

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections: 4700, 4710, 4711, 4712,
4713, 4714, 4715, 4716,
4717

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0906-03


OAL Matter Type: Emergency (E)

The Department of State Hospitals submitted this emergency action to adopt a new article and nine new sections to title 9, division 1, chapter 16 of the California Code of Regulations pertaining to admissions to state hospitals from court-ordered commitments under Penal Code section 1370, which are made when a criminal defendant is determined by a court to be incompetent to stand trial (IST). The proposed regulations will provide uniform rules to all counties regarding the admissions process for IST individuals.

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 9/16/2016 and will expire on 3/16/2017. The Certificate of Compliance for this action is due no later than 3/15/2017.

Date: September 16, 2016



Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Pamela Ahlin
Copy: Dennalee Folks

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2016-0906-03E
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

SEP 16 2016
2:06 P.M.

2016 SEP -6 A 11:57
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of State Hospitals

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 <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Incompetent to Stand Trial Admissions Process	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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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 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716, 4717
	AMEND
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 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 checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

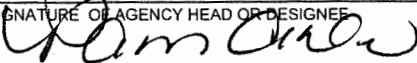
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

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 checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

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	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Dennalee Folks	TELEPHONE NUMBER 916-651-8544	FAX NUMBER (Optional) 916-651-3090	E-MAIL ADDRESS (Optional) dennalee.folks@dsh.ca.gov
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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 	DATE 8-12-16
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TYPED NAME AND TITLE OF SIGNATORY
Pam Ahlin, Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 16 2016

Office of Administrative Law

INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES DIVISION 1. DEPARTMENT OF MENTAL HEALTH CHAPTER 16. STATE HOSPITAL OPERATIONS

Adopt ARTICLE 7. ADMISSIONS

Adopt Sections 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716 and 4717

4700. Definitions.

- (a) "Low/moderate security risk" means any individual who has no escape/escape attempt(s) history from a locked facility, state hospital, locked psychiatric facility, or correctional facility.
- (b) "High security risk" means an individual with a history of escape/escape attempt(s) from a locked facility or a successful escape from a state hospital, locked psychiatric facility, or correctional facility.
- (c) "Psychiatric acuity" means an individual's condition that is evidenced by the fact that an individual's mental illness is leading to complications which put the individual at risk of death or serious injury while awaiting admission. For purposes of assessing psychiatric acuity, the individual would need to exhibit more than aggressive behavior alone.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Section 1370, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code.

4710. Admission of Individuals Found Incompetent to Stand Trial.

(a) When scheduling admission of individuals committed by the courts to the Department of State Hospitals pursuant to Penal Code section 1370, the department will admit such individuals in relation to the individuals' respective commitment date, such that the order of admission will be determined by the earlier of the individuals' respective commitment dates. This order of admission by commitment date may be changed by the department under any of the following circumstances:

- (1) Bed availability at the facility under consideration for the individual's placement;
- (2) Whether the psychiatric acuity of the individual indicates the need for a priority admission to a facility;

- (3) Whether the medical needs of the individual can presently be clinically accommodated by the facility under consideration for the individual's placement;
- (4) The transportation ability or timing of the committing county to the facility under consideration for the individual's placement; or the committing county's inability to transport the committed individual for any other reason.

(b) For individuals committed and/or admitted by the courts to the Department of State Hospitals who are placed in a jail-based competency program pursuant to Penal Code section 1370, if that jail-based competency program determines that it cannot appropriately serve the individual, the individual shall be admitted to a state hospital in the order of admission that reflects the individual's original commitment date to the Department of State Hospitals.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Section 1370, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code.

4711. Admissions Documentation for Individuals Found Incompetent to Stand Trial.

(a) A county committing an individual to the Department of State Hospitals under Penal Code section 1370 shall submit a commitment packet to the department for review and approval prior to the admission of the individual.

(b) The commitment packet shall include:

- (1) The commitment order, including a specification of the charges.
- (2) A computation or statement setting forth the maximum term of commitment.
- (3) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.
- (4) The state summary criminal history information.
- (5) Any arrest report(s) from police departments or other law enforcement agencies.
- (6) Any court-ordered psychiatric examination or evaluation reports.
- (7) The placement recommendation report prepared by the community program director of the forensic conditional release program.

(8) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Penal Code section 290 or any pending Penal Code section 1368 proceeding arising out of a charge of a Penal Code section 290 offense.

(9) Any medical records as described in section 4712.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Sections 1370 and 1370.01, Penal Code; Section 7228, Welfare and Institutions Code; Title 45, Code of Federal Regulations, Section 164.508; and *In re Loveton* (2016) 244 Cal.App.4th 1025.

4712. Medical Records Documentation.

(a) The following medical documentation of the individual shall be supplied in the individual's commitment packet, if available;

(1) Any progress notes by a nurse, psychiatrist, medical doctor, or that pertain to behavioral incidents, within the last 10 days;

(2) Current medications and dosages;

(3) Medication compliance documentation;

(4) Lab results/work and consultations;

(5) Recent admission psychiatric evaluation;

(6) Safety cell usage or suicide watch records or incidences of self-injurious behavior;

(7) Any recent physical exams or medical history notes;

(8) Any advance health care directive;

(9) Any consent forms for treatment; and

(10) Any other court-ordered medical treatment.

(b) Other medical documentation, including treatment plans, will be required for the following conditions, if available:

(1) Renal dialysis (hemodialysis or peritoneal dialysis);

- (2) Non-ambulation, or where the individual needs prosthetics, walkers, or assistance to ambulate;
- (3) Pregnancy, near term (last two months), or any prenatal care information or complications;
- (4) Continuous oxygen, continuous respiratory monitoring such as pulse oximetry, ventilator devices such as CPAP for sleep apnea, or nebulizer for airway treatment;
- (5) Cancer;
- (6) Congestive heart failure;
- (7) Blood or spinal fluid shunt in place, such as Prot-o-cath, or shunt for hydrocephalus;
- (8) Any required injections;
- (9) Any open wound not yet healed or untreated;
- (10) Ostomy;
- (11) Cirrhosis of the liver;
- (12) Active inflammatory bowel diseases, complications by intestinal obstruction, subocclusion, severe fistulas, or active rectal bleeding;
- (13) Inability to provide basic self-care or any other condition requiring skilled nursing level of care;
- (14) HIV/AIDS;
- (15) Tuberculosis; and
- (16) Any other significant medical condition.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Section 1370 and 1370.01, Penal Code; Section 7228, Welfare and Institutions Code; Title 45, Code of Federal Regulations, Section 164.508; and *In re Loveton* (2016) 244 Cal.App.4th 1025.

4713. Medical Records Review.

- (a) The Department of State Hospitals shall use the medical records provided in the commitment packet to determine the medical needs of an individual.
- (b) A department admissions unit's triage nurse shall review all documents related to an individual's medical condition(s).
- (c) The department's admissions unit's triage nurse shall consult with the department's admissions unit's physician or the chief physician and surgeon to address whether the particular facility, proposed for the individual's placement, is able to provide the necessary care or services needed by the patient's medical condition(s).

Note: Authority cited: Sections 4005.1 and 4027.

Reference: Sections 1370 and 1370.01, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code.

4714. Security Risk Assessment for Placement of Individuals Found Incompetent to Stand Trial.

- (a) The Department of State Hospitals shall conduct a security risk assessment of each individual committed to the department pursuant to Penal Code section 1370 prior to admission.
- (b) The security risk assessment shall include:
 - (1) The individual's prior history of escape or attempted escapes at any locked facility;
 - (2) Whether, within 30 days prior to the completion of the department's assessment, the department receives new information about the individual, such as a change in commitment status, divorce by spouse, death of a family member, or birth of a child;
 - (3) The individual's age;
 - (4) Whether the individual has been diagnosed with an antisocial, borderline, and/or narcissistic personality disorder based on the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (May 18, 2013), hereby incorporated by reference;
 - (5) The number of the individual's prior felony convictions;
 - (6) The individual's current length of sentence at the time of assessment; and

(7) The individual's current medical condition.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Sections 7228 and 7230, Welfare and Institutions Code.

4715. Placement of Individuals Found Incompetent to Stand Trial.

The Department of State Hospitals may not admit an individual under Penal Code section 1370 until the commitment packet specified in section 4711 is received, reviewed, and approved by the department in order to determine the proper placement within the department. The department may admit a committed individual whose commitment packet is incomplete when the department determines, pursuant to section 4716, that the individual's psychiatric acuity indicates the need for an immediate admission to a state facility.

Note: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Section 1370, Penal Code; Section 7228, Welfare and Institutions Code.

4716. Psychiatric Acuity Review.

- (a) If an individual committed to the department pursuant to Penal Code section 1370 is psychiatrically acute, the individual may be reprioritized in the order of commitment in the admission process.
- (b) The committing county's clinician responsible for the individual's clinical assessment shall contact the Department of State Hospitals' medical director, or designee, about an individual's psychiatric acuity and the psychiatric acuity needs of the individual.
- (c) The committing county shall provide the medical director, or designee, the medical information and documentation that supports the psychiatric acuity. Such documentation may include, but is not limited to:
 - (1) Safety cell notes;
 - (2) Current medications or lack of medication;
 - (3) Medical lab work; or
 - (4) Any additional treatment records from local health care providers.
- (d) The medical director of the Department of State Hospitals, or designee, is the final authority for determining psychiatric acuity of an individual for purposes of expediting admission to a state facility.

(e) The medical director of the Department of State Hospitals, or designee, will make a decision on whether to expedite admission of an individual due to his or her psychiatric acuity within 72 hours of contact by the committing county's clinician and when the department receives sufficient documentation.

Note: Authority cited: Sections 4005.1, 4027 and 7225, Welfare and Institutions Code.

Reference: Sections 1370 and 1370.01, Penal Code; and Sections 7228 and 7230, Welfare and Institutions Code.

4717. State Hospital Placements of Individuals Found Incompetent to Stand Trial for Security Risks,

(a) The Department of State Hospitals shall consider an individual committed to the department pursuant to Penal Code section 1370, and who the department determines is a low/moderate security risk, only for admission to Department of State Hospitals – Atascadero, Department of State Hospitals – Patton, Department of State Hospitals – Napa, or to Department of State Hospitals – Metropolitan.

(b) The Department of State Hospitals shall consider an individual committed pursuant to Penal Code section 1370, and who the department determines is a high security risk, only for admission to Department of State Hospitals – Atascadero or to Department of State Hospitals - Patton.

Note: Authority cited: Sections 4005.1, 4027 and 7225, Welfare and Institutions Code.

Reference: Sections 7228 and 7230, Welfare and Institutions Code.