

## **DEPARTMENT OF STATE HOSPITALS INITIAL 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

### **PROBLEM STATEMENT**

The Department of State Hospitals provides mental health treatment and care to over 7,000 patients annually. The California Code of Regulations (CCR), Title 9, Division 1, Chapter 16, Section 4210 currently allows the Department of State Hospitals (DSH) to conduct administrative hearings to determine the necessity to administer non-emergency interim involuntary antipsychotic medication to Mentally Disordered Offenders (MDOs) and Sexually Violent Predators (SVPs) patients. The Court of Appeal, Second Appellate District, *In re Greenshields*, San Luis Obispo County on July 14, 2014, ruled that persons found Not Guilty by Reason of Insanity (NGI) have the same constitutional rights as MDOs and SVPs to refuse antipsychotic medication. The court directed the Department to refrain from administering antipsychotic medication to Mr. Greenshields against his will in a non-emergency situation unless a trial court determines he is competent to refuse the treatment or is a danger to others within the meaning of Welfare and Institutions Code Section (WIC) section 5300. The recent court decision now compels the Department to expand Section 4210 to include NGIs which will allow the state hospitals to provide interim involuntary medication hearing procedures and due process to the additional patient population.

### **BENEFITS**

Amending CCR 9, Section 4210, will allow the Department to provide the same interim hearing processes and procedures to the NGI patients as are afforded to MDO and SVP patients. Efficacy of most psychotropic medications requires long term administration for optimal benefit. Emergency medication, as allowed by WIC section 5008(m), must be ceased once the emergent situation ends. To limit medication administration to only emergency situations would hinder successful long-term treatment. The hearing panels in the proposed regulations provide due process to a patient, while providing the State Hospitals with a means to consistently medicate a patient who has shown that he or she poses a danger to others, or lacks capacity to make decisions regarding psychotropic medications.

### **PURPOSE**

This regulatory action will amend CCR, Title 9, Chapter 16, Article 2, Section 4210 - Interim Involuntary Medication Hearing Procedures at State Hospitals to include the NGI population, as well as another group of MDO patients committed under Penal Code (PC) section 2972 and sex offenders committed under WIC section 6316 et al. In addition, two forms will be incorporated by reference, DSH 9164, Notice of Involuntary Psychotropic Medication Hearing (12-14), and DSH 9165, Involuntary Psychotropic Medication Review

Hearing (12-14), as the interim involuntary medication review process requires that a hearing take place and the decision rendered by the panel both be documented as required by law.

## **NECESSITY**

On July 14, 2014, the Court of Appeal of the State of California, Second Appellate District, *In re Greenshields*, decided that persons who are found not guilty by reason of insanity have the same constitutional right as MDOs and SVPs to refuse psychotropic medication. A defendant found to be NGI requires a finding beyond a reasonable doubt that at the time of the offense, he or she had a mental disorder that rendered them dangerous to others. A defendant found to be NGI is presumed to be insane during their confinement. Like the MDOs and the SVPs in prior court cases, NGIs have not yet been adjudicated to be incompetent to refuse psychotropic medication or dangerous within the meaning of WIC section 5300.

The court directed the Department to refrain from administering psychotropic medication to Mr. Greenshields against his will in a non-emergency situation unless a trial court determines he is incompetent to refuse the treatment or a danger to others within the meaning of WIC section 5300, i.e., whether he committed the types of violent or threatening acts specified in section 5300 within the year prior to his recommitment.

This court decision sets precedence for the involuntary medication of the approximately 1,400 NGI patients currently under the care and treatment of the Department. By implication of the commitment statutes, PC section 1026.2, an NGI is presumed to be a danger to others. In order to preserve public safety and protect the other 7,000 patients and 10,000 employees, as well as public visitors, the Department is filing this regulatory action to amend Section 4210, Interim Involuntary Medication Hearing Procedures at State Hospitals.

The forms incorporated by this regulation are necessary to notify a patient of the interim involuntary medication hearing and to document the decision reached by the panel.

## **RATIONALE**

The Department currently has regulatory authority through Section 4210 to conduct interim hearings for MDOs committed under PC section 2962 and SVPs committed under WIC section 6600 et al. These amendments will expand the constitutional rights to refuse medication to other patients; allow the Department to provide continued non-emergency treatment until a court hearing can be arranged; and thereby preserve the health and safety of the patient, the other patients, public visitors, and employees.

## **TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS**

These regulations are similar to the regulatory authority for patients committed through Section 4210 to conduct interim hearings for MDOs committed under PC section 2962 and SVPs committed under WIC section 6600 et al.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

These regulations will allow the Department to conduct internal, interim hearings for which the economic impact is limited to the Department and patient advocates.

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

The services performed as a result of the amendments to Section 4210 will only create a few new jobs within the Department and within the California Office of Patients' Rights (COPR). The Department is requesting authority to hire three clinicians to serve on the hearing panel and perform related administrative functions and the Department will increase the contract funding with COPR to allow them to hire two more patients' rights advocates.

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

The services performed as a result of the amendments will be provided by state employees and COPR. These regulations will neither create nor eliminate businesses within the State of California.

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

The Department will increase the contract funding with COPR to allow them to hire two more patients' rights advocates.

### Benefits of the Regulation

These regulations will help improve the benefits to health, safety and welfare of California residents, and worker safety by allowing the Department to conduct interim involuntary medication hearings for the proper treatment and care of patients committed to state hospitals. They will also provide more patients with constitutional rights to refuse antipsychotic medications.

## **EVIDENCE SUPPORTING FINDINGS OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

These regulatory amendments are similar to statutory and regulatory authority for three other patient types which have been successfully implemented and have caused no significant statewide adverse economic impact directly affecting businesses.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Department has determined 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 this 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.

## **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

There is no duplication or conflict with Federal Regulations.