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CALIFORNIA GAMBLING CONTROL COMMISSION
DESCRIPTION OF PROPOSED REGULATORY ACTION
PROGRAM FOR RESPONSIBLE GAMBLING

INTRODUCTION:

The California Gambling Control Commission (Commission) is considering amendments to previously adopted regulations, as well as the addition of a new section and form related to the Self-Exclusion element of the Program for Responsible Gambling (Program). These amendments to the regulations would better implement various aspects of the Gambling Control Act (Act)¹ and provide further protection to the public.

Essentially, except for minor changes and a clarification in the responsible gambling advertising, the proposed regulations revise the way in which individuals apply for, and are removed from the list of self-excluded persons. Under the proposed system, the Bureau of Gambling Control (Bureau) would continue to process applications and maintain the list of self-excluded persons. The Bureau already processes the removal of individuals from the list, but under the proposed system they would only be required to process removals upon receiving a request.

SUMMARY:

Several substantive amendments to the regulations for the Program have been suggested. These amendments relate to:

- Licensee requirements for posting problem gambling referral information.
- Changes to non-lifetime exclusion requests for the Self-Exclusion Program.
- Changes to lifetime exclusion requests for the Self-Exclusion Program.

Posting Problem Gambling Referral Information

Concerns have been raised that the requirements for including problem gambling messages in advertising are not being met because the messages are sometimes not legibly displayed. The suggested amendments would address this issue. In addition, the language has been revised to clarify that owners of third-party providers and gambling business, not just owners of a gambling establishment, must include problem gambling messages in gaming advertising and websites.

Automatic Removal from the List of Self-Excluded Persons

Current regulation allows for the automatic removal of individuals from the list of self-excluded persons if their request was for either a one-year or five-year term. Another option, included in several other states' responsible gambling programs, is to require individuals enlisted in a responsible gambling program to request removal from the program at the expiration of the term, instead of automatic removal. This requirement would provide further flexibility and protection for those individuals who choose to participate.

¹ Business and Professions Code section 19800, et seq.

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Changes to Lifetime Exclusion Requests to the Self-Exclusion Program

Concerns have been raised that individuals are not able to remove themselves from lifetime exclusion. Current regulations allow an individual to request to be excluded on a lifetime basis. This request is irrevocable and can be made for any reason. Two options are being suggested for implementing changes to lifetime requests. Option 1 would provide a system for individuals who have requested lifetime exclusion to request removal after five years, with or without a required one-year “cool down” period. Option 2 would maintain the irrevocable status of a lifetime request, but prevent an individual from making their first request a lifetime term. Option 3 provides for a combination between options 1 and 2, where a lifetime term request could not be requested as the first term, and like option 1, lifetime would be irrevocable. Option 4 could apply to any of the other options, or even to just the current regulations, and would require that certain mental health professional certifications and requirements be met before removal could be requested.

In addition, several less substantive amendments to the regulations for the Program have been suggested. These amendments relate to:

- Revising the reporting requirements for violations of exclusion requests for the self-restriction and self-exclusion programs.
- Correcting the name of the Office of Problem and Pathological Gambling (OPPG).
- Require identity verification at certain points.
- Permit the OPPG, in addition to the Bureau and Commission, to request and review the policies and procedures of any gambling establishment’s self-restriction or self-exclusion program.

Office of Problem and Pathological Gambling

The originally adopted regulations referred to the Office of Problem and Pathological Gambling as Office of Problem Gambling.

Require Identity Verification

Current regulations require the gambling establishment to establish policies and procedures for the forfeiture of money or prizes won or losses recovered by an excluded person. The regulations provide no guidelines to the policies and procedures for how or when to identify the individuals on the list of self-excluded persons. The proposed text provides options to provide minimum standards that gambling establishments must incorporate into their policies and procedures.

Program Review

Current regulations allow the Executive Director and Bureau staff to request copies of a gambling establishment’s self-restriction and self-exclusion policies and procedures. The proposal will add the Office of Program and Pathological Gambling staff, and allow them to request and review gambling establishment’s policies and procedures. Additionally, the notice

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process would be revised to a practice consistent with other regulatory practices by having the Bureau issue any notice of deficiency.

BACKGROUND:

This is the first time since the Program regulations became operative (March 5, 2007) that any substantive revisions have been considered. The current list of self-excluded persons allows for requests to be made in one-year, five-year or lifetime terms. All terms are irrevocable, with the individuals in the one-year and five-year terms being removed from the self-exclusion list automatically at the conclusion of their term. Requests can be made at a gambling establishment with establishment employees or with either the Bureau or the Commission using a notary public. The list is maintained by the Bureau and enforced by the gambling establishments, which are required to have policies and procedures in place to both assist potential applicants in requesting exclusion, and restrict those on the list from participating in gambling activities. As part of the required assistance, gambling establishments must include specific program information in any advertising materials, on the gambling premises and on any websites. Individuals on the list are barred from access to any facilities or services, including receiving directed advertising.

In addition to maintaining the statewide self-exclusion program, gambling enterprises are required to provide and maintain site specific self-restriction lists. This allows an individual to bar themselves from a specific location or a specific service at a specific location. Like the list of self-excluded persons, this list of self-restricted persons is confidential, but instead of being maintained by the Bureau, it is instead maintained independently by each specific gambling establishment.

Since the operative date of the Program, anecdotal stories and complaints have arisen where individuals claim to have placed themselves on the list of self-excluded persons for a lifetime term when that term was not intended. These incidents include individuals using the wrong form; individuals who were intoxicated and felt they had made a mistake; and, individuals who did not feel they had a gambling problem, but were pressured into making a request by another person.

In considering revisions to the regulations, staff reviewed existing regulations in other states and consulted with problem gambling experts on the topic of lifetime exclusion.

EXISTING LAW:

Business and Professions Code section 19801 provides that gambling is addictive and that the exclusion or ejection of certain persons from a gambling establishment is necessary to effectuate the policies of the Act.

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Business and Professions Code section 19845 provides that a licensee may remove from their establishment any person who the Commission has determined should be excluded from licensed gambling establishments in the public interest.

Business and Professions Code section 19920 provides that a gambling establishment must be operated in a manner suitable to protect the public health, safety and general welfare of residents of the state.

Business and Professions Code section 19954 establishes the gambling addiction program fund, paid by licensees and monitored by the State Department of Public Health, OPPG, and made available for the use in providing aid and assistance to persons with a gambling addiction problem.

Welfare and Institutions Code section 4369.2 provides for the training of personnel in the gambling industry in being able to identify customers at risk for problem and pathological gambling and to have knowledge of referral and treatment services.

Welfare and Institutions Code section 4369.4 provides that any agency that regulates casino gambling or cardrooms within the State, along with other departments, coordinate with the OPPG to ensure that state programs take into account, as much as practicable, problem and pathological gamblers.

California Code of Regulations Section 12461 provides requirements for gambling establishments to post or provide OPPG information, including guidelines for display inside the establishment, on any website and in any advertising material.

California Code of Regulations Section 12462 provides for the designing and implementation of problem gambling training for employees of a gambling establishment.

California Code of Regulations Section 12463 provides that gambling establishments shall design and implement a self-restriction program through which patrons can request restriction from various services up to exclusion from the gambling establishment. An optional form is also included which may be utilized by the gambling establishment in the operation of their program.

California Code of Regulations Section 12464 provides that gambling establishments shall design and implement a program that allows patrons access to the statewide self-exclusion program which provides for the exclusion of the patron from all gambling establishments, statewide. A form is also provided in this section which must be utilized in the program.

California Code of Regulations Section 12466 provides that the Executive Director or Bureau staff may require a licensee to provide any elements of their required programs for review and that the Commission may make an administrative determination that a program is inadequate and provide timelines for the implementation of corrections. This section also provides that failure to

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establish a program or maintain the confidentiality of the lists of self-restricted or self-excluded persons, or to cure a deficiency is a violation.

PROPOSED ACTION:

Section 12460 – Article Definitions

- The irrevocability descriptions in subsections (a) and (b) are revised to clarify that the voluntary agreement is only irrevocable during the requested period.
- The proposed changes to this Section include non-substantive changes for clarity and consistency with the rest of the Article.

Section 12461 – Posting Referral Information

- Proposed changes to subsections (a) through (c) include non-substantive changes for consistency; such as the correction of the OPPG and the removal of expired date references.
- Proposed changes to subsection (b) and (c) include changes in the requirement from licensees to a gambling enterprise or a licensed or registered owner of a gambling business or third-party provider; and from a gambling establishment's website to any website for a business requiring Commission approval. This change provides clarification that the provisions apply to all gambling operations that require approval by the Commission, and removes possible loopholes in the requirement.
- The proposed change to subsection (c) remove the requirement to include a "link to a website" and instead require only a reference to the website listed, in order to resolves a concern that the term "link" may mean only a selectable item in an electronic format and would not apply to printed material. The section would provide that any advertising material shall refer to the website <http://www.problemgambling.ca.gov>, without the possibly ambiguous reference to a link.
- The proposed subsection (d) provides clarification in the requirements of subsections (b) and (c) for how the gambling establishment provides all gambling messages, links to the OPPG website, and the problem gamblers hotline. Concern has been expressed that in some advertising the required messages are unclear or not easily readable. The proposed language seeks to remedy this by providing clearer guidance.

Section 12462 – Training Requirements

- The proposed changes to this Section include only non-substantive changes for clarity and consistency.

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Section 12463 – Self-Restriction Program

- The proposed changes to this Section and associated form include only non-substantive changes for clarity and consistency.
- The proposed change to subparagraph (B) of paragraph (4) of subsection (a) is non-substantive.

Section 12464 – Self-Exclusion Program

- The proposed changes to this Section and associated form include only non-substantive changes for clarity and consistency.
- The proposed change to paragraph (3) of subsection (a) would revise the requirement to report to the Bureau a violation of a self-exclusion request from only when police or security are required and would instead require the reporting of any violation.
- The proposed addition of paragraph (4) of subsection (a) would add the requirement that gambling establishments verify the identity of a patron and check the list of self-excluded persons before cashing a check, or exchanging chips, tokens or any other item for a monetary value. This additional requirement would further the protection of the public by ensuring that individuals were unable to cash a check or redeem any of gambling paraphernalia having a monetary value without having their participation in the self-exclusion program verified.

Changes to Automatic Removal from Self-Exclusion List – Included in all options

Currently, the regulatory structure has individuals who have requested either a one-year or five-year self-exclusion term automatically removed from the list of self-excluded persons at the conclusion of their term. An individual would then be forced to reapply with another one-year, five-year or lifetime term request. According to conversations with problem gambling experts, the program was initially designed so that individuals would have the option to serve many shorter terms before, if ever, requesting lifetime exclusion. This allowed the program to work at the level to which an individual is comfortable as they sought assistance. The proposed change is designed to maintain this flexibility concept, but to streamline the process for both the applicants and the State.

Under the proposal an individual would not automatically be removed from the list at the conclusion of their term. Instead of having to request multiple self-exclusion terms to maintain a temporary status, an individual would stay on the list of self-excluded persons at the conclusion of their term without additional requests. Under the proposal, an individual would need to request removal from the list, which would be allowed at any time after the conclusion of the self-exclusion term.

This proposal could be applied with either of the proposed two options that follow, or could be applied to the current list of self-excluded persons with no other revision. Also, this proposal

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would not be applied to individuals currently on the list of self-excluded persons under either a one-year or five-year term. It would apply on a prospective basis.

Pros:

- Individuals would not be required to repeatedly request to be included on the list of self-excluded persons and would be able to maintain the flexibility to be removed at some future date.
- May reduce the Bureau's workload related to the Program as they would only be required to update the list when requested by an individual instead of having to continuously track when terms expire.
- Less frequent updates of the list of self-excluded persons should provide more clarity to the implementing gambling establishments.

Cons:

- Could be considered redundant with a lifetime term option.
- Requires individuals on the list of self-excluded persons to file additional paperwork with the State to resume gambling at gambling establishments.
- Could provide a false sense of security that the individual still has long term protection when in fact they are subject to little wait time should they decide to resume gambling.

OPTION 1 - Section 12465 – Removal from the List of Self-Excluded Persons

This option would change a lifetime request to a term of five years (or some other period to be determined, but presumably no less than five years). At the conclusion of the term, the individual would remain on the list of self-excluded persons until such time as a request for removal is submitted.

Individuals enrolled on the current list of self-excluded persons with a lifetime term would be placed on the proposed list of self-excluded persons with a new "lifetime" term and a new request date the same as the effective date of the regulations.

This proposal effectively removes a true lifetime exclusion term despite the continued use of the term "lifetime" as the description for the self-exclusion term.

Pro:

- Individuals would be able to remove themselves from the list of self-excluded persons once they have served the minimum period should they feel that their reasons for enlisting are no longer relevant.

Cons:

- This proposal effectively removes a true lifetime self-exclusion term. During previous discussions, problem gambling experts suggested that any change that removes a true lifetime exclusion period risks the integrity of the self-exclusion program.

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- This proposal becomes redundant when the proposed elimination of automatic removal from the list of self-excluded persons for one-year and five-year terms is considered.

OPTION 2 - Section 12465 – Removal from the List of Self-Excluded Persons

This option would prevent any individual from requesting a lifetime term unless they had already concluded either a one-year or five-year term on the list of self-excluded persons. This should help to reduce the number of reported instances of individuals claiming to have accidentally or mistakenly requested self-exclusion for a lifetime term, while also ensuring that individuals would still have the option of a permanent exclusion if one was desired at a later date.

Individuals enrolled on the current list of self-excluded persons with a lifetime term would be placed on the proposed list of self-excluded persons for a five-year term with an effective date the same as the effective date of the regulations. This would ensure that individuals who have already requested lifetime self-exclusion have the opportunity to take advantage of the proposed new direction (not being able to request lifetime self-exclusion as a first request), but at the same time still providing protection to those actually desiring a lifetime term.

Pros:

- Would still include a lifetime period, with no option for removal, after an initial one-year or five-year self-exclusion term.
- Would address complaints that individuals signed up for lifetime self-exclusion under duress or by mistake.

Con:

- Would prevent someone from requesting lifetime on the first request even if they understood and desired such an option. This is somewhat alleviated when the proposed change to automatic removal from the list of self-excluded persons for one-year and five-year terms is considered.

OPTION 3 - Section 12465 – Removal from the List of Self-Excluded Persons

This option would prevent any individual from requesting a lifetime term unless they had already concluded either a one-year or five-year term on the list of self-excluded persons. This should help to reduce the number of reported instances of individuals claiming to have accidentally or mistakenly requested self-exclusion for a lifetime term, while also ensuring that individuals would still have the option of a permanent exclusion if one was desired at a later date.

Individuals enrolled on the current list of self-excluded persons with a lifetime term would be placed on the proposed list of self-excluded persons for a five-year term with an effective date the same as the effective date of the regulations. This would ensure that individuals who have already requested lifetime self-exclusion have the opportunity to take advantage of the proposed new direction (not being able to request lifetime self-exclusion as a first request), but at the same time still providing protection to those actually desiring a lifetime term.

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In addition, this option would change a lifetime request to a term of nine years (or some other period to be determined). At the conclusion of the term, the individual would remain on the list of self-excluded persons until such time as a request for removal is submitted. The request for removal would start a one year “cool down” period, during which the individual would remain on the list of self-excluded persons. At the conclusion of the “cool down” period (ten years), the individual would be automatically removed.

Pros:

- Individuals would be able to remove themselves from the list of self-excluded persons once they have served the minimum period should they feel that their reasons for enlisting are no longer relevant.
- Would address complaints that individuals signed up for lifetime self-exclusion under duress or by mistake.

Cons:

- This proposal effectively removes a true lifetime self-exclusion term. During previous discussions, problem gambling experts suggested that any change that removes a true lifetime exclusion period risks the integrity of the self-exclusion program.
- This proposal becomes redundant when the proposed elimination of automatic removal from the list of self-excluded persons for one-year and five-year terms is considered.

OPTION 4 - Section 12465 – Removal from the List of Self-Excluded Persons

This option could be added in conjunction with any of the other options and would provide additional requirements, most likely incorporated through a revision of the Self-Exclusion Removal Request, form CGCC-0XX. This option would include additional requirements before individuals could be removed from the list of self-excluded persons:

- Affidavits from two licensed certified gambling addiction counselors recommending release from exclusion.
- Proof of identity of the individual.
- At least eight therapy sessions with a licensed therapist trained by OPPG, including a requirement that the dates, initials of the therapist and the therapist’s unique OPPG number be included on the required form.
- A letter from the licensed therapist that includes; a list of the dates of completed sessions, why the therapist believes the individual should be removed from the list, the therapists OPPG number and the therapist’s location, phone number and original signature.

This additional requirement could be added to the one and five year terms or in cases of options 1 and 3, only to the lifetime requests.

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Pro:

- Would ensure that an individual has received some assistance prior to being removed from the list of self-excluded persons.

Cons:

- Would place the Commission in a position to weigh the opinions of mental health professionals.
- In discussions with OPPG it has been mentioned that in their experience no mental health professional has expressed a willingness to recommend an individual resume gambling as a professional opinion.

Section 12466 – Responsible Gambling Program Review

- Subsection (a) provides that the Executive Director or Bureau staff may request that licensees make available for review their required programs as provided in the article. The subsection is revised to allow the staff of the OPPG to request program information for their own review. The addition of this agency enhances the required coordination between the OPPG and the Commission and will further protect the people of California. Additionally, to be consistent with other provisions of regulation and the Act, the notification of any deficiency is changed to issuance by the Bureau.
- Subsection (b) is revised to clarify that failure to establish or remedy a deficiency is a ground for disciplinary action.