

FINAL STATEMENT OF REASONS

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 2. Treatment

Amendment of Section 4210

UPDATE OF INITIAL STATEMENT OF REASONS

The Department of State Hospitals (Department) has not relied upon any additional data or any technical, theoretical or empirical study, or similar report in proposing the amendment of these regulations that was not identified in the initial statement of reasons. The Department did publish and mail a Supplement to the Initial Statement of Reasons on September 10, 2015, with a 15-day public comment period, that is now included in the rulemaking file.

LOCAL MANDATE DETERMINATION

The Department has determined this action imposes no mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (section 17561) of Division 4 of the Government Code, as these regulations only impact patients under the care and treatment of the Department.

SUMMARY AND RESPONSE TO PUBLIC COMMENTS RECEIVED

The summary of and responses to public comments received are contained in the attached log.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED FOR SUPPLEMENT TO THE INITIAL STATEMENT OF REASONS

On September 10, 2015, the Department submitted a Supplemental to the Initial Statement of Reasons to further clarify the necessity standard of Government Code 11349.1. A 15-day Notice of Document Added to Proposed Regulatory Action was published and mailed on September 10, 2015, whereby the Supplement to the Initial Statement of Reasons was available for public inspection through September 24, 2015.

No comments were received during the public comment period of September 10, 2015 through September 24, 2015, regarding the Supplemental to the Initial Statement of reasons.

ALTERNATIVE DETERMINATIONS

The Department has determined there are no other reasonable alternatives that would be more effective in carrying out the purpose for which these regulations are proposed;

would be more effective and less burdensome to affected private persons than the adopted regulations; or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The Department does not anticipate any adverse economic impact on small businesses as these regulations only impact patients under the care and treatment of the Department.

FORMS INCORPORATION BY REFERENCE

The Department has determined that it would be cumbersome, unduly expensive, or otherwise impractical to publish the DSH-9164 and DSH-9165 in the California Code of Regulations.

The DSH-9164 and DSH-9165 were made available upon request directly from the Department and on the Department's website with the other rulemaking documents.

NONSUBSTANTIVE CHANGES MADE TO REGULATION TEXT DURING OAL REVIEW

- Under Section 4210(a), the Department is withdrawing the proposed text "based on legal criteria" and reverting to the original text.
- The Department has changed "et al." to "et seq." in Section 4210(a)(1) through (4).
- Under Section 4210(a)(3), the Department added "(Stats. 1967, c. 1667; see also, Stats. 1981, c.928, for additional legislative intent.)"
- The Department added "hereby incorporated by reference" to Sections 4210(f) and (l) after the form numbers. The revision dates on the forms were changed from 10-14 and 12-14 to 11-2015 to reflect nonsubstantive changes to the forms.
- Under Section 4210(q), the Department changed "concurrently" to "concurrent with" and "subsequently" to "subsequent".
- Under Authority, the Department added Penal Code section 2972.
- Under Reference, the Department removed Penal Code sections 1026 and 2972; Welfare and Institutions Code sections 5300 and 6600, and added "(Stats. 1977, c. 164; see also, Stats. 1981, c. 928, for additional legislative intent)" after Welfare and Institutions Code section 6316.2.
- On forms DSH-9164 and DSH-9165, the Department added "(Stats. 1967, Ch. 1667)" after Welf. & Inst. Code, § 6316.

Public Comments
Interim Involuntary Medication Hearing Procedures: 45 Day Notice
Z-2015-0629-02

No.	Date Received	Commenter	Comment Summary	Response	Revisions Yes/No
1	8/24/2015	Disability Rights California (DRC)	<p>a. The regulations provide for hearings to determine the necessity of involuntary medication based on legal criteria, but the regulations do not specify what those legal criteria are.</p> <p>b. Section 4210(b): (i) California law requires as part of the determination of appropriateness that “treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient..” (WIC 5332(b)) The requirement to consider alternatives should be set out in the regulations. (ii) This provision does not need to use the term “involuntary” before the term “antipsychotic medication.”</p> <p>c. Section 4210(c) (i) The regulations should require that the person be informed of and given an explanation of:</p> <ul style="list-style-type: none"> • The nature of the mental illness, or behavior, that is the reason the medication is being given or 	<p>a. DSH has removed the language “based on legal criteria.”</p> <p>b. Section 4210(b) (i) The commenter is requesting DSH to restate existing statute (WIC 5332(b)) which is not required in a regulation. DSH complies with this statute without including it in these regulations. (ii). DSH considers this comment a writing style preference and it is not necessary to effectively implement these regulations.</p> <p>c. Section 4210(c) (i) The list of criteria stated by the commenter is found in WIC 5152(c). Restatement of statute is not required in a regulation. DSH complies with this statute without</p>	<p>Yes</p> <p>No</p> <p>No</p> <p>No</p>

Public Comments
Interim Involuntary Medication Hearing Procedures: 45 Day Notice
Z-2015-0629-02

No.	Date Received	Commenter	Comment Summary	Response	Revisions Yes/No
			<p>recommended.</p> <ul style="list-style-type: none"> • Reasonable alternative treatments available. • The name and type, frequency, amount, and method of dispensing the medication, and the probable length of time the medication will be taken. <p>(ii) In addition, for persons who are not dangerous within the meaning of Section 5300, the treating psychiatrist must also advise the person of the right to refuse medication (WIC 5332(a)).</p> <p>(iii) In addition, the advisement should be given in language or modality that the person understands, as required under LPS, Title VI, Section 504, and Title II of the ADA.</p> <p>d. Section 4210(d) – there is no statute or case law that authorizes a hearing to determine that a patient lacks capacity absent a refusal to consent. If a patient does not refuse medication, there is no need for an adjudication of capacity.</p>	<p>including it in these regulations.</p> <p>(ii) Restatement of statute (WIC 5332(a)) is not required in these regulations. DSH complies with WIC 5332(a) without including it in these regulations.</p> <p>(iii) Restatement of statutes is not required in regulations.</p> <p>d. Section 4210(d) - If a patient does not refuse medication these regulations are not applicable.</p>	<p>No</p> <p>No</p> <p>No</p>

Public Comments
Interim Involuntary Medication Hearing Procedures: 45 Day Notice
Z-2015-0629-02

No.	Date Received	Commenter	Comment Summary	Response	Revisions Yes/No
			<p>e. Section 4210(e):</p> <p>(i) This section provides that the state hospital shall hold the administrative hearings pursuant to the applicable legal standard for each commitment category. The regulations should set out the legal standards.</p> <p>(ii) The legal standard for lack of capacity should also be set out in the regulations.</p> <p>f. Section 4210(f) – provides for a 24-hour notice prior to the hearing. 24 hours is not sufficient time for the patient or the advocate to prepare for the hearing.</p> <p>g. Section 4210(q) – provides that the state hospital shall request a court hearing as required by law, concurrently or subsequently to the administrative hearing. The hospital should be required to request a hearing before or at the time of the</p>	<p>e. Section 4210(e)</p> <p>(i) Setting the legal standards for the commitment categories would be a restatement of case law. Restatement of statutes and laws is not required in a regulation.</p> <p>(ii). Setting out the legal standards for lack of capacity would be a restatement of statutes/law and is not required in a regulation.</p> <p>f. Section 4210(f) - The regulation establishes a minimum of “at least” 24 hours, not an absolute of only 24 hours.</p> <p>g. Section 4210(q) - DSH disagrees with the commenter’s interpretation that a state hospital shall request a court hearing before or at the time of the initial administrative hearing.</p>	<p>No</p> <p>No</p> <p>No</p> <p>No</p>

Public Comments
Interim Involuntary Medication Hearing Procedures: 45 Day Notice
Z-2015-0629-02

No.	Date Received	Commenter	Comment Summary	Response	Revisions Yes/No
			administrative hearing. The only justification for holding a second hearing after 14 days is a delay by the court in making a determination. If the court is not asked to make a determination in a timely manner, the second hearing should not be held and the involuntary administration of medication should stop.	Section 4210(q) requires DSH to file with the court concurrent with, or subsequent to, the administrative hearing.	