

**STATE OF CALIFORNIA
DEPARTMENT OF MENTAL HEALTH
1600 9TH STREET
SACRAMENTO, CA 95814**

**TITLE 9, CALIFORNIA CODE OF REGULATIONS
ADOPT CHAPTER 16 REGARDING STATE HOSPITAL OPERATIONS**

SUPPLEMENTAL INITIAL STATEMENT OF REASONS

INTRODUCTION

These proposed regulations are necessary to effectuate the statutes relating to the care and custody of mentally disordered persons, and to clearly set forth in regulations the necessary legal requirements in order to ensure that DMH will not be hampered in its ability to carry out its responsibilities, and to ensure that the individual patients' and the public's safety and security will not be compromised by underground regulation challenges that have occurred and continue to occur.

The proposed regulations address the important safety and security topics of visitation of individual patients, state mental hospital police services, offsite transportation, complaints against hospital police officers, and counting of individual patients. These proposed regulations also address issues regarding patients' mail and packages, patient's rights complaints, and in-house hearing procedures regarding involuntary medication of mentally disordered offender and sexually violent predator patients.

These regulations will ensure that DMH will not be prohibited from using the affected administrative directives or special orders that are important to safety and security of DMH facilities.

**SPECIFIC PURPOSE OF EACH SECTION – GOVERNMENT CODE 11346.2 (b)
(1)**

Proposed Section 4100 describes the scope of the regulations in Title 9, Chapter 16. This section is necessary in order to delineate the scope of Chapter 16.

Proposed Section 4105 contains definitions for the terms, “state hospital,” “facility,” “individual patient,” and “patient” as used in Title 9, Chapter 16. This section is necessary to define these specific terms that are, and will be, used throughout in Chapter 16 in order to ensure clarity and consistency of understanding of their intended meaning.

Proposed Section 4210 sets forth procedures for conducting administrative hearings on state hospital grounds to determine whether mentally disordered offender and sexually violent predator individual patients may be administered medication involuntarily in non-emergency situations. Section 4210 also provides that the appropriate court hearing as required by applicable law shall be requested as soon as possible by the state hospitals

concurrent with, or subsequent to, the administrative hearing. This section is necessary in order to ensure the timely and necessary administration of antipsychotic medication in conjunction with, and while waiting for, the obtainment of a court order authorization. Delay in administration of antipsychotic medications can mean worsening of existing psychotic symptoms such as hallucinations or delusions, or the development of new psychotic symptoms, as well as social withdrawal and increased disorganization in thoughts, speech and behavior. Also, delay in administration could result in the patient being violent which would pose a safety and security concern to other state hospital patients and staff.

Subsection (a) provides state hospitals with the authority to conduct review panels to determine whether mentally disordered offender and sexually violent offender individual patients may be given interim involuntary antipsychotic medication. This subsection gives the state hospitals the ability to determine on a case-by-case basis whether to conduct the review panels or to go directly to seeking an appropriate court order, based on the exigent need to administer involuntary antipsychotic medication and the anticipated length of time it would take to request and obtain the necessary court order.

Subsection (b) enumerates the prerequisite requirements which must be met before the administrative hearing process may be initiated. This subsection addresses the need for the treating clinician to first determine that involuntary medication is appropriate and to seek informed consent from the individual patient before proceeding to the optional interim involuntary medication hearing panel.

Subsection (c) describes the necessary criteria for the administrative hearing process. This subsection creates clear and appropriate due process elements of:

- (1.) A sufficient 24-hour notice to the patient;
- (2.) Unbiased hearing panel of clinicians not directly involved in the individual patient's treatment;
- (3.) State hospital's obligation to present supporting clinical information and need;
- (4.) Patient's right to be represented and be advised by a lay adviser;
- (5.) Decision by majority vote of panel members;
- (6.) Clear patient's appeal rights and process wherein the patient has 24 hours from time of receipt of the written decision to appeal to the medical director of the state hospital or designee, and the medical director's obligation to address the appeal within a 24-hour time frame; and
- (7.) Defined medication time frame of an initial 14-day period, followed by an additional 180-day period after a further hearing panel, until superseded by the sought after court order at any time during the process.

Subsection (d) specifies that this regulation shall not affect any existing patient's right to judicial review of these proceedings; and Subsection (e) specifies that this regulation shall not affect any existing legal authority of the state hospital to otherwise involuntarily medicate these patients in emergency situations.

Proposed Section 4300 addresses visitation of individual patients. This section which spells out the parameters of visitation of individual patients in state hospitals is necessary to ensure that visitations are safe and orderly for the benefit of individual patients, visitors, and state hospital staff, while taking into account treatment needs and staff and facility limitations.

Subsection (a) provides that visitation is seven days per week for a reasonable five hours minimum each day.

Subsection (b) requires the setting aside of private areas for individual patients to meet with their legal counsel in order to allow for, and ensure, confidential communication.

Subsection (c) allows for the suspension of visiting hours when needed and circumstances dictate because of safety and security concerns and staffing limitations, such as during patient protests or disruptions, shortage in staff to monitor visitation, or other unforeseen circumstances.

Subsection (d) clearly spells out that conjugal visits are not allowed as state hospitals are not set up to provide for them.

Proposed Section 4310 sets forth the visiting hour standards for all Non-LPS individual patients who are being treated in offsite hospitals. Similar to Section 4300, this section is necessary to ensure that visitations of individual patients being treated in facilities outside of state hospitals are safe and orderly for the benefit of individual patients, visitors and members of the public doing business at such outside facilities.

Subsection (a) gives the parameters for when patients in offsite hospitals may receive visitors. This subsection recognizes and take into account the visiting rules and physical facility limitations of the outside hospital facility where the individual patient is being treated. This subsection's limitation of visitation to outside hospital stay of longer than a week for non-critical or non-terminally ill Non-LPS individual patients is because of safety and security concerns, and resource limitations of state hospitals to provide for safety and security at the outside facilities during visitation. This subsection does not apply to LPS individual patients because Welfare and Institutions Code Section 5325 gives them the deniable right to see visitors each day.

Subsection (b) allows individual patients being treated in offsite hospitals who are in critical condition or suffering from a terminal disease to have visitors each day beginning on the first day of offsite treatment, subject to visiting limitations of the outside hospital facility where the individual patient is being treated.

Proposed Section 4315 sets forth the responsibilities of the Department of Police Services, and clarifies that the Department of Police Services may work with and obtain assistance from other local, state or federal law enforcement agencies. This section is necessary in order to define the scope and purpose of each state hospital's police services

department in order to avoid any misconception or misunderstanding of the peace officers role by the peace officers and individual patients.

Subsection (a) delineates the responsibilities of the hospital's police services department.

Subsection (b) clarifies that it is permissible for hospital police to work with state and local law enforcement.

Subsection (c) states that the Hospital Administrator is the senior law enforcement official of a state hospital.

Proposed Section 4320 sets forth the ability of state hospitals to coordinate with the California Department of Corrections and Rehabilitation and law enforcement agencies to arrange for the transportation of individual patients to and from state hospitals. This section is necessary in order to clarify and avoid any misconception or misunderstanding by individual patients of state hospitals' ability to work with the California Department of Corrections and Rehabilitation and law enforcement agencies regarding transportation of individual patients to and from state hospitals. The need for the flexibility to work with outside agencies is due to state hospital existing setup and resource limitations.

Proposed Section 4325 sets forth the complaint procedures and the process for handling of complaints against a state hospital peace officer. This section is necessary in order to create and define a clear and efficient complaint process available to individual patients against state police officers.

Subsection (a) sets forth the requirement that all complaints be submitted in writing, and the requirements for information which must be contained in the written complaint and optional complaint form.

Subsection (b) sets forth the requirements for investigating complaints; and Subsection (c) sets forth the possible dispositions for the complaint.

Proposed Section 4330 sets forth the procedures in counting individual patients of state hospitals. This section is necessary in order to define the scope and parameters of counting individual patients in order to avoid any abuse of discretion regarding counts by state hospital staff and to give individual patients a clear understanding of the scope and parameters of such counts.

Subsection (a) specifies the reasonable count number of a reasonable minimum of three times per day or once per shift, whichever is more frequent. Exact number of counts per day is not specified because otherwise individual patients would not be deterred from planning escape or visiting unauthorized areas of the state hospital once the maximum number of counts per day has been reached.

Subsection (b) proscribes the scope of counts to be facility wide or focused on specific areas, as necessary, based on safety and security needs and concerns.

Proposed Section 4415 sets forth the formal facility policy on the dimensions, weight and volume of mail allowed as such policy is required pursuant to Title 9, California Code of Regulations Section 884 (b)(6). This section is necessary in order to create and maintain a consistent policy regarding the receipt of mail in order to avoid any inconsistent treatment of mail by state hospital staff and misconception by individual patients of what is and is not allowed.

Proposed Section 4420 sets forth the facility policy on the dimensions, weight, volume, and number of packages allowed as such policy is required pursuant to Title 9, California Code of Regulations Section 884 (b)(7). This section is necessary in order to maintain a consistent policy regarding the receipt of packages in order to avoid any inconsistent treatment of packages by state hospital staff and misconception by individual patients of what is and is not allowed. This section is also necessary because of state hospital facility space limitations and fire code requirements.

Subsection (a) provides the necessary distinction between “packages” and “mail.”

Subsection (b) gives the maximum dimensions and weight of packages.

Subsection (c) allows the hospital to limit the volume of a patient’s packages based on staffing and hospital ground limitations, and set the reasonable parameters to three packages per individual patient for the first three calendar quarters (January – March, April – June, and July – September) and to four packages per individual patients for the fourth calendar quarter (October – December) for Thanksgiving and December Holiday Season.

Subsection (d) states that packages sent to the facility that are not within the limits set forth in subsection (b) and (c) above shall be returned to the sender.

Subsection (e) states that these limitations do not apply to confidential mail.

Proposed Amendment to Section 864 adds a subsection (e) to clarify that the procedures in section 864 do not apply to state hospitals, but that the complaint procedures for LPS state hospital patients are the same as those set forth in Title 9, California Code of Regulations Section 885 for Non-LPS state hospital patients. This section is necessary in order to ensure that the complaint procedure is consistent for both LPS and Non LPS individual patients.

OTHER REQUIRED SHOWINGS – GOVERNMENT CODE 11346.2 (b) (2)-(4)

Studies, Reports, or Documents Relied Upon – Gov. Code 11346.2(b) (2): None

Reasonable Alternatives Considered – Gov. Code 11346.2(b) (3) (A): None

Reasonable Alternatives That Would Lessen the Impact on Small Businesses – Gov. Code 11346.2 (b) (3) (B): None

Evidence Relied Upon to Support the Initial Determination That the Regulation Will Not Have A Significant Adverse Economic Impact On Business – Gov. Code 11346.2(b)(4): The proposed regulations will not have a significant adverse economic impact upon business since they only govern security issues and patient policies for secured state hospital facilities.