



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 encourages adoption of the proposed regulation amendment below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing will be held if any interested person, or his or her duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

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 August 24, 2015. 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, 4027, and 4101, allow the Department to adopt and enforce rules and regulations necessary to carry out the duties of the Department.

References: *In Re Qawi* (2004) 32 Cal.4th 1; *In Re Calhoun* (2004) 121 Cal. App. 4th 1315; *In Re Greenshields* (2014) 227 Cal. App. 4th 1284; *Washington v. Harper* (1990) 494 U.S. 210; Sections 1026, 2962, and 2972, Penal Code; and Sections 5300, 6316.2, and 6600, Welfare and Institutions Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Department finds that the proposed amendments to California Code of Regulations (CCR), Title 9, Division 1, Chapter 16, Section 4210 are necessary to provide appropriate treatment to patients who are committed under Penal Code (PC) section 1026 et al. (Not Guilty by Reason of Insanity(NGI)), PC 2962 and 2972 (Mentally Disordered Offender (MDO)), Welfare and Institutions Code (WIC) section 6316 et al. (Mentally Disordered Sex Offender(MDSO)), and/or WIC 6600 (Sexually Violent Predator (SVP)). The Department finds that any disruption or prevention of the Department's ability to appropriately treat these patients through necessary involuntary medication will create serious harm to public peace, health and safety, and general welfare to the patient and the other 7,000 patients and 10,000 employees. The failure to treat psychotic illness with medication causes worsening of the disease and can defeat overall treatment goals for a patient.

Forms Incorporated By Reference

This amended version of Section 4210 incorporates two forms, DSH 9164, Notice of Involuntary Psychotropic Medication Hearing (12-14), and DSH 9165, Involuntary Psychotropic Medication Review Hearing (12-14), with copies of the forms attached for review and comment. These forms are incorporated by reference as the interim involuntary medication review process requires that a hearing take place and the decision rendered by the panel must be documented as required by law.

The proposed rulemaking will:

- extend the interim involuntary medication hearing processes to the NGI, PC 2972 MDO and WIC 6316 et al. sex offender patient populations to ensure appropriate treatment and due process;
- provide additional clarification to the interim involuntary medication hearing procedures; and
- provide increased safety and security to public peace and the general welfare of the public, including that of the other state hospital patients, visitors, and staff.

These regulations will cause no significant differences in existing comparable federal regulations or statutes.

The Department has conducted an evaluation for any regulations that would relate to this proposed action and has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

Existing Law

CCR, Tile 9, Division1, Chapter 16, Section 4210, as written, provides for the interim involuntary medication hearing procedures for MDOs committed under PC 2962 and SVPs committed under WIC 6600 et al. The Department submitted emergency

regulations on September 18, 2014, to include the NGI patients pursuant to the recent *Greenshields* case. This regular rulemaking proposal amends the regulation to include NGI, MDO committed under PC 2962 and 2972, and sex offender patients committed under WIC 6600 et al. and 6316 et al. who require interim involuntary medication on a non-emergency basis, prior to a court hearing.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

- Mandate on local agencies or school districts: None.
- Costs or savings to any state agency: DSH anticipates annual costs of \$375,000 for the interim hearing procedures associated with the additional patient populations.
- Costs to any local agency or school district that requires reimbursement in accordance with GC section 17500 through 17630: None.
- Other nondiscretionary costs or savings imposed on local agencies: None.
- Costs or savings in federal funding to the state: None
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None
- Cost impacts on a representative private person or businesses: The Department proposes to provide additional contract funds in the amount of \$165,000 annually to the California Office of Patients' Rights (COPR) to cover costs associated with their increased workload.
- Significant effect on housing costs: None.
- Small Business determination: The proposed action will not affect small businesses because it will only slightly increase the workload on the California Office of Patients' Rights' patient advocates.

Results of the Economic Impact Analysis:

Creation or Elimination of Jobs within the State of California:

The services performed as a result of these regulations will create a few more jobs within the Department and within COPR. The Department is requesting authority to hire three clinicians to serve on the hearing panel and perform related administrative functions, in addition, the Department will increase the contract funding with COPR to allow them to hire two more patients' rights advocates.

Adoption of these regulations will not:

- create new businesses or eliminate existing businesses within California;
- increase or decrease investment in the state;
- create incentive for innovation in products, materials or processes;
- obstruct potential benefits to the health, safety and welfare of the citizens of California. These regulations will not obstruct worker safety, the environment or quality of life; and
- affect the expansion of businesses currently doing business in California.

Benefits that would be derived from this proposal:

- allows the Department to provide interim involuntary medication hearings to state hospital patients committed under specific statutes;
- provides more clarification to the interim involuntary medication hearing process for state hospitals;
- allows the Department to preserve public health and safety;
- allows the Department to preserve the health and safety of state hospital patients, visitors and employees;
- provides due process for the patients impacted by these regulations; and
- promotes the increase in openness and transparency in business and government.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a), subdivision (13), the DSH must determine that no reasonable alternative 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 this 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 a during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Karen Gillham
Chief
Regulations Unit
Department of State Hospitals
1600 9th Street, Room 410
Sacramento, CA 95814
Regulations' Telephone: (916) 653-2257
Desk: (916) 651-5578
E-mail: karen.gillham@dsh.ca.gov

The back-up contact person for these inquiries is:

James Castro
Department of State Hospitals
1600 9th Street, Room 410
Sacramento, CA 95814
Regulations' Telephone: (916) 653-2257
Desk: (916) 651-3247
E-mail: james.castro@dsh.ca.gov

Please direct requests to Ms. Gillham at the above address for copies of the proposed text (the "expressed terms") of the regulation, the initial statement of reasons, the modified text of the regulation or any other information upon which the rulemaking is based.

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF 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 Ms. Gillham.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if one is requested, 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 modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Karen Gillham at the address indicated above.

The Department will accept written comments on the modified regulations for 15 day after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASON

Upon its completion, copies of the Final Statement of Reason may be obtained by contacting Ms. Gillham at the above address.

AVAILABILITY OF DOCUMENT ON THE INTERNET

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