



*Bulletin 13-02*  
**Fiscal Integrity**

**Background**

California's DUI treatment system was designed by the State Legislature to protect public safety by providing intervention, education and treatment to individuals convicted of driving-under-the-influence [DUI], and provided the criteria for approved DUI treatment programs to become licensed and insured.

This system is mandated by law to be entirely self-supported by participant fees. *No taxpayer money is to be used in its operations.* This fact makes the requirement for counties to ensure their County's DUI programs fiscal integrity critical to the success of the statewide network

This mandate is extended to both Counties and the State, who are required to be compensated by licensed DUI treatment programs for their costs incurred in providing the required fiscal and programmatic oversight responsibility, which also includes assistance with court liaison as needed. As part of the fee charged to program participants, the DUI program collects and remits these fees to the County and State.

DUI treatment programs are required by regulation to provide services to program participants regardless of their ability to pay. They are required to offer deferred payment plans; or sliding scale fee schedules; as well as provisions for individuals on county general relief. DUI program fees are regulated by the State. A part of the approved fee goes to cover the cost of participants who cannot pay for their program.

*It should be noted that the Health & Safety Code and Title 9 regulations limit the profit/surplus income that a licensed DUI treatment program can earn for the delivery of DUI treatment services. §9879 (o) states "DUI program profit or surplus shall not exceed 10% of gross revenue from fees per annum".<sup>(1)</sup>*

**Currently**

There continues to be a great deal of misunderstanding on the part of some counties regarding the County Board of Supervisor's responsibility to ensure the fiscal integrity of State licensed DUI treatment programs operating within their county, and why that requirement was placed in state regulation. *It should be noted that this responsibility is an original requirement and a part of the Health & Safety Code since the inception of the DUI treatment system.*

Two concerns frequently articulated by County staff are, (i) what is the definition of fiscal integrity as it applies to Chapter 3, Division 4, Title 9 regulations; and (ii) that existing DUI programs "*have a monopoly*", that they do not have sufficient competition, and that they are guaranteed profitability by the unfair restriction of competition.

Section 11837.6 (a) of the California Health & Safety Code establishes in law, the requirement that the County Alcohol Program Administration and County Board of Supervisors assure the fiscal integrity of DUI treatment programs licensed by the State within the County's jurisdiction.

Merriam-Webster defines fiscal integrity as “*an unimpaired condition; soundness*”. This definition as it applies to §9801.5 of Title 9 regulations establishes the County’s responsibility to ensure that licensed DUI programs in their County be in sound financial condition.

In his August 9, 2013 letter, Mr. Roger Thompson [RMT Consulting] provides a concise history of the development of this provision within the Health & Safety Code subsequently published in §9801.5 of Chapter 3, Division 4, Title 9, California Code of Regulations. Mr. Thompson, being the former manager of the DUI Program Branch of the Department of Alcohol and Drug Programs, was primarily responsible for drafting the regulations published in Chapter 3, Division 4, Title 9, California Code of Regulations. He was instrumental in establishing the intent of the language contained in §9801.5 and §9805.

***There is nothing in either one of these sections, or in the Health & Safety Code that implies that the State and County are responsible to guarantee the profitability of the licensed DUI treatment programs within their County.***

To the contrary the statute and subsequent regulations are simply meant to, (i) ensure that the County has established sufficient DUI treatment programs, geographically located within the County, to adequately provide DUI treatment services ordered by the court to individuals convicted of driving-under-the-influence; and (ii) that additional programs would only be considered and/or recommended for approval by the State in the event that there would be a demonstrated need for an additional new program[s], based on measurable criteria required by §9805.

There is nothing in statute or regulation that would prevent the County Alcohol Program Administration from recommending an existing DUI program license be suspended or revoked due to malfeasant operations that warrant such suspension or termination of license. In such cases the County has both the responsibility and right to issue an RFP to replace the terminated program because by definition terminating a program meets the justification criteria specified in §9805 of the regulations.

In addition to the limitations placed on DUI treatment program profit/surplus, all fees charged to program participants for DUI services are equally regulated, which are recommended by the County Alcohol Program Administration and subsequently approved by the State Department of Health Care Services.

***DUI treatment programs cannot establish program fees that have not been justified by detailed cost data justifying the fee ... then recommended by the County and approved by the State.***

Thus there are two methods to be used by the County and State in determining how much a program participant can be charged for services, plus establishing a clear limitation on the amount of profit or surplus that the program can earn on an annual basis. Both of these factors were designed to control the cost of court ordered driving-under-the-influence treatment services, as well as prohibiting the DUI treatment program from earning exorbitant profit at the expense of the program participant.

***The viewpoint or concern of many individuals within various County Alcohol Program Administrations are that, (i) DUI treatment programs are a “protected class” of alcohol and drug treatment program within the State; (ii) that these programs make exorbitant or excessive profits; and (iii) they believe the existing regulations should be changed to allow counties to RFP and add additional programs at will. Such thinking ignores the factual basis of the why and how the statewide DUI treatment system was established, and further ignores the fact that by law, these programs must be self-funded., receiving no county/state [taxpayer] funding.***

## FACTS:

1. The DUI treatment program is a private sector business providing a public sector program, i.e. driving-under-the influence treatment services under licensed by the State Department of Health Care Services.
2. Both California law and state regulations prevent the DUI program from charging unwarranted and excessive fees.
3. Profit or surplus is limited to 10% per annum.
4. The State receives an enrollment fee for each new participant. Counties receive a monitoring fee. Both are paid quarterly.
5. The DUI program is required to provide operating cost budgets to justify the fee requested by the program.
6. The County has the responsibility to not recommend, and the State has the responsibility to not approve... unwarranted and excessive fees.
7. The DUI treatment program is licensed by the State to provide specific program services, i.e. 1<sup>st</sup> offender, 2<sup>nd</sup> offender, 3<sup>rd</sup> offender, etc. in specifically defined geographic within the counties they are located in. Each DUI treatment program license is specific to the level of program service, as well as the geographic area in which it may deliver services.
8. The program is not allowed or authorized to provide services in other locations or at fees not approved by the Department of Health Care Services.

### *Summary*

The definition of fiscal integrity as defined in §9801.5 requires the County Board of Supervisors to assure that the County does not add additional DUI treatment programs within the County beyond what is needed and that the existing network of providers are not economically damaged by the unwarranted addition of new programs.

There are a finite number of individuals convicted of a DUI offense that actually enroll in DUI treatment programs. Unless there would be a measurable increase in the numbers of enrollees, unwarranted new programs would reduce the numbers of enrollees being referred to existing programs impairing the program's economic viability, and would insure that any new program would also have its growth negatively impacted and not be able to succeed, which becomes a "lose-lose" situation.

Nothing in this language is meant to imply that the licensed DUI treatment provider is guaranteed profitability. The treatment provider has the sole responsibility to manage their operations to maintain profitability, notwithstanding a county's improper and unwarranted addition of new programs.

## CADTP

**October 10, 2013**

**<sup>(1)</sup> Title 9 - §9870 (o); Health & Safety Code - §11837.4 (2) (A)**