

**State of California  
Office of Administrative Law**

**In re:**  
**Department of State Hospitals**

**Regulatory Action:**

**Title 09, California Code of Regulations**

**Adopt sections: 4020, 4020.1**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2018-0710-02**

**OAL Matter Type: Certificate of Compliance  
(C)**

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This certificate of compliance action makes permanent emergency regulations pertaining to procedures for evaluations under the Sexually Violent Predator Act (Welf. & Inst. Code, secs. 6600–6609.3).

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

**Date: August 20, 2018**



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**Nicole C. Carrillo  
Attorney**

**For: Debra M. Cornez  
Director**

**Original: Pamela Ahlin, Director  
Copy: Trini Balcazar**

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

**CERT**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-2017-1107-04</b>	REGULATORY ACTION NUMBER <b>2018-0710-02 C</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>2018 JUL 10 P 1:37</p> <p>OFFICE OF ADMINISTRATIVE LAW</p>	<p>NOTICE</p> <p>REGULATIONS</p>
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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**AUG 20 2018**  
2:47 PM

AGENCY WITH RULEMAKING AUTHORITY Department of State Hospitals	AGENCY FILE NUMBER (if any)
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**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE SVPA Evaluation Processes	TITLE(S) 9	FIRST SECTION AFFECTED 4020	2. REQUESTED PUBLICATION DATE November 17, 2017
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Amy Whiting	TELEPHONE NUMBER 916-651-3247	FAX NUMBER (Optional) 916-651-3090
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2017, 46-2	PUBLICATION DATE 11/17/2017

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) SVPA Evaluation Processes	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2017-0807-02E, 2018-0201-02EE, 2018-0501-02EE
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
<table border="1"> <tr> <td rowspan="3"><b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b></td> <td>ADOPT 4020, 4020.1</td> </tr> <tr> <td>AMEND</td> </tr> <tr> <td>REPEAL</td> </tr> </table>	<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 4020, 4020.1	AMEND	REPEAL
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>		ADOPT 4020, 4020.1		
		AMEND		
	REPEAL			
TITLE(S) 9				

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
 April 9, 2018-April 24, 2018

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Trini Balcazar	TELEPHONE NUMBER 916 651-3222	FAX NUMBER (Optional) 916 651-3090	E-MAIL ADDRESS (Optional) trinidad.balcazar@dsh.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 8/21/18
TYPED NAME AND TITLE OF SIGNATORY Pam Ahlin, Director	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

AUG 20 2018

Office of Administrative Law

# FINAL REGULATION TEXT

## SEXUALLY VIOLENT PREDATOR EVALUATION PROCESSES

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 15. Assessment of Sexually Violent Predators

Amend sections 4020 and 4020.1, title 9, California Code of Regulations to read as follows:

[NOTE: The pre-existing regulation text is set forth below in normal type. The amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.]

### § 4020. Evaluations Definitions.

- (a) "Necessary" shall mean no more frequently than annually, with an exception if the original evaluation(s) will become older than a year old during the time of trial under the Sexually Violent Predator Act.
- (b) "Original evaluation" shall mean either:
- (1) Two concurring initial evaluations conducted pursuant to Welfare and Institutions Code section 6601, subdivision (d); or
  - (2) Two concurring independent evaluations conducted pursuant to Welfare and Institutions Code section 6601, subdivision (f).

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 6601 and 6603, Welfare and Institutions Code; and *Albertson v. Superior Court* (2001) 25 Cal.4th 796.

### § 4020.1. Update Evaluations.

- (a) The Department of State Hospitals shall perform necessary update evaluations pursuant to Welfare and Institutions Code section 6603, subdivision (c)(1), on

the original evaluations.

- (1) If an updated evaluation performed under subdivision (a) results in a difference of opinion, the department shall appoint two independent professionals to each complete an evaluation.
- (42) When update evaluations of the original evaluations are requested by the petitioner after a petition is filed, pursuant to Welfare and Institutions Code section 6603, subdivision (c)(1), and ~~two~~ an independent evaluations ~~has~~ve previously been ~~assigned~~conducted to address a difference of opinion post-petition pursuant to subdivision (a)(1), the ~~two~~ independent evaluations under subdivision (a)(1) and the original evaluations may be updated.
- (b) Any time the Department of State Hospitals determines that an evaluation report contains an error, or when the Department of State Hospitals obtains or produces additional pertinent information, it shall authorize the currently assigned evaluators to prepare an addendum.
- (c) The Department of State Hospitals shall have the sole authority to designate evaluators for update evaluations and replacement evaluations for the petitioner.
  - (1) Only an evaluator designated by the Department of State Hospitals may testify on behalf of the Department of State Hospitals.
  - (2) The Department of State Hospitals shall replace an evaluator in accordance with Welfare and Institutions Code section 6603, subdivision (c)(2).
- (d) Only an evaluator designated by the Department of State Hospitals shall have access to a Department of State Hospitals patient's records for the purposes of conducting an update or replacement evaluation absent a court order.

- (e) An evaluator who is no longer available to testify for the petitioner in court proceedings pursuant to Welfare and Institutions Code section 6603, subdivision (c)(2), may not be designated by the Department of State Hospitals to perform an update evaluation.
- (f) If an evaluator who is no longer available to testify for the petitioner in court proceedings pursuant to Welfare and Institutions Code section 6603, subdivision (c)(2), is called by a party to testify at trial, costs for the testimony shall be paid by the party calling the evaluator to testify.

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code.  
Reference: Sections 6601, 6603, 6604 and 6605, Welfare and Institutions Code.