

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 9, California Code of Regulations

Adopt sections:
Amend sections: 4210
Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

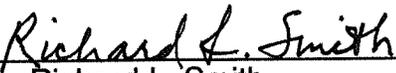
OAL File No. 2014-0918-02 E

The Department of State Hospitals submitted this emergency action to amend title 9, California Code of Regulations, section 4210 to allow the department to conduct administrative hearings on hospital grounds to determine the necessity to administer interim, non-emergency, involuntary antipsychotic medications to patients admitted under a not guilty by reason of insanity plea under Penal Code Section 1026.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 9/29/2014 and will expire on 3/31/2015. The Certificate of Compliance for this action is due no later than 3/30/2015.

Date: 9/29/2014



Richard L. Smith
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Cliff Allenby
Copy: Karen Gillham

NOTICE PUBLICATION ON REGULATIONS SUBMISSION

EMERGENCY

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2014-0918-02E
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
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2014 SEP 18 PM 3:59

OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED IN THE OFFICE OF

2014 SEP 29 PM 2:13

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
Department of State Hospitals

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Interim Involuntary Medication Hearing Procedures at State Hospitals	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 4210
TITLE(S) 9	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input 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"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

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)

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 Karen Gillham	TELEPHONE NUMBER 916-651-5578	FAX NUMBER (Optional) 916-651-3090	E-MAIL ADDRESS (Optional) karen.gillham@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 <i>K. Samuels</i>	DATE 9/8/14
TYPED NAME AND TITLE OF SIGNATORY Chief Deputy Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 29 2014

Office of Administrative Law

Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 2. Treatment

Amend Section 4210 as follows:

~~§4210. Interim Involuntary Medication Hearing Procedures Regarding Mentally Disordered Offenders and Sexually Violent Predators at State Hospitals.~~

(a) ~~The Department of State~~ hHospitals may conduct administrative hearings on hospital grounds to determine the necessity to administer non-emergency interim involuntary antipsychotic medication to patients admitted under a not guilty by reason of insanity (NGI) plea as currently described in Penal Code Section 1026, Mentally Disordered Offenders (MDOs) as currently described in Penal Code Section 2962, and Sexually Violent Predators (SVPs) as currently described in Welfare and Institutions Code Section 6600, pursuant to the applicable legal standard for each category of individual patient. The appropriate court hearing as required by applicable law shall be requested as soon as possible by the sState hHospitals concurrent with, or subsequent to, the administrative hearing.

(b) Before initiating the administrative hearing process, the individual patient's treating physician must first determine that involuntary medication is appropriate, inform the individual patient of such diagnosis, explain why medication is necessary along with the anticipated benefits and possible side effects, and ascertain that the individual patient either refuses to give informed consent to accept or is incompetent to give informed consent to receive the medication.

(c) The administrative hearing shall be held according to the following criteria:

(1) The individual patient must be given at least 24 hours' written notice of the sState hHospital's intention to convene an involuntary medication hearing.

(2) The hearing shall be conducted by a panel of two psychiatrists and one psychologist, or three psychiatrists, none of whom have been directly involved in the individual patient's treatment.

(3) The sState hHospital shall present evidence of the individual patient's treatment history, current medical condition, and of the information enumerated in subsection (b) above.

(4) The individual patient shall be given the choice to be present at the hearing, present evidence, and cross examine witnesses.

(5) The individual patient shall be given the choice to be represented by a disinterested lay adviser versed in the applicable psychological issues, and who will explain the hearing procedures and the applicable legal standard for the involuntary administration of anti-psychotic medication to, and serve the written hearing notice on, the individual patient.

(6) The decision of the hearing panel shall be by majority vote, and be in writing, and include information as to the participants at the hearing, and whether the legal standard for involuntary medication applicable to the individual patient is met.

(7) The written decision shall be given to the individual patient wherein the individual patient has 24 hours from the time of receipt of the written decision to appeal to the medical director of the sState hHospital or his or her designee. The sState hHospital medical director or his or her designee shall decide any appeal within 24 hours after its receipt.

(8) The hearing panel's decision to allow involuntary medication may direct such treatment for up to 14 days, unless superseded by a court decision pursuant to the court hearing that follows the interim administrative hearing process set forth in these regulations. After the 14-day treatment period, further treatment ~~could~~ may be authorized only after the same panel conducts a second hearing pursuant to these same elements wherein the hearing panel may then direct that treatment may continue for the sooner of up to an additional 180 days or when a decision is made by a court pursuant to the court hearing that follows the interim administrative hearing process set forth in these regulations.

(d) Nothing in these regulations shall affect any existing legal rights of the individual patient to seek a judicial review of the hearing panel's determination for involuntary medication.

(e) Nothing in these regulations shall affect any existing legal authority of the sState hHospital to involuntarily medicate the individual patient in emergency situations.

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: *In Re Qawi* (2004) 32 Cal.4th 1; *In Re Calhoun* (2004) 121 Cal.App.4th 1315; *In Re Greenshields* (2014) 227 Cal.App.4th 1284; *Washington v. Harper* (1990) 494 U.S. 210; Sections 1026 and 2962, Penal Code; and Sections 5300 and 6600, Welfare and Institutions Code.