

DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 7. Admissions

The Department of State Hospitals (Department) proposes to adopt Article 7, Sections 4700, 4710, 4711, 4712, 4713, 4714, 4715, 4716, and 4717.

PROBLEM STATEMENT.

Penal Code section 1370 mandates that the Department of State Hospitals (Department or DSH) admit, treat, and restore to competency individuals found by courts to be Incompetent to Stand Trial. When a court makes a finding that a criminal defendant is incompetent to participate or assist in his or her own defense, it commits that individual to the Department as Incompetent to Stand Trial (committed individual). The law tasks the Department to admit the committed individual to a state hospital for treatment and competency restoration.

An individual judicially committed to the Department as Incompetent to Stand Trial may be admitted to and treated at one of the following state hospitals: Department of State Hospitals – Atascadero, Department of State Hospitals - Patton, Department of State Hospitals - Napa, or Department of State Hospitals - Metropolitan. The number of committed individuals continues to substantially increase, since fiscal year 2010 to 2011. Consequently, each state hospital has reached its maximum licensing, functional, and statutory capability, which has resulted in a patient wait list and a delay in admission. Because of the delay, courts, counties, and the committed individuals have had to wait for current state hospital patients to be discharged and beds become available. Without a regulated, standard admissions process, courts, counties, and committed individuals have had no meaningful way to expect admission that is timely or fair.

Furthermore, in a recent published decision, the Court of Appeal for the First Appellate District upheld the Contra Costa County Superior Court's standing order to admit patients to DSH within 60 days of commitment. (*In re Loveton* (2016) 244 Cal.App.4th 1025.) This decision became final on April 12, 2016. The *In re Loveton* decision has given some courts the impression that in order to ensure that their patients are admitted to a DSH hospital as soon as possible and ahead of Incompetent to Stand Trial referrals from other counties, a standing order, or alternatively beginning or increasing issuance of OSCs will help expedite the admission. In *In re Loveton*, the Court also discussed the need for the superior courts to provide complete commitment packets to DSH. DSH has received numerous incomplete commitment packets from various counties, and these incomplete packets have contributed to some delays in admitting patients for treatment to DSH. A

uniform statewide Incompetent to Stand Trial referral and admission process is needed to comply with the *In re Loveton* decision and help all the counties understand the admission process.

ANTICIPATED BENEFITS.

The regulations will standardize the admissions process of committed individuals state-wide. 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. Moreover, the regulations ensure that each state hospital operates its admissions process in the same way. The Department anticipates that standardizing the admissions process will provide uniformity and predictability to the courts, counties, the committed individuals, and the state hospitals. With a standard, state-wide admissions process, the expectations of courts, counties, counsel, and committed individuals about the admissions process will be better managed and met and, further, the regulations ensure that all committed individuals are treated in the same way.

Section 4700: Definitions.

Purpose: To provide definitions for “low or moderate security risk,” “high security risk,” and “psychiatric acuity” to give uniform guidance on these specific factors the Department considers in evaluating a committed individual for admission to a state hospital.

Necessity: Defining “low or moderate security risk,” “high security risk,” and “psychiatric acuity” ensures that when the Department communicates with parties about the factors it considers in evaluating a committed individual for admission, it is clear to the courts, counties, and counsel exactly what these uniform factors are.

Section 4710: Date of Admission of Individuals Found Incompetent to Stand Trial.

Purpose: To provide a standard admissions procedure for each committed individual based on the date the court committed each person to the Department.

Necessity: Instituting a state-wide admissions queue according to the date the court has committed each individual to the Department ensures that all committed individuals are treated in the same way. Penal Code section 1370, subdivision (a)(2), also ensures that the Department has latitude to admit committed individuals to a state hospital notwithstanding the date the court committed the individual to the Department if there is an exigent, psychiatrically acute situation. A standard, state-wide admissions procedure ensures that courts, counties, and counsel can have the expectation that committed individuals are treated fairly.

Section 4711: Required Documentation for Admission of Individuals Found Incompetent to Stand Trial.

Purpose: To specify the required documentation and records the Department requires to properly evaluate each committed individual for admission and to determine the appropriate state hospital for each committed individual.

Necessity: Requiring that the counties submit to the Department documentation and records relating to each committed individual ensures that the Department will have all the information it needs to evaluate each committed individual for admission to the most appropriate state hospital.

Section 4712: Required Medical Records for Admission of Individuals Found Incompetent to Stand Trial.

Purpose: To specify the required documentation and records the Department requires to properly accommodate and address the medical needs of each committed individual.

Necessity: Requiring that the counties submit to the Department documentation and records relating to each committed individual ensures that the Department will have all the information it needs to evaluate each committed individual for admission to the most appropriate state hospital which can meet the medical needs of that committed individual.

Section 4713: Appropriate Placement of Individuals Found Incompetent to Stand Trial According to Medical Records Review.

Purpose: To provide a standard procedure on reviewing documentation and records that the Department receives for each committed individual.

Necessity: Standardizing the medical evaluation process ensures that each committed individual is afforded the assessment of medical and psychiatric professionals and that through this standard process, each committed individual is admitted to the most appropriate state hospital according to his or her medical needs.

Section 4714: Security Risk Assessment of Individuals Found Incompetent to Stand Trial.

Purpose: To specify a standard list of security risk factors that the Department considers in determining whether a committed individual is a low, moderate, or high security risk.

Necessity: Standardizing the security risk evaluation process ensures patient safety, hospital staff safety, and public safety. The security risk assessment allows the Department to place each committed individual in the most appropriate state hospital according to his or her risk level. This ensures that each committed individual is admitted to a particular state hospital that is prepared to house him or her, with consideration of the other patients and the staff in the particular state hospital and also that of the community surrounding the particular state hospital.

Section 4715: Appropriate Placement of Individuals Found Incompetent to Stand Trial According to Security Risk Assessment.

Purpose: To identify to which state hospital each committed individual shall be admitted based on the Department's security risk assessment.

Necessity: Identifying which state hospitals may house and treat a committed individual with low and moderate security risk and a committed individual with high security risk ensures that courts, counties, committed individuals and their families, and the public can have a degree of expectation as to which hospitals a committed individual may be admitted, depending on his or her security risk level, and that each committed individual is placed in a state hospital suitable to meet the security needs of that individual.

Section 4716: Placement of Individuals Found Incompetent to Stand Trial Upon Review of Completed Commitment Packet.

Purpose: To require that the Department receive and review each committed individual's documentation and records before that individual may be admitted to a state hospital. To reserve the Department's authority to admit a psychiatrically acute committed individual notwithstanding the date the court committed that individual to the Department. To reserve the Department's final authority for placement of a committed individual in a particular state hospital.

Necessity: Requiring that courts and counties furnish a complete commitment packet to the Department before it admits a committed individual ensures that the Department has all the information it needs to appropriately place a committed individual in the most suitable state hospital, one that meets the psychiatric, medical, and security needs of that individual. Reserving the Department's authority to admit a committed individual notwithstanding an incomplete packet in cases of psychiatric acuity ensures that a committed individual who is experiencing exigent psychiatric issues is accommodated and treated timely.

Section 4717: Psychiatric Acuity Review of Individuals Found Incompetent to Stand Trial.

Purpose: To provide a standard procedure for receiving documentation and records so the Department can evaluate a committed individual for psychiatric acuity. To give authority to the Department to determine whether a psychiatrically acute committed individual shall be admitted to a state hospital notwithstanding the date the court committed that individual to the Department.

Necessity: Identifying a standard procedure for evaluating a committed individual for psychiatric acuity and, further, for admission notwithstanding the date the court committed the individual to the Department ensures that exigent psychiatric issues are accommodated and treated timely.

TECHNICAL, THEORETICAL OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Department has not identified or relied upon any technical, theoretical or empirical studies, reports, or documents related to these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS.

The Department does not anticipate that these proposed regulations will have any impact: (1) in creating or eliminating jobs within the State of California, (2) in creating or eliminating businesses in the State of California, or (3) on the expansion of businesses in the State of California.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The Department believes that there are no reasonable alternatives to the proposed regulations which would be more effective and less burdensome to affected private persons or equally effective in implementing the provision of law.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS OR STATUTES.

No duplication or conflict with federal regulations is expected to occur.