

FINDING OF EMERGENCY

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

The Legislature and the Governor passed the End of Life Option Act (Act) in the most recent special session, in which case, the effective date of the Act is delayed until 90 days following the adjournment of the Special Session. Because the special session adjourned in March 2016, the law will now become effective on June 9, 2016.

Benefits of the Proposed Regulations

The Act allows an individual who is qualified to request to end their life through the provisions of the Act. DSH is promulgating these emergency regulations in order to strike an appropriate balance between allowing qualified patients to exercise their individual rights under the Act, but in a manner that is consistent with DSH's legal and institutional needs to ensure the safety and security of other patients and staff.

Affect of the Proposed Regulations

- (1) These proposed regulations are consistent with existing regulations.
- (2) There are no federal regulations previously adopted or amended that prohibit the Act. However, there are federal regulations that do not allow for federal reimbursement for assisted suicide or euthanasia.

The Finding of Emergency

DSH finds that the proposed regulatory amendment is 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." (Gov. Code, § 11342.545.) The Act becomes effective June 9, 2016. The Act requires that the patient be in possession of the medication, which presents a risk to the safety and security to the facility due to the patient population under the custody and care of DSH.

Accordingly, these emergency regulations strike an appropriate balance between allowing qualified patients to exercise their individual rights under the Act, but in a

manner that is consistent with DSH's legal and institutional needs to ensure the safety and security of other patients and staff, as follows. For terminally ill DSH patients who seek to utilize the Act, they will be directed to the committing court for the court to consider release. If the court finds the patient able to utilize the Act but not for release, the court shall decide the patient's competency and qualification under the Act, and DSH shall contract with and transfer the patient to an off-site facility if the court finds the patient qualifies under the Act. If no off-site facility can be found for the qualified patient, DSH will facilitate the patient's participation in end of life activities in a safe and secure location on DSH grounds with contracted medical health professionals.

However, for the safety and security of DSH staff, DSH is prohibiting its employees and independent contractors from participating in activities under the Act while on premises owned or under the management or direct control of DSH, or while acting within the scope of any employment by, or contract with, DSH.

C. Authority and Reference Citations

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

References: Health and Safety Code sections 443 et. seq.

D. Informative Digest and Policy Statement Overview

Policy Statement

The objective of the proposed action is to implement, interpret, or make specific policy regarding Health and Safety Code sections 443 et seq.

Existing Law

Currently, the patients are committed to DSH by the courts and are involuntarily held at the 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. As a result, when a patient is terminally ill, DSH provides palliative and hospice care.

E. Summary of Proposed New Regulations

Add Section 4600

This regulatory action would add Title 9, Division 1, Chapter 16, Article 6, Section 4600 to allow DSH to opt out of the Act and prohibit DSH clinicians and contractors from providing the end of life option services on DSH premises.

Add Section 4601

This regulatory action would add Title 9, Division 1, Chapter 16, Article 6, Section 4601 to allow patients to petition the court for access to the end of life option, and the court to determine whether the patient is eligible under the Act. The regulatory action provides that DSH will facilitate the patient's access to the Act when ordered by the superior court.

Add Section 4602

This regulatory action would add Title 9, Division 1, Chapter, 16, Article 6, Section 4602 to provide how DSH will provide a patient access to end of life option services under the Act, if the court orders the patient be provided the ability to participate in the Act.

Add Section 4603

This regulatory action would add Title 9, Division 1, Chapter 16, Article 6, Section 4603 to provide direction for obtaining and keeping patients' records.

F. Technical, Theoretical, and Empirical Study or Report

None

G. Determinations

Substantial Difference from Existing Comparable Federal Regulations or Statute: None.

Mandates on Local Agencies or School Districts: County courts are State funded, and the courts would have to review patients' petitions. However, patients are already allowed to petition to the courts.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

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 does not anticipate there to be significant costs to DSH or any state agency.

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

Costs or Savings to Individuals or Businesses: DSH 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.