



Board of Behavioral Sciences

Memo

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To: Board Members

Date: September 4, 2024

From: Christy Berger, Regulatory Manager

Subject: Update on Board Rulemaking Proposals

Below is the status of Board-approved regulation proposals. See **Attachment** for information on the required steps of the regulatory process.

Disciplinary Guidelines

Status: Submitted to DCA Office of Legal Affairs to Begin Initial Review Process (Production Phase); Additional Changes Proposed to the Board at September 2024 Meeting

This proposal would result in updates to the Board's "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, which are incorporated by reference into the Board's regulations. The proposed changes fall into three general categories:

1. Amendments seeking to amend certain penalties that are available to the Board;
2. Amendments seeking to update regulations or the Uniform Standards/Guidelines in response to statutory changes to the Business and Professions Code; and
3. Amendments to clarify language that has been identified as unclear or needing further detail.

The proposal was approved by the Board at its meeting in August 2023.

Unprofessional Conduct

Status: Public Comment Period for Modified Text Ended June 25, 2024; Submitted to the Office of Administrative Law for Approval

This proposal would result in updates to the Board's Unprofessional Conduct regulations. The proposed changes would result in striking regulations that duplicate statutory law, and would provide for transparency by adding requirements related to the Confidentiality in Medical Information Act.

The proposal was approved by the Board at its meeting in August 2023.

Telehealth

Status: Submitted to DCA Office of Legal Affairs for Initial Review Process (Production Phase)

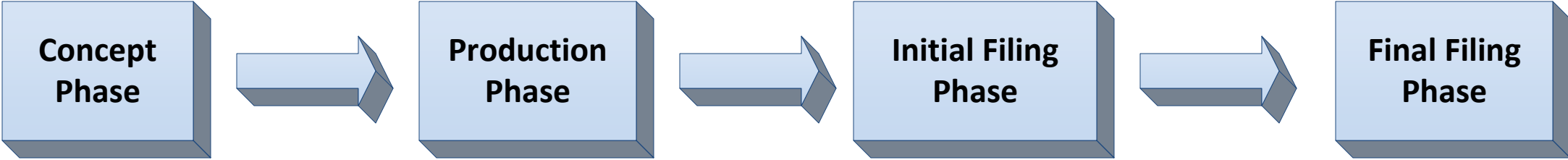
This proposal would require a license be “current and active” to engage in telehealth instead of “valid and current” to conform with the actual license status types in the Board’s online licensing system; require licensees providing services via telehealth to ensure that the technology, method and equipment used to provide services complies with all applicable federal and state privacy, confidentiality and security laws; and, strike a provision that states that violation of this section is unprofessional conduct, as this authority is already provided for in statute.

The proposal was approved by the Board at its meeting in March 2024.

Attachment

Regulation Process

Regulation Package Approval Process



- Kick-Off Meeting with relevant Board and DCA staff to discuss potential regulation.
- Board staff drafts proposed regulation.
- Regulations Counsel and Second Level Reviewer reviews and approves proposed regulation.
- Board meeting is held, proposed regulation text is presented for vote and approval.

Phase Goal: Proposed Regulation is drafted and approved by the Board to move forward.

- After the Board approves the proposed text, Board staff develop remaining documents in the initial regulatory package.
- Regulation package is prepared with assistance from DCA Budget Analyst and Board Regulations Counsel.
- Following review and approval of the regulatory package by the Budget Analyst and Regulations Counsel, the package is reviewed and approved by the DCA Director and Agency.

Phase Goal: Regulation Package is approved by Agency.

- Following Agency approval, the regulatory package is submitted to OAL for publication in the Notice Register for a 45-day comment period.
- If comments are received, Board Staff draft responses for review by the Regulations Counsel.
- Board meeting is held to approve the responses and modified text, if necessary.
- If substantial changes are made to the text, a 15-day comment period commences.

Phase Goal: Completion of the Public Comment Period with all comments appropriately addressed and any changes to the text approved by the Board.

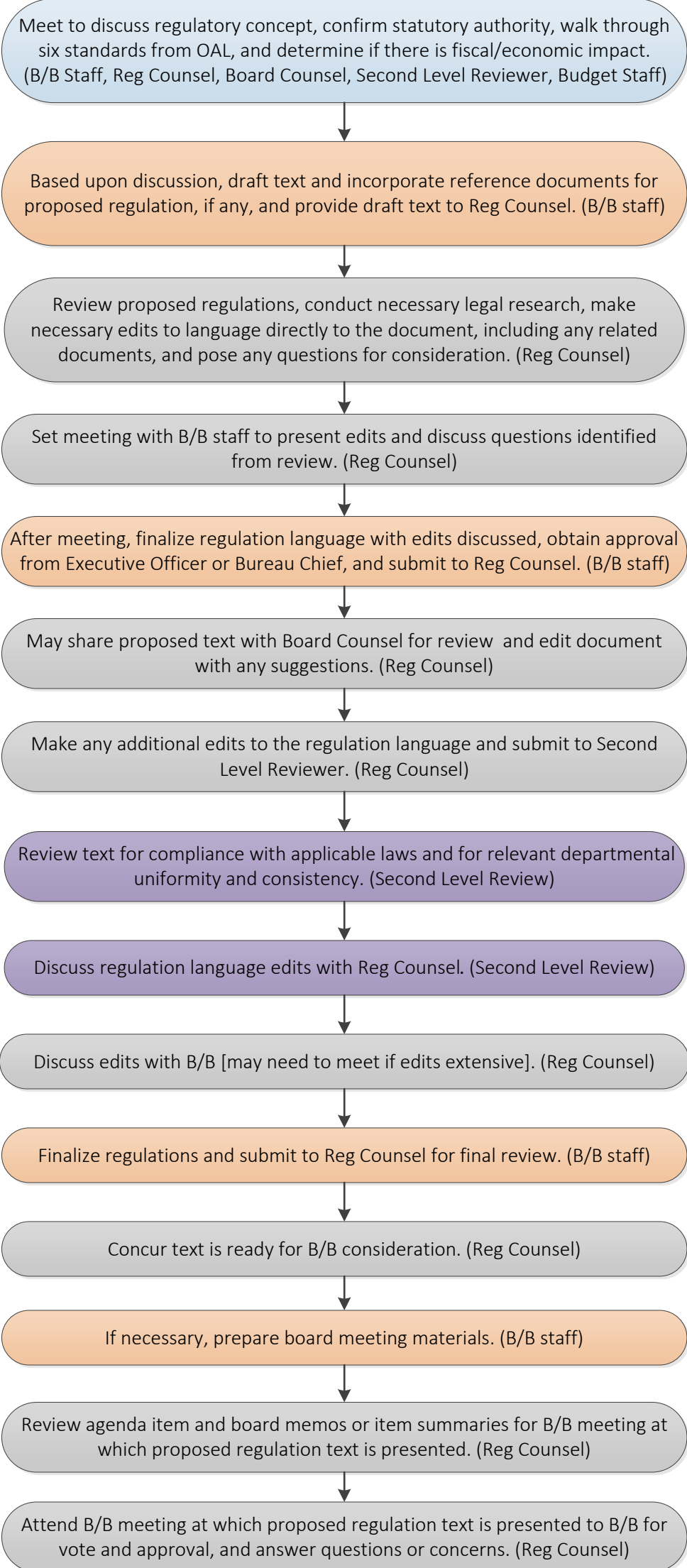
- Board Staff develops and submits a final regulatory package to the Regulations Coordinator for review.
- If there is a fiscal impact to the regulations, the Budget Analyst submits the package to the Department of Finance (DOF) for review and approval, as necessary.
- The package is reviewed by Regulations Counsel, DCA Director, and Agency.
- Final package is submitted to OAL.
- OAL approves package, Board Staff updates the Board website with the new regulation, and contacts interested parties with notification of the effective date.

Phase Goal: OAL approves Final Regulatory Package.

Note:
All references to timeframes throughout the Phases shall be calendar days, unless the Parties agree otherwise during the kick-off meeting or subsequently to alternative timeframes.

Light Blue: B/B Staff/Reg Counsel, Board Counsel, Second Level Reviewer, Budget Staff
Purple: Second Level Reviewer
Orange: B/B Staff
Gray: Reg Counsel

Concept Phase



Note:
30-day timeframe for reviewing of proposed regulations and legal research.

Note:
Regulation Counsel and Second Level Reviewer have a 30-day timeframe for reviewing and finalizing regulation language.

Note:
If suggestions are substantial from the Board Counsel, the Regulations Counsel may need to confer with Staff and Executive Officer or Bureau Chief.

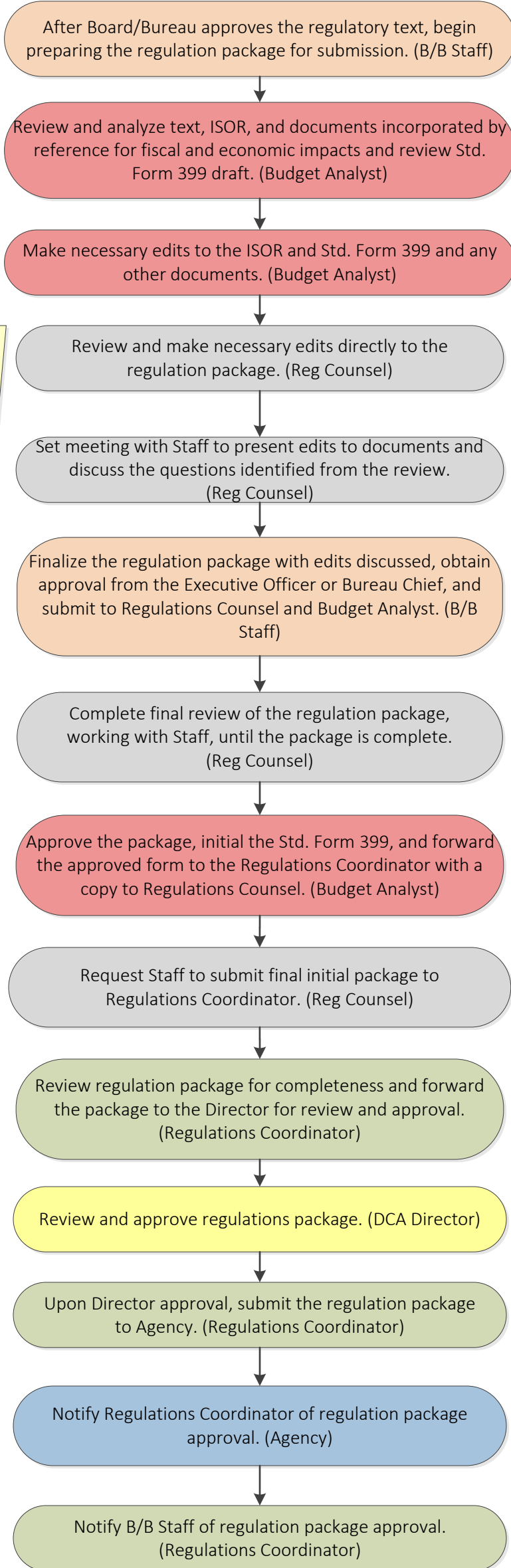
Note:
Additional revisions to the text may raise new legal issues not previously identified, which may also alter the review timeframe.



End Point

Production Phase

Blue: Agency
Yellow: DCA Director
Green: Regulations Coordinator
Red: Budget Analyst
Orange: B/B Staff
Gray: Reg Counsel



Note:
Regulations Counsel review will be completed within a 30-day timeframe.

Green: Regulations Coordinator
Orange: B/B Staff
Pink: OAL
Gray: Reg Counsel

Initial Filing Phase

Notify Staff of Agency approval and offer to electronically submit package to OAL for publication. (Regulations Coordinator)

Staff submitting package to OAL?

Submit package to OAL and copy Staff and Regulations Counsel on submission. (Regulations Coordinator)

Provide Form 400 and Agency's signed Std. Form 399 to Staff for submission. (Regulations Coordinator)

Submit package to OAL and copy Regulations Coordinator on submission. (B/B Staff)

Publish rulemaking in Notice Register for 45-day comment period. (OAL)

Post the notice on B/B webpage on same day as publication. (B/B Staff)

Send email and U.S. Mail notices to the mailing list by OAL publishing date. (B/B Staff)

Adverse comments received?

Proceed to Final Filing Phase

Review comments, prepare recommended responses, and proposed modification to text, and forward to Regulations Counsel for review. (B/B Staff)

Review proposed responses to comments and any proposed modification to text, if any. Make necessary edits to documents and place questions regarding responses for B/B in comment fields. If necessary, seek Second Level Review of modified text. (Reg Counsel)

Provide approved responses and modified text, if necessary, to Staff. (Reg Counsel)

Schedule B/B meeting to approve the responses and, as needed, any modified text. (B/B Staff)

Attend any B/B meeting to address legal questions raised regarding comments or modified text, if any. (Reg Counsel)

End Point

Note:
 Regulations Counsel and the Second Level Reviewer are copied as appropriate throughout the process.

Note:
 A hearing, if timely requested, must be scheduled (if a hearing is not already scheduled) and Staff shall arrange such hearing. Regulations Counsel shall attend the hearing.

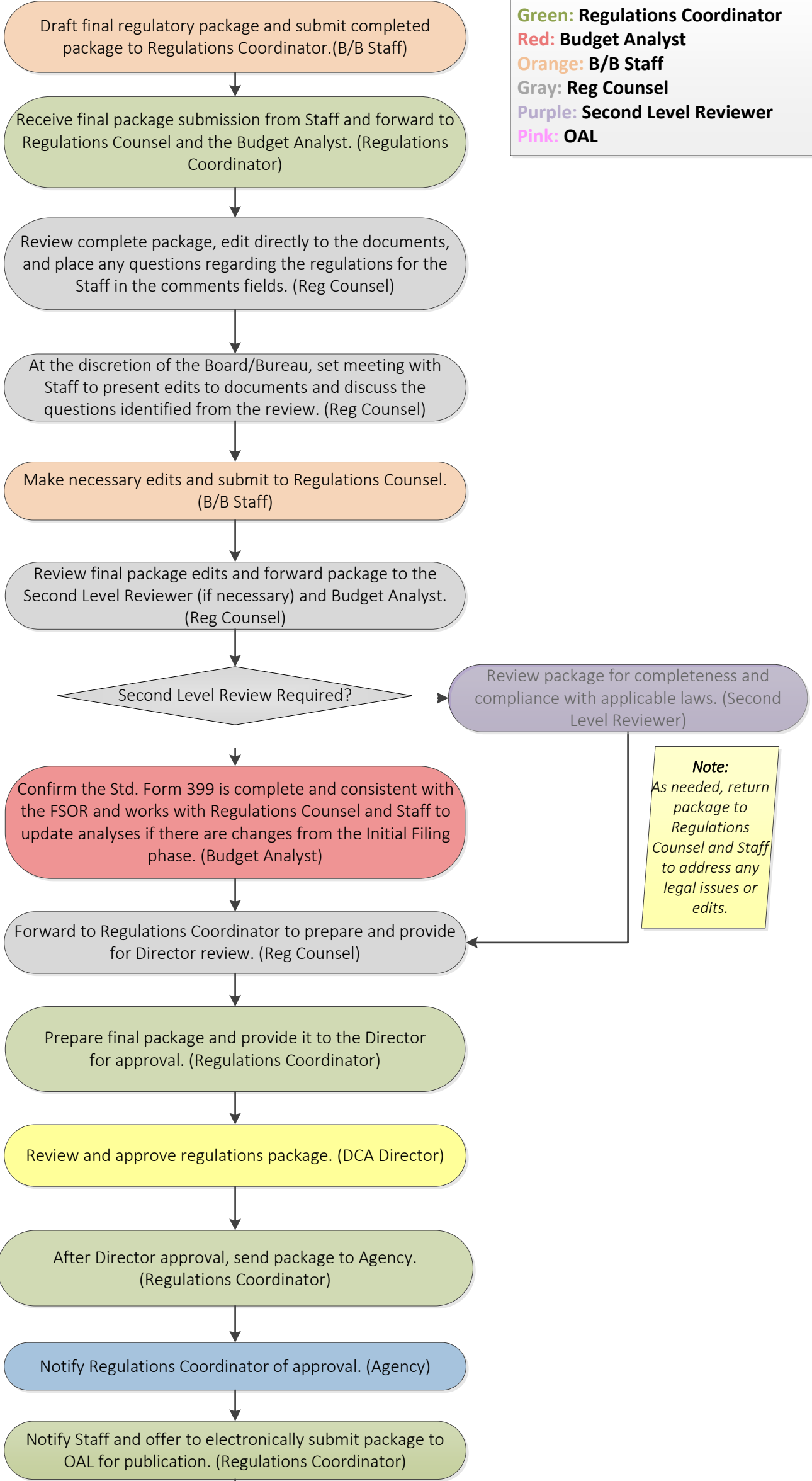
Note:
 Comments review should take 15-30 days depending upon the number and complexity of the comments.

Note:
 Board commences any 15-day comment period. Process would repeat if adverse comments were received, and edits or responses were needed.

Final Filing Phase

Blue: Agency
Yellow: DCA Director
Green: Regulations Coordinator
Red: Budget Analyst
Orange: B/B Staff
Gray: Reg Counsel
Purple: Second Level Reviewer
Pink: OAL

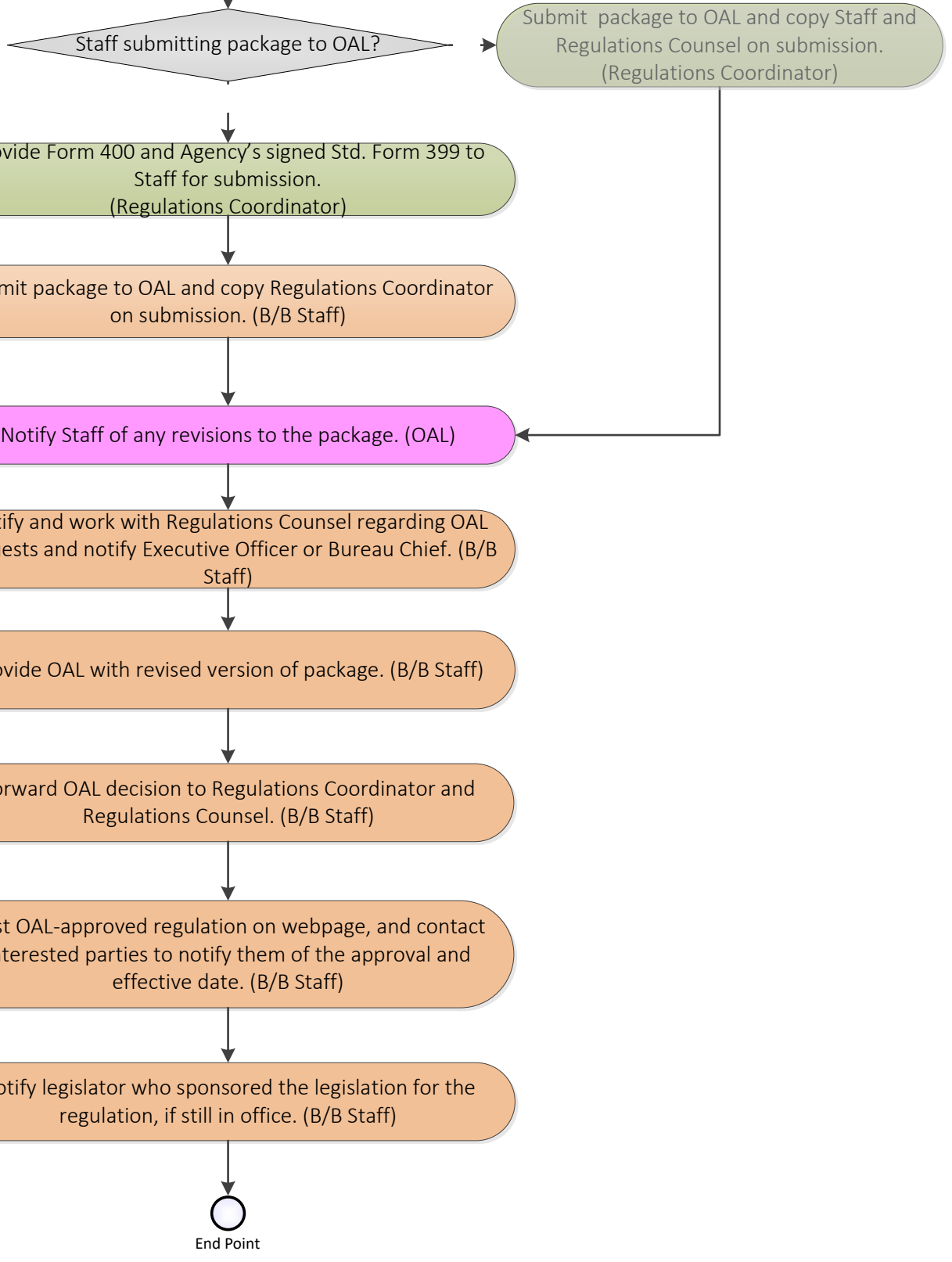
Note:
Regulations Counsel review will be completed within a 30-day timeframe.



Note:
As needed, return package to Regulations Counsel and Staff to address any legal issues or edits.

A Proceed to pg. 2

A From Pg. 1



Note:
Budget Analyst forwards Std. Form 399 package to DOF for approval, if needed.