

DEPARTMENT OF STATE HOSPITALS  
REQUEST FOR READOPTION OF EMERGENCY RULEMAKING ACTION  
EXPRESS STATEMENT OF EXISTENCE OF EMERGENCY

REGARDING

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, 4711, 4712, 4713, 4714, 4715, 4716, and 4717

The Department of State Hospitals (DSH) is requesting readoption of emergency regulations necessary to ensure a state-wide, uniform admissions process for defendants found Incompetent to Stand Trial (IST). The readoption will ensure the immediate and ongoing implementation of a standardized admissions process necessary to prevent discrimination, to promote fairness and social equity, and to increase openness and transparency in government. With a regulated state-wide admissions process, the expectation of courts, counties, counsel, and IST defendants regarding an IST defendant's admission to a state hospital will be better managed and met. These emergency regulations were originally approved by the Office of Administrative Law (OAL) and became effective on September 16, 2016. DSH received no public comment on these emergency regulations. They are set to expire on March 16, 2017. (OAL File No. Z-2016-1229-01.) This readoption action is being taken in accordance with Government Code sections 11346.1 and 11349.6 of the California Administrative Procedure Act.

**DILIGENT ADOPTION OF PERMANENT REGULATIONS**

As required for readoption of emergency regulations, DSH has made substantial progress and is proceeding with diligence to comply with Government Code section 11346.1, subdivision (e). (Cal. Code Regs., title 1, section 52, subd. (b)(1).) The following actions demonstrate DSH's progress toward the adoption of permanent regulations.

Since the emergency regulations were enacted in September 16, 2016, DSH has engaged in the following:

- Since September 2016, DSH has met with county and court stakeholders to educate them on the emergency regulations and to ensure that they have a good understanding of DSH hospital admissions process of IST defendants, state-wide.
- On February 27, 2017, DSH held a public hearing and received oral comments and three written comments.
- In March 2017, DSH responded to comments given at and following the public hearing and incorporated these comments and responses into its Final Statement of Reasons, to be published with the complete rulemaking record.

A readoption of the emergency regulations will ensure that the standardized, uniform admissions process for IST defendants remains in effect while DSH continues to work to complete the regular rulemaking process for permanent regulations.

As required for re-adoption of emergency regulations (Cal. Code Regs., title 1, section 52, subd. (b)(2)), there has been no material change in emergency circumstances since the original emergency adoption of these regulations (OAL File No. Z-2016-1229-01).

**PUBLIC COMMENT**

Pursuant to Government Code section 11346.1, subdivision (a)(2) and California Code of Regulations, title 1, section 52, at least five working days prior to the submission of the proposed re-adoption to OAL, notice must be provided to every person who has filed a request for notice of regulatory action with DSH. After submission of the proposed re-adoption to OAL, any interested person will have five calendar days to submit related comments to OAL as set forth in Government Code section 11349.6. Also upon submission, OAL will have 10 calendar days within which to review and make a decision on the proposed re-adoption.

**Request for waiver.**

DSH requests that OAL waive the five-day notice and five-day public comment period. Because these emergency regulations will expire on March 16, 2017, DSH is requesting that OAL approve the emergency re-adoption immediately, so there would not be a lapse in time during which the admissions process for IST defendants would be unregulated.

**Serious harm.**

Currently, DSH appears daily on multiple proceedings related to admission of IST defendants to DSH hospitals and educates courts and counties on the admissions process of IST defendants and to show its diligence in taking steps to comply with its own standardized admissions process and the *In re Loveton* order. (*In re Loveton* (2016) 244 Cal.App.4th 1025.) Since the adoption of these emergency regulations, between October 2016 and February 2017, DSH has appeared at 1,236 hearings to address the admission process of ISTs to a DSH hospital.

Delaying action to allow public comment would be inconsistent with public interest and would cause serious harm to the public peace, health, safety, or general welfare; the lapse in time would result in an unregulated admissions process, would potentially cause a further delay in admissions, and would confuse courts and counties who would be left without guidance on the admissions process of IST defendants.

Further, immediate re-adoption of the proposed emergency regulations can be reasonably expected to prevent or significantly alleviate this serious harm by ensuring that the uniform admissions process stays in place so that each county and each IST defendant is treated fairly. As one example of the impact of this regulation, since the emergency regulations were promulgated on September 16, 2016, Los Angeles County's IST waitlist dropped by over 50 percent.

For these reasons, DSH respectfully request that OAL waive the five-day notice and five-day public comment period requirement and approve the emergency re-adoption of these emergency regulations.

**RESULTS OF ECONOMIC IMPACT ANALYSIS**

The Department does not anticipate that these proposed emergency regulations will have any economic impact within the State.

Creation or elimination of jobs within the State of California.

The emergency regulations are designed to streamline the admission of committed individuals to state hospitals. Existing state staff is currently managing the admission of committed individuals, and the emergency regulations only enhance and clarify their current job duties. The emergency regulations affect only state positions already existing. Therefore, no jobs will be created or eliminated within the State because of the emergency regulations.

Creation of new businesses or the elimination of existing businesses within the State of California.

The emergency regulations are designed to streamline the admission of committed individuals to state hospitals. Existing state staff is currently managing the admission of committed individuals, and the emergency regulations only enhance and clarify their current job duties. Therefore, no businesses will be created or eliminated within the State because of the emergency regulations.

Expansion of businesses currently doing business with the State of California.

The emergency regulations are designed to streamline the admission of committed individuals to state hospitals. Existing state staff is currently managing the admission of committed individuals, and the emergency regulations only enhance and clarify their current job duties. Therefore, no businesses will be expanded or eliminated within the State because of the emergency regulations.

Benefits of the regulations to the health and welfare of California residents, worker safety, and the State of California's environment.

The emergency regulations may benefit the health and welfare of California residents by ensuring that committed individuals who come with a criminal history or pending criminal charges are admitted to, housed in, and treated in the most appropriate state hospital in the most appropriate location. The emergency regulations may also benefit worker safety by placing committed individuals in appropriate state hospitals depending on security risk and escape history. Lastly, the regulations may benefit the State's environment by making more efficient the transport of committed individuals from county custody to state hospitals, potentially reducing the carbon footprint of these deliveries.