



CALIFORNIA DEPARTMENT OF
State Hospitals

Regulations Unit
1600 Ninth Street, Room 410
Sacramento, CA 95814
916-654-2748

August 26, 2016

The Department of State Hospitals (DSH) is required to post this emergency regulation notification and documents which address the “Incompetent to Stand Trial Admissions Process.”

Government Code section 11346.2, subdivision (a)(2), requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In addition to the five-day comment period for the emergency filing indicated above, there will be the routine 45-day public comment period when these regulations are permanently adopted via the regular rulemaking process which will be completed within 180 days of OAL’s adoption of this emergency package.

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of State Hospitals is proposing to take the action described in the Finding of Emergency after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OAL. Comments may also be submitted to OAL by facsimile (FAX) at 916-323-6826. The Department plans to file the emergency rulemaking package with OAL 5 working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed emergency regulations, the comments must be received by both the Department and OAL within five calendar days of the Department’s filing of the emergency regulations

with OAL. Please check the OAL website at www.oal.ca.gov to find out when the emergency regulation is filed with OAL.

Comments should be sent simultaneously to:

Department of State Hospitals
Attn: Dennalee Folks
1600 9th Street, Rm 400
Sacramento, CA 95814

and

Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

AUTHORITY AND REFERENCES

Authority: Welfare and Institutions Code sections 4005.1, 4027, 4101, and 7225.

References: Penal Code sections 1370, 1370.01; Welfare and Institutions Code sections 7228, 7230; Code of Federal Regulations, title 45, section 164.508, and *In re Loveton*, (2016) 244 Cal.App.4th 1025.

FINDING OF EMERGENCY

A. Department of State Hospital's (DSH) Finding of Emergency Regulatory Action Is Necessary

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code section 11346.1.

B. Description of Specific Facts Which Constitute the Emergency

The Necessity for the Proposed Regulations

In a recent published decision, the Court of Appeal for the First Appellate District upheld the Contra Costa County Superior Court's standing order to admit patients to DSH within 60 days of commitment. (*In re Loveton*, (2016) 244 Cal.App.4th 1025.) This decision became final on April 12, 2016. This decision has pushed many other counties to pursue standing orders for their counties as well, because the decision has given some courts the impression that in order to ensure that their patients are admitted to a DSH hospital as soon as possible, and ahead of IST referrals from other counties, a standing order will help expedite the admission. In *In re Loveton*, the Court also discussed the need of the superior courts to provide complete referral packets to DSH. In the past, DSH has received incomplete commitment packets from various counties,

which have contributed to some delays in admitting patients for treatment to DSH. DSH proposes these emergency regulations on the additional basis that they help create a uniform admissions criteria and process for all patients committed to DSH statewide. The proposed emergency regulations would help ensure that all of the necessary documents are provided to an individual DSH hospital for a smooth admission and continuity of care.

The Finding of Emergency

DSH finds that the proposed regulatory amendment is necessary to address an emergency. An emergency is “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” (Gov. Code, § 11342.545.) DSH currently is attempting to admit patients simultaneously and in a timely manner from all 58 counties statewide while IST referrals from many of these counties have been increasing substantially week after week. DSH would like to implement these regulations as soon as possible to immediately conform to the state facility admission process set forth in the recently issued *In re Loveton* decision. While DSH is also working on bed expansion, DSH has been sued in this matter by the ACLU in Alameda Superior Court as well as in a potential class action lawsuit in federal court from Ventura County patients on related IST admission issues. Further, when a patient has not been admitted to DSH after a period of time, some courts have released these patients into the community.

Accordingly, these emergency regulations would provide clarification of the process and the order in which patients shall be admitted to DSH by all of the superior courts and help ensure that the counties are aware of all the necessary requirements to ensure a smooth transition of patient care. The proposed regulations would provide all of the committing courts with a clear understanding of how and when the patients will be admitted to DSH. The proposed regulations will thus assist in ensuring better delivery of treatment to the IST individuals committed to DSH.

DSH HAS MADE THE FOLLOWING INTITIAL DETERMINATIONS:

Substantial Difference from Existing Comparable Federal Regulations or Statute: None.

Mandates on Local Agencies or School Districts: None. County courts are State funded, and the courts are statutorily required to provide the commitment packet pursuant to Penal Code section 1370.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

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: DSH anticipates there will be no fiscal impact in the current State Fiscal Year to Local Agencies.

Non-discretionary Costs or Savings Imposed on Local Agencies: DSH anticipates there will be no fiscal impact in the current State Fiscal Year to Local Agencies.

Costs or Savings to Any State Agency: DSH anticipates that there may be some additional state legal costs, as DSH may be ordered to appear in court more frequently, until all the courts become comfortable with the new proposed regulation and the new timeline that the emergency regulations will create in admissions for all the Penal Code section 1370 patients throughout the state.

Costs or Savings in Federal Funding to the State: None.

Costs or Savings to Individuals or Businesses: DSH is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed action.

MATERIAL INCORPORATED BY REFERENCE

None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DSH has determined that no reasonable alternative which it will consider or that will otherwise be identified and brought to its attention will be more effective in carrying out the purpose for which this action is proposed or will be as effective and less burdensome to affect private persons than the proposed action described in this Notice.

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

AVAILABILITY OF FINDING OF EMERGENCY, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The rulemaking file is available for inspection and copying at the Department of State Hospitals, Regulations Unit, 1600 9th Street, Room 410, Sacramento, CA 95814. As of the date this Notice is published, the rulemaking file consists of a copy of the exact language of the proposed regulations and the Finding of Emergency. These documents may also be viewed and downloaded from DSH's website at www.dsh.ca.gov.