



May 25, 2017

**NOTICE OF PROPOSED EMERGENCY ACTION  
SECOND READOPTION OF EMERGENCY REGULATIONS**

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 16. State Hospital Operations  
Article 7. Admissions  
Sections 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716, and 4717

Pursuant to the requirements of Government Code section 11346.1, subdivision (a)(2), the California Department of State Hospitals (DSH) is providing notice of proposed emergency action with regard to the above-entitled regulation.

**DILIGENT ADOPTION OF PERMANENT REGULATIONS**

As required for readoption of emergency regulations, DSH has made substantial progress and is proceeding with diligence to comply with Government Code section 11346.1, subdivision (e). (Cal. Code Regs., title 1, section 52(b)(1).) The following actions demonstrate DSH's progress toward the adoption of permanent regulations.

Since the emergency regulations were enacted in September 16, 2016 and first readopted on March 15, 2017, DSH has engaged in the following:

- Since September 2016, DSH has been meeting with counties and courts to educate them on the proposed emergency regulations and to ensure that they have a good understanding of admissions process of IST defendants, state-wide.
- In February 2017, DSH held a public hearing and received oral comments and three written comments.
- In March 2017, DSH responded to comments given at or prior to the public hearing and incorporated these comments and responses into its Final Statement of Reasons, to be published with the complete rulemaking record.
- In May 2017, DSH received one written comment. DSH will respond to this comment and incorporate the comments and its response into its Final Statement of Reasons, to be published with the complete rulemaking record.

A readoption of the emergency regulations will ensure that the standardized, uniform admissions process for IST defendants remains in effect while DSH continues to work to complete the regular rulemaking process for permanent regulations.

As required for re-adoption of emergency regulations (Cal.Code Regs., title 1, section 52(b)(2)), there has been no material change in emergency circumstances since the original emergency adoption of these regulations (OAL File No. 2016-0906-03E).

### **SUBMISSION OF COMMENTS**

Government Code section 11346.1, subdivision (a)(2) requires that at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of Proposed Emergency Action to every person who has filed with the agency a request for notice of regulatory action. After posting of the Notice of Proposed Emergency Action, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

DSH invites interested persons to provide comment. The public may comment only in writing. Any interested person may submit a written comment relevant to the proposed regulatory action. Written comments must be received by both DSH and OAL within five calendar days of this Emergency Readoption filing with OAL. DSH intends to file this Emergency Readoption Action with OAL on June 2<sup>nd</sup>, 2017. All written comments received by June 7<sup>th</sup> 2017, no later than 5:00 p.m., which pertain to the proposed regulations will be considered and responded to by DSH.

Please submit comments to:

Mailing Address:	Regulations Unit Department of State Hospitals 1600 9th Street, Room 410 Sacramento, California 95814	Reference Attorney Office of Administrative Law 300 Capitol Mall, Suite 1250 Sacramento, California 95814
Fax:	(916) 651-3090	(916) 323-6826
Email:	<a href="mailto:DSH.Regulations@dsh.ca.gov">DSH.Regulations@dsh.ca.gov</a>	<a href="mailto:staff@oal.ca.gov">staff@oal.ca.gov</a>

For the status of the DSH submittal to OAL for review and the end of the five-day written comment period, please visit OAL's website at <http://www.oal.ca.gov> under the heading "Proposed Emergency Regulations Under Review."

### **AUTHORITY AND REFERENCE CITATIONS**

Authority: Welfare and Institutions Code sections 4005.1, 4027, 4101, and 7225.

References: Penal Code sections 1370, 1370.01; Welfare and Institutions Code sections 7228, 7230; Code of Federal Regulations, title 45, section 164.508, and *In re Loveton* (2016) 244 Cal.App.4th 1025.

## INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

### Policy Statement

The objective of the proposed action is to implement, interpret, or make specific state policy regarding Penal Code section 1370, as set forth in the *In re Loveton* decision. The regulation would clarify what specific documents need to be provided to DSH for admission to a DSH hospital, as well as providing direction on how and when a patient will be admitted. The regulation will provide for a uniform admissions procedure statewide, where counties and IST individuals will be treated uniformly and equally.

### Existing Law

Currently, the patients are committed to DSH by the courts and are involuntarily held at the respective county facility. These patients are committed to DSH due to a mental illness. DSH is responsible for providing the care and treatment, and the safety and security of these patients. Penal Code section 1370, subdivision (a)(3), currently provides what documents are needed for a commitment packet in order to be admitted to a DSH hospital. However, the law does not provide or account for how to prioritize admissions of patients from the various committing counties simultaneously. This has led some courts to issue OSCs for IST defendants awaiting admission that is not in line with the *In re Loveton* decision.

## ANTICIPATED BENEFITS OF THE PROPOSED EMERGENCY REGULATIONS

The emergency regulations may benefit the health and welfare of California residents by ensuring that committed individuals who come with a criminal history or pending criminal charges are admitted to, housed in, and treated in the most appropriate state hospital in the most appropriate location. The emergency regulations may also benefit worker safety by placing committed individuals in appropriate state hospitals depending on security risk and escape history. Lastly, the regulations may benefit the State's environment by making more efficient the transport of committed individuals from county custody to state hospitals, potentially reducing the carbon footprint of these deliveries.

The benefits of the regulations will be to prevent discrimination, to promote fairness and social equity, and to increase openness and transparency in government. By implementing the *In re Loveton* decision, the proposed emergency regulations will provide a uniform admissions criteria and help all the counties understand the admission process and allow uniformity within the various counties. The proposed emergency regulations will help DSH better serve those IST defendants committed to DSH and provide clarification as to what documents are needed and what will be reviewed. These regulations should reduce overall wait time for admission to DSH, help remove IST defendants from county jails, reduce time on criminal court calendars, and provide equity in admission process to defendants throughout the state. The regulations specify the documentation and records required by the Department to evaluate each committed individual for admission to a state hospital. Further, the regulations lay out the factors that the Department considers in assessing each committed individual for medical needs, psychiatric acuity, and security risk. Clearly laying out the objective metric that the Department will use in admitting committed individuals safeguards from the preferential treatment of one county over another or one committed individual over another, thereby preventing discrimination and promoting fairness. With a regulated standard, state-wide admissions process, the expectations of courts, counties, counsel, and committed individuals about the admissions process will be better managed and met, fostering openness and transparency in government.

## DETERMINATIONS

### **Evaluation of Consistency/ Compatibility with Existing Regulations:**

The Department has researched existing regulations and has determined that these proposed regulations are consistent and compatible with existing state laws and regulations.  
Evaluation with existing state regulations – from F of E

## LOCAL MANDATE DETERMINATION

### **Mandates on Local Agencies or School Districts: None**

County courts are State-funded, and courts are statutorily required to provide the commitment packet pursuant to Penal Code section 1370.

## FISCAL IMPACT

### **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**

DSH anticipates that there will be no fiscal impact in the current State Fiscal Year to local agencies.

### **Costs or Savings to Any State Agency**

DSH anticipates that initially there is potential increase in the State's legal costs due to DSH being ordered to appear in court more frequently. Subsequent to all of courts and counties becoming familiar with the state hospital admissions process for Penal Code section 1370 patients that the emergency regulations create, there is a potential decrease in the State's legal costs if DSH is not ordered to appear in court as frequently.

### **Non-discretionary Costs or Savings Imposed on Local Agencies**

While there may be additional county personnel resources involved in implementing a part of these regulations, DSH anticipates there will be no fiscal impact in the current State Fiscal Year to local agencies.

### **Costs or Savings in Federal Funding to the State**

None.

### **Costs or Savings to Individuals or Businesses**

DSH does not anticipate any impact on individuals or businesses since the proposed regulations only provide clarification to counties on the state hospital admissions process for Penal Code section 1370 patients.

## **MATERIALS INCORPORATED BY REFERENCE**

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5, Published 2013.

Economic and Fiscal Impact Statement, STD 399, submitted in OAL file number 2016-0906-03E.