



# CALIFORNIA DEPARTMENT OF State Hospitals

## **NOTICE OF PUBLIC COMMENT PERIOD FOR PROPOSED ADOPTION OF THE ALIENIST GUIDELINES REGULATION**

The Department of State Hospitals (Department or DSH) is proposing adoption of the proposed regulations for the Alienist Guidelines after considering all relevant public comments, objections, and recommendations.

### **PUBLIC HEARING**

A public hearing is not currently scheduled; however, you may request the Department to conduct a public hearing. A public hearing will be held if any interested person, or his or her duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period. If a request for public hearing is received by **February 18, 2019**, the time, date, and location of the public hearing will be provided by separate notice.

### **WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

Any interested person or his or her representative may provide comments relevant to the proposed regulatory action to the Department by personal delivery, postal mail service, fax, or email submittal as follows. The public comment period for this regulatory action will begin on **January 18, 2019**. For any written comment to be considered must be received by the Department **no later than 5:00 p.m., on March 4, 2019**.

Comments sent to persons and/or addresses other than that specified, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission. For consideration, any written comments shall be submitted as follows:

1. By email to [DSH.Regulations@dsh.ca.gov](mailto:DSH.Regulations@dsh.ca.gov). It is requested that all comments, particularly those emailed with attachments, contain the regulation package identifier "**Alienist Guidelines**" in the subject line to facilitate timely identification and review;
2. By fax transmission to (916) 651-3090;

3. By United States Postal Service to;
- California Department of State Hospitals  
Regulations Unit  
**RE: Alienist Guidelines**  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814; or

4. Hand-delivered to the address above.

### **AUTHORITY AND REFERENCE**

This regulatory action is proposed under the authority granted to the Department in Welfare and Institutions Code sections 4005.1, 4027, 4101, and 4312, and Penal Code section 1369. This action is proposed to implement, interpret and make specific Penal Code sections 1369, 1370, 1370.01, and 1370.1.

### **INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5(a)(3)**

**Sections Affected:** The Department proposes to adopt new article 7.5 and sections 4750, 4751, and 4752, title 9, California Code of Regulations (CCR).

#### **Existing Laws/Regulations:**

Penal Code section 1369 mandates that the Department adopt guidelines for the education and training standards for a psychiatrist or psychologist to be considered for appointment by the court to evaluate a defendant whose mental competence is in question.

#### **Effect of the Proposed Regulatory Action:**

This proposed rulemaking adopts the Alienist Guidelines to assist the courts in their consideration of experts to evaluate individuals whose mental competency is at issue. This proposed rulemaking specifies the education and training the Department believes are adequate for an expert to evaluate a defendant and reliably advise the court on his or her mental competency to stand trial. Further, this proposed rulemaking aims to result in reliable competency evaluation, assisting the court in committing to the Department only the individuals who are incompetent to stand trial.

#### **Policy Statement Overview/ Anticipated Objectives and Benefits of the Proposed Regulatory Action:**

Standardizing the training and experience required of psychiatrists or licensed psychologists who evaluate defendants for mental competency is crucial in ensuring that evaluations are as complete and accurate as possible; that courts can then rely on the

evaluations; and that the resulting incompetency commitments to the Department are appropriate. Further, a standard guideline on the training and experience a competency evaluator should have helps ensure that individuals can expect to receive a fair, reliable assessment of their competence to stand trial. Obtaining such a diagnosis would result in those who are mentally competent to remain in the criminal justice system until timely adjudication of their cases and in those who are incompetent to timely receive appropriate competency restoration. Consequently, Department resources will be spent on those who need competency restoration, and the courts can reduce case delays by avoiding the erroneous commitment of a mentally competent individual.

*Evaluation of Inconsistency or Incompatibility with Existing State Regulations*

During the development of this regulatory action, DSH reviewed the regulations on this topic and concluded that the proposed amendments are neither inconsistent nor incompatible with existing state regulations or statutes.

*Comparable to Federal Regulations:*

There are no existing federal regulations or statutes comparable to the proposed regulations within a California DSH facility.

**LOCAL MANDATE (Gov. Code, § 11346.5(a)(5))**

Under Government Code sections 11346.5, subdivision (a)(5), DSH has determined that the proposed regulatory action would not impose a mandate on any local agency or school district that requires reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500).

**FISCAL IMPACTS (Gov. Code, § 11346.5(a)(6)):**

The determination of the Department concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

*Cost to any local agency or school district requiring reimbursement under section 17500 et seq.:*

DSH has determined that the proposed regulatory action would not create costs or savings to any local agency or school district.

*Cost or savings to any State agency:*

DSH has determined that the proposed regulatory action would not create costs or savings to any State agency.

Other non-discretionary costs or savings on local agencies:

DSH has determined that the proposed regulatory action would not create costs or savings to any other nondiscretionary cost or savings to State or local agencies.

Cost or savings in Federal funding to the State:

DSH has determined that the proposed regulatory action would not create costs or savings in federal funding to the State.

**HOUSING COSTS (Gov. Code, § 11346.5(a)(12)):**

In accordance with Government Code section 11346.5, subdivision (a)(12), the Department has made the initial determination that the proposed regulatory action will not have a significant effect on housing costs. These proposed regulations do not impact housing since they only affect individuals committed to the Department and in Department custody.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (GOV. CODE, §§ 11346.3(a), 11346.5(a)(7), 11346.5 (a)(8)):**

DSH has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

**STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (Gov. Code, § 11346.5(a)(10)):**

The creation of jobs within the State of California.

It has been determined that the proposed action will not affect the creation of jobs.

The elimination of jobs within the State of California.

It has been determined that the proposed action will not affect the elimination of jobs.

The creation of new business within the State of California.

It has been determined that the proposed action will not affect the creation of new businesses.

The elimination of existing businesses within the State of California.

It has been determined that the proposed action will not affect the elimination of existing businesses.

The expansion of businesses currently doing business within the State of California.

It has been determined that the proposed action will not affect the expansion of businesses currently doing business in California.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by ensuring that defendants whose competence is in question are timely evaluated by appropriate and qualified experts who have experience in diagnosing individuals for psycho-legal, forensic issues. A timely, standardized, and appropriate evaluation would result in timely placement and treatment of an incompetent defendant and the timely adjudication of the pending cases of those who are competent and, later, those whose competence has been restored. This uniform process has the following benefits: (1) courts can timely administer justice in cases where the individual is actually competent and order the appropriate commitment of an incompetent individual to the Department; (2) mentally competent individuals do not have to spend time receiving unnecessary competency treatment, freeing up Department resources to admit, treat, and restore mentally incompetent individuals; (3) mentally incompetent individuals receive appropriate treatment and mental competency restoration that they require to move along in the criminal justice system; and (4) the general public and community can rest assured that the criminal justice system, in place in large part to keep them safe, is able to timely administer justice. This proposed regulation may also benefit worker safety by ensuring that the state hospital system treats only appropriate and suitable patients, reducing the risk of erroneously treating patients inappropriate for competency restoration. Lastly, this proposed regulation may benefit the State's environment by streamlining the consideration and appointment process – resulting in properly trained evaluators providing accurate diagnoses upon which the court can rely; appropriate commitment and treatment of mentally incompetent defendants; decrease in the risk of delay in the administration of justice – thus overall reducing carbon footprint, waste, use of resources, and energy costs.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**  
**(Gov. Code, § 11346.5(a)(9)):**

In developing this regulatory proposal, DSH staff evaluated the potential economic impacts on representative private persons or businesses. DSH is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESS (Cal. Code Regs., tit. 1, § 4, subs. (a) and (b)):**

DSH has determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the proposed regulation only provides guidance on the training and education standards of experts for the courts to consider in appointing an expert to evaluate defendants for mental competency.

**ALTERNATIVES STATEMENT (Gov. Code, § 11346.5(a)(13)):**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the 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 provisions of law.

On March 29, 2017, DSH held a stakeholder meeting which was comprised of the Judicial Council and groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, state psychologists and psychiatrists, professional associations and accrediting bodies for psychologists and psychiatrists, and other interested stakeholders in order to develop these guidelines and determined that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the 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 provisions of law.

**AGENCY CONTACT PERSONS (Gov. Code, § 11346.5(a)(14)):**

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Katherine Warburton, DO., Medical Director, (916) 654-3602 or (designated back-up contact) Susan Velasquez, PhD., Chief Psychologist, at (909) 280-3211.

**AVAILABILITY OF DOCUMENTS**

The Department staff has compiled a record for this rulemaking action which includes all the information upon which the proposal is based, including an Initial Statement of Reasons (ISOR) for the proposed regulatory action and the proposed text (the “express terms”) of the regulation.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the Department’s website listed below or may be obtained from the

agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed: Trini Balcazar, Regulations Coordinator, Regulations Unit, by telephone at (916) 562-2824.

### **HEARING PROCEDURES**

If a public hearing is scheduled, it will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340). After holding the public hearing if applicable, and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, with the exception of grammatical changes, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons (FSOR) shall be available, and copies may be requested from the agency contact persons in this Notice or may be accessed on the Department's Internet web site listed below.

### **INTERNET ACCESS**

This Notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR when completed, are available on the Department's web site for this rulemaking at <http://www.dsh.ca.gov/Publications/Regulations.aspx>.