



CALIFORNIA DEPARTMENT OF State Hospitals

Regulations Unit
1600 Ninth Street, Room 410
Sacramento, CA 95814
916-654-2748

February 17, 2015

The Department of State Hospitals (DSH) is required to post this re-adoption of emergency regulations notification and documents which address the "Interim Involuntary Medication Hearing Procedures at State Hospitals."

Government Code section 11346.2(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 the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In addition to the five day comment period for the emergency filing indicated above, there will be the routine 45-day public comment period when these regulations are permanently adopted via the regular rulemaking and Certificate of Compliance process.

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of State Hospitals is proposing to take the action described in the Finding of Emergency after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Office of Administrative Law (OAL). Comments may also be submitted to OAL by facsimile (FAX) at 916-323-6826. The written comment period will close five (5) days following the posting of the Notice by OAL on their website at www.oal.ca.gov.

OAL will consider only comments received at OAL offices by that time. Submit comments to:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

AUTHORITY AND REFERENCES

Authority: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code.

References: *In Re Qawi* (2004) 32 Cal.4th 1; *In Re Calhoun* (2004) 121 Cal.App.4th 1315; *In Re Greenshields* (2014) 227 Cal. App.4th 1284; *Washington v. Harper* (1990) 494 U.S. 210; Sections 1026 and 2962, Penal Code; and Sections 5300 and 6600, Welfare and Institutions Code.

FINDING OF EMERGENCY – UNCHANGED

A. Department of State Hospital's (DSH) Finding of Emergency Regulatory Action Is Necessary

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

B. Description of Specific Facts Which Constitute the Emergency

The Necessity for the Proposed Regulations

On July 14, 2014, the Court of Appeal of the State of California, Second Appellate District, *In re Greenshields*, decided that persons who are found Not Guilty by Reason of Insanity (NGI) have the same constitutional right as Mentally Disordered Offenders (MDOs) and Sexually Violent Predators (SVPs) to refuse antipsychotic medication.

A defendant found to be NGI requires a finding beyond a reasonable doubt that at the time of the offense, he or she had a mental disorder that rendered them dangerous to others. A defendant found to be NGI is presumed to be insane during their confinement. Like the MDOs and the SVPs in prior court cases, NGIs have not yet been adjudicated to be incompetent to refuse antipsychotic medication or dangerous within the meaning of Welfare and Institutions Code Section 5300.

The court directed DSH to refrain from administering antipsychotic medication to Mr. Greenshields against his will in a nonemergency situation unless a trial court determines he is (1) incompetent to refuse the treatment, or (2) a danger to others within the meaning of Welfare and Institutions Code Section 5300, i.e., whether he committed the types of violent or threatening acts specified in Section 5300 within the year prior to his recommitment.

This court decision sets precedence for the involuntary medication of the 1,371 NGI patients currently under the care and treatment of DSH. By implication of the

commitment statutes, Penal Code section 1026.2, an NGI is presumed to be a danger to others. In order to preserve public safety and protect the other 7,000 patients and 10,000 employees, DSH is filing this emergency regulatory action to amend Section 4210 – Interim Involuntary Medication Hearing Procedures Regarding Mentally Disordered Offenders and Sexually Violent Predators, to include the NGI population.

The Finding of Emergency

DSH finds that the proposed regulations are necessary to address an emergency. An emergency is “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.” Government Code Section 11342.545. Any disruption or prevention of DSH’s ability to appropriately treat violent NGI patients through necessary involuntary medication will create serious harm to public peace, health, safety, and general welfare to the other 7,000 patients and 10,000 employees. The failure to treat psychotic illness with medication causes worsening of the disease and can defeat overall treatment goals for a patient. Appropriate regulations must be enacted immediately to ensure DSH has the continued ability to provide appropriate involuntary antipsychotic medication to violent NGI patients in order to protect public peace, health, safety and general welfare.

DSH HAS MADE THE FOLLOWING INTITIAL DETERMINATIONS:

Mandates on Local Agencies or School Districts: To Be Determined.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: To Be Determined.

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 there will be no fiscal impact in the current State Fiscal Year to Local Agencies.

Non-discretionary Costs or Savings Imposed on Local Agencies: DSH anticipates there will be no fiscal impact in the current State Fiscal Year to Local Agencies.

Costs or Savings to Any State Agency: DSH anticipates a cost of \$3,176 to the Department in the current State Fiscal Year.

Costs or Savings in Federal Funding to the State: None.

Costs or Savings to Individuals or Businesses: The Department is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed action.

MATERIAL INCORPORATED BY REFERENCE

None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (1)(13), DSH must determine that no reasonable alternative which it will consider or that will otherwise be identified and brought to its attention will be more effective in carrying out the purpose for which this action is proposed or will be as effective and less burdensome to affect private persons than the proposed action described in this Notice.

DSH invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation amendment a during the written comment period.

AVAILABILITY OF FINDING OF EMERGENCY, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The rulemaking file is available for inspection and copying at the Department of State Hospitals, Regulations Unit, 1600 9th Street, Room 410, Sacramento, CA 95814. As of the date this Notice is published, the rulemaking file consists of a copy of the exact language of the proposed regulations and the Finding of Emergency. These documents may also be viewed and downloaded from DSH's website at www.dsh.ca.gov.