



# CALIFORNIA DEPARTMENT OF State Hospitals

## NOTICE OF PROPOSED RULEMAKING

### TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES DIVISION 1. DEPARTMENT OF MENTAL HEALTH

October 18, 2016

The Department of State Hospitals (Department) encourages adoption of the proposed regulations 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](mailto:DSH.Regulations@dsh.ca.gov). The written comment period closes at 5:00 p.m. on December 12, 2016. The Department will consider only comments received at the Department office by that time. Submit comments to:

Regulations Unit  
Department of State Hospitals  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814

#### AUTHORITY AND REFERENCES

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

References: Health and Safety Code sections 443, 443.1, 443.2, 443.9, and 443.15; Code of Federal Regulations, title 45, sections 164.502, and 164.504.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to adopt regulations to ensure the Department is in compliance with the law. These regulations will also provide safety and security to the public by providing some guidance as to how the End of Life Option Act may be available to the patients while not available on the premises of the Department.

### Policy Statement Overview

These proposed regulations will:

- Provide guidelines as to the Department's policy under the End of Life Option Act (Act).
- Provide patients in the custody and care of the Department the ability to obtain services under the Act, based on court determination.
- Provide guidance of the recordkeeping needed under the Act.

The Department has conducted an evaluation and determined that these regulations are not inconsistent or incompatible with existing state regulations.

### Existing Law

Current laws provide terminally ill patients the means of participating in the decision-making process that affects the end of their lives, also known as the "end of life option." The Department has patients who are terminally ill, and wants to allow the patients to participate in this option if they choose. Health and Safety Code section 443 et seq. provides specific processes that a patient needs to go through in order to participate in the end of life option. Based upon the existing law, the Department implemented emergency regulations, requiring that a patient obtain a court order in order to access the Act, since the courts have ordered the patients committed to our facilities. While Department employees may not participate in the Act, the Department wants to allow patients the option to seek participation if they meet the criteria required by the statute.

### Disclosures Regarding the Proposed Regulations

The Department has made the following initial determinations:

- Mandates on Local Agencies or School Districts: There will be no mandates imposed on local agencies or school districts.
- 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: None
- Non-discretionary Costs or Savings Imposed on Local Agencies: The Department anticipates there will be no fiscal impact in the current State Fiscal Year to Local Agencies.
- Costs or Savings to Any State Agency: The Department does not anticipate there to be many costs to the Department or any state agency.
- Costs or Savings in Federal Funding to the State: None.
- Significant, Statewide Adverse Economic Impact Directly Affecting Business: There will not be a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. We do not foresee that this regulation will be utilized and only a small fraction of the state hospital population may be eligible.
- Cost Impacts on Representative Private Person or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Small Businesses: There will be no cost impact on small businesses because the proposed regulation only affects individual patients who are terminally ill in state hospitals.

#### Results of the Economic Impact Analysis

These proposed regulations are intended to allow the Department to set forth the policy of the Department under the Act.

#### Creation or Elimination of Jobs within the State of California

The proposed regulations would not create or eliminate jobs within the State of California. The Act allows medical providers, if the provider chooses, to provide another end of life option available to a patient who is terminally ill.

#### Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed regulations would not create new businesses or eliminate existing businesses. The Department already contracts for hospice services and other services in providing the proper medical care to terminally ill patients. The Act has

now created a new option available to every individual in the state, therefore there may be an increase in the aid-in-dying medications for the end of life.

### Expansion of Businesses Currently Doing Business within the State of California

The Department may need to have more contractors who provide the spectrum of medical care to terminally ill patients. The Act expands services that health care providers can provide to patients.

### Anticipated Benefits of the Regulation

The proposed regulations provide the policy of the Department. The proposed regulations also provide clear direction to the public, employees, and patients as to how a patient may get access to the end of life option under the Act.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, 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 during the written comment period.

### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Dennalee Folks  
Department of State Hospitals  
Regulations Unit  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814  
Telephone: (916) 651-8544  
e-mail: [Dennalee.Folks@dsh.ca.gov](mailto:Dennalee.Folks@dsh.ca.gov)

The back-up contact person for these inquiries is:

Shazida Chechi  
Department of State Hospitals  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814  
Regulations' Telephone: (916) 651-3222

E-mail: shazida.chechi@dsh.ca.gov

Please direct requests to Ms. Folks 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 THE 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. Folks.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Folks at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation can be accessed through our website at [www.dsh.ca.gov/About Us/regulations.aspx](http://www.dsh.ca.gov/About_Us/regulations.aspx).