

UPDATED INFORMATIVE DIGEST

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED RULEMAKING FOR ADOPTION OF SEXUALLY VIOLENT PREDATOR EVALUATION PROCESSES

Sections Affected:

Adoption of California Code of Regulations, title 9, sections 4020 and 4020.1.

Background and Effect of the Rulemaking:

Welfare and Institutions Code section 6603 allows for updates on original evaluations when necessary for trial. Cases brought under the Sexually Violent Predator Act begin with initial (original) evaluations of the inmate to determine whether he/she is a Sexually Violent Predator (SVP) as defined in Welfare and Institutions Code section 6600, et seq., then a referral is made, and the county designee files a petition to determine if a person meets the criteria of a SVP and should be civilly committed. After the petition is filed, the court determines if there is probable cause to civilly commit the person, and the case is set for trial. Prior to trial, the District Attorney may request updates on the two original evaluations that were the source of the referral, to evaluate whether the patient continues to meet the criteria of a SVP. The evaluations would be updated and if the evaluators' opinions differ as to whether the patient continues to meet the criteria of a SVP, then two independent evaluators would be appointed and the case would go to trial. However, this is not how cases currently progress. It is very common for a case to require many rounds of updates over many years, prior to the trial date. In these cases, multiple evaluators have been appointed over the years for various reasons, including evaluators retiring from DSH or no longer being on the panel of contracted evaluators with DSH. Having so many rounds of updates and so many different evaluators appointed has caused a lack of consistency from case to case and confusion on who legally should be designated to conduct an update and testify on behalf of the Department.

Description of Regulatory Action:

At the Department of State Hospitals January 2, 2018 public hearing, the Director approved for adoption to the California Code of Regulations, title 9, sections 4020 and 4020.1, as it was noticed in the California Notice Register and as set forth in the Initial Statement of Reasons released on November 17, 2017. During the public comment period of the re-adoption of emergency regulations, DSH received one comment from the public, indicating that the Department did not have the authority to regulate when updates can be completed, and that the language was unclear. Based on the comment, DSH is amending the proposed text of the regulation to clarify the language in this current rulemaking action.

Changes to the Regulation:

Pursuant to Government Code section 11346.8, DSH conducted a 15-day supplemental comment period on changes to the initially proposed regulations. The following summarizes the substantive modifications.

The following 15-day modifications were made in Section 4020.1 to the Regulation Text:

1. In Section 4020.1, subdivision (b) was eliminated and clarified in section 4020.1, subdivision (a)(1).
2. In Section 4020.1, subdivisions (a)(1) was added and (a)(2) was modified, to clarify when independent evaluators will be appointed for a difference of opinion.

In addition to the modifications described above, additional nonsubstantive modifications correcting typographical, grammar, changes in numbering and formatting have been made to improve clarity.

Documents Incorporated by Reference:

None.

Comparable Federal Regulations:

There is no duplication or conflict with federal regulations or statutes.