



CALIFORNIA DEPARTMENT OF STATE HOSPITALS

15-DAY NOTICE OF PUBLIC AVAILABILITY OF MODIFIED TEXT AND MODIFIED TEXT

PROPOSED ADOPTION OF THE GUIDELINES ON COURT APPOINTMENT OF FORENSIC EVALUATORS REGULATIONS

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations

15-Day Public Availability Date: September 12, 2019
End of Comment Period: September 27, 2019

This notice announces a 15-day comment period in which the public may comment on the modifications to the originally proposed text for the Guidelines on Court Appointment of Forensic Evaluators regulation. This notice is issued pursuant to Government Code section 11346.8, subsection (c), California Code of Regulations, title 1, section 44, and Government Code section 11347.1.

This regulatory action was originally noticed on January 18, 2019 and published in the California Regulatory Notice Register and mailed to all interested parties. The originally proposed regulatory action is described in detail in the ISOR and can be found at: <https://www.dsh.ca.gov/Publications/Regulations.html>

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

The Proposed 15-Day Modified Text is available on the Department of State Hospitals (DSH or Department) Internet Web site under the Guidelines on Court Appointment of Forensic Evaluators - Regular Rulemaking Proceeding "15-Day Notice of Public Availability of Modified Text" at: <https://www.dsh.ca.gov/Publications/Regulations.html>

This rulemaking and all documents relevant to it shall be physically available at the address indicated below under WRITTEN COMMENTS, between 8:00 a.m. and 5:00 p.m. on September 12, 2019 through September 27, 2019, or by request to the persons also indicated below.

SUMMARY OF THE PROPOSED MODIFICATIONS

The text of the modified regulatory language is shown in the Attachment. The originally proposed regulatory language is shown in plain text. The modifications proposed as part of the 15-day changes are shown in single underline to indicate addition, and ~~single strikethrough~~ to show deletion.

The following 15-day modifications were made to the Regulation Text:

Article 7.5, Title was changed from “Alienist Guidelines” to “Guidelines on Court Appointment of Forensic Evaluators.” Because the term “Alienist” appears only once in this proposed regulation, in the title, this term was removed and changed to “Forensic Evaluators,” which is more consistent with the rest of the text.

In original section 4750.

TEXT: [*Original section 4750 was removed from the text.*]

RATIONALE: This section is not regulatory (no mandates) and is just a restatement of the statute; it is not necessary.

In original section 4751, subdivision (b).

TEXT: “Forensic Evaluation” means the assessment of a defendant, ordered by a court, in which the Evaluator opines on a defendant’s competency to stand trial pursuant to specific psycho-legal referral question related to Penal Code sections 1369 et seq., and ~~competency to stand trial.~~

RATIONALE: This subdivision was modified to ensure that it is clear that the question to be answered by an expert appointed by the court pursuant to Penal Code section 1369 is a defendant’s competency to stand trial.

In original section 4751, subdivision (c).

TEXT: “Incompetent to stand trial” means that as a result of mental disorder or a developmental disability the defendant ~~does not have the ability~~ is unable to understand the nature of the criminal proceedings against him or her or to assist counsel in the conduct of a defense in a rational manner.

RATIONALE: This subdivision was modified to restate the statute verbatim, for clarity.

In original section 4751, subdivision (f).

TEXT: “Psycho-legal” means specific applications of psychiatry or psychology to the applicable legal requirements.

RATIONALE: This subdivision was removed because “psycho-legal” appears only here and in the original section 4751, subdivision (b), from which the term was removed for clarity.

In original section 4752, subdivision (a).

TEXT: . . . In considering an appointment, the court shall appoint an expert who meets the provisions in subsection (1), (2), **or** (3) of this section **and** who meets the provision in subsections (4), if applicable, and (5) of this section, or an expert with equivalent experience and skills.

RATIONALE: This subdivision was modified to account for the modification to the original section 4752, subdivision (3)(C) – now section 4752, subdivision (4).

In original section 4752, subdivision (a)(1).

TEXT: If a psychiatrist, the psychiatrist shall have a State of California medical license in a ~~renewed~~ and current status, without any restrictions prohibiting practice, **and** one of the following

RATIONALE: This subdivision was modified to clarify that the psychiatrist’s State of California license referenced is a State of California medical license. Further, “renewed” was removed from the license status requirement to be broader and to also include newly licensed psychiatrists in the expert pool.

In original section 4752, subdivision (a)(2).

TEXT: If a psychologist, the psychologist shall have a State of California psychology license in ~~renewed~~ and current status and one of the following

RATIONALE: “Renewed” was removed from the license status requirement to be broader and to also include newly licensed psychologists in the expert pool.

In original section 4752, subdivision (a)(3).

TEXT: If a psychiatrist or licensed psychologist who does not meet either subsection (1) or (2) above

RATIONALE: This subdivision was modified to clarify that a license is still required if a court is to appoint a psychologist, even one who does meet the other requirements on board certification or eligibility or post-doctoral training.

In original section 4752, subdivision (a)(3)(B).

TEXT: Experience in drafting at least six forensic reports submitted to a court or, if fewer than six, proof provided to the court, prior to appointment, that at least three forensic reports submitted to a court were reviewed by ~~–If a peer review~~

~~panel composed of members who are experienced in the criminal justice system and familiar with the issues of competency and criminal responsibility is available, the court may require a psychiatrist or licensed psychologist to provide proof, prior to appointment, that three of a psychiatrist or licensed psychologist's redacted reports have been reviewed by such a panel.~~

RATIONALE: This subdivision was modified to provide clarity on how much experience is required in drafting reports. Six was chosen because it is a reasonable number, low enough not to be burdensome, and high enough to ensure that an expert has had sufficient time working on preparing reports for court. The requirement of at least three peer-reviewed reports, if an expert has not yet completed six, was chosen also because it is a reasonable number, low enough not to be burdensome, and high enough to ensure that if a peer review panel is available in a county, it is able to review enough of an expert's work for quality control.

In original section 4752, subdivision (a)(3)(C).

TEXT: If evaluating for developmental disabilities, experience in the treatment and assessment of individuals with developmental disabilities.

RATIONALE: This subdivision was modified, for clarity, by removing it from the requirements under licensed psychologists only and expanding it to be a requirement for either a psychiatrist or licensed psychologists. With this modification, either a psychiatrist or licensed psychologist would need experience in developmental disability if they are evaluation for such a disability.

In original section 4752, subdivision (a)(4).

TEXT: The expert shall have completed, within the 24 months preceding the appointment, eight hours of the total continuing education courses, as required by their respective licensing board, in forensic evaluation.

RATIONALE: This subdivision was modified to clarify that the eight hours of continuing education courses required are eight out of the total required by the licensing board.

In original section 4752, subdivision (b).

TEXT: *[Original section 4752, subdivision (b) in its entirety was removed from the text.]*

RATIONALE: Original section 4752, subdivision (1) was removed from the text because it is a restatement of the statute, does not provide any extra clarity, and is unnecessary. Original section 4752, subdivision (2) was removed from the text since it is outside the scope of DSH's regulatory authority to allow (" . . . the court may appoint a specialized expert . . . ") a court to make such an appointment; courts already have the discretion to do so.

In addition to the modification described above, additional modifications correcting grammar, changes in numbering and formatting have been made to improve clarity. These changes are non-substantive.

WRITTEN COMMENTS

DSH invites all interested persons to provide comments relevant to the Proposed Modified Text. The public may comment only in writing, submitted by postal mail, fax, or electronically as follows:

Please submit written comments to:

Postal mail: California Department of State Hospitals
Regulations Unit
RE: Guidelines-15-Day
1600 9th Street, Room 410
Sacramento, California 95814; or

Hand delivered to the address above

Fax: (916) 651-3090 (include **RE: Guidelines -15-Day**)

Electronic submittal: DSH.Regulations@dsh.ca.gov

It is requested that all comments, particularly those emailed with attachments, contain the regulation package identifier “**Guidelines -15-Day**” in the subject line to facilitate timely identification and review.

All written comments received by **September 27, 2019**, no later than **5:00 p.m.**, which pertain to the Proposed Modified Text will be considered and responded to by the Department. The Department will prepare the Final Statement of Reasons (FSOR) which will provide a response to all timely comments received. The Department will submit the FSOR and the final text of the regulation to OAL and will also post the documents on the DSH Internet Web site.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Katherine Warburton, D.O., Medical Director, at (916) 654-3602 or Susan Velasquez, Ph.D., Chief Psychologist, at (909) 280-3211.

Non-substantive inquiries concerning the proposed administrative action may be directed to Trini Balcazar, Regulations Coordinator, Regulations Unit, at (916) 562-2824.

Attachment