



Board of Behavioral Sciences

Memo

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To: Policy and Advocacy Committee Members **Date:** March 26, 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: Preparation for DCA Initial Review Process

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 Ended March 25, 2024

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

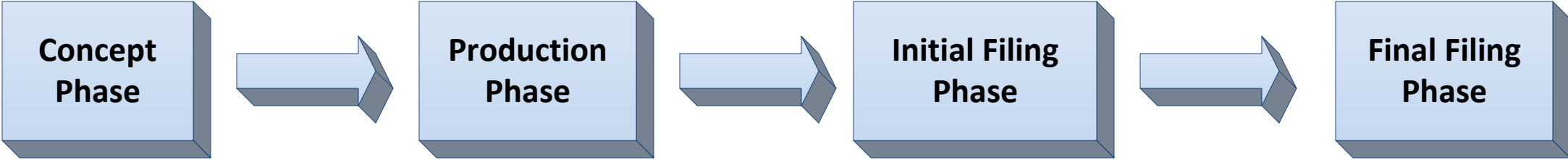
Status: Approved by the Board at its March 1, 2024 meeting

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.

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

Meet to discuss regulatory concept, confirm statutory authority, walk through six standards from OAL, and determine if there is fiscal/economic impact. (B/B Staff, Reg Counsel, Board Counsel, Second Level Reviewer, Budget Staff)

Based upon discussion, draft text and incorporate reference documents for proposed regulation, if any, and provide draft text to Reg Counsel. (B/B staff)

Review proposed regulations, conduct necessary legal research, make necessary edits to language directly to the document, including any related documents, and pose any questions for consideration. (Reg Counsel)

Set meeting with B/B staff to present edits and discuss questions identified from review. (Reg Counsel)

After meeting, finalize regulation language with edits discussed, obtain approval from Executive Officer or Bureau Chief, and submit to Reg Counsel. (B/B staff)

May share proposed text with Board Counsel for review and edit document with any suggestions. (Reg Counsel)

Make any additional edits to the regulation language and submit to Second Level Reviewer. (Reg Counsel)

Review text for compliance with applicable laws and for relevant departmental uniformity and consistency. (Second Level Review)

Discuss regulation language edits with Reg Counsel. (Second Level Review)

Discuss edits with B/B [may need to meet if edits extensive]. (Reg Counsel)

Finalize regulations and submit to Reg Counsel for final review. (B/B staff)

Concur text is ready for B/B consideration. (Reg Counsel)

If necessary, prepare board meeting materials. (B/B staff)

Review agenda item and board memos or item summaries for B/B meeting at which proposed regulation text is presented. (Reg Counsel)

Attend B/B meeting at which proposed regulation text is presented to B/B for vote and approval, and answer questions or concerns. (Reg Counsel)



End Point

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.

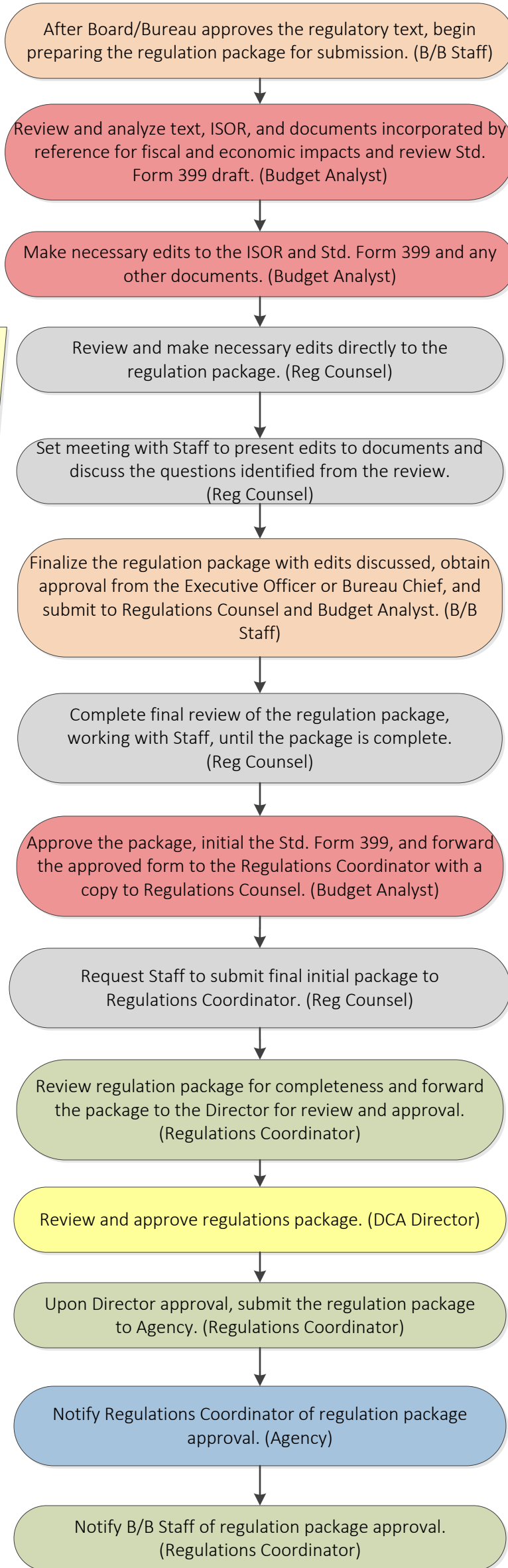
Note:
If suggestions are substantial from the Board Counsel, the Regulations Counsel may need to confer with Staff and Executive Officer or Bureau Chief.

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

Production Phase

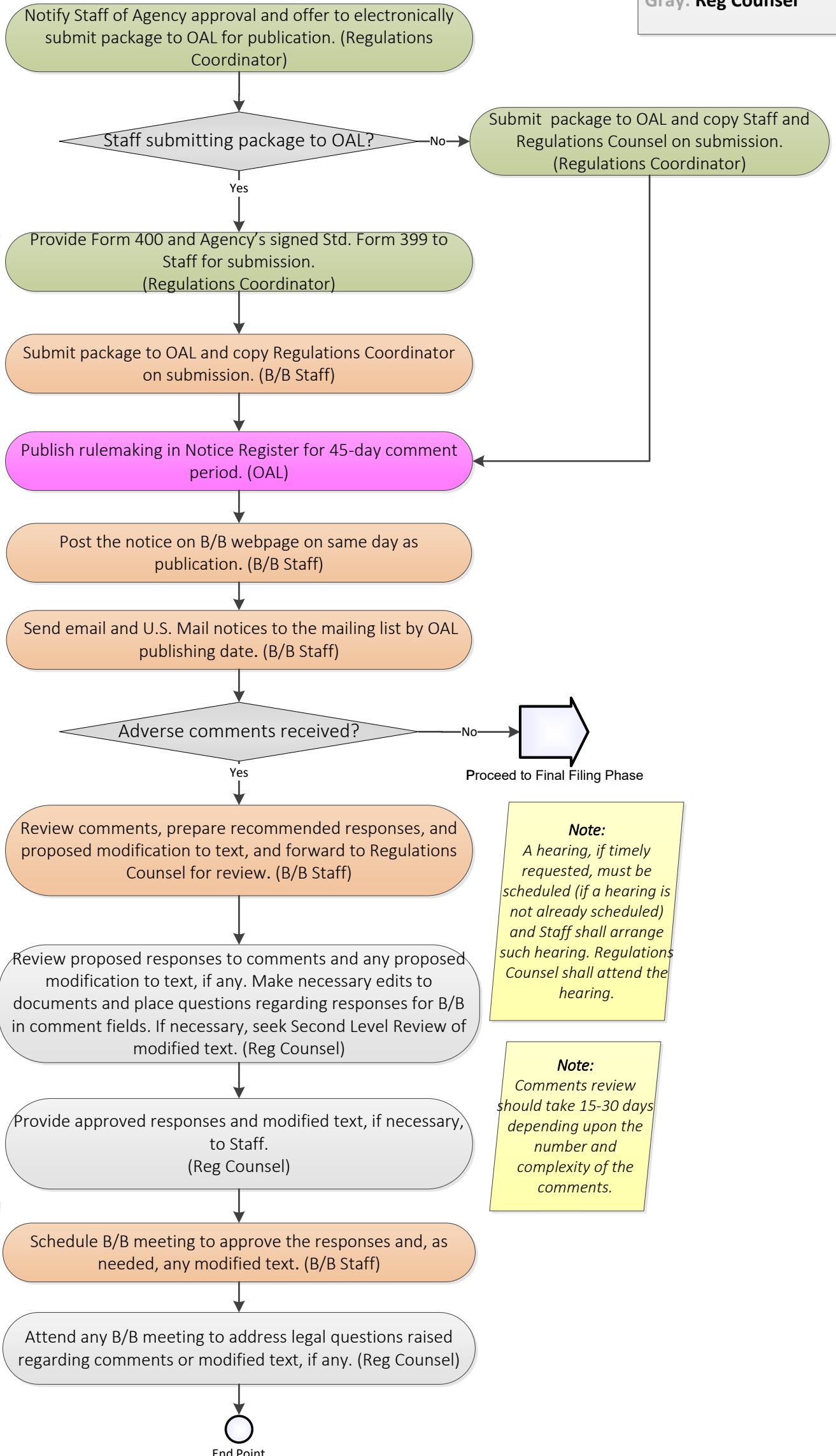
Blue: Agency
Yellow: DCA Director
Green: Regulations Coordinator
Red: Budget Analyst
Orange: B/B Staff
Gray: Reg Counsel

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



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.

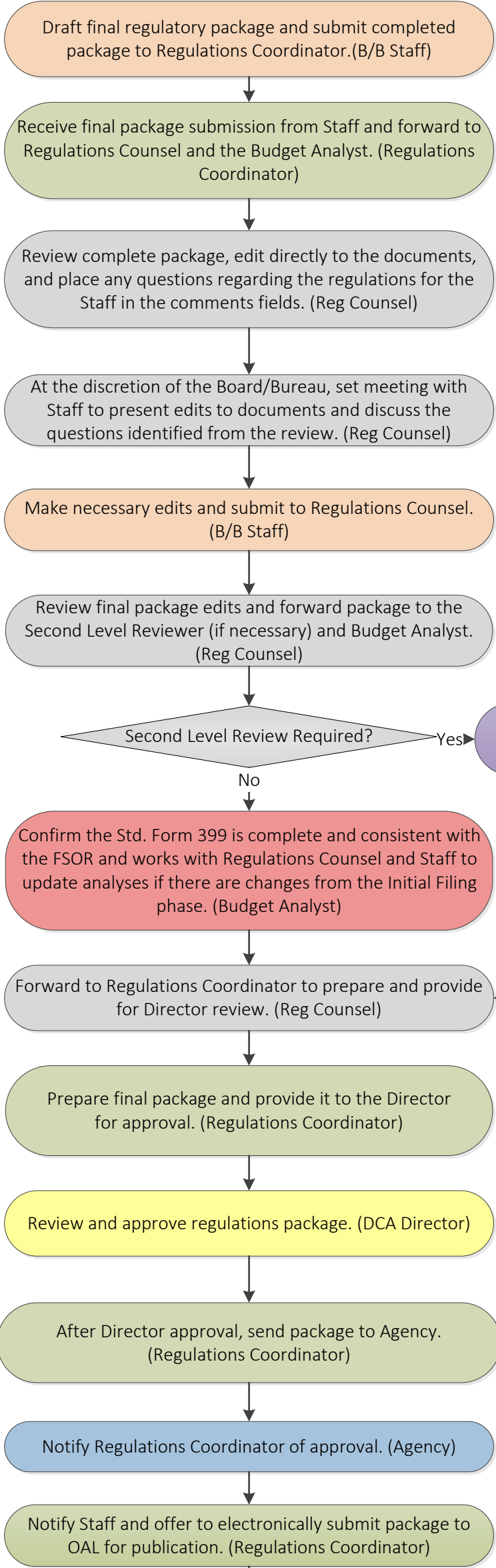
Note:
 Comments review should take 15-30 days depending upon the number and complexity of the comments.

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

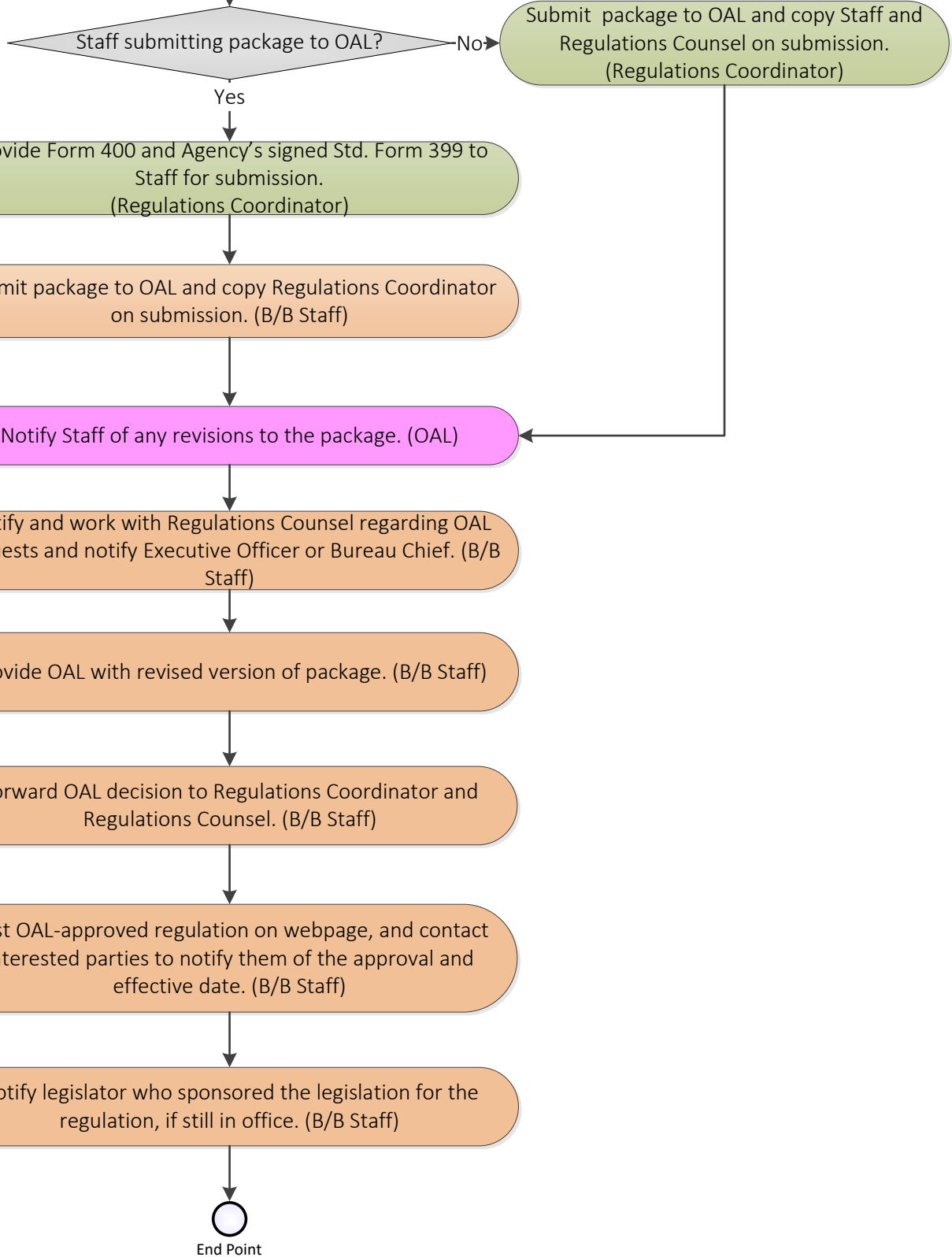
Note:
Regulations Counsel review will be completed within a 30-day timeframe.



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.