training, and develop a formal, integrated training program to ensure involved staff from the Legal Affairs Division and the boards and bureaus have the skills and knowledge needed to successfully perform critical tasks throughout the regulations process.

4. **Streamline Regulations Procedures.** An effective way to reduce the delays identified in developing and reviewing regulations is to dedicate staff devoted 100 percent to regulation development and review, as reflected in DCA's budget change proposal (BCP). Clearly defining roles, developing processes for coordinating workflow, and fostering regular communication between staff in the proposed regulations unit and other key stakeholders in the regulations process would set the stage for a smooth transition. Developing mutually agreed upon service targets and continuing to seek ways to eliminate duplication in DCA's review process would ensure the regulations process is both efficient and responsive to the boards' and bureaus' needs.

The Department of Consumer Affairs will work with the Pro Rata Work Group to create a plan to implement the recommendations contained in this report.

DEPARTMENT OF CONSUMER AFFAIRS OVERVIEW

The Department of Consumer Affairs issues licenses, certificates, registrations, and permits in over 250 business and professional categories through 37 regulatory entities comprised of boards, bureaus, committees, a program, and a commission. These 37 entities set and enforce minimum qualifications for the professions and vocations they regulate, which include nearly all of California's health care fields.

DCA's 37 regulatory entities are supported by a staff of legal, technical, and administrative professionals at the Department. These professionals provide legal, human resources, information technology, investigations, professional examinations, training, strategic planning, fiscal management, and other integral support services. DCA is committed to its core mission of consumer protection, which is shared by all its boards and bureaus. The individuals who serve at DCA inform and empower consumers, promote consumer interests before lawmakers, enforce consumer protection laws, collaborate with law enforcement to fight consumer fraud, resolve disputes between consumers and businesses, promote use of fair and valid licensing examination programs, and work to ensure that consumers have a voice in the California marketplace.

DCA's Legal Affairs Division serves as in-house counsel for the DCA director, DCA executive staff, and the boards, bureaus, and other programs of DCA. The team of attorneys provide legal analysis and opinions on laws, issues, proposed legislation, regulations, government contracts, employer-employee matters, the Open Meeting Act, the Public Records Act, and the Information Practices Act. They represent DCA before the State Personnel Board and other administrative tribunals, provide small claims advice, defend clients in depositions, and appear at hundreds of public meetings annually.

Rulemaking Procedures Prior to 2016

Prior to 2016, boards and bureaus organized under the Department of Consumer Affairs filed rulemaking packages[1] directly with the Office of Administrative Law. Boards and bureaus were not required to submit rulemaking packages to the Department of Consumer Affairs or Business, Consumer Services and Housing Agency, or its predecessor the State and Consumer Services Agency,[2] for review and approval prior to submission for publication in the Notice Register.

According to the Office of Administrative Law, this process was unusual within state government: most programs must submit regulations packages to their respective agency for approval.

1 The terms "regulations" and "rulemaking" are used interchangeably in this report.

2 The California State and Consumer Services Agency (SCSA) was a state cabinet-level agency of the executive branch of California. It was replaced by the California Business, Consumer Services and Housing Agency (BCSH) effective July 1, 2013.

Rulemaking Procedures Starting 2016

In September 2016, the Secretary of the Business, Consumer Services and Housing Agency (Agency) changed the procedures: boards and bureaus were now required to submit rulemaking packages to the department and Agency for review prior to filing with the Office of Administrative Law. This level of oversight and approval procedures for regulations is consistent with programs across state government.

The primary reason for Agency's decision was an increase in the number of regulations disapproved by OAL for failing to meet their statutory requirements. The resulting enhanced scrutiny from Agency and DCA's Legal Affairs Division successfully reduced the number of disapproved regulation packages, with the number of disapprovals falling from nine in 2016 to only one in 2018.[3]

The effort to reduce OAL disapprovals was successful and led to a more thorough examination of regulations packages during the initial and final review cycles at DCA and Agency. However, while disapproval rates plummeted, a consequence was lengthened timelines to adopt regulations.

Several boards and bureaus raised objections to the lengthened review time and reported difficulty obtaining timely updates about regulation packages under review.

Existing Regulation Review Process

There are generally five phases of regulation development and review at DCA. Phases 1 and 2 capture the initial preparation of the proposed regulation package. Phase 3 encapsulates DCA's (and Agency's) initial formal review before public notice. Phase 4 includes the notice to public, revisions to the file, and preparation of the final proposed regulation package. Phase 5 is DCA's (and Agency's) final formal review of the proposed regulation package before submission to OAL.

PHASE 1. Phase 1 begins with the recognition of the need for a regulation. Program staff (i.e. board and bureau staff) work with their DCA Legal Affairs Division attorney to draft the proposed regulation text. For boards, the board members must approve the proposed regulation text at a public meeting. For bureaus, the bureau chief must approve the proposed regulation text.

PHASE 2. During Phase 2, program staff work with their Legal Affairs Division attorney to prepare the proposed regulation package according to statutory standards. The required documents are lengthy, technical and detailed. These documents include: Initial Statement of Reasons, Notice of Rulemaking Action, Economic and Fiscal Impact Statement, and the text of the proposed regulations.

3 The number of disapproved rulemaking actions by year is based on the date of each disapproval decision, as reflected in the published decisions on the OAL's website. See Appendix A for additional detail.

Any changes to the text during this phase must be approved again by the board. For a board, this change(s) and subsequent approval(s) can add significant time (weeks or months) to the completion of the regulation to accommodate the board's meeting schedule.

PHASE 3. Phase 3 includes reviews by DCA and Agency, comprised of multiple specialized reviews within DCA. This phase begins with the program submitting three copies of its proposed regulation package to DCA's regulation coordinator, who then provides a copy to the Legal Affairs Division and Budget Office for concurrent reviews.

The Legal Affairs Division's review seeks to ensure that the proposed regulation package meets all the statutory standards for rulemaking. The review begins with the program's assigned attorney, who performs a simple review to ensure that the package submitted to the regulations coordinator was not amended by program staff after the attorney last reviewed it. The proposed regulation package is then reviewed by an Assistant Chief Counsel. As in any law firm or state law office, supervision and management of legal work is one of the primary tasks of supervising attorneys. The Assistant Chief Counsel's review ensures that each regulation package satisfies legal requirements and ensures quality and consistency of work product.

Concurrently, the Budget Office's review begins with the budget analyst and moves to a budget manager and then to the budget officer for their respective reviews. The focus of the Budget Office review is to ensure the financial and economic impacts included in the Economic and Fiscal Impact Statement—STD. 399 form (Economic and Fiscal Impact Statement) of the regulation package are relevant, accurate, and complete. Once the Budget Office completes its review, the regulations coordinator provides the proposed regulation package (incorporating the revisions of prior reviewers) to the Legal Affairs Division Deputy Director for review. The Legal Affairs Deputy Director reviews to confirm that all statutory requirements are met. Since the legal and economic reviews take place concurrently, and each may result in changes to the file, the Legal Affairs Deputy Director may be the only attorney to review the entire completed package that incorporates the prior revisions. Subsequently, the Deputy Director of Legislation conducts a review, after which DCA's Director conducts a review. The Deputy Director of Legislation reviews the package to ensure the proposed changes in the regulation package are consistent with legislative intent. As a precondition to filing any regulation with OAL, except regulations relating to examinations and qualifications for licensure, boards and bureaus must submit them to the Director for review (Business and Professions Code, § 313.1). The Director is authorized to disapprove regulations on grounds that they are injurious to the public health, safety, or welfare. The Director's initial review at this point can help minimize the need for disapprovals and shorten any subsequent reviews. Phase 3 is then concluded with a final review by Agency.

PHASE 4. Phase 4 begins with filing the rulemaking package with the Office of Administrative Law, which begins the 45-day public comment period. The program works with its attorney to review all public comments and determine whether to make changes to the regulation text based on public comment. If the program decides to amend the regulation text, there must be another 15-day public comment period. There may be additional amendments to the text, which require an additional 15-day public comment period.

During Phase 4, program staff and the attorney also draft the Final Statement of Reasons. The Final Statement of Reasons requires a response to every issue mentioned in every comment letter. The response must explain why or why not a change was made to the text based on the comment.

Once the text of the regulations is finalized, and the Final Statement of Reasons is complete, the regulation package is submitted to a board or bureau for approval. Boards must vote to approve the final package and authorize submission to OAL. After the board or bureau chief approves the final regulation package, the package is submitted to the regulations coordinator at the Department of Consumer Affairs.

PHASE 5. Phase 5 is comprised of DCA's and Agency's review of the final package. DCA's and Agency's review is focused on new materials in the regulation file such as the Final Statement of Reasons, responses to comments, and modified regulation text. After Agency completes its review, the regulation package is then sent to the Department of Finance (DOF) for its financial and economic impact review. DOF's review concludes Phase 5. Once DOF has completed its review, the regulation package is submitted by the program to OAL for final decision.

Each milestone in the review process can require the program to respond to comments or revise a portion of the regulation package. For boards, some revisions to the regulation text—particularly changes with policy implications—require board approval at a public meeting. Other non-substantive changes may be approved at a staff level. For bureaus, changes are typically approved by bureau leadership.

Each board or bureau follows its own processes and procedures for conducting Phases 1 and 2. Consequently, Legal Affairs Division attorneys tailor their support and involvement in Phases 1 and 2 to accommodate the individual needs of the board or bureau. For example, a smaller board or bureau with limited staff may rely more heavily on the attorney to draft the proposed regulation language and prepare the regulation package. Additionally, the time needed to complete Phases 1 and 2 vary widely, up to years in some cases. Given the varying processes among the boards and bureaus and the time it may take to develop a regulation, DCA considers the point when a regulation file is submitted to the regulations coordinator as the beginning of the formal review process.

EFFORTS TO SECURE OUTSIDE EXPERT

DCA pursued several procurement avenues in Fall 2018 to retain an outside expert in the state rulemaking process to review DCA's regulations process and make recommendations. DCA took the following additional steps to acquire outside expertise in regulations dedicated to this project:

- On September 12, 2018, DCA published a "request for quote" (RFQ) soliciting quotes from small business or disabled veteran business enterprises. DCA subsequently extended the submission date, and modified the qualifications requirements, to secure a responsive quote.
- Additionally, DCA sent direct emails to general counsels across state government asking them to send the solicitation to qualified contacts, or those who might be interested as a retired annuitant.
- On September 18, 2018, DCA sent direct emails with the solicitation to three candidates specifically recommended by the OAL Director.
- Beginning September 27, 2018, DCA sent the solicitation to retired annuitants listed in the state's Boomerang system.
- Although DCA briefly identified a qualified retired annuitant candidate in late October, the candidate subsequently withdrew from the project.

Difficulty attracting and hiring a qualified outside expert, combined with pressing deadlines for conducting the review activities and developing recommendations, prompted the team to proceed without a dedicated outside expert. Fortunately, the team was able to interview OAL and several other state departments' regulations staff, and this report includes best practice findings and recommendations gleaned from a detailed analysis of DCA's disapproved regulations packages and consultations with other state entities.

INITIATIVES TO IMPROVE REGULATIONS PROCESS

Following changes to the approval process for regulations in 2016, concerns were voiced regarding the time it took to complete rulemaking packages. At the time, DCA did not have a comprehensive regulation tracking system that could identify and explain delays. The concerns were amplified in the background paper prepared in advance of DCA's Joint Legislative Sunset Review Oversight Hearing on March 5, 2018. The background paper indicated that regulations had "come to a virtual standstill." As these concerns about DCA's regulatory process surfaced, DCA independently undertook several initiatives to address the concerns. DCA's Legal Affairs Division identified three areas of concern in the regulations process: 1) timeliness of the regulations review process, 2) transparency of the regulations review process, and 3) the rate of OAL disapprovals. Consequently, DCA formulated a response strategy that included assessing training needs, improving processes, and using technology to augment development and review of regulation packages.

Spearheaded by the Legal Affairs Division, DCA acted immediately to address the stated concerns. It identified and cut layers of review that could be eliminated without affecting the high quality of the reviews. It also consolidated departmental staff to streamline the process. Since DCA does not have a comprehensive tracking system that tracks regulations from the moment they are submitted for review through filing with OAL, a team comprised of Legal Affairs, Organizational Change Management (OCM), the budget office, and the Office of Information Services (OIS) staff started working on such a system.

Additionally, because of retirements and other personnel changes, the Legal Affairs Division experienced a recent influx of new attorneys. About half of the DCA attorneys joined the Department within the last three years. Accordingly, the Legal Affairs Division prioritized and encouraged regulations training for its attorneys—both OAL's three-day training and DCA's separate regulations training. All DCA attorneys have completed OAL's three-day training. The attorneys also meet intermittently to discuss improvements to the regulations process and identify best practices and common pitfalls when developing and reviewing rulemaking files.

Considering DCA's exceedingly high disapproval rate for regulations, DCA concluded that program staff also needed training on how to develop rulemaking packages. Not all program staff responsible for initial development of rulemaking files have legal experience or training, and they require additional training on the rulemaking process. Even after staff are trained, they may promote to a new position, and new staff are tasked with drafting rulemaking materials. Thus, in 2017, the Legal Affairs Division started providing regular training open to all program staff. DCA offered a total of four such training classes in 2017, 2018, and 2019, and plans to offer more in the future. The most recent class, which was offered in January 2019, had approximately 50 participants from several different boards and programs.

Lastly, DCA concluded that deadline-driven legal work contributed to regulations delays. Public Records Act requests, subpoenas and discipline cases involve strict statutory deadlines. Attorneys naturally prioritize these deadline-driven matters over other matters with less stringent deadlines, such as regulations. A similar prioritization was observed regarding the fiscal impact of regulations. The most effective way to reduce the delays identified in developing and reviewing regulations is to dedicate staff devoted 100 percent to regulation development and review, as reflected in DCA's budget change proposal (BCP). DCA is also in the most natural position to serve as a centralized hub for regulations, since it can coordinate the regulatory activities of the boards and bureaus, Department, Agency, and OAL.

For these reasons, DCA took the following steps to improve its regulations process:

- DCA prepared a BCP to create a centralized regulations unit within the Legal Affairs Division, which will significantly increase its capacity for issuing regulations. The unit will be comprised of six attorneys who will be assigned a portfolio of clients and dedicated to assisting them in developing and reviewing regulations. Currently, the attorneys assigned to each board are generalists, providing all manner of legal advice to their clients, including regulations advice. The proposed regulations unit attorneys will relieve the board counsels of this workload and focus solely on each client's regulations, which will free up the regularly-assigned board counsel to address non-regulatory workload in a timelier manner. The unit will also have a senior legal analyst and a research data specialist II, who will be responsible for coordinating rulemaking activities and reviewing economic analyses.
- All DCA attorneys completed OAL's three-day training. Even after completing the training, DCA continued directing attorneys to the training to ensure they are up-to-date on OAL review practices and procedures.
- DCA is developing a department-wide computer tracking system to better track regulations and streamline the review of regulation packages. The Legal Affairs Division met with program stakeholders to get input on the proposed system, identified and engaged a developer for the system, and currently holds weekly meetings with the vendor to develop the system.
- The Legal Affairs Division offered four separate department-wide training classes in November 2017, April 2018, May 2018, and January 2019 to improve the knowledge and skill of the staff responsible for writing rulemaking documents. The classes involved attorney trainers from the Legal Affairs Division, OAL, and Agency, and budget analysts. The training equipped staff on preparing rulemaking files, with the goal of cutting down the level of scrutiny needed to review the files.

- The Legal Affairs Division is establishing and refining internal review timelines.
- The Legal Affairs Division, Legislative Affairs Division, and budget office cut duplicative layers of review that did not harm the quality of the rulemaking files. For example, the Legal Affairs Division cut a preliminary review step that involved the assigned counsel performing a more detailed review at the point the rulemaking file was submitted to DCA. The step was confusing to staff and attorneys, and it added no value to the review process. Similarly, the Legislative Affairs Division eliminated its analyst-level review of regulation files. The files are now only reviewed by the Deputy Director of Legislation.
- DCA consolidated regulations staff into the Legal Affairs Division to reduce the amount of time lost due to transferring files throughout DCA.
- The Legal Affairs Division conducted in-house attorney trainings to identify best practices and common pitfalls when reviewing rulemaking files.

CONSULTATIONS WITH OTHER STATE AGENCIES

A critical step in identifying specific improvement initiatives was consulting with other state departments' regulatory staff to identify best practices and potential efficiencies. Follow-up consultations with these departments also informed the preparation of this report. OAL, the Department of Motor Vehicles (DMV), Department of Housing and Community Development (HCD), Air Resources Board (ARB), and Department of Public Health (DPH) participated in these consultations.

Office of Administrative Law Consultation

DCA consulted with OAL in September and December 2018. During the consultation with OAL, DCA noted the change in process that occurred in late 2016, when Agency started reviewing DCA's rulemaking files before publication in the Notice Register. As discussed, State Administrative Manual section 6614 requires that the fiscal impact statement section of the STD. 399 form must be signed by the Agency Secretary when a notice of proposed action is submitted for publication in the California Regulatory Notice Register. OAL noted that DCA was the only department that did not require the Agency Secretary to sign the STD. 399 form at the time of publication in the Notice Register. Accordingly, the process change brought DCA into compliance with other similarly-situated state departments.

OAL also reviewed DCA's disapproval decisions for the last five years and offered suggestions to minimize disapprovals, including:

- Submit regulations to OAL for final review no later than eight months after publication in the Notice Register, to ensure there is time to correct the file if necessary before the expiration of the one-year deadline to file an action with OAL.
- Ensure that all public comments are appropriately addressed.
- Utilize OAL's rulemaking checklists.
- Ensure detail-oriented staff are responsible for drafting and reviewing rulemaking files.
- Ensure each level of review adds value.
- Ensure that staff are adequately trained.

Department of Motor Vehicles Consultation

Based on the 2018 rulemaking calendar DMV filed with OAL, it anticipated working on 15 rulemaking actions in 2018. In 2017, DMV proposed 11 rulemaking actions. DMV has 26 authorized attorney positions at various classifications.[4] DMV has a regulations unit within its legal office that is comprised of two analysts and a chief of staff. The DMV's chief counsel directly oversees the regulations process for DMV and works closely with the staff to keep rulemaking files on track. At times, other attorneys will be assigned to review regulations.

Regulation development at DMV starts with an analysis of new legislation that may require regulations. DMV will often request delayed implementation for legislation that requires regulations to ensure there is sufficient time to adopt regulations and make necessary system and process changes before new laws take effect. For statutes requiring regulations, the legal office creates a master calendar of proposed regulations, based on the regulations' desired effective dates. The calendars include major milestones, such as California State Transportation Agency review, publication in the Notice Register, public comment periods, and OAL review. The calendars anticipate that regulations will be completed within approximately eight or nine months, but the schedules can be adjusted over the course of the rulemaking process. DMV estimated hat regulations were generally completed within nine to twelve months, which includes re-submissions, when needed, based on OAL informal feedback.

The legal office charts major milestones and due dates for each regulation. Late items are flagged in red as overdue. To help keep regulations on time, the DMV director's office meets monthly with the chief counsel, regulatory unit analysts, division chiefs and budget office representatives to review the status of each regulation.

Experienced regulation staff within DMV's divisions may draft initial rulemaking documents, but the chief counsel and regulations unit analysts also draft regulation documents, such as the initial statement of reasons or responses to comments, particularly when program staff are inexperienced, or the regulation is high profile.

DMV reported just one disapproved rulemaking action in 15 years. The low disapproval rate was attributed to DMV withdrawing and correcting errors OAL identified before making its final submission.

4 The attorney position count is based on the authorized attorney positions reported for fiscal year 2018–2019 in the Salaries and Wages Supplement, which is available on the Department of Finance's website at: **http://www.dof.ca.gov/budget/Salaries_Wages_Supplement/documents/2500%20TRN.pdf**.

Department of Housing and Community Development Consultation

Based on the 2017 and 2018 rulemaking calendars that HCD filed with OAL, it anticipated working on 17 rulemaking actions in 2017 and 16 in 2018. HCD has 31 authorized attorney positions at various classifications.[5]

Like DMV, HCD evaluates the need for regulations early, while legislation is being developed. HCD noted that in particularly urgent matters, a statutory exemption from the rulemaking process might be appropriate, and it pointed to a provision of the Health and Safety Code that exempts HCD from the formal rulemaking process for developing guidelines to administer appropriations of $20 million or less (Health and Safety. Code, section 50675.11). For appropriations that exceed $20 million HCD is exempt from the rulemaking process for a period of 15 months (Ibid). This exemption enables HCD to immediately develop guidelines without the need to comply with the procedural requirements of the Administrative
Procedures Act.

At HCD, division-level staff prepare the initial rulemaking documents. When ready, the file is reviewed by an attorney with subject-matter expertise in the area of law being implemented, plus an attorney that specializes in the Administrative Procedure Act's procedural and technical requirements. The file is also reviewed for fiscal impacts. Reviewers make necessary revisions to the file, and it is subsequently reviewed by the chief counsel and director.

HCD recommended using a routing spreadsheet to allow interested persons to locate a file in review and identify who reviewed it. This increased transparency into the review process helps set expectations. HCD also recommended using a change tracker to require persons making edits to a file to separately document what changes were made and the reasons for the changes. This process cuts down on unnecessary changes and helps other reviewers understand the reasons for any changes. Completing the rulemaking process within 15 months was viewed positively.

HCD also noted that it avoided disapproval decisions by ensuring that rulemaking files were submitted to OAL at least a few months before the expiration of the one-year deadline. This allowed HCD time to withdraw, correct, and resubmit a file to OAL prior to the expiration of the deadline.

5 The attorney position count is based on the authorized attorney positions reported for fiscal year 2018–2019 in the Salaries and Wages Supplement, which is available on the Department of Finance's website at: **http://www.dof.ca.gov/budget/Salaries_Wages_Supplement/documents/1000%20BCH.pdf**.

Air Resources Board Consultation

Based on the 2017 and 2018 rulemaking calendars that ARB filed with OAL, it anticipated working on 20 rulemaking actions in 2017 and 34 in 2018. ARB reported an average of approximately 11 rulemakings per year over the last five years, and it has 27 authorized attorney positions at various classifications.[6] The timeline to develop and review regulations at ARB varies depending on the complexity of the regulation. Less complex regulations may be developed in three to four months, and then typically involve an 18-month process prior to noticing the file for publication in the Notice Register. More complex rulemakings take two to three years to develop. ARB aims to submit final rulemaking files to OAL for approval approximately nine months after publication (three months before the expiration of the one-year deadline), to accommodate possible changes required by OAL and resubmission of the file to OAL.

ARB established a regulations coordination unit called the Board Administration and Regulatory Affairs Unit (Regulations Unit) within its legal office to serve as a centralized hub that ensures that all rulemaking timelines and procedures are met. The Regulations Unit is staffed by two dedicated Associate Governmental Program Analysts (AGPAs), who serve as regulations coordinators and are supervised by a Staff Services Manager I, the Board Clerk (an AGPA), and the Regulations Unit assistant (a Staff Services Analyst). Program staff are considered subject matter experts for regulations. They hold workshops and draft proposed rulemaking documents. An attorney and economic analyst are also assigned to each rulemaking action. The attorneys review rulemaking documents and provide legal guidance to program staff from concept through OAL approval. They are encouraged to be involved early and often, attend workshops and meetings, become subject matter experts and assist staff as needed. The economic analysts prepare the Form 399 and economic evaluations. A California Environmental Quality Act (CEQA) coordinator may also be involved, as necessary, as well as the legal office support staff.

The Regulations Unit helps with the initial development of regulations and ensures their progression through the development and review process. The Regulations Unit usually holds an initial meeting with the program staff. Regulations are calendared with specific internal deadlines for development and review, which incorporate the ARB's public meeting dates. Completed regulation packages are routed for review about one month before noticing with OAL. At that point, however, most reviewers have already seen or been briefed on the action. Reviewers include the regulations coordinators, the Regulations Unit manager, assigned attorney, assistant chief counsel, deputy executive officer, chief counsel, and executive officer.

6 The attorney position count is based on the authorized attorney positions reported for fiscal year 2018–2019 in the Salaries and Wages Supplement, which is available on the Department of Finance's website at: **http://www.dof.ca.gov/Budget/Salaries_Wages_Supplement/documents/3900%20EPA.pdf**.

The Regulations Unit also conducts about 10 days of in-depth regulations training annually for ARB staff. It develops and requires the use of regulation templates, as applicable, to ensure that technical Administrative Procedure Act (APA) requirements are met.

Department of Public Health Consultation

Based on the Department of Public Health's (DPH) 2017 and 2018 rulemaking calendars, it anticipated working on 25 regulations in 2017 and 22 in 2018. DPH has 41.5 authorized attorney positions at various classifications.[7]

DPH has an Office of Regulations within the Office of Legal Services, which is responsible for departmental rulemaking activities. The Office of Regulations is comprised of a supervising Staff Services Manager (SSM) II, three SSMI specialists, four AGPAs, and one limited term AGPA. There are five attorneys at various classifications assigned to rulemaking activities, and the attorneys and Office of Regulations staff are supervised by an assistant chief counsel. Regulations are assigned to a regulation coordinator, an attorney, and program staff, who are together responsible for developing rulemaking documents. Regulations may be drafted by program staff or attorneys.

DPH guidelines for drafting regulations notes that it creates an action plan and establishes aspirational timelines for regulations using a detailed tracking spreadsheet. The template spreadsheet estimates that it will take approximately 16 months to complete a rulemaking action, but also notes that actual review times will vary depending on the size and complexity of a package. DPH reported that it takes roughly one to two years from concept to the start of the 45-day comment period. DPH generates reports to all interested persons and provides status updates on rulemaking packages to ensure transparency in the process.

7 The attorney position count is based on the authorized attorney positions reported for fiscal year 2018–2019 in the Salaries and Wages Supplement, which is available on the Department of Finance's website at: **http://www.dof.ca.gov/budget/Salaries_Wages_Supplement/documents/4000%20HHS.pdf**.

REVIEW OF DCA'S ANNUAL DEMAND FOR REGULATIONS

Government Code section 11017.6 requires state agencies, including DCA boards and bureaus, to prepare a rulemaking calendar each year that includes all proposed rulemaking activities anticipated for the year. Historically, more regulations are included in the rulemaking calendar than are completed. Workload constraints prevent boards, bureaus, and DCA from completing every regulatory package that is identified on rulemaking calendars each year. Consequently, boards and bureaus are forced to prioritize their regulations. All regulations are important for consumer protection, but due to the volume of regulations and the current level of resources, boards and bureaus must determine which regulations to pursue and how to prioritize them.

Table A conservatively identifies the number of proposed regulatory packages expected to be developed each year, as reflected in the calendars filed with OAL, including regular, emergency and "Section 100" rulemakings.

TABLE A

Years	2013	2014	2015	2016	2017	2018
Annual regulations workload	116	113	133	107	164	173
Number of boards, bureaus, and programs reporting[8]	22	20	25	21	35	34

Boards and bureaus completed the rulemaking calendars in different ways, and for this reason, the number of regulations identified in Table A reflects the most conservative count of anticipated regulations for each year. A more realistic count of anticipated regulations by year ranged, as shown in Table B:

TABLE B

Years	2013	2014	2015	2016	2017	2018
Annual regulations workload	116–121	113–120	133–142	107–119	164–181	173–192

8 Not all boards and bureaus filed rulemaking calendars each year with OAL, which may result in underreporting.

Table C identifies by year the number of proposed regulatory packages submitted to DCA for review and packages filed with OAL for approval:

TABLE C						
Years	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Regulations submitted to DCA	52	64	84	59	46	51
Regulations filed with OAL	56	50	53	69	46	28

The length of time it takes to complete a rulemaking package depends on several factors: statutory notice, comment and review periods, the complexity of the regulation file, public meeting schedules, the workload capacity of designated program staff and assigned attorneys, and reviews by DCA and Agency. At times, a program may be ready to move forward with a package but may have to wait for reviews to be completed.

DCA sampled regulation timelines for five boards and bureaus, and found that, on average, it took approximately 14 months from the time a rulemaking file was submitted to DCA for review to the time it was filed with OAL for approval. Table D shows the average times for the sampled boards and bureaus to complete this period of regulation development and review:

TABLE D	
Board/Bureau	**Average Time (months)**
California Board of Accountancy	11.7
Bureau of Automotive Repair	18.75
Dental Board of California	10.28
State Board of Pharmacy	12.69
Physical Therapy Board of California	17.25

SUPPLEMENTAL REVIEW EFFORTS

In 2018, Senate Bill 840 directed DCA to conduct an internal assessment of the central services it provides to boards and bureaus: "[i]n consultation with the Pro Rata Work Group . . . [to] identify and prioritize the most critical services to be reviewed." In response to this direction, OCM is conducting a two-year study to identify opportunities for streamlining and improving the central services DCA provides to boards and bureaus. The central services included in this project were chosen based on discussions with the DCA Pro Rata Work Group, interviews with members of the group, and relevant responses from the 2017 DCA Central Services Customer Satisfaction Survey.

This study is primarily concerned with the central services that include a customer service component. Many central services activities include both customer service and oversight components. In these instances, the study will attempt to improve customer service efficiency and quality of the services provided while ensuring required oversight is maintained.

The following sections summarize the different activities and analyses OCM conducted in its examination of the Legal Affairs Division's regulation services to boards and bureaus. The analysis of regulations occurred as part of a broader study that included all Legal Affairs board counsel services. Subsequently, findings from data gathering activities are grouped by areas of opportunity for improvement to the regulation services, and recommendations are nested in each area of opportunity.

Process Mapping

Senate Bill 840 identified process mapping as a desired methodology for identifying efficiencies in DCA's central services: "Reviews shall consist of process mapping with the intent to identify opportunities to achieve efficiencies." OCM created "as is" maps of DCA's current regulations processes, drawing from interviews with Legal Affairs Division staff, budget office staff, and previous work with DCA's Office of Information Services (OIS). OCM also created "Could-Be" maps of the proposed regulation processes, incorporating both the DCA's initiatives and OCM's research-based recommendations. A complete set of the process maps are provided in Appendix B.

Review of Disapproved Regulation Packages

OCM also conducted a review of DCA's disapproved regulation packages from 2016 and 2017. The purpose of the review was to discern if there were any pervasive commonalities in the disapprovals that could help DCA minimize future disapprovals. The review included a total of 18 DCA regulation packages that were disapproved during the two-year period. OCM analyzed the disapproved regulations across four areas of concern:

- The Administrative Procedures Act's six standards of review pursuant to Government Code section 11349.1.
- Submission time frames for OAL final decision-making.
- Submitting unit or DCA program.
- Status after disapproval.

Based on preliminary analysis, no common patterns emerged across all the disapproved packages. Some recurring examples of "Major" and "Minor" issues cited by OAL occurred in the categories of Clarity, Necessity, and failure to follow Administrative Procedure Act (APA) procedure. Detailed analysis of the disapproved regulations packages is included in Appendix C.

Stakeholder Input

Program Survey

In September 2018, OCM distributed a survey to all executive officers and bureau chiefs to obtain feedback about regulatory and other legal services received from the Legal Affairs Division. Participation was optional and 28 respondents completed the survey. The survey contained both multiple choice and free form text response options. A primary goal was to obtain detailed, quantitative data to further clarify comments raised during interviews. Survey analysis focused on identifying challenges and improvement opportunities related to the regulations process, overall communication, and workload prioritization.

Legal Staff Interviews and Survey

From July through September 2018, OCM conducted individual interviews with members of Legal Affairs Division staff, including management (4), staff attorneys (17), and legal support staff (5). The purpose of the interviews was to gain a baseline understanding of the division's perspective on the current regulations process and its current activities in the process. The interviews were conducted using interview guides and the responses of the interviewees were kept anonymous in the report findings and conclusions.

OCM also distributed a survey to the staff attorneys to gain a deeper understanding about regulations development support and other legal services provided to boards and bureaus. Participation was optional and 11 respondents completed the survey. The survey contained both multiple choice and free form text response options. Several questions mirrored those in the boards and bureaus program survey to illuminate similarities and differences in perspectives about the regulations process. Survey analysis focused on identifying challenges and improvement opportunities related to the regulations process, overall communication, and workload prioritization.

FINDINGS AND RECOMMENDATIONS

1. Improve Communication and Transparency Around the DCA Regulations Process

Interviews with board and bureau staff revealed that there are several different viewpoints about which activities mark the beginning of DCA's regulation process and how long this process should take. Additionally, the program survey indicated a need for more proactive communication regarding the status of a regulation once the regulation is sent to DCA for formal review. Furthermore, DCA lacks a robust, reliable internal tracking system for regulations workload. OCM also discovered there is no tool or process in place to provide key stakeholders a way to easily view a regulation's status or location throughout regulation promulgation. OCM's recommendations include:

a. DCA should develop consensus among representatives from the Legal Affairs Division, boards and bureaus, Budget Office, and Executive Office about DCA's official regulation process, including when the process starts and major milestones.

b. While DCA conducted several training classes regarding regulations and the regulations process, attendance is voluntary and more communication about the process is needed. DCA should conduct a "townhall meeting" for all stakeholders to announce the official DCA regulation process, as well as introduce the initiatives discussed in this paper to help ensure the DCA regulation process is both efficient and transparent.

c. DCA should develop and implement a continuous communication program that reinforces definitions, standards, expectations, and changes related to the official regulations process.

d. DCA should institute regular meetings to keep regulations on schedule, coordinate activities, and resolve problems.

- The Executive Office should facilitate the meetings with responsible and accountable parties in attendance.
- The meetings should be driven by recurring status reports that include high-profile or complex regulations and regulations in danger of missing scheduled milestones, color-coded by level of risk.

e. DCA should implement a robust and reliable regulations tracking system with appropriate access to all DCA stakeholders that, at a minimum, tracks movement, status, and responsible parties throughout the official DCA regulation process. The system should include:

- Notifications to responsible and interested parties about upcoming and overdue activities, color coding to indicate level of urgency.
- Ability to track progress and delays between milestones.
- User acceptance testing to ensure the system design works "in real life". Initial, ongoing, and specialized training (system updates or role-based changes) on use of the system.

2. Create Master Calendar with Deadlines and Milestones.

Competing workload priorities and the lack of firm regulations package deadlines results in challenges to completing quicker reviews of regulations. OAL reported that many state organizations submit regulations for final decision with sufficient time to withdraw and resubmit packages within the one-year statutory deadline if needed. DMV's regulation process is centralized: it centrally develops and calendars milestones and deadlines to ensure at least a four-month cushion to allow for withdrawals with resubmissions before the one-year deadline from public notice. In addition, DMV staff monitor new legislation, proactively identify regulations that may be needed, and regularly requests delayed implementation of new legislation to provide adequate time to develop regulations. Likewise, HCD has a statutory exemption from the Administrative Procedures Act for some rulemaking activities, enabling it to issue rules without the need to comply with the procedural requirements of the APA. OCM's recommendations include:

a. Creating a centralized calendar of all regulations and associated milestones with clearly identified deadlines for responsible parties throughout DCA's official regulation process to ensure regulations are enacted by specified dates. The deadlines for milestones during the final formal review phase should track toward submitting a regulation package for OAL final decision with sufficient time for withdrawal and resubmission; ideally between a three or four-month cushion of time.

b. Developing a process to forecast potential regulations from new legislation, evaluating the likelihood of statutory exemptions from the rulemaking process, and estimating the time needed to successfully implement regulations if an extension is requested.

3. Provide Comprehensive and Ongoing Training.

Concerns were voiced about a wide variation in the quality of regulation packages submitted, which signals the need for a more formal, ongoing, and comprehensive training program that addresses all aspects of the regulation process. Attorneys, boards, and bureaus also shared their concerns about long wait lists for OAL training and reported a desire for more opportunities to learn the DCA regulation process. Boards and bureaus expressed a need for augmented training on how to successfully complete the Initial Statement of Reasons (ISOR). After reviewing the disapprovals for DCA regulations from the last five years, OAL reported recurring problems with DCA's ability to meet the standards of Clarity and Necessity in the regulation packages, which could be addressed through training. Thus, OCM's recommendation includes designing and implementing an integrated training program for all stakeholders who participate in DCA's regulation process that includes both recurring and ad-hoc components, such as:

a. An online tutorial introducing DCA's regulations process that addresses roles and processes from identifying the need for a regulation through OAL's final decision. The training would be developed in collaboration with Legal Affairs; with open registration but mandatory for new DCA staff (program and central services staff) directly involved in regulations promulgation.

b. An online training series that describes each phase of the process, identifies differences between boards and bureaus in the regulatory process, provides guidance on how to draft rulemaking documents, outlines expectations about using associated tools and systems, and communicates expectations related to quality, service, and performance. This would be mandatory for staff who are new to the regulations process at DCA.

c. An online training series focused on expected roles and responsibilities for program staff involved in the regulations process, including available tools and support from the regulations unit.

d. Job shadowing for staff who are new to the regulations unit to learn relevant practice law, policies and procedures, and associated tools and systems.

e. An annual brown bag session that addresses new processes, policies, tools, or practice laws that affect DCA's regulations process. This informal session would be open to both program and DCA staff.

4. Streamline Regulations Procedures.

Boards and bureaus reported a perception that the regulations process is overly complex with too many layers of review. In the surveys, attorneys and boards and bureaus indicated that getting feedback from multiple reviewers was confusing and added time to the regulations process. OCM's recommendations include:

a. Attempt to hire attorneys who have experience with regulations and APA procedures.

b. Implement standardized forms, language, templates, and checklists for the regulation packages.

c. As often as possible, regulation development and review activities should be coordinated jointly between staff, including program and Legal, to reduce time spent sharing documents and comments back and forth between staff.

- Identifying proposed regulation packages whose initial documents have NOT been changed after the public comment period such that DCA's (and Agency's) final formal review and focusing only on the added documents that are necessary for submission to OAL, could reduce substantially this final formal review period.

d. Implement an online system that captures the regulation life cycle from drafting the initial regulation language through program's approval, DCA's formal reviews, and OAL's final decision.

- The system should track the progress of regulations through each phase and ensure data integrity through drop-down boxes and required fields to support a streamlined regulations process, minimize delays, and eliminate confusion caused by missing documents, conflicting versions, or breakdowns in process flow.

e. Develop a process and/or system for capturing the Legal Affairs Division's institutional knowledge for each program and cross-program legal issues (e.g., formal letters of opinions).

f. Work with boards and bureaus to develop comprehensive and mutually agreed upon service level targets throughout the regulation process.

g. Implement a continuous and formal feedback loop between all participants in the regulations process that includes action plans and follow-up activities.

h. Develop and execute a comprehensive training and communication plan to ensure a smooth transition for the new regulations unit and associated processes.

i. Clearly delineate roles and coordinate workflow between program dedicated attorneys, regulations unit attorneys, legal analysts, and economic analysts during both the transition period and the steady-state regulations process.

j. The new analyst position as part of the BCP for the proposed regulations unit will increase efficiency around creating and reviewing regulation packages, with a focus on completing the Economic and Fiscal Impact Statement. For boards and bureaus with limited regulations experience or capacity, this position could assist in preparing fiscal and economic analyses and related analyses in the Initial Statement of Reasons (ISOR) and Notice of Proposed Action. The analyst would also interface directly with boards and bureaus during the regulations process, serving as a single point of contact and streamlining communication with them. With the new position serving as liaison to external and involved parties, there is potential for a more expedient process via the proposed regulations unit, which will reduce the time required to complete economic reviews.

APPENDICES

2018

(1) Bureau of Real Estate Appraisers—OAL No. 2018-0918-01 (Decision date: 11/6/2018)

2017

(1) California State Board of Pharmacy—OAL No. 2016-1130-01 (Decision date: 1/23/17)

(2) Board of Behavioral Science—OAL No. 2016-1213-01 (Decision date: 2/2/17)

(3) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board—OAL No. 2016-1220-02 (Decision date: 2/8/17)

(4) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board—OAL No. 2017-0104-02 (Decision date: 2/22/17)

(5) Board of Chiropractic Examiners—OAL No. 2017-0310-03 (Decision date: 5/1/17)

(6) Dental Board of California—OAL No. 2017-0413-02 (Decision date: 6/1/17)

(7) Bureau of Automotive Repair—OAL No. 2017-0417-04 (Decision date: 6/6/17)

(8) California Board of Registered Nursing—OAL No. 2017-0724-02 (Decision date: 9/12/17)

(9) California Board of Registered Nursing—OAL No. 2017-1020-01S (Decision date: 12/13/17)

2016

(1) Veterinary Medical Board—OAL No. 2016-0125-04 (Decision date: 3/15/16)

(2) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board—OAL No. 2016-0211-02 (Decision date: 3/24/16)

(3) Board of Accountancy—OAL No. 2016-0329-06S (Decision date: 5/9/16)

(4) California State Board of Pharmacy—OAL No. 2016-0603-02 (Decision date: 7/25/16)

(5) Physical Therapy Board—OAL No. 2016-0616-01 (Decision date: 8/4/16)

(6) Professional Fiduciaries Bureau—OAL No. 2016-0825-01 (Decision date: 10/13/16)

(7) California Acupuncture Board—OAL No. 2016-0830-01 (Decision date: 10/19/16)

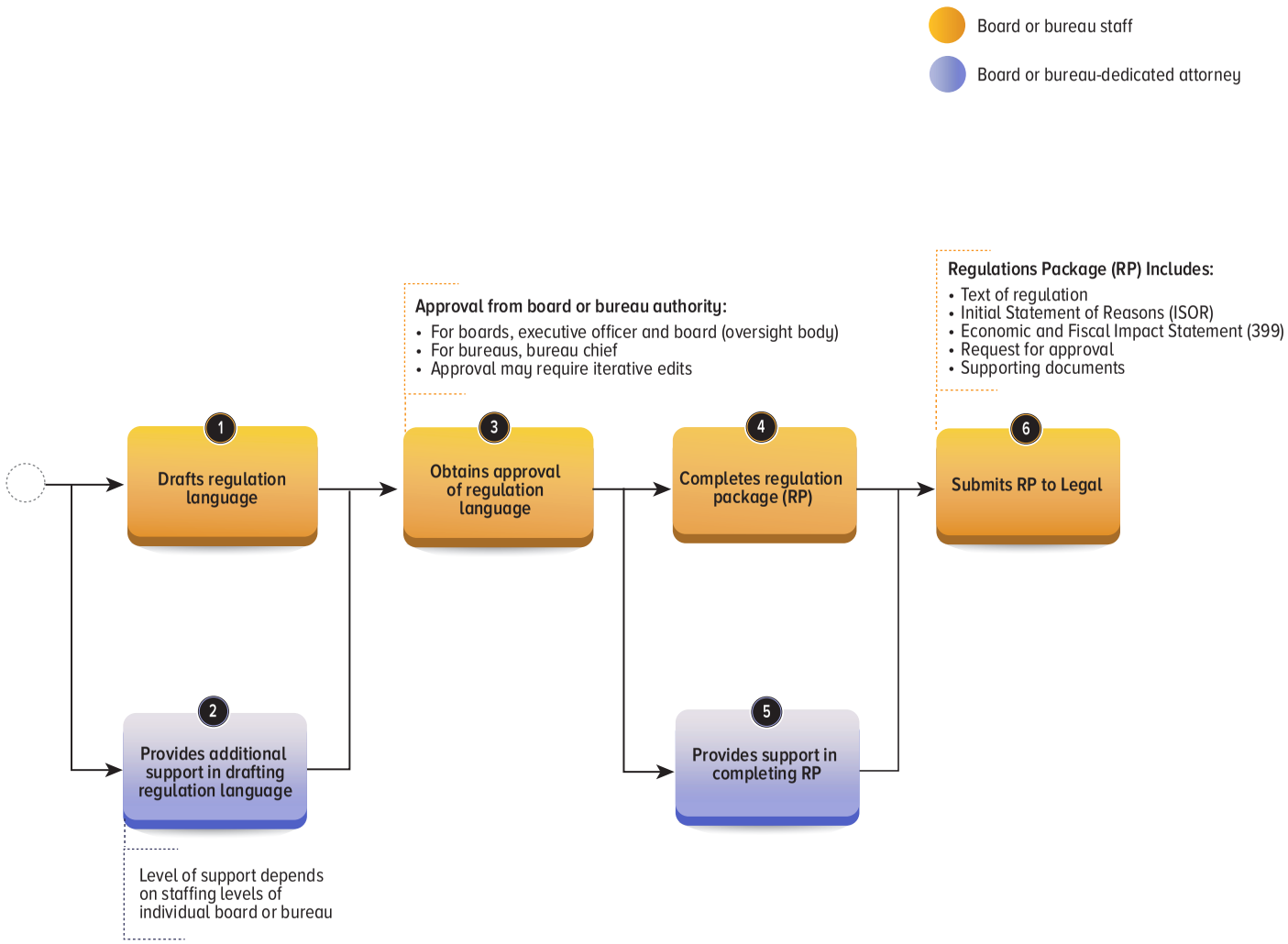
(8) Osteopathic Medical Board of California—OAL No. 2016-1025-04 (Decision date: 12/16/16)

(9) California State Board of Pharmacy—OAL No. 2016-1109-02 (Decision date: 12/30/16)

As-Is DCA Formal Regulation Pre-Review Process

(Phase 1–Conception and Board or Bureau Approval of Language and Phase 2–Preparation of Package)

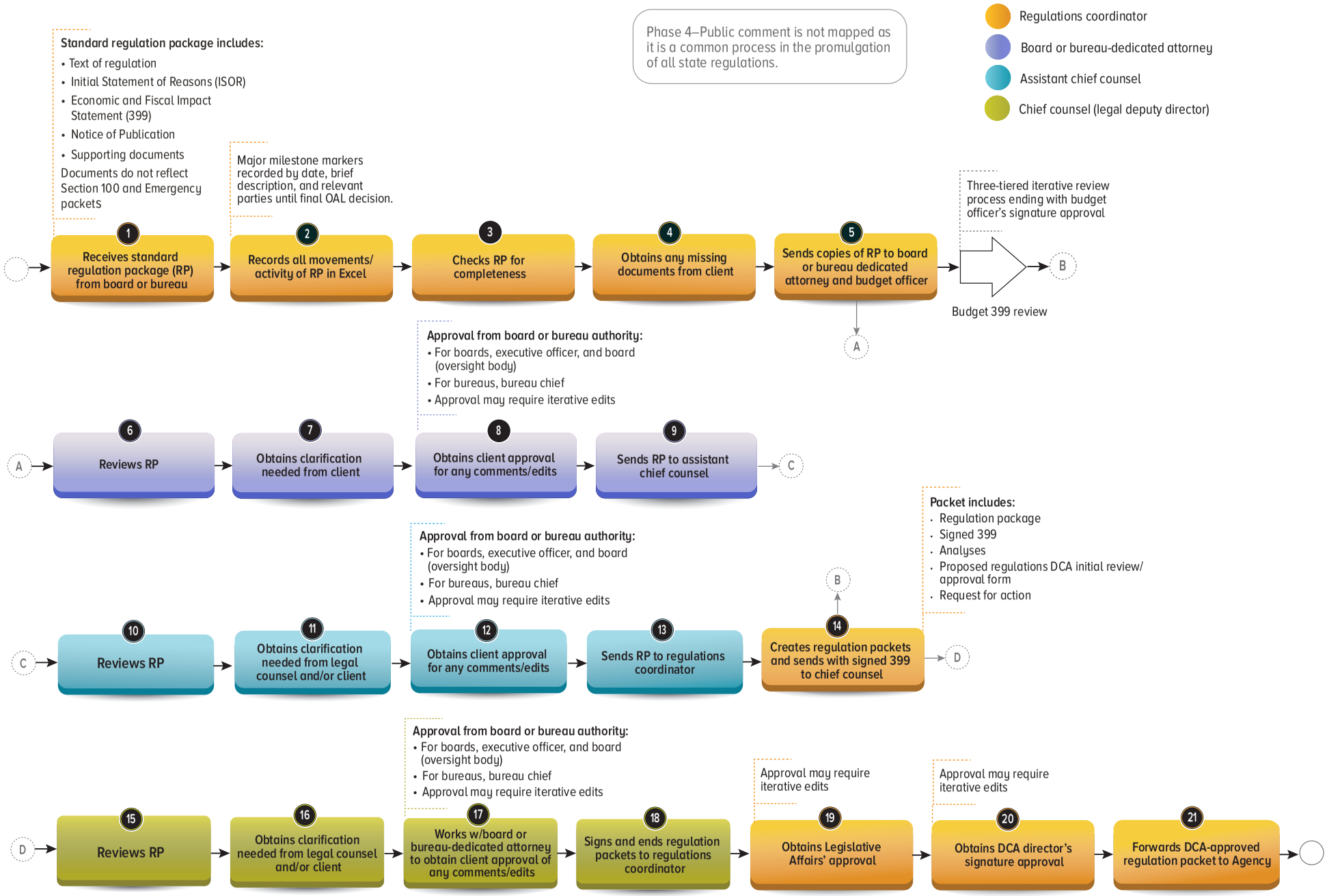
2/6/19



As-Is DCA Formal Regulation Review Process

(Phase 3–Initial Formal Review and Phase 5–Final Formal Review)

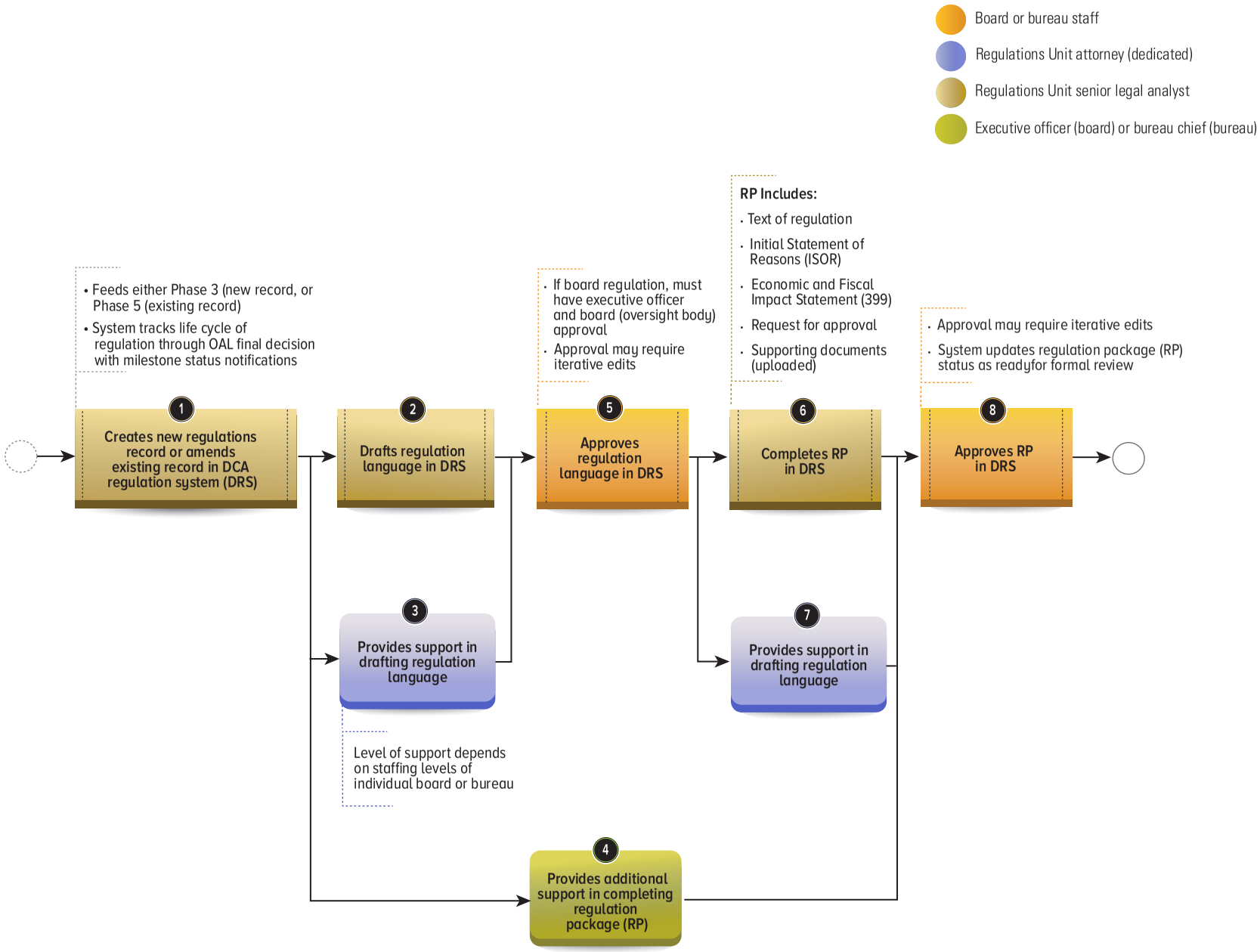
2/6/19



Could-Be DCA Regulation Pre-Review Process

(Phase 1–Conception and Board or Bureau Approval of Language and Phase 2–Preparation of Package)

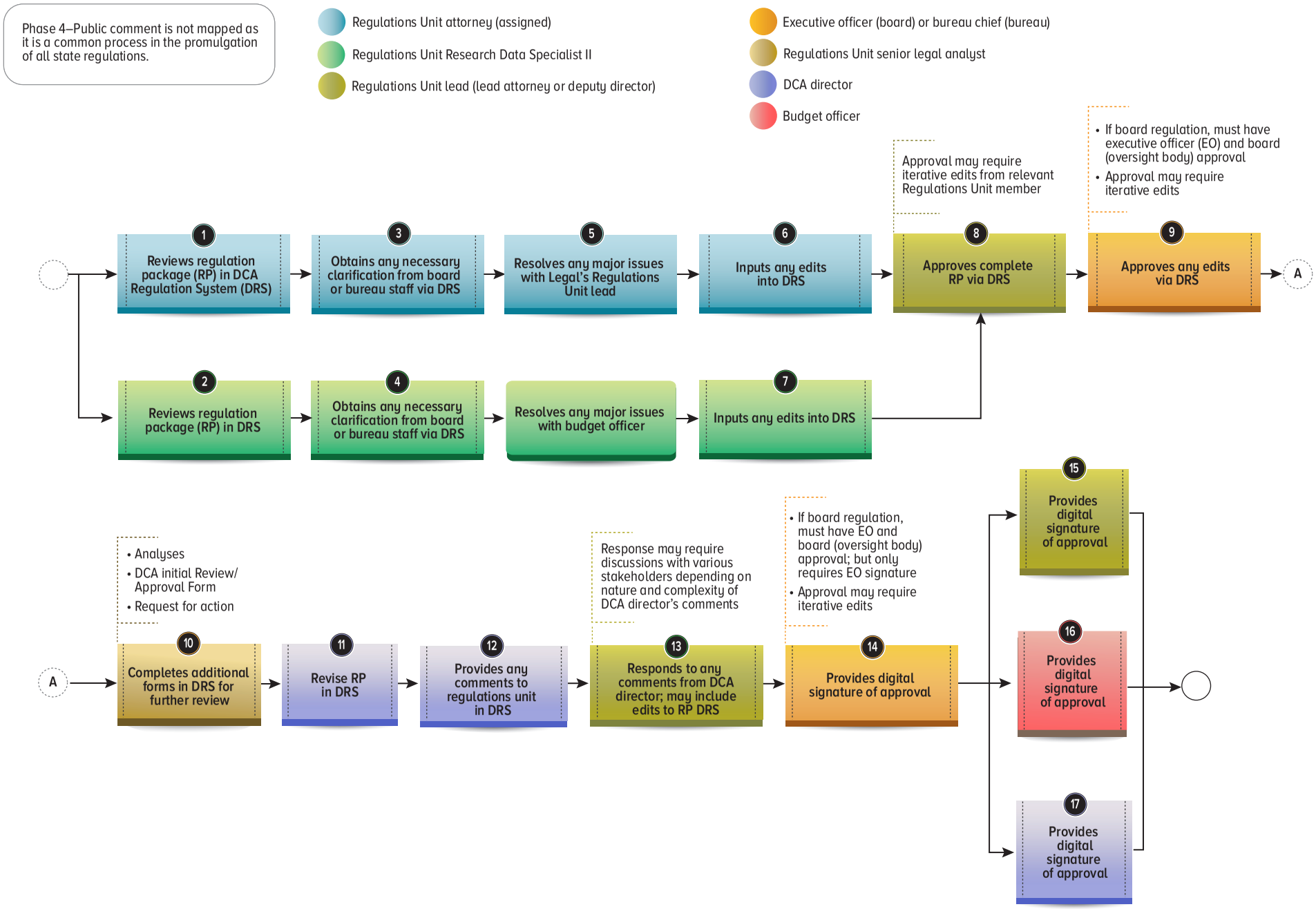
2/6/19



Could-Be Formal Regulation Review Process

(Phase 3–Initial Formal Review and Phase 5–Final Formal Review)

2/6/19



BOARD OF REGISTERED NURSING, ADVANCED PRACTICE REGISTERED NURSE PRACTITIONERS

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
October 20, 2017	December 6, 2017	December 13, 2017

SUMMARY OF REGULATORY ACTION: This regular rulemaking by the Board of Registered Nursing (Board) proposes to (1) update definitions relating to nurse practitioners and nurse practitioner education programs; (2) identify categories of nurse practitioners; (3) update requirements for obtaining certification and evaluating a registered nurse's qualifications to be certified as a nurse practitioner; (4) establish requirements for nurse practitioner education programs in California; (5) establish requirements for reporting nurse practitioner education program changes; and (6) establish requirements for clinical practice experience for nurse practitioner students enrolled in an out-of-state nurse practitioner education program.

DECISION: The Office of Administrative Law (OAL) disapproved the above-referenced rulemaking action because the proposed regulations failed to comply with the consistency, clarity, and necessity standards of the Administrative Procedure Act (APA). Additionally, the Board failed to follow procedural requirements in adopting the proposed regulations. All of these issues must be resolved prior to OAL's approval of regulations.

CONSISTENCY: The APA requires proposed regulations to be consistent with other laws.

- Since the proposed $30 temporary nurse practitioner certificate fee falls outside of the statutory range, the proposed fee listed in the Certification Application violates the consistency standard of the APA.
- Since the proposed $150 fee falls out side of the statutory range, the proposed fee listed in the Certification Application also violates the consistency standard of the APA.
- Since the proposed $50 Furnishing Number Application fee falls outside of the statutory range, the fee listed in the application and section 1417; subdivision (22), violates the consistency standard of the APA.

CLARITY: Government Code (GC) section 11349 (c), defines "clarity" to mean that the regulations are "written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them."

- The OAL decision cites issues related to clarity in 11 sections of the proposed regulation.
- In addition to the clarity issues identified above, there are other less-substantial clarity issues that will be discussed with the Board, i.e., grammar typos, etc.

NECESSITY: The record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

- The necessity for many proposed provisions is absent throughout much of the Initial Statement of Reasons (ISOR). The ISOR only provides general statements of necessity for entire sections and both documents incorporated by reference in this rulemaking. As such, specific provisions where the Board is exercising discretion lack corresponding statements of necessity in the ISOR. Also, although the Board is relying upon two documents in this rulemaking, the ISOR fails to state whether and to what extent these documents provide the basis for specific provisions proposed in this rulemaking.

FAILURE TO FOLLOW APA PROCEDURES:

Incorporation by Reference

- There are two documents mentioned in the proposed regulations that have a regulatory effect. Based on the similar titles, it is unknown whether these two documents are, in fact, one document. Regardless, the regulations contained in documents incorporated by reference must be adopted pursuant to the APA.

Originally Proposed Text

- GC section 11346.2, (a)(3), requires that an agency "use underline or italics to indicate additions to, and strikeout to indicate deletions from, the [CCR]." The originally proposed text—which was noticed at the beginning of the 45-day public comment period—failed to accurately indicate changes to the CCR. This deficiency led to one substantive in consistency in section 1484, (h) (10), where the text between and including "shall be sufficient" and "the nurse practitioner category" should have been underlined to reflect an addition to the CCR.

ISOR—Significant Adverse Economic Impact on Business

- The ISOR does not provide any "facts, evidence, documents, testimony; or other evidence on which the agency relies" (ibid.) to support the Board's determination.

Undated Informative Digest (UID)

- Three statutes affecting the proposed regulations were amended after publication of the 45-day notice and before the Board submitted this rulemaking action to OAL for review: Business and Professions Code sections 2715 (amended by Statutes of 2016, Chapter 86, Section 5 (5:13.1171), effective January 1, 2017); 2786.5 (amended by, Statutes of 2016, Chapter 799, Section 14 (S.B. 1039), effective January 1, 2017); and 2815 (id. at section 17, effective January 1, 2017). However, the UID does not mention or discuss the amendments to these three statutes.

FSOR—Incorporation by Reference

- When an agency incorporates a document by reference, the agency must demonstrate in the FSOR (1) "that it would be cumbersome, unduly expensive, or otherwise impractical to publish the document in the. [CCR,]" and (2) "that the document was made available upon request directly from the agency or was reasonably available to the affected public from a commonly known as specified source." (Cal. Code Regs., tit. l; §20, subd. (c)(1) and (2).) As previously mentioned, the Board proposes to incorporate the Certification Application and the Furnishing Number, Application by reference in this rulemaking. However, the Board failed to satisfy the requirements of subdivision (c)(1) and (2) of section 20 in title 1 of the CCR.

OAL Attorney: Steven J. Escobar

BOARD OF REGISTERED NURSING, CREDIT FOR MILITARY EDUCATION/EXPERIENCE

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
Not provided	Not provided	September 12, 2017

SUMMARY OF REGULATORY ACTION: This rulemaking action proposes to implement Senate Bill 1466 (Chapter 489, Statutes of 2015, by expanding requirements for registered nursing education programs (hereafter "nursing programs") to award students credit for military education and experience toward the education requirements for licensure as a registered nurse.

DECISION: The Office of Administrative Law (OAL) disapproved the proposed rulemaking action for failure to comply with the clarity and necessity standards of the Administrative Procedure Act (APA) and for failure to comply with certain procedural requirements of the APA, pursuant to Government Code (GC) sections 11349, 11349.1, and 11346.2.

CLARITY: The Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. As a result of its review, OAL found that the following proposed provisions failed to meet the clarity standard:

- Section 1418
- Section 1423.2(a)
- Section 1423.2(d)
- Section 1424(b)(3)
- Section 1424(b)(4)
- Section 1426(d)(1)

NECESSITY: The Board's Initial Statement of Reasons (ISOR) and its rulemaking record lacked the agency's rationale for the determination that certain provisions were reasonably necessary to carry out the purpose and address the problem for which the provisions were proposed. The following proposed provisions lacked explanations of their necessity to implement SB 466:

- Section 1423.1(a)
- Section 1423.1(c)
- Section 1423.1(d)
- Section 1423.2(a)
- Sections 1423.2(b)(c)(d) and 1424(b)(4)

FAILURE TO FOLLOW APA PROCEDURES:

- Failure to comply with GC section 11346.5(a)(3)(A).
  - » The Board's notice failed to include a clear summary of the effect of the proposed action.
- Failure to comply with GC section 11346.2(a)(2).
  - » The Board failed to specify reference citations.
- Failure to comply with title 1 California Code of Regulations section 44(b).
  - » The Board failed to include in the rulemaking record a certification regarding the availability of modified text.

OAL Attorney: Dale P. Mentink

BUREAU OF AUTOMOTIVE REPAIR, MOBILE AUTOMOTIVE REPAIR ADVERTISING

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
April 17, 2017	May 30, 2017	June 6, 2017

SUMMARY OF REGULATORY ACTION: On April 17, 2017, the Bureau of Automotive Repair (Bureau) submitted to the Office of Administrative Law (OAL) this proposed regulatory action to adopt and amend various sections in title 16 of the California Code of Regulations (CCR). These regulatory changes are proposed to establish registration, advertising, and other standards for automotive repair dealers who engage in the business of mobile automotive repair and who do not operate a currently registered place of business where the diagnosis or repair of motor vehicles is performed.

DECISION: On May 30, 2017, OAL notified the Bureau that OAL disapproved the proposed regulations because the Bureau failed to follow procedural requirements of the California Administrative Procedure Act (APA). This decision of disapproval of regulatory action explains the reasons for OAL's action.

FAILURE TO FOLLOW APA PROCEDURES:

- Failure to obtain Department of Finance signature on Form STD. 399.
- Improper illustration of text.
- Failure to name DCA in section B.6 of Form 400.
- Failure to provide a certification made by head of the agency or their designee.
- Failure to include authority and reference citations.
- Failure to include in the table of contents the required affidavit or declaration under penalty of perjury.

OAL Attorney: Thanh Hyunh

DENTAL BOARD OF CALIFORNIA, FEE INCREASE

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
April 13, 2017	May 25, 2017	June 1, 2017

SUMMARY OF REGULATORY ACTION: In this rulemaking action the Dental Board of California (Board) is proposing to amend sections 1021 and 1022 of title 16 of the California Code of Regulations (CCR). These amendments increase the fees for dentists and dental assistants. This rulemaking action also proposes to remove some fees and adopt other new fees.

DECISION: On April 13, 2017, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On May 25, 2017, OAL notified the Board of the disapproval of this regulatory action. The reason for the disapproval was failure to comply with the "necessity" standard of Government Code (GC) section 11349.1. This decision of disapproval of regulatory action explains the reasons for OAL's action.

NECESSITY: In order to meet the "necessity" standard of GC section 11349.1, the record of the rulemaking proceeding shall include: (1) a statement of the specific purpose of each adoption, amendment, or repeal; and (2) information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision.

Issue 1

- Necessity was provided in the Initial Statement of Reasons (ISOR) for this proposed change, but the Board elected to amend this fee again during a Board hearing after the initial public comment period. The revised text was sent out for a 15-day public comment period. The Board, therefore, is required to provide the necessity for this change in the Final Statement of Reasons (FSOR).
- Additionally, because the $168 fee approved by the Board during the adoption hearing on August 19, 2016, was not the fee amount noticed or submitted as part of the final text, the Board must determine and approve the correct fee amount needed. The Board must then document in the FSOR the necessity for the chosen fee.

Issue 2

- Necessity was provided in the ISOR for this addition to the CCR. During the subsequent 15-day public comment period this language disappeared from the Board's proposed rulemaking text. The Board is required to provide necessity for this text change in the FSOR as an update to the ISOR. The failure to explain the need for the removal of this proposed fee constitutes a violation of the necessity standard of the APA.

OAL Attorney: Peggy J. Gibson

BOARD OF CHIROPRACTIC EXAMINERS, APPLICATION FOR LICENSE AND CE REQUIREMENTS

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
March 10, 2017	April 24, 2017	May 1, 2017

SUMMARY OF REGULATORY ACTION: This rulemaking action by the Board of Chiropractic Examiners (Board) proposes to amend its existing "Application for License to Practice Chiropractic" (Form 09A-1, rev. 05/16), incorporated by reference in section 321 of title 16 of the California Code of Regulations (CCR), to include various new requirements. In addition, the Board proposes to incorporate two new forms in section 321: "Verification of Prechiropractic Hours" (Form 09B-3, new 07/14) and "Chiropractic College Certificate" (Form 09B-2, new 07/14). This action also includes amendments to title 16 of the CCR designed to incentivize participation in examination development and assist past and present members of the U.S. armed forces with obtaining and maintaining Board licensure.

DECISION: On March 10, 2017, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On April 24, 2017, OAL notified the Board of the disapproval of this regulatory action. The reasons for the disapproval were failure to comply with the "necessity" and "clarity" standards of Government Code (GC) section 11349.1. This decision of disapproval of regulatory action explains the reasons for OAL's action.

NECESSITY: The record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

Issue 1

- Form 09A-1 includes a cover sheet that contains instructions and information intended to help the applicant properly complete the application form. The Board refers to this cover sheet as a "check sheet." The Initial Statement of Reasons (ISOR) provides no specific evidence of the need to adopt the italicized text: *If the report no longer exists or is not available, you must obtain a letter from the court, on their letterhead, specifying that fact* [italics added for emphasis].

Issue 2

- The problem is that while the Board identified the specific documentation that would furnish satisfactory evidence of military service and legal relationship status, it did not provide any evidence in the rulemaking record to explain the reasons for proposing that documentation.

Issue 3

- Ultimately, in order to meet the necessity standard of the Administrative Procedure Act (APA), the rulemaking record must include substantial evidence demon stating why the Board needed to adopt the forms in the ways described above and the evidence then needs to be made available to the public pursuant to GC section 11347.1

CLARITY: GC section 11349, subdivision (c), defines "clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

Issue 1

- It is not clear how the Board will determine the number of continuing education (CE) hours a participating licensee will be credited.

Issue 2

- ... ambiguities and inconsistencies in the requirements will create confusion among directly affected applicants and may result in the unwarranted rejection of applications by the Board. These violations of GC section 11349.1 and section 16(a)(1) of title 1 of the CCR must be addressed by the Board prior to resubmitting this action to OAL for review.

Issue 3

- Under the heading, "PRACTICE IMPAIRMENT OR LIMITATIONS," The Board must clearly define the scope and meaning of the proposed text in order to narrow this question down to a single, reasonable interpretation that will satisfy the requirements of GC section 11349.1 and section 16(a)(1) of title 1 of the CCR.

Issue 4

- As previously discussed, Forms 09B-2 and 09B-3 are required to be signed by a representative from the school attended by the applicant. Form 09B-2 includes no such requirement and appears to permit any school employee to sign the form. This creates an inconsistency between Form 09B-2 and the Board's description of the form in the rulemaking record, which is a violation of section 16, (a)(2) of title 1 of the CCR.

OAL Attorney: Eric Partington

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD, SPEECH-LANGUAGE PATHOLOGY ASSISTANTS

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
January 4, 2017	February 16, 2017	February 22, 2017

SUMMARY OF REGULATORY ACTION: On January 4, 2017, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) submitted to the Office of Administrative Law (OAL) this proposed regulatory action to amend various sections in title 16 of the California Code of Regulations (CCR). The amendments incorporate the American Speech-Language-Hearing Association's Speech Language Pathology Assistant Scope of Practice (2p13), address the level of experience that supervisors of a licensed speech-language pathologist are required to have, allow supervision to be done on-site or by way of electronic means, and update form SPA 110—Responsibility Statement for Supervisors of a Speech-Language Pathology Assistant—that is incorporated by reference.

DECISION: On February 16, 2017, OAL notified the Board that OAL disapproved the proposed regulations because the regulations failed to comply with the clarity and necessity standards of Government Code (GC) section 11349.1 and the Board failed to follow procedural requirements of the California Administrative Procedure Act (APA). This decision of disapproval of regulatory action explains the reasons for OAL's action.

CLARITY: GC section 11349 (c), defines "clarity" to mean "written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them."

When to submit form SPA 110 to the Board

- ... internal inconsistency between the regulation text and the form text causes the proposed action to be unclear because it provides two different compliance dates; one is for 30 days and the other for 14 days. Further, it provides two different types of deadline computation; one for 14 calendar days and the other is for 14 business days. Those directly affected would not know the exact time frame within which the form is required to be submitted to the Board.

Who signs form SPA 110 under penalty of perjury

- ... the text of form SPA 110—Responsibility Statement for Supervisors of a Speech-Language Pathology Assistant—fails to comply with the clarity standard of the APA.

NECESSITY: The record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

- The proposed regulations amend one document incorporated by reference: SPA 110—Responsibility Statement for Supervisors of a Speech-Language Pathology Assistant—and adopt another document that is incorporated by reference: the American Speech-Language-Hearing Association's Speech-Language Pathology Assistant Scope of Practice (2013). However, the Initial Statement of Reasons (ISOR) does not provide any necessity for the amendments to, or contents of, either document.

FAILURE TO FOLLOW APA PROCEDURES:

Failure to Obtain Department of Finance Signature on Form STD. 399

- A review and signature from Department of Finance must be obtained and indicated on the STD. 399 before this rulemaking action can be approved by OAL.

Failure to Summarize and Respond to Public Comments

- The Board is required to summarize and respond to all comments received, pursuant to GC section 11346.9 (a)(3), before resubmitting the rulemaking action to OAL for review.

Improper Illustration of Text

- The proposed regulations and forms incorporated by reference were noticed to the public; however, the text was not accurately illustrated so that the public would know what the exact changes were in order to comment on those changes.

Failure to Identify Document or Form Incorporated by Reference

- In the file, the Notice of Proposed Action did not identify any documents incorporated by reference.

Failure to Attach the Documents Incorporated by Reference to Form 400

- The Board did not attach either of the two documents incorporated by reference to Form 400. Upon resubmittal, the Board must attach to Form 400, along with the proposed regulation text, both the Responsibility Statement for Supervision of a Speech-Language Pathology Assistant (SPA 110, rev. 01/16) and the Speech-Language Pathology Assistant Scope of Practice (2Q13).

Inadequate Section 44 Confirming Statement

- … upon resubmittal, the rulemaking file's confirming statement for the 15-day public comment period must state that the Board complied with title 1, section 44 of the CCR, rather than section 11346.4(x)(1) through (4) of the GC.

Failure to Include all Required Documents in the Rulemaking File

- According to the 45-day regulation text, it appears that the Board modified form SPA 110 by changing the revision date of the forth from "12/99" to "07/15." However, an incomplete form is included in the file; that is, only two out of three pages of the form are included in the record.

MISCELLANEOUS: The following issues must be addressed by the Board prior to resubmitting its rulemaking action to OAL:

- In section B.4. of Form 400, the Board included the period of "October 2, 2015–November 23, 2015." It appears that these are the dates of the 45-day comment period. However, section B.4. of Form 400 should only include "all beginning and ending dates of availability of modified regulations and/or material added to the rulemaking file (Cal. Code Regs., tit. 1, §44 and Gov. Code §11347.1)." Upon resubmittal, the dates of the 45-day comment period should not appear in this section of Form 400.
- The information in the Final Statement of Reasons (FSOR) incorrectly references the Application for Speech-Language Pathology Assistance (form SPA 100) as a document incorporated by reference. However, form SPA 100 is not affected by this proposed action. This must be clarified upon resubmittal of this regulatory action.
- The proposed modifications in the regulatory text caused various subdivisions to be renumbered; however, the affected subdivisions were not properly renumbered. The subdivisions. in the regulation text must be properly renumbered upon resubmittal.
- The affidavit located in the table of contents which declares under penalty of perjury that the file is closed and complete states that the file was closed on November 23, 2015, reopened on June 13, 2016, and closed again on June 28, 2018. Upon resubmittal, the affidavit must correctly state the date that the file is closed and complete.

OAL Attorney: Thanh Hyunh

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD, FEES

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
December 20, 2016	February 3, 2017	February 8, 2017

SUMMARY OF REGULATORY ACTION: This rulemaking action by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) proposes to add section 1399.129 to title 16 of the California Code of Regulations (CCR). The purpose of this action is to compile all statutory application, license, and other related fees into one section for clarity and ease of access.

DECISION: On December 20, 2016, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On February 3, 2017, OAL notified the Board of the disapproval of this regulatory action. The reasons for the disapproval were failure to comply with the "necessity" standard of Government Code section 11349.1 and failure to follow all required procedures under the California Administrative Procedure Act (APA).

NECESSITY: The record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

Issue 1

- No evidence to support the specific examination fee amounts can be found in the Initial Statement of Reasons (ISOR).
- The Board's documents relied upon are more relevant than the ISOR, but their utility is hampered by inconsistencies.
- This issue is muddled even further by the presence of separate analyses and calculations in the record that, while much more recent, appear to justify significantly higher fees.

Ultimately, because the totality of the evidence in the rulemaking record is unclear, inconsistent, and does not support the proposed regulation text, the record does not satisfy the necessity standard of the APA. The Board must ensure that the proposed fees are supported by substantial evidence and consistent with existing law prior to resubmission to OAL.

Issue 2

In this case, the Board set the renewal fee at the maximum of $280 but offered no analyses, calculations, or other information to support the adoption of the specific fee. This lack of evidence violates the necessity standard of the APA.

Issue 3

While the $50 fee is expressly prescribed in Business and Professions Code subdivision (h), the requirement that the fee be paid each calendar year is not. No evidence to support the adoption of this requirement exists in the rulemaking record; thus, the record fails to satisfy the necessity standard of the APA. The Board must ensure that the text of proposed section 1399.129 (k) is not only supported by substantial evidence in the record, but also consistent with existing law, before resubmission of this action to OAL.

FAILURE TO FOLLOW APA PROCEDURES:

There was no signature from the Department of Finance (DOF) on the STD. 399 submitted to OAL for review. Thus, the Board failed to follow required APA procedures. A review and signature from DOF must be obtained and indicated on the STD. 399 before resubmitting this action to OAL.

OAL Attorney: Thanh Hyunh

BOARD OF BEHAVIORAL SCIENCES, ENGLISH AS A SECOND LANGUAGE

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
December 13, 2016	January 27, 2017	February 2, 2017

SUMMARY OF REGULATORY ACTION: his rulemaking action by the Board of Behavioral Sciences (Board) proposes to add section 18Q5.2 to title 16 of the California Code of Regulations. This section states the conditions under which the Board may grant additional time to complete examinations to those for whom English is a second language.

DECISION: On December 13, 2016, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On January 27, 2017, OAL notified the Board of the disapproval of this regulatory action. The reasons for the disapproval were failure to comply with the "clarity" and "necessity" standards of Government Code section 11349.1. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

CLARITY: Regulations are written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

Issue 1

- The phrase "to the satisfaction of the board" in subdivisions (b) and (c) is not clear or easily understood by those affected by the regulation

Issue 2

- Based on the regulation text alone, an applicant cannot be certain what percentage of international coursework presented in a language other than English will satisfy the Board.

NECESSITY: The record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

Issue 1

- ... additional materials provide no justification for requiring an applicant to certify his or her request under penalty of perjury. The complete absence of evidentiary support for the adoption of this requirement is a violation of the necessity standard of the APA.

OAL Attorney: Eric Partington

BOARD OF PHARMACY, DISCIPLINARY GUIDELINES

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
November 30, 2016	January 13, 2017	January 23, 2017

SUMMARY OF REGULATORY ACTION: The Board of Pharmacy (Board) submitted to the Office of Administrative Law (OAL) a proposed regulatory action to amend its "Manual of Disciplinary Guidelines and Model Disciplinary Orders", which is incorporated by reference in section 1760, title 16, of the CCR. The amendments reorganize the disciplinary guidelines, incorporate changes that have occurred in pharmacy law, and establish new terms and conditions of probation.

DECISION: OAL disapproved the above-referenced regulatory action for the following reasons:

- The proposed regulations failed to comply with the clarity standard of Government Code (GC) section 11349.1, (a)(3).
- The proposed regulations failed to comply with the necessity standard of GC section 11349.1 (a)(1), and title 1 of the California Code of Regulations (CCR), section 10 (b); and decision of disapproval OAL Matter No. 2016-3130-01 Page 2 of 10.
- The Board failed to follow the required procedures of the APA by neglecting to:
  a. Summarize and respond to all of the public comments made regarding the proposed action pursuant to GC 11346.9 (a)(3).
  b. Makes a document relied upon available for at least 15 days for public comment as required by GC section 11347.1.
  c. Properly display text, pursuant to GC section 11346.2 (a)(3) and title 1 of the CCR, sections 8 and 44.

CONSISTENCY: OAL reserved the right to review for consistency once the clarity issues are resolved.

CLARITY: Regulations must be written so they are easily understood by those persons directly affected by them. Regulations must be reasonably and logically interpreted to have one meaning.

Issue 1

- The Board proposes to add the phrase "and in a form or format" but it does not specify what form or format the respondent is now required to use. Those directly affected would not know which form to use or where to find it.

Issue 2

- First, the term "geographic area" can be reasonably and logically interpreted to have more than one meaning. Second, it is unclear what information and documentation is considered necessary.

Issue 3

- The proposed language in the disciplinary guidelines suggests that there may or may not be consent forms or an agreement and the respondent only need to comply with the requirement if there are such forms and agreement.
- The Uniform Standards permit all communication between the board and the worksite monitor. However, the proposed language in the disciplinary guidelines appears to restrict the communication to the subjects of work performance and sobriety, which unless clarified, may cause inconsistency in application.

NECESSITY: APA requires the Initial Statement of Reasons (ISOR) describe the need for the regulation (i.e. why and how the regulation addresses the need).

Issue 1

- The disciplinary guidelines do not explain the reasons for the various standards. ISOR merely paraphrases the proposed language. It does not explain the problem that prompted the need for this language, the purpose, and the rationale for adding it. A more complete ISOR would explain why the Board chose to continue to exercise jurisdiction with the new owner. The rulemaking also does not provide the criteria that the Board would use to continue jurisdiction and how to exercise discretion.

Issue 2

- Necessity is missing or inadequate. ISOR does not have an explanation demonstrating why language is being repealed in the disciplinary guidelines.
- Board proposes various time frames to meet different requirements but does not explain their rationale. ISOR must explain the problem, purpose, and rationale.

FAILURE TO FOLLOW APA PROCEDURES: The public needs to be noticed and informed of the regulatory action.

Issue 1

- The Board failed to follow procedures by omitting a summary and response to all public comments.
- Licensing statistics for fiscal year 2014–2015 were included in the file but not made available for public comment and not listed in notices to the public.
- Notices to the public had improperly displayed text. In multiple instances, added text was not underlined.

OAL Attorney: Thanh Huynh

BOARD OF PHARMACY, TRAVEL MEDICATIONS

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
November 9, 2016	December 27, 2016	December 30, 2016

SUMMARY OF REGULATORY ACTION: This rulemaking action by the Board of Pharmacy (Board) proposed the adoption of section 1746.5 of title 16 of the California Code of Regulations, which would set forth the standards and procedures pharmacists must follow in order to furnish prescription medications to individuals traveling outside the United States.

DECISION: OAL disapproved the above-referenced regulatory action for failure to comply with the "consistency," "clarity," and "necessity" standards of Government Code (GC) section 11349.1. The Board also failed to follow all required procedures under the APA.

CONSISTENCY: GC section 11349 (d), defines "consistency" to mean "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law."

The Board did not distinguish between different types of travel medications, or include different reporting time frames for furnished vaccines, pills, etc. The proposed 30-day reporting requirement in subdivision (f) of section 1746.5 directly conflicts with existing law and violates the consistency standard.

CLARITY: GC section 11349 (c), defines "clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

Issue 1

- The body of knowledge does not isolate which content areas, subtopics, or curricula are "medication-related" elements that must be included in a training program pursuant to proposed section 1746.5 (c)(2). This lack of distinct guidance leaves "medication-related" open to more than one reasonable and logical interpretation by each directly affected person.

Issue 2

- Business Professions Code requires the completion of an immunization training program endorsed by CDC or ACIP. The Board must clarify the proposed text is referring to training programs authorized by existing laws rather than a separate certificate program.

NECESSITY: GC section 11349 (a), defines "necessity" as meaning "... the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the

regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion."

Issue 1

- The complete absence of evidentiary support for the adoption of progress note provisions is a violation of the necessity standard. The Board did not describe the need for the regulation and identify documents relied upon in proposing the regulation in the Initial Statement of Reasons.

FAILURE TO FOLLOW APA PROCEDURES: Incorporation by Reference sets forth several requirements that apply when a rulemaking agency proposes to incorporate documents by reference in its regulations. Specific conditions must be met to incorporate by reference.

Issue 1

- The Board did not properly incorporate the body of knowledge by reference and the Final Statement of Reasons (FSOR) does not demonstrate compliance. Incorporating by reference only the specifically identified "medication-related elements" of the body of knowledge would likely resolve both this procedural defect and the aforementioned clarity issue. If the Board intends to incorporate the body of knowledge by reference, then it must address each of these procedural deficiencies.
- The FSOR explains that the proposed regulation text does not formally incorporate by reference this body of knowledge; however, the regulation does reference the required travel medicine training program must consist of at least 10 hours of training. This inconsistency must be resolved.

Incomplete Form STD. 399

Issue 2

- The Board anticipated the cost of this regulation to be minimal. The Board failed to submit to Department of Finance for review and concurrence with fiscal effects on state government.

OAL Attorney: Eric Partington

OSTEOPATHIC OF MEDICAL BOARD OF CALIFORNIA, UNIFORM STANDARDS AND DISCIPLINARY GUIDELINES

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
October 25, 2016	December 9, 2016	December 16, 2016

SUMMARY OF REGULATORY ACTION: This rulemaking action by the Osteopathic Medical Board of California (Board) was proposed to update the Board's existing disciplinary guidelines and incorporate the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, April 2011 in accordance with Business and Professions Code section 315.

DECISION: OAL disapproved the above referenced regulatory action for failure to comply with the "consistency," "clarity," and "necessity" standards of Government Code (GC) section 11349.1. The Board also failed to follow all required procedures under the APA.

CONSISTENCY: GC section 11349 (d), defines "consistency" to mean "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law."

Issue 1

- The DCA Substance Abuse Coordination Committee per Business and Professions Code 315 formulated uniform and specific standards ... that each healing arts board shall use in dealing with substance-abusing licensees. In the Board's Uniform Standards regulation proposal it consolidated, rephrased, and cherry-picked provisions from nearly all the Uniform Standards. The Boards failure to implement all 16 of the applicable Uniform Standards violated the consistency standard.

Issue 2

- The Board has freedom to impose additional conditions on substance-abusing licensees; however, they have no authority to modify the Uniform Standard conditions. In multiple instances the Board's regulations proposed guidelines that were less restrictive than the Uniform Standards (e.g. intervals for face-to-face contact with substance-abusing licensees). The proposed regulation guidelines violate the consistency standard.

CLARITY: GC section 11349 (c), defines "clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

Issue 1

- In instances of substance abuse, the Board shall order a clinical diagnostic evaluation without deviation. The Board has two documents which do not clearly detail which standard would be applied to an affected licensee. This ambiguity violates the clarity standard.

Issue 2

- Probationers shall undergo a clinical diagnostic evaluation when violations involve drugs or alcohol. The Board has a series of inconsistencies in the text, Guidelines and Initial Statement of Reasons (ISOR) that imply the Board can exercise discretion in the imposition of an evaluation.

Issue 3

- Proposed language includes the word "may" regarding the imposition upon the outcome of the clinical diagnostic evaluation. This lack of clarity creates a situation where an affected licensee cannot discern which outcome may allow a contingency nor whether the outcome is to be weighed using one or more criteria.

Issue 4

- Titles are not consistent on the ISOR, text, and guidelines.

Issue 5

- Text in the regulations and ISOR is unclear regarding which document is being incorporated thus producing a clarity issue.

NECESSITY: APA requires a Board to describe the need for the regulation and identify documents relied upon in proposing the regulation in the ISOR. In this regulations package, many proposed amendments to the California Code of Regulations (CCR) and guidelines are not supported by evidence in the rulemaking record.

Issue 1

- The regulatory provisions signify the Board has discretion in handling cases involving any act of sexual conduct with a patient or commitment or conviction of a sex offense. The APA requires the need for this adoption to be supported by substantial evidence in the record. The Board's purpose statement contains no such evidence; thus, the necessity standard was not satisfied.

Issue 2

- The ISOR does not provide the specific purpose or substantial evidence for any of the proposed changes to guidelines 1–29. Of note, the proposal does not describe the Board's discretionary selection process, or the criteria used in deciding which "best practices" from other boards to apply to its guidelines.

Issue 3

- The Board proposed adoption of additional rules beyond the Uniform Standards governing multiple rules (e.g. clinical diagnostic evaluation, worksite monitoring) which are within the Board's power. In multiple instances the specific purpose and provision of substantial evidence were not included for additional rules in the ISOR; thus, the necessity standard was violated.

FAILURE TO FOLLOW APA PROCEDURES:
Incorporation by reference sets forth several requirements that apply when a rulemaking agency proposes to incorporate documents by reference in its regulations.

Issue 1

- The Board did not include the 1996 version of its guidelines in the regulations package. All proposed modifications reference the 2007 guidelines which were never properly included in the CCR. With the 1996 guidelines being the valid version, all regulation proposals should have been based on this accepted version.
- The Board proposed changes to its quarterly report; however, no version of the form was included in the regulations package. The Board must comply with all conditions regarding notice and identification. Further, all changes must be properly highlighted and substantiated.

Documents Missing from the Rulemaking Record

Issue 1

- No evidence of the Board approval to initiate the 45-day notice period or any of the three 15-day notice periods.

Issue 2

- The table of contents was not accurate.

OAL Attorney: Eric Partington

ACUPUNCTURE BOARD, SPONSORED FREE HEALTH CARE EVENTS

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
August 30, 2016	October 12, 2016	October 19, 2016

SUMMARY OF REGULATORY ACTION: This rulemaking action by the California Acupuncture Board (Board) proposes to adopt sections 1399.480, 1400.1, 1400.2, and 1400.3 in title 16 of the California Code of Regulations (CCR) to establish application and registration requirements for participation in sponsored free health care events. This action also includes provisions regarding the termination of authorization to participate in sponsored free health care events. Lastly, the Board seeks to incorporate by reference two forms that will be utilized as part of the application and registration process.

DECISION: OAL disapproved the rulemaking action for the following reasons:

1. The proposed regulations failed to comply with the clarity standard of Government Code (GC) section 11349.1 (a)(3).

2. The Board did not meet the required Administrative Procedure Act (APA) procedural requirements due to its failure to:

   a. Properly notice the addition to the rulemaking record, documents relied upon by the Board, pursuant to GC section 11347.1.

   b. Include in the rulemaking record the original public comment or a copy of the original public comment submitted in connection with this rulemaking action, pursuant to Government Code section 11347.3 (b)(6).

   c. Provide supporting information to justify the Board's reasonable alternatives determination, pursuant to GC section 11346.9 (a)(4).

CONSISTENCY: N/A

CLARITY: GC section 11349 (c) defines "clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

Issue 1

- The Board proposed allowing out-of-state practitioners in "good standing" to engage in the practice of acupuncture in California. The phrase "good standing" is vague and could have one or more meanings.

Issue 2

- The proposal is unclear because it does not use a citation style that clearly identifies published material. Language of the regulation can be interpreted as having more than one meaning. In a few instances, neither an "and" nor an "or" appears at the end of the sentence. It is unclear if all of the conditions need to be met.
- Language of the regulation conflicts with the description of the effect of the regulation. Contrary to the explanation provided, the language does not provide that "failure to meet any of the specified requirements" will constitute an automatic denial of the application.
- Numbering hierarchy in various sections does not align. In a few instances, the language of the regulation conflicts with the description of the effect of the regulation.
- It is not clear whether the 12-month period set forth in the regulation is calculated from the date the application is received, the date the application is reviewed, or the date the Board renders a decision on the application.
- The reference to the APA is not accompanied by a supporting citation.
- References to licensing authority and state of licensure are unclear.

Issue 3

- Proposal failed to identify Form 901-B by title of publication and violates the clarity standard.
- The language on Form 901-B asking for release of information, signature, and background clearance (as stated in the regulations package) is completely missing from the form. Comments made in response to the proposed modifications above must be made available to the public for 15 days per GC 11346.8. In addition, comments made in response to the proposed modifications must be presented by the Board for consideration prior to adoption. Objectives and recommendations must be summarized and responded to in the Final Statement of Reasons (FSOR).

NECESSITY: N/A

FAILURE TO FOLLOW APA PROCEDURES:

Issue 1

- In multiple instances, the rulemaking record did not have original public comment, or a copy of the original public comment submitted in connection with this regulation package. In addition, the package failed to provide supporting information to justify the Board's reasonable alternatives determination.

MISCELLANEOUS:

Issue 1

- The regulation text contains a number of capitalization and grammatical errors. The numbering of the proposed regulatory sections requires revision.
- Nonsubstantive revisions (DCA contact information) to the Form 901-A must be made prior to resubmittal.

Issue 2

- Incorrect citation of Business and Professions Code (BPC) section 144.

Issue 3

- The forms incorporated by reference in the regulation text were not attached to this regulations package.

Issue 4

- Information on how the Board determined the $25 processing fee was not attached to the Initial Statement of Reasons (ISOR).

Issue 5

- The regulation text duplicates language in the BPC with no justification in the FSOR.
- FSOR is missing the incorporation by reference statements.

Issue 6

- The table of contents list is inaccurate

OAL Attorney: Lindsey S. McNeill

PROFESSIONAL FIDUCIARIES BUREAU, CLIENT NOTIFICATION

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
Not provided	October 7, 2016	October 13, 2016

SUMMARY OF REGULATORY ACTION: This rulemaking action by the Professional Fiduciaries Bureau (Bureau) of the Department of Consumer Affairs proposed to add section 4640 to title 16 of the California Code of Regulations. This section establishes client notification requirements for Bureau licensees.

DECISION: OAL notified the Bureau of the disapproval of this regulatory action. The reasons for the disapproval were failure to comply with the "clarity" and "necessity" standards of Government Code (GC) section 11349.1, and failure to follow procedures set forth in GC sections 11346.8 and 11346.9.

CONSISTENCY: N/A

CLARITY: GC section 11349 (c), defines "clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

Issue 1

- The Bureau's description of "prospective client" is unclear. A clear definition of this term is important if licensees may be subject to penalties for failure to provide the required notice to all customers who the Bureau considers to be prospective.

Issue 2

- A sentence is grammatically unsound. It is unclear if the Bureau is defining "proof of mailing" as "proof of service" or if proof of mailing must also include a separate proof of service.

Issue 3

- It is unclear which documents must be maintained in each of the provided scenarios.

NECESSITY: In order to meet the "necessity" standard, the regulations package must include substantial evidence demonstrating why the Bureau needed to modify text in the ways described below and the evidence then needs to be made available to the public pursuant to GC.

Issue 1

- The evidence of necessity in the regulations package is inadequate. The record fails to provide the public with the rationale for the determinations by the Bureau as to why the specific regulatory changes are needed to carry out the purpose for which they are proposed. This vital information should have been made available to the public during the rulemaking process.

- The record does not explain why section 4640 is being revised to broaden the language of the statute from "clients" to "current and prospective clients."
- The record does not explain the requirement to have licensees obtain signed, dated copies of the notice when provided to clients in person.
- The record does not explain the requirement to have licensees retain either written notice or proof of transmission or both, nor why the records must be retained in perpetuity.
- In response to the public, the Bureau did not explain in the record why it was reasonably necessary to draft provision in their respective ways.

FAILURE TO FOLLOW APA PROCEDURES: Summary and response to public comment—Any written comments received regarding regulatory changes must be responded to in the Final Statement of Reasons (FSOR) GC section 11346.9

Issue 1

- In this regulations package, the Bureau adequately summarized and responded to most comments, but not all of them.

Substantive changes without notice—If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation.

Issue 1

- The Bureau materially altered the requirement from 48-point to 36-point font size in order to make the mandate more reasonable. The modified text containing this change must be made publicly available for comment for at least 15 days pursuant to GC section 11346.8.

OAL Attorney: Eric Partington

PHYSICAL THERAPY BOARD, ENGLISH PROFICIENCY

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
June 16, 2016	July 29, 2016	August 4, 2016

SUMMARY OF REGULATORY ACTION: his rulemaking action by the Physical Therapy Board of California (Board) proposes to adopt section 1398.26.3 and amend section 1398.25 in title 16 of the California Code of Regulations (CCR) to set a minimum passing score on the Test of English as a Foreign Language (TOEFL) for applicants who have graduated from a physical therapist education program that is not approved by the Board and is not located in the United States. This action also seeks to require the passing score to be achieved within a single administration of the TOEFL, seeks to establish exemption criteria, and seeks to provide clarification regarding reporting requirements.

DECISION: The proposed regulation failed to comply with consistency, clarity, and necessity standards. The Board also failed to meet several Administrative Procedure Act (APA) procedural requirements.

CONSISTENCY: Government Code (GC) section 11349 (d) defines "consistency" to mean "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law."

Issue 1

- The regulation package is devoid of citations that would require the Board to establish criteria for exemption from English proficiency for foreign applicants applying for licensure. Business and Professions Code (BPC) requires demonstration of English proficiency for applicants from foreign schools seeking licensure. The Board must revise the regulation language to be consistent with code.

CLARITY: GC section 11349 (c) defines "clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

Issue 1

- The Initial Statement of Reasons (ISOR) is unclear if two requirements for English proficiency are required or satisfaction of one requirement is sufficient.
- The Board's response to a public comment on exemption of foreign applicants does not align with the proposed regulation language.

Issue 2

- The language is unclear because the regulation presents information in a format that is not readily understandable by persons "directly affected" and the regulation does not use citation styles which clearly identify published material cited in the regulation.

Issue 3

- Board must make revised regulation package text available to the public for comments for at least 15 days.

NECESSITY: "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

Issue 1

- The proposed language established minimum scores foreign applicants must achieve to demonstrate English proficiency. The ISOR is silent on why the minimum scores are appropriate or should be adopted.

FAILURE TO FOLLOW APA PROCEDURES:

Issue 1

- The regulations package submitted to the Office of Administrative Law (OAL) did not include documentation that the members of the Board voted upon and approved the final version of the regulation text following substantive revision. The file for this action must include the transcript, recording, or minutes of the public hearing where the Board approved the final regulation text.

Issue 2

- The public comments are "clearly not the original comments" submitted to the Board because all of the comments have the heading "Agenda Item #3" at the top of the page, all of the comments are typed in the same font, and all of the comments are devoid of any email or mail transmission information. It is unclear whether the comments reproduced in the file include all of the substantive comments submitted.

Issue 3

- The Board did not provide reasonable alternatives to explain whether any alternatives were considered.
- Board failed to include any supporting information to justify its conclusions.

Issue 4

- The Board does not describe the effect of the revision on the proposed regulations.

MISCELLANEOUS:

Issue 1

- The regulation text is missing words.
- The final text contains several underline and strikeout illustration errors.

Issue 2

- The adverse economic impact justification is insufficient.

Issue 3

- The mailing statement contains a citation error.

Issue 4

- Form STD. 400 must be corrected by adding the beginning and ending dates of the 15-day public comment period and include any future public comment periods.
- Department of Finance must be checked on the Form 400.

OAL Attorney: Lindsey S. McNeill

BOARD OF PHARMACY, ADVANCED PRACTICE PHARMACIST

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
Not provided	July 18, 2016	July 25, 2016

SUMMARY OF REGULATORY ACTION: This rulemaking action by the Board of Pharmacy (Board) sets forth requirements and fees for a licensed pharmacist to obtain Board recognition as an advanced practice pharmacist.

DECISION: The reason for the disapproval was failure to comply with the "clarity" and "necessity" standards of Government Code (GC) section 11349.1.

CONSISTENCY: N/A

CLARITY: GC section 11349 (c) defines "clarity" as meaning "... written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

Issue 1

- The Boards interpretation of Business and Professions Code (BPC) and public comments regarding the appropriate path to advanced practice licensure was ambiguous. The text did not appropriately describe the intent of the Board to allow concurrent satisfaction of licensure criteria.

NECESSITY: The record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, considering the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

Issue 1

- The Initial Statement of Reasons (IROS) contains broad, general statements of necessity that do not support the proposed text for three provisions (i.e. 1,500 hours of experience, written statement from applicant under penalty of perjury, and written statement from supervising practitioner under penalty of perjury).

FAILURE TO FOLLOW APA PROCEDURES: N/A

OAL Attorney: Erik Partington

BOARD OF ACCOUNTANCY, FEES

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
March 29, 2016	May 5, 2016	May 9, 2016

SUMMARY OF REGULATORY ACTION:
BPC section 5134 authorizes the Board of Accountancy (Board) to charge various fees. These fees are listed in section 70 of title l6 of the California Code of Regulations. The fee for the initial permit to practice as a partnership, corporation, or certified public accountant, and the biennial fee to renew this permit are both currently set at $50. An automatic increase of these $50 fees to $120 is scheduled to occur on July 1, 2016. This rulemaking proposes to increase these fees to $200, a level that existed prior to fiscal year 2011–2012. All remaining fees would stay at their existing level.

DECISION: The Office of Administrative Law (OAL) disapproved the above-referenced rulemaking action because the Board did not obtain the concurrence of the Department of Finance in the Board's estimate of the fiscal impact of the proposed regulations on governmental agencies (STD. 399) as required by State Administrative Manual section 6615.

CONSISTENCY: N/A

CLARITY: N/A

NECESSITY: N/A

FAILURE TO FOLLOW APA PROCEDURES:
The only issue preventing OAL from approving this rulemaking action concerns the STD. 399 completed by the Board. State Administrative Manual section 6615 requires DOF's concurrence when the "other" box is marked in section B.4. of the Fiscal Impact Statement portion of the form, as it is on the Board's STD. 399. The STD. 399 in the rulemaking file does not have a signature from DOF indicating concurrence on the STD. 399. The Board must obtain DOF's signature on the STD. 399 prior to resubmitting this rulemaking to OAL.

OAL Attorney: Steven J. Escobar

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD, HEARING AID DISPENSERS CONTINUING EDUCATION

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
February 11, 2016	March 17, 2016	March 24, 2016

SUMMARY OF REGULATORY ACTION: The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) proposed this action to amend five sections and adopt one section in title 16 of the California Code of Regulations that set forth continuing education requirements for hearing aid dispenser licensees as a condition of license renewal, and eligibility and application requirements for continuing education courses offered by providers. The originally proposed text was approved by the Board on January 10, 2013, but was not put out for public comment until December 5, 2014. The originally proposed text was modified in a 15-day availability on September 21, 2015.

DECISION: The Office of Administrative Law (OAL) disapproved the above-referenced regulatory due to several instances where Administrative Procedure Act (APA) procedures were not followed.

CONSISTENCY: N/A

CLARITY: N/A

NECESSITY: N/A

FAILURE TO FOLLOW APA PROCEDURES:

Issue 1

- The Board failed to follow required APA procedures by not considering and approving a substantial change made to the final version of the regulation text, and by not considering public comments received during the 45-day and 15-day comment periods (Government Code (GC) section 11346.8).
- Per GC 11347.3(b)(8) the rulemaking file for this action needs to include the transcript, recording, or minutes of a public hearing or hearings where the Board approves the final version of the regulation text.

Issue 2

- The STD. 399 form in the rulemaking file submitted to OAL did not have a signature from the Department of Finance (DOF). Additionally, the copy of the STD. 349 form that was submitted with the rulemaking file had holes punched through many of the boxes, making unclear what the Board's responses on the STD. 399 form were (State Administrative Manual section 6615).

Issue 3

- The regulation text attached to the STD. 400 form was not in conformity with existing California Code of Regulations (CCR) section 8(b) text. There were also errors in the underlining and strikeout, punctuation, and grammar of the text.

Issue 4

- The rulemaking file submitted to OAL did not include five documents that the Board relied upon for this rulemaking action:
  - » The Board stated it was relying on "The existing CE [continuing education] provider/course list and a record of denied courses." (Note there are two documents identified here.)
  - » May 19–20, 2011 Draft Audiology Practice Committee Meeting minutes.
  - » June 12, 2013 Hearing Aid Dispensers Committee Meeting minutes; and,
  - » June 13, 2013 Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board Meeting minutes.
  - » (Note there are three sets of minutes identified here.)
  - » GC 11347.3(b)(7); GC 11346.3

Issue 5

- The summary and response to public comments in the Final Statement of Reasons (FSOR) does not show that each issue raised by the commenters was considered, as required by GC section 11346.9(a) (3).

Issue 6

- The Board's proposed amendment to section 1399.141(a) adds a new application form, the "Continuing Education Course Approval Application Form CEP 100 (Rev. 1/2015)." This form was not identified in the informative digest of the 45-day notice by title and date of publication or issuance, as required by title 1, CCR, section 20(c)(3).
- The incorporated by reference form was not included with the final regulation text submitted for filing with the Secretary of State (GC section 11343).

OAL Attorney: Richard L. Smith

VETERINARY MEDICAL BOARD, CIVIL PENALTIES FOR CITATION

Date Board/Bureau Submitted to OAL:	Date OAL Notified Board/Bureau:	Date Disapproval Signed by OAL:
Not provided	March 8, 2016	March 15, 2016

SUMMARY OF REGULATORY ACTION: This proposed rulemaking action by the Veterinary Medical Board (Board) amends section 2043 of title 16 of the California Code of Regulations, which governs the assessment of civil penalties for violation of the Board's rules. This amendment would reclassify the existing three categories of citations issued by the Board, including accompanying fines, and new rules regarding orders of abatement and public disclosure of citations.

DECISION: On March 8, 2016, the Office of Administrative Law (OAL) notified the Board of the disapproval of this regulatory action. The reason for the disapproval was failure to comply with the "clarity" standard of Government Code section 11349.1.

CONSISTENCY: N/A

CLARITY:

Issue 1

- Section 2043, first paragraph: The Initial Statement of Reasons (ISOR) provides no reason for the substantive change in policy and simultaneously demonstrates the Board's intent to issue citations without civil penalties when such penalties are warranted. The proposed text and related record materials are inconsistent.

Issue 2

- Section 2043 (g): Two clarity issues result from ambiguous phrasing. A directly affected person should not be left to guess which meaning the Board intended.

NECESSITY: N/A

FAILURE TO FOLLOW APA PROCEDURES: N/A

OAL Attorney: Eric J. Partington

STATE OF CALIFORNIA

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DEPARTMENT OF CONSUMER AFFAIRS

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