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MEMORANDUM

DATE:	December 13, 2012
TO:	Executive Officers/Bureau Chiefs/Division Chiefs Department of Consumer Affairs
FROM:	Denise Brown, Director <i>Denise Brown</i> Department of Consumer Affairs
SUBJECT:	2012 Legislation Impacting All Department of Consumer Affairs Licensing Programs

In order to assist with compliance, the Department of Consumer Affairs (Department) is notifying each of its programs about legislation passed last session that will have broad impact across all programs. This memo outlines those new laws and what is expected of each program. We understand you may have some questions or concerns regarding these new laws or their implementation. As such, please contact Tracy Rhine by phone at (916) 574-7800 or by email at tracy.rhine@dca.ca.gov.

SB 1099 (Wright, Chapter 295) – Changes to Regulatory Timelines

This legislation modified the effective date of regulations. Currently, regulations become effective, as a general rule, 30 days after the Office of Administrative Law (OAL) files the Order of Adoption with the Secretary of State (SOS). Beginning January 1, 2013, SB 1099 provides that a regulation, or an order of repeal, becomes effective on one of four dates: January 1, April 1, July 1, or October 1 of each year. As to which of the four effective dates a regulation will become effective depends on when OAL files the regulation with SOS. The following timeframes outline when a regulation would become effective:

- To take effect January 1, a regulatory change must be filed with SOS between September 1 and November 30.
- To take effect April 1, a regulatory change must be filed with SOS between December 1 and February 29.
- To take effect July 1, a regulatory change must be filed with SOS between March 1 and May 31.
- To take effect October 1, a regulatory change must be filed with SOS between June 1 and August 31.

For example, a program completes its regular rulemaking by the one-year deadline and submits the rulemaking to OAL for review. OAL still is required to approve or disapprove the rulemaking within 30 **working** days after the rulemaking has been submitted to OAL for review. OAL approves the rulemaking, and files the Order of Adoption with SOS on July 10, 2013. Notwithstanding any exceptions, as noted below, the rulemaking will become effective on October 1, 2013.

It is important to note that the date a regulation is submitted to OAL for OAL's review does not determine a regulation's effective date. The date the regulation is filed with SOS determines the regulation's effective date.

Exceptions to this new general rule are as follows:

- The effective date is specifically provided by statute; therefore the regulation becomes effective by the date provided in statute.
- A later date is requested by the program.
- An earlier effective date is requested in writing by the program, demonstrating good cause for the earlier effective date.

Each program is also required to do the following:

- Post a regulation on its website within 15 days of the date a regulation is filed with the Secretary of State. The regulation must stay on the website for a minimum of six months from the filing date.
- Send the website link to the OAL within five days of posting the regulation on the program website. OAL is requesting all state agencies send a copy of the link to the following email address: postedregslink@oal.ca.gov.

The use of the term regulation as used above means the Order of Adoption, which technically, is the regulation.

Section 100 regulatory files are not subject to the new quarterly effective dates. However, entities are required, effective January 1, 2013, to post the Section 100 regulations on their websites and send the link to OAL, as is the case with all other OAL approved regulations.

OAL currently is in the process of drafting regulations to implement SB 1099 to clarify the bill's requirements.

OAL sent a memo to Chief Counsels and Regulation Coordinators providing information about the new changes and how these changes will affect agency procedures. OAL also revised its Standard Form 400 in compliance with the new statute. These two documents can found at this website: [http://www.oal.ca.gov/Amendments to the APA 2012.htm](http://www.oal.ca.gov/Amendments%20to%20the%20APA%202012.htm)

AB 1588 (Atkins, Chapter 742) – Waiver of Renewal Requirements for Licensees on Active Duty

Beginning January 1, 2013, every program must waive the renewal requirements for a licensee if the licensee is serving on active duty in the Armed Forces or California National Guard. This new law gives each program broad regulatory authority to implement its provisions.

Renewal requirements waived under this bill include:

- Renewal fees;
- Continuing education; AND,
- Any other requirements as determined by the program.

Certain requirements for a waiver must be met:

- The licensee must possess a current and valid license with the program when called to active duty.
- The licensee must provide written documentation that substantiates the licensee's call to active duty.
- The licensee's renewal requirements are only waived for the period of time the licensee is serving on active duty.

As part of the waiver process, the licensee must also stipulate whether services will continue to be provided as part of their military service. All private practice is prohibited under the waiver. If a licensee will be providing services in the military, the license status must be converted to "military active."

For programs that choose to utilize a "military inactive" status, which should be applied to all licensees who are not specifically called to active duty to provide services under a license, it will be necessary to adopt regulatory changes specifying the new military inactive status.

Upon returning from active duty, a licensee must notify the program of the licensee's discharge within 60 days of the discharge date. The licensee is given six months to comply with all renewal requirements prior to providing any services under the license.

All programs will need to create a waiver process for qualified licensees to complete as well as a process for licensees who are discharged and returning from active duty. Each program can require additional information as necessary, but that information must be set out in regulations.

The Medical Board of California currently waives renewal fees for its licensees called to active duty. Its form can be found here: <http://www.mbc.ca.gov/forms/07a-106.pdf>

AB 1904 (Block, Chapter 399) – Expediting the Licensure Process for Spouses' of Active Duty Members

Beginning January 1, 2013, each program is required to expedite the licensure process for spouses and domestic partners of those on active duty. This does not mean that a license must be issued, but simply requires the process to be accelerated for these individuals. The applicant must provide evidence that he or she is also currently licensed in another state in the same profession.

Regulations should not be necessary for most programs; however, regulations will be necessary for those programs with initial application forms set specifically in regulation. Those programs not pursuing regulations must also keep in mind that it can only require applicants provide the necessary information in the initial application package that is required by statute. Programs cannot require an applicant complete a separate form without regulatory changes requiring it. If you have any questions, please contact your legal counsel for assistance.

AB 2570 (Hill, Chapter 561) – Prohibition on the Use of Gag Clauses

Beginning January 1, 2013, programs will now be required to enforce the prohibition on confidentiality agreements (also called “gag clauses”) in settlements involving licensees.

Programs are also prevented from requiring a licensee to pay additional sums of money to a consumer if the consumer and licensee have agreed to a settlement that provides for the full satisfaction of the consumer.

There is an important exception in the new prohibition that would authorize a program, upon a petition filed by a licensee or agent of a licensee, to adopt a regulation that would allow for certain “gag” clauses. Adopting a regulation or not is left to the discretion of the program. However, there is a process that must be followed upon receipt of a petition. The Department’s Legal Affairs Division has advised that any program that receives such a petition contact its legal counsel immediately for assistance with a response to the petition.