

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 9, California Code of Regulations

Adopt sections:
Amend sections: 4210
Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2015-0226-04 EE

The Department of State Hospitals submitted this emergency readoption action to maintain the effectiveness of amendments made to title 9, California Code of Regulations, section 4210 in OAL file no. 2014-0918-02E. The emergency amendments allow the department to conduct administrative hearings on hospital grounds to determine the necessity to administer interim, non-emergency, involuntary antipsychotic medications to patients admitted under a not guilty by reason of insanity plea under Penal Code Section 1026.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 3/30/2015 and will expire on 6/30/2015. The Certificate of Compliance for this action is due no later than 6/29/2015.

Date: 3/9/2015

Richard L. Smith

Richard L. Smith
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Pamela Ahlin
Copy: Karen Gillham

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

EMERGENCY

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2015-0226-04EE

For use by Office of Administrative Law (OAL) only

NOTICE AGENCY WITH RULEMAKING AUTHORITY Department of State Hospitals	REGULATIONS 2015 FEB 26 PM 2:18 OFFICE OF ADMINISTRATIVE LAW
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ENDORSED - FILED in the office of the Secretary of State of the State of California

MAR 9 2015 2:23 PM

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Interim Involuntary Medication Hearing Procedures	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2014-0918-02E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 4210
TITLE(S) 9	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) 3/31/2015 3/30/2015 per agency request

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal

7. CONTACT PERSON			
Karen Gillham	TELEPHONE NUMBER 916-651-5578	FAX NUMBER (Optional) 916-651-3090	E-MAIL ADDRESS (Optional) karen.gillham@dsh.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Stephanie Cleland</i> , Chief Deputy Director for Pam Ahlin, Director, Department of State Hospitals	DATE 2/13/15
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ENDORSED APPROVED

MAR 09 2015

Office of Administrative Law

Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 2. Treatment

§ 4210. Interim Involuntary Medication Hearing Procedures at State Hospitals

(a) The Department of State Hospitals may conduct administrative hearings on hospital grounds to determine the necessity to administer non-emergency interim involuntary antipsychotic medication to patients admitted under a not guilty by reason of insanity (NGI) plea as currently described in Penal Code Section 1026, Mentally Disordered Offenders (MDOs) as currently described in Penal Code Section 2962; and Sexually Violent Predators as currently described in Welfare and Institutions Code Section 6600, pursuant to the applicable legal standard for each category of individual patient. 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.

(b) Before initiating the administrative hearing process, the individual patient's treating physician must first determine that involuntary medication is appropriate, inform the individual patient of such diagnosis, explain why medication is necessary along with the anticipated benefits and possible side effects, and ascertain that the individual patient either refuses to give informed consent to accept or is incompetent to give informed consent to receive the medication.

(c) The administrative hearing shall be held according to the following criteria:

(1) The individual patient must be given at least 24 hours' written notice of the State Hospital's intention to convene an involuntary medication hearing.

(2) The hearing shall be conducted by a panel of two psychiatrists and one psychologist, or three psychiatrists, none of whom have been directly involved in the individual patient's treatment.

(3) The State Hospital shall present evidence of the individual patient's treatment history, current medical condition, and of the information enumerated in subsection (b) above.

(4) The individual patient shall be given the choice to be present at the hearing, present evidence, and cross examine witnesses.

(5) The individual patient shall be given the choice to be represented by a disinterested lay adviser versed in the applicable psychological issues who will explain the hearing procedures and the applicable legal standard for the involuntary

administration of anti-psychotic medication to, and serve the written hearing notice on, the individual patient.

(6) The decision of the hearing panel shall be by majority vote, in writing, include information as to the participants at the hearing, and whether the legal standard for involuntary medication applicable to the individual patient is met.

(7) The written decision shall be given to the individual patient wherein the individual patient has 24 hours from the time of receipt of the written decision to appeal to the medical director of the State Hospital or his or her designee. The State Hospital medical director or his or her designee shall decide any appeal within 24 hours after its receipt.

(8) The hearing panel's decision to allow involuntary medication may direct such treatment for up to 14 days, unless superseded by a court decision pursuant to the court hearing that follows the interim administrative hearing process set forth in these regulations. After the 14-day treatment period, further treatment may be authorized only after the same panel conducts a second hearing pursuant to these same elements wherein the hearing panel may then direct that treatment may continue for the sooner of up to an additional 180 days or when a decision is made by a court pursuant to the court hearing that follows the interim administrative hearing process set forth in these regulations.

(d) Nothing in these regulations shall affect any existing legal rights of the individual patient to seek a judicial review of the hearing panel's determination for involuntary medication.

(e) Nothing in these regulations shall affect any existing legal authority of the State Hospital to involuntarily medicate the individual patient in emergency situations.

Note: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: *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 and 2962, Penal Code; and Sections 5300 and 6600, Welfare and Institutions Code.