

State of California
DEPARTMENT OF STATE HOSPITALS

NOTICE OF SECOND 15-DAY COMMENT PERIOD

REGARDING

INCOMPETENT TO STAND TRIAL ADMISSIONS PROCESS

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

This notice announces a second supplemental period during which **the public may comment on the entire text of the proposed regulations** on the admissions process of defendants found Incompetent to Stand Trial (IST) to state hospitals. This notice also announces further modifications to the originally proposed text of these regulations pursuant to Government Code section 11346.8, subsection (c) and the California Code of Regulations, title 1, section 44. A copy of the modified text is included with this notice.

No action by the public is necessary unless persons wish to comment on the proposed regulations.

The public may comment on the entire text of the proposed regulations and is not limited to commenting on the modified text.

The originally proposed regulatory action is described in detail in the Initial Statement of Reasons released to the public on January 13, 2017, and can be found at: http://www.dsh.ca.gov/About_Us/docs/Regulations/Initial_Statement_Reasons_01132017.pdf. On February 27, 2017, DSH held a public hearing on the proposed regulations and received both oral comments and written comments.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS

Initial modifications made to the originally proposed text are indicated as follows: added text is in underline and deleted text is in ~~strikeout~~.

The additional proposed modifications made subsequent to the first 15-day comment period are indicated as follows: added text is in double underline and deleted text is in ~~double strikeout~~.

Highlighting in yellow below is for ease of review only and does not indicate any additional modification.

Section 4710, subsection (b) is to be amended to:

- ~~A court may commit an individual found judicially committed to the Department of State Hospitals as Incompetent to Stand Trial to may be placed in a jail-based competency program, pursuant to Penal Code section 1370, prior to or concurrently with committing that individual to the Department of State Hospitals.~~ **If an individual found Incompetent to Stand Trial is judicially committed to the Department of State Hospitals and placed in a the jail-based competency program and that program determines that it cannot appropriately treat the individual, the individual shall be admitted to a state hospital according to the date the court committed the individual to the jail-based competency program or to the Department, whichever date is earlier to the Department.**
- **Rationale:** These changes are necessary to reflect AB 103. They clarify that once the court commits an IST defendant to the Department, the Department is the one to determine whether to place the individual in a jail-based competency treatment program or in a state hospital. In the event that the Department places an IST defendant in a jail-based competency treatment program, and that program recommends that the individual be transferred to a state hospital, these changes are necessary to make clear that the individual shall maintain his or her place in line and shall be committed according to the date the court committed him or her to the Department.

Section 4712, subsection (a) is amended to:

- **"The A county judicially committing an individual to the Department of State Hospitals as Incompetent to Stand Trial shall provide the following medical documentation of the individual, if available applicable, shall be provided with the individual's commitment packet[.]"**
- **Rationale:** This change from passive voice to active voice is necessary to clarify that the county which commits the IST defendant to DSH is the one that must provide to DSH, with the commitment packet, the necessary and applicable medical documentation on that IST defendant.

Section 4712, subsection (b) is amended to:

- **"If the individual presents with Under any of the following conditions, the committing county shall provide medical documentation including treatment plans, if available applicable, shall be provided with the individual's commitment packet[.]"**
- **Rationale:** This change from passive voice to active voice is necessary to clarify that the county which commits the IST defendant to DSH is the one that must provide to DSH, with the commitment packet, any applicable medical documentation related to a medical condition or conditions that the IST defendant has.

Section 4712, new subsection (c) is to be added and the former subsection (c) is changed to (d):

- **"Prior to the individual's transport to the state hospital, the committing county shall provide updated medical records to the state hospital under consideration for the individual's placement."**

- **Rationale:** This change is necessary to clarify that historical and updated medical records are needed by a state hospital to ensure that it is adequately prepared to address the medical needs of an IST defendant upon that individual's arrival to a state hospital.

Section 4714, subsection (b) is to be amended to:

- "To determine the security risk of an individual, the Department may ~~The security risk assessment shall~~ consider the following[.]"
- **Rationale:** This change from passive to active voice is necessary to clarify that the Department is the one to consider certain factors for the security assessment.

Section 4716, new subsection (b) is to be added and the former subsections (b) and (c) have been renumbered accordingly:

- "In cases wherein the Department, upon review, discovers that a commitment packet is incomplete, it shall advise the committing county of any missing documentation within 14 calendar days of such discovery."
- **Rationale:** This change is necessary to clarify that a state hospital needs a complete commitment packet to admit an IST defendant and to provide the state hospital a process by which to alert the committing county of a packet's incompleteness.

Section 4716, former subsection (c), now subsection (d), is to be amended to:

- "Upon review of the commitment packet, the ~~Executive Medical~~ Director or designee of each state hospital under consideration for the individual's placement has the final authority to determine whether the individual shall be placed at that particular state hospital. If the ~~Executive Medical~~ Director or designee determines that the individual is not appropriate for placement at that particular state hospital, the Department's Director or designee shall determine the appropriate facility for the individual's placement."
- **Rationale:** This change is necessary to clarify that the Medical Director is in the best position to determine whether a state hospital can adequately serve the medical needs of an IST defendant.

Section 4717, subsection (e) is to be amended to:

- "Within ~~72 hours~~ 3 business days after the committing county's clinician or designee contacts the Department's medical director or designee and after receipt of sufficient documentation, the Department's medical director or designee shall determine whether the individual's psychiatric acuity may indicate the need for admission to a state hospital notwithstanding the date the court committed the individual to the Department. The determination of the Department's medical director or designee shall be based only on medical documentation provided by the committing county pursuant to Section 4717, subsection (d) and, if warranted, discussions with the county's clinician or designee."
- **Rationale:** These changes are necessary because they clarify that the county must provide documentation on what it believes to be psychiatric acuity and that DSH's medical director has the final authority on determining whether an IST defendant suffers from

psychiatric acuity such that the individual warrants an admission to a state hospital notwithstanding the date of his or her commitment to DSH. These changes are necessary because they make clear that DSH's medical director will base this determination only on available medical documentation and records provided to DSH by the committing county and, if DSH's medical director believes it is needed, a clinical discussion between DSH's medical director and the county clinician. This amendment is necessary because it provides direction to courts on how DSH determines whether an IST defendant meets psychiatric acuity criteria. Further, the change from "72 hours" to "3 business days" is necessary to reconcile any potential calendar differences between the Department and other local agencies and courts.

SUBMITTAL OF WRITTEN COMMENTS

DSH invites interested persons to provide comment. The public may comment only in writing. Any interested person may submit to the Department a written comment relevant to the proposed regulatory action and modified regulations. Please submit written comments by postal mail, facsimile, or e-mail as follows:

Postal mail: Regulations Unit, Department of State Hospitals
1600 9th Street, Room 410
Sacramento, California 95814

Fax: (916) 651-3090

Email: DSH.Regulations@dsh.ca.gov

DEADLINE FOR PUBLIC COMMENT

In order to be considered, comments must be directed to DSH in one of the three forms described above. All written comments received by **August 29, 2017**, no later than 5:00 p.m., which pertain to the proposed regulations and modifications will be considered and responded to by DSH. DSH will prepare a response to comments and submit to OAL a final text of the proposed regulations and modified regulations. A Final Statement of Reasons will also be submitted to OAL and will be posted on the DSH website.

CONTACT PERSONS

Inquiries regarding the proposed regulations may be directed to:

Amy Whiting, Regulations Unit
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The backup contact person is:

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