

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections: 4020, 4020.1

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-0501-02

OAL Matter Type: Emergency Readopt (EE)

This emergency action by the Department of State Hospitals is the second re-adoption of emergency rulemaking action no. 2017-0807-02E, which established procedures for updating evaluations under the Sexually Violent Predator Act.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 5/16/2018 and will expire on 8/15/2018. The Certificate of Compliance for this action is due no later than 8/14/2018.

Date: May 8, 2018



Nicole C. Carrillo
Attorney

For: Debra M. Cornez
Director

Original: Pamela Ahlin, Director
Copy: Trini Balcazar

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION / REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2018-0501-02EE
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of State Hospitals			AGENCY FILE NUMBER (if any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAY 08 2018
at 1:44 PM

2018 MAY -1 A 10:31
OFFICE OF
ADMINISTRATIVE LAW

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Readopt Sexually Violent Predator Act (SVPA) Evaluations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2017-0807-02E, 2018-0201-02EE
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 4020 and 4020.1
	AMEND
TITLE(S) 9	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
N/A

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

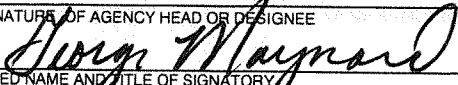
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) May 16, 2018
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Trini Balcazar, Regulations Coordinator	TELEPHONE NUMBER (916) 651-3222	FAX NUMBER (Optional) (916) 651-3090	E-MAIL ADDRESS (Optional) Trinidad.Balcazar@dsh.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 4/23/2018
TYPED NAME AND TITLE OF SIGNATORY George Maynard, Deputy Director	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
MAY 08 2018
Office of Administrative Law

PROPOSED REGULATION ORDER

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 15. Assessment of Sexually Violent Predators

Adopt new sections 4020 and 4020.1, title 9, California Code of Regulations to read as follows:

[NOTE: The entire text of sections 4020 and 4020.1 is new language to be added to the California Code of Regulations]

§ 4020. Evaluations Definitions.

- (a) "Necessary" shall mean no more frequently than annually, with an exception if the original evaluation(s) will become older than a year old during the time of trial under the Sexually Violent Predator Act.
- (b) "Original evaluation" shall mean either:
 - (1) Two concurring initial evaluations conducted pursuant to Welfare and Institutions Code section 6601, subdivision (d); or
 - (2) Two concurring independent evaluations conducted pursuant to Welfare and Institutions Code section 6601, subdivision (f).

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 6601 and 6603, Welfare and Institutions Code; and *Albertson v. Superior Court* (2001) 25 Cal.4th 796.

§ 4020.1. Update Evaluations.

- (a) The Department of State Hospitals shall perform necessary update evaluations pursuant to Welfare and Institutions Code section 6603, subdivision (c)(1), on the original evaluations.

- (1) When update evaluations of the original evaluations are requested by the petitioner after a petition is filed, pursuant to Welfare and Institutions Code section 6603, subdivision (c)(1), and two independent evaluations have previously been assigned to address a difference of opinion post-petition, the two independent evaluations and the original evaluations may be updated.
- (b) Any time the Department of State Hospitals determines that an evaluation report contains an error, or when the Department of State Hospitals obtains or produces additional pertinent information, it shall authorize the currently assigned evaluators to prepare an addendum.
- (c) The Department of State Hospitals shall have the sole authority to designate evaluators for update evaluations and replacement evaluations for the petitioner.
 - (1) Only an evaluator designated by the Department of State Hospitals may testify on behalf of the Department of State Hospitals.
 - (2) The Department of State Hospitals shall replace an evaluator in accordance with Welfare and Institutions Code section 6603, subdivision (c)(2).
- (d) Only an evaluator designated by the Department of State Hospitals shall have access to a Department of State Hospitals patient's records for the purposes of conducting an update or replacement evaluation absent a court order.
- (e) An evaluator who is no longer available to testify for the petitioner in court proceedings pursuant to Welfare and Institutions Code section 6603, subdivision (c)(2), may not be designated by the Department of State Hospitals to perform an update evaluation.

(f) If an evaluator who is no longer available to testify for the petitioner in court proceedings pursuant to Welfare and Institutions Code section 6603, subdivision (c)(2), is called by a party to testify at trial, costs for the testimony shall be paid by the party calling the evaluator to testify.

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 6601, 6603, 6604 and 6605, Welfare and Institutions Code.