

NOTICE OF PROPOSED RULEMAKING

TITLE 9, CALIFORNIA CODE OF REGULATIONS ADOPT CHAPTER 16 REGARDING STATE HOSPITAL OPERATIONS

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Department of Mental Health (DMH) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on March 16, 2010, in the Auditorium at the Department of Water Resources located at 1416 Ninth Street in Sacramento, California. It will start at 9:00 AM, and end when all comments have been received or at 5:00 P.M. whichever comes first.

Following the public hearing the Department of Mental Health may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 4005.1, 4015, 4027, 4101, and 5326 of the Welfare and Institutions Code, and to implement, interpret or make specific Penal Code Sections 832.5, 832.7, 2600, 2684, 2962, 2972, 1026, 1367 and 1370; Health and Safety Code Section 7104, Welfare and Institutions Code Sections 4005.1, 4027, 4101, 4109, 4311-13, 5008, 5300, 5325, 5326, 5332, 5333, 7232, and Sections 6600, et seq.; *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526; *In Re Qawi* (2004) 32 Cal.4th 1; *In Re Locks* (2000) 79 Cal.App.4th 890; *In Re Calhoun* (2004) 121 Cal.App.4th 1315, and Title 9, California Code of Regulations Section 884 (b)(7), the Department of Mental Health (DMH) is seeking changes to Division 1 of Title 9 of the California Code of Regulations as follows: Adoption of Chapter 16, Article 1, Sections 4100 and 4105; Article 2, Section 4210; Article 3, Sections 4300, 4310, 4325, 4330 and 4340; Article 4, Sections 4415 and 4420; and Amendment to Title 9, California Code of Regulations Section 864.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The objective of the proposed action is to implement, interpret, or make specific the above-identified sections of the Welfare and Institutions Code, Penal Code, and Health and Safety Code, and Case Law, and to amend Title 9, California Code of Regulations Section 864 to ensure operation efficiency and compliance with all lawful requirements involving areas of safety and security, and individual patient's support services.

Existing law, in Welfare and Institutions Code Section 4005.1, states that the Department of Mental Health may adopt and enforce rules and regulations necessary to carry out its duties under Division 4 of the Welfare and Institutions Code. Welfare and Institutions Code Section 4027 states that the Department of Mental Health may adopt regulations concerning patients' rights and related procedures applicable to the treatment of mentally ill offenders. Welfare and Institutions Code Section 4101 states that all institutions under the jurisdiction of the Department of Mental Health are governed by the rule and regulation of the Department of Mental Health

The effect of the proposed action shall be to address the important safety and security topics of visitation of individual patients, state mental hospital police services, offsite transportation, complaints against hospital police officers, counting of individual patients, and interment of unclaimed deceased individual patients. The proposed regulations also address the individual patients' well being issues regarding mail and packages, patient's rights complaints, and in house hearing procedures regarding involuntary medication of patients.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any costs or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

BUSINESS IMPACT/SMALL BUSINESSES

The Department of Mental Health has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by Government Code Section 11342.610. Small businesses will not be affected because the proposed regulations only affect the internal operations of state hospital facilities.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The Department of Mental Health has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department of Mental Health is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS: None

CONSIDERATION OF ALTERNATIVES: The Department of Mental Health must determine that no reasonable alternative which it has considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

CONTACT PERSONS

Inquiries concerning the proposed adoption of these regulations and written comments may be directed to:

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Sacramento, CA 95814
(916) 651-1446

Backup Contact:

Matthew Garber
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(916) 651-3851

Comments may also be submitted by facsimile (FAX) at (916) 651-3852 or by e-mail to regulations@dmh.ca.gov. Comments must be submitted prior to 5:00 p.m. on March 16, 2010.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Department of Mental Health has prepared an initial statement of the reasons for the proposed action and has available all of the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Department of Mental Health at 1600 9th Street room 435, Sacramento, CA 95814. Some of these documents may also be viewed and downloaded from the DMH website at www.dmh.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

A copy of the final statement of reasons once it has been prepared may be obtained, by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal may be found at www.dmh.ca.gov.