



CALIFORNIA DEPARTMENT OF State Hospitals

NOTICE OF PROPOSED RULEMAKING

TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES DIVISION 1. DEPARTMENT OF MENTAL HEALTH

The Department of State Hospitals (formerly Department of Mental Health) proposes to adopt and amend the regulations related to the Patients' Rights Complaint and Appeal procedures after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department of State Hospitals will hold a public hearing starting at 1:00 pm on December 23, 2014, at the Department of State Hospitals, 1600 9th Street, Room 100, Sacramento, California. The Department of State Hospital's building is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted by facsimile (FAX) at (916) 651-3090 or by e-mail to DSH.Regulations@dsh.ca.gov. The written comment period closes at 5:00 p.m. on December 22, 2014. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Regulations Unit
Department of State Hospitals
1600 9th Street, Room 410
Sacramento, CA 95814

AUTHORITY AND REFERENCES

Authority: Welfare and Institutions Code sections 4005.1, 4011, 4027, 4101; 5325, 5325.1, and 5326.

References: Sections 4027, 5325, 5325.1, and 5326, Welfare and Institutions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Welfare and Institutions Code (WIC) section 5325 et. al establishes the legal and civil rights of persons involuntarily detained pursuant to the Lanterman-Petris-Short (LPS) Act (WIC 5000-5550). California Code of Regulations, Title 9, Division 1, Chapter 4, Article 6, Section 864 describes the complaint procedures for local mental health facilities and does not apply to the California Department of State Hospitals. This regulatory action will add Section 864.1 to provide the specific provisions for the patient complaint and appeal procedures for individuals admitted to a state hospital under the LPS Act. Amendments to Title 9, Section 885 will provide individuals admitted to a state hospital under statutes other than LPS with the same complaint and appeal procedures.

Effect of the Proposed Rulemaking

This action describes specific roles, responsibilities and timelines for patients, state hospital staff and the Patients' Rights Advocate related to the review and resolution of patients' rights complaints and appeals for all state hospital patients. This rulemaking action will eliminate confusion with current regulations and facilitate the correction of potential patient rights violations.

Comparable Federal Regulations or Statutes

The Department of State Hospitals has conducted an evaluation for comparable federal regulations or statutes and has determined this regulatory action is consistent with the provisions of the 42 U.S. Code §9501-Bill of Rights for mental health patients and the Federal Constitution.

Benefits Anticipated from the Proposed Action

- The proposed actions will eliminate confusion for patients, patient advocates and state hospital staff in interpreting and applying the current regulations.
- The proposed actions will provide additional health, safety and security for the patients and staff at the state hospitals through the timely review and resolution of potential patient rights violations.

Consistency Evaluation

During the process of developing this regulation amendment, the Department has conducted a search of any similar regulation on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DOCUMENT OR FORMS INCORPORATED BY REFERENCE

None

THE DEPARTMENT OF STATE HOSPITALS HAS MADE THE FOLLOWING INITIAL DETERMINATIONS

Mandated by Federal Law or Regulations

42 U.S. Code §9501 – Bill of Rights provides recommendations for states to ensure that mental health patients receive the protection and services they require. This is a permissive regulation and not a mandate.

Mandates on Local Agencies or School Districts

The Department has determined that this regulation will not impose a mandate on local agencies or school districts.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code

The Department has determined that this regulation will not impose a mandate on local agencies or school districts and therefore no state reimbursement is required.

Fiscal Impact

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: The Department has determined that this regulation will not impose costs to any local agency or school district that require reimbursement.

Costs or Savings to Any State Agency: The Department anticipates there will be no fiscal impact to any State agencies.

Non-discretionary Costs or Savings Imposed on Local Agencies: The Department anticipates there will be no fiscal impact to local agencies.

Costs or Savings in Federal Funding to the State: The Department anticipates there will be no fiscal impact in federal funding to the State.

Significant Effect on Housing Costs

The Department anticipates there will be no impact on housing costs.

Significant, Statewide Adverse Economic Impact Affecting Businesses, Including Ability to Compete

The Department has initially determined that the proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Costs or Savings to Individuals or Businesses

The Department is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed action.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Adoption of these regulations will not:

- create or eliminate total jobs within California;
- create new businesses or eliminate existing businesses within California; or
- affect the expansion of businesses currently doing business in California.

Benefits

These regulations allow the Department to provide additional clarification to state hospital staff, patients, and patient advocates on the patients' rights complaint and appeal procedures. This rulemaking action will also facilitate the resolution of potential patients' rights violations, including abuse and punitively withholding or unreasonably denying patients of their rights. Finally, this regulatory proposal furthers the goal of the Department which is to promote fairness to patients while maintaining standards for a healthy and safe environment, and responsible stewardship.

Cost Impacts on a Representative Person or Business

The Department is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

Business Report

This regulation does not require a business report to be made.

Small Business Determination

The Department is not aware of any impact this proposed action will have on small businesses, because this regulatory action serves to clarify/update the patients' right complaint and appeal procedures within the state hospitals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

DSH invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation amendment at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Karen Gillham

Chief
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Regulations Unit
1600 9th Street, Room 410
Sacramento, CA 95814
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e-mail: karen.gillham@dsh.ca.gov

The back-up contact person for these inquiries is:

Sherry Barandas
Staff Services Manager I
Department of State Hospitals
Regulations Unit
1600 9th Street, Room 410
Sacramento, CA 95814
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e-mail: sherry.barandas@dsh.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to the Regulations Unit at the above address.

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATION AMENDMENT, AND THE RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting the Regulations Unit.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulation amendment substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the Regulations Unit at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the Regulations Unit at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at www.dsh.ca.gov.