

**HISTORY:**

1. Change without regulatory effect renumbering and amending former section 9838 to section 9854 filed 4-15-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 20). For prior history, see Register 82, No. 47.
2. Amendment filed 11-18-91 as an emergency; operative 1-1-92 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 4-29-92 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 4-27-92 as an emergency; operative 4-28-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 8-26-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-27-92 order including amendment of subsection (f) transmitted to OAL 7-16-92 and filed 8-25-92 (Register 92, No. 35).
5. Change without regulatory effect amending subsection (h) filed 10-24-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 43).
6. Amendment of section and Note filed 3-23-2000; operative 4-22-2000 (Register 2000, No. 12).

**§9878. Fees** (4/22/2000 amendments shown with new text underlined, old ~~struck out~~.)

- (a) The program shall charge only the program fee and any additional fees which have been recommended by the county alcohol program administrator and approved by the Department.
- (b) Program profit or surplus shall not exceed 10 percent of gross revenue from fees per annum.
- (c) Notwithstanding Subsection (b) of this regulation, the program fee shall be set at a level sufficient to cover the cost of program services, including each participant's share of personnel and operating expenses incurred by the program in providing program services. All exceptions to this standard require the approval of the Department, in accordance with Subsections 11837.8(b) and (c) of the Health and Safety Code.
- (d) The program shall establish and use a standardized payment schedule, approved by the Department in accordance with this subsection, to determine each participant's assessed program fee and schedule for payment of fees. As used in this regulation, the term "participant" includes both program participants and potential participants, who have not yet been enrolled in accordance with Section 9848.
  - (1) The standardized payment schedule shall specify:
    - (A) The program fee and additional fees, broken out by cost of unit of service;
    - (B) The monthly income level at which the program shall require the participant to pay a maximum program fee of no more than \$5.00 per month, in accordance with Subsection (f)(1) of this regulation;
    - (C) The monthly income level at which the program shall allow the participant to extend payment of the program fee or shall reduce the participant's assessed program fee through one of the options described in Subsection (f)(3) of this regulation;
    - (D) The option the program has elected to use, in accordance with Subsection (f)(3) of this regulation;

- (E) A schedule for payment of fees, including the amount of down payment and the amount and frequency of payments required;
  - ~~(F) A sample of all documents used to conduct the financial assessment, determine the assessed program fee, and schedule payment of fees;~~
  - ~~(G)~~
  - (F) A sample of the participant contract containing the terms and conditions for a fee assessment and a payment schedule.
- (2) The program shall apply the standardized payment schedule equally in determining the participant's assessed program fee and payment schedule.
  - (3) The program shall submit the standardized payment schedule to the Driving Under the Influence Program Branch (DUIPB), Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814, for review and approval:
    - (A) Prior to using the standardized payment schedule, and
    - (B) Whenever the program modifies the standardized payment schedule.
  - (4) The DUIPB shall review the standardized payment schedule developed by the program to determine if it complies with the requirements of this regulation and Section 11837.4 of the Health and Safety Code. Within 30 days of the date of the Department receives the standardized payment schedule, the DUIPB shall:
    - (A) Notify the program that the standardized payment schedule was approved and the date of approval, or
    - (B) Notify the program that the standardized payment schedule was not approved.
  - (5) If the DUIPB disapproves the standardized payment schedule submitted by the program, the notice of disapproval shall inform the program how the standardized payment schedule must be amended in order to be approved and shall explain the program's right of appeal in accordance with this regulation.
  - (6) Within fifteen (15) days of the date shown on the written notice of disapproval, the program shall submit:
    - (A) An amended standardized payment schedule to the DUIPB, or
    - (B) A written request for appeal of the DUIPB's decision to the Director, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814.
  - (7) If the program submits an amended standardized payment schedule, the DUIPB shall review it in accordance with Subsection (d)(4) of this regulation.
  - (8) If the program submits a written request for appeal, within fifteen (15) days of the receipt of the request the Director or his/her designee shall:
    - (A) Review the DUIPB's decision and any subsequent documentation regarding the appeal, which was submitted by the program, and
    - (B) Notify the program in writing of his/her decision.
  - (9) Pending approval of the program's standardized payment schedule, the program shall collect the program fees using the most recent standardized payment schedule approved by the DUIPB. This requirement shall not preclude the right of any participant to have his/her program fee modified in accordance with Subsection (f) of this regulation.
- (e) The program shall document the participant's assessed program fee and payment schedule in the participant contract signed at enrollment. The program shall amend the

- contract to reflect any subsequent increase or decrease in the assessed program fee or the payment schedule.
- (f) If the participant notifies the program that he/she is not able to pay the fee shown on the standardized payment schedule, the program shall perform a financial assessment, in accordance with Section 9879, and shall allow the participant to participate in the program as follows:
- (1) If the participant's monthly income is equal to or less than the general assistance benefit level for one person, established by the county board of supervisors pursuant to Part 5 (commencing with Section 17000) of the Welfare and Institutions Code, the program shall assess the participant a maximum program fee of no more than \$5.00 per month for each month in which the participant's income is equal to or less than the general assistance benefit level for the county in which the program is licensed to provide services. The assessed program fee shall be applicable for each month in which the participant is enrolled in the program for one or more calendar days.
    - (A) At least once a year, on or before July 1, the program shall request written notification of the current general assistance benefit level from the county alcohol program administrator or the county board of supervisors. The program shall retain a copy of the notification in its files and shall send a copy of the notification to the Department by October 1 of the same year.
    - (B) If the county board of supervisors has not established a general assistance benefit level, the program shall assess the participant a maximum program fee of no more than \$5.00 per month for each month in which the participant's monthly income is \$300 or less.
    - (C) If the participant is eligible for a maximum program fee of no more than \$5.00 per month, the program shall assess only the following additional fees:

The program may assess a maximum additional fee of no more than \$5.00 each time it must reschedule a program service because the participant failed to attend or reschedule in advance, in accordance with the requirements of Section 9876.

The program may assess a maximum additional fee of no more than \$10.00 each time it reinstates a participant who was dismissed from the program, in accordance with Section 9886, or who voluntarily withdrew from the program.
  - (2) If the participant's monthly income is greater than the general assistance benefit level for the county, the program shall determine if it is equal to or less than 35 percent of the monthly median family income for the county, as shown on the most recent decennial census obtained from the county planning department or from the State Census Data Center, Department of Finance, 915 L Street, Sacramento, CA 95814.
  - (3) If the participant's monthly income is greater than the general assistance benefit level for the county but equal to or less than 35 percent of the monthly median family income for the county, the program shall allow the participant to extend payment of the program fee [i.e. the extended payment option, described in Subsection (f)(3)(D) of this regulation] or shall reduce the participant's assessed program fee [i.e. the reduced fee option,; described in Subsection (f)(3)(E) of this regulation].

- (A) The program shall elect to use either the extended payment option or the reduced fee option and shall use the option it has elected for all participants whose monthly income is greater than the general assistance benefit level for the county but equal to or less than 35 percent of the monthly median family income for the county.
- (B) The program shall notify the Department in writing of which option it elects to use.
- (C) A program may change its election of an option any time. To do so the program shall submit a written request for approval to the Driving-Under-the-Influence Program Branch (DUIPB), Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814, at least 30 days prior to the effective date of a proposed change. In accordance with Subsection (d)(4) of this regulation, the DUIPB shall review the request to determine that it complies with the requirements of this regulation. The DUIPB shall notify the program, in writing, of its decision. The program shall not implement the change until it receives approval from the DUIPB.
- (D) If the program elects to use the extended payment option, the program shall assess the participant the full program fee shown on the program's standardized payment schedule. The program shall allow the participant to extend payment of his/her assessed program fee as follows:

The program shall allow a participant in a three-month program no less than six months from the date of enrollment to pay the program fee.

The program shall allow a participant in a six-month program no less than nine months from the date of enrollment to pay the program fee.

The program shall allow a participant in a nine-month program no less than 12 months from the date of enrollment to pay the program fee.

The program shall allow a participant in a 12-month program no less than 15 months from the date of enrollment to pay the program fee.

The program shall allow a participant in a 18-month program no less than 18 months from the date of enrollment to pay the program fee.

The program shall allow a participant in a 30-month program no less than 30 months from the date of enrollment to pay the program fee.

- (E) If the program elects to use the reduced fee option, the program shall assess the participant's program fee as follows:

The program shall divide the participant's annual gross income by 35 percent of the county median family income to determine the percentage of the program fee to be paid by the participant.

The program shall multiply the resulting percentage by the program fee, shown on the program's standardized payment schedule, to determine the dollar amount of the participant's assessed program fee.

For example:

If the county median family income is \$39,035, the program would multiply \$39,035 by 0.35 to determine that 35 percent of the county median family income is \$13,662.

If the participant's income is \$10,930, the program would divide \$10,930 by \$13,662 to determine that the participant would be required to pay 80 percent of the program fee.

If the program fee is \$1,081, the program would multiply \$1,081 by 80 percent to determine that the participant's assessed program fee would be \$865.

At its option, the program may require the participant to pay his/her assessed program fee in accordance with the provisions of Subsection (f)(4) of this regulation, or the program may allow the participant to extend payments as specified in Subsection (f)(3)(D) of this regulation.

- (F) If the participant's income is greater than the general assistance benefit level for the county but equal to or less than 35 percent of the monthly median family income for the county, the program shall not require the participant to pay a down payment that exceeds the cost of enrolling the participant in the program.
- (4) If the participant's monthly income is greater than 35 percent of the monthly median family income for the county, the program shall assess the participant the full program fee shown on the program's standardized payment schedule. The program shall allow the participant to pay his/her assessed program fee as follows:
  - (A) The program shall allow a participant in a three-month program no less than three months from the date of enrollment to pay the program fee.
  - (B) The program shall allow a participant in a six-month program no less than six months from the date of enrollment to pay the program fee.
  - (C) ) The program shall allow a participant in a nine-month program no less than nine months from the date of enrollment to pay the program fee.
  - (D) The program shall allow a participant in a 12-month program no less than 12 months from the date of enrollment to pay the program fee.
  - (E) The program shall allow a participant in a 18-month program no less than 12 months from the date of enrollment to pay the program fee.
  - (F) The program shall allow a participant in a 30-month program no less than 18 months from the date of enrollment to pay the program fee.
  - (G) The program may require the participant to pay a down payment not to exceed 50 percent of the program fee for first offenders, or 20 percent of the program fee for multiple offenders.
- (g) The program may allow a participant to voluntarily pay in advance for program services to be provided.
- (h) The program may withhold the participant's completion certificate until the assessed program fee, and any additional fees assessed have been paid in full. Withholding of the participant completion certificate shall require an agreement between the parties, to be reflected in the participant contract or an amendment to that contract. (As used in this regulation, the term "completion certificate" means the Department of Motor Vehicles' Form DL 101.)
- (1) The contract or amendment shall state that the participant has been informed of (and by signing the contract shows that he/she understands) the terms and conditions of the contract, and he/she agrees that the program completion certificate will be

- withheld until the participant has paid the assessed program fee and any additional fees assessed.
- (2) The contract or amendment shall be signed by the participant and by a program representative.
  - (3) The program shall retain a copy of the signed contract or amendment in the participant's record.
  - (i) The program may allow the participant, at the program's option, to pay the program fee on a weekly, bi-weekly, or monthly basis. If the program requires the participant to pay the program fee on a weekly or bi-weekly basis, the total amount charged shall not exceed the total amount which would be required if payment were made in equal monthly payments.
  - (j) The program shall refund to the participant any program fee paid in advance for a service which the program did not provide. In calculating the amount to be refunded to the participant, the program shall use the cost per unit of service.
  - (k) Prior to processing a participant's request for a transfer to another state licensed program, the program may require the participant to pay his/her assessed program fee due for services provided by the program and any additional fees assessed in accordance with the provisions of this regulation.
  - (l) Prior to processing a participant's request for reinstatement to the program following a dismissal, voluntary withdrawal, or transfer, the program may require the participant to pay his/her assessed program fee due for services provided by the program, and any additional fees assessed in accordance with the provisions of this regulation.
  - (m) The county may assess an amount not to exceed five percent of gross program revenue per annum for its administration and monitoring of the program, in accordance with Section 9801.5. The county may assess an amount in excess of five percent of gross program revenue per annum only with approval by the Department. Such approval shall require the county to provide justification of actual costs and services. Approval shall be valid only for the fiscal year for which it is granted.
  - (n) Annual License Fee - The Department may assess an amount not to exceed one and one-half percent of gross program fees per annum for the cost of its administration of the program. This assessment remains in effect through June 30, 2000 and is then repealed.
    - (1) The Department shall determine the license fee annually, not later than April 30 of each year, in an amount sufficient to cover the projected costs of administering the licensure of DUI programs for the forthcoming fiscal year commencing on the first day of July and concluding on the last day of June. The license fee shall be an amount for each participant enrollment, determined by dividing the projected costs by the number of participant enrollments and rounding up to the next dollar. Projected costs (including expenditures and encumbrances) and participant enrollments used in the calculation shall be the total actual costs and enrollments, respectively, for the most recent 12-month period for which both sets of data are available. For example, if projected costs were anticipated to be \$1,612,593 and the total number of participants were 130,992 the license fee per participant would be \$12.31 rounded up to \$13.

- (2) Not later than April 30 of each year following the effective date of this regulation, the department shall give written notice to DUI program licensees of the license fee for the forthcoming fiscal year and the manner in which it was calculated, including data used in making the calculation.
  - (3) The license fee shall be a set amount assessed for each participant enrollment. The total amount of fees owed to the Department by a licensee shall be determined by multiplying the total number of new enrollments for the applicable quarter in the licensed program by the amount of the license fee per enrollee. For example, if the licensee enrolled 100 participants during the quarter and the license fee is \$13 per enrollment, the amount of the total fee would be \$1,300.
  - (3) Failure to submit quarterly enrollment reports and pay quarterly license fees by the 30th day following the close of each quarter (i.e., September 30th, December 31st, March 31st, and June 30th) shall result in the issuance of a notice of deficiency in accordance with Section 9824. For example, if the quarter first quarter fees are not paid by October 30, a notice of deficiency will be sent to the licensee.
- (o) The program shall maintain for Departmental review the current and previous fiscal year program budget and revenue and expenditure reports.

**AUTHORITY:** Section 11836.15, Health and Safety Code; and Section 23161(b), Vehicle Code. Reference: Sections 11837.4 and 11837.5, Health and Safety Code; and Sections 23161 and 23181, Vehicle Code.

**HISTORY:**

1. Change without regulatory effect renumbering and amending former section 9846 to section 9878 filed 4-15-91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 20). For prior history, see Register 82, No. 47.
2. Amendment filed 11-18-91 as an emergency; operative 1-1-92 (Register 92, No. 8). A Certificate of Compliance must be transmitted to OAL 4-29-92 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 4-27-92 as an emergency; operative 4-28-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 8-26-92 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 4-27-92 order including amendment of subsection (i) transmitted to OAL 7-16-92 and filed 8-25-92 (Register 92, No. 35).
5. Amendment of section heading and text filed 6-14-93 as an emergency; operative 6-14-93 (Register 93, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-93 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading and text refiled 9-1-93 as an emergency; operative 10-8-93 (Register 93, No. 36). A Certificate of Compliance must be transmitted to OAL by 2-7-94 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section heading and text refiled 2-2-94 as an emergency; operative 2-5-94 (Register 94, No. 5). A Certificate of Compliance must be transmitted to OAL by 6-6-94 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 2-2-94 order including amendment of section transmitted to OAL 5-31-94 and filed 7-13-94 (Register 94, No. 28).

9. Repealer of subsection (d)(1)(F), subsection relettering, amendment of subsection (n), new subsections (n)(1)-(n)(3) and amendment of Note filed 3-23-2000; operative 4-22-2000 (Register 2000, No. 12).

## **§8 OTHER CONSEQUENCES OF CONVICTION**

### **8(B) Attorneys**

In December, 1999, an attorney (SBN 65216) with no prior record of discipline was suspended from the practice of law for 20 months and given 3 years probation as a result of his conviction of a fourth offense of drunk driving in violation of Veh. C. §23175. This means that he got no discipline for the first three convictions. Predictably, our records indicate that this attorney has never purchased a copy of this book.

An attorney (#147834) was the subject of an interim suspension in January 2000, following his conviction of violations of Veh. C. §20002(a) and Pen. C. §148. The published notice stated, "both convictions involved moral turpitude".

### **8(D) Immigrants, Aliens & Non-Citizens**

Oakland attorney Norton Tooby (510 601 1300) and the Immigration Law Resource Center (San Francisco, 415 255 9499) are good resources for research on this topic.

#### **For more information:**

Rosenzweig, Sandra, "Immigration Law - Historic and Current Sources for a Highly Politicized Topic", *California Lawyer*, 20 No. 6, June 2000 (Los Angeles: Daily Journal Corporation) 60.

*California Criminal Law and Immigration* (San Francisco: Immigration Law Resource Center, 1999).

### **8(E) Pilots and Transportation Workers**

The Federal Aviation Administration (FAA) alcohol related conviction and suspension reporting requirements are available on the internet at:

**<http://www.mmac.jccbi.gov/cas/duidwi/report.htm>**

Basically, the document states that 14 C.F.R. §61.15 requires a report to the FAA of any drunk driving conviction or administrative action (driver's license suspension, cancellation, revocation or restriction) within 60 days of the effective date of the action. Typically then, the pilot would have 90 days from the date of arrest to report the D.M.V. APS action, and 60 days from any conviction to report that.

The FAA defines a reportable action as: