

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections: 4600, 4601, 4602

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2016-0616-02

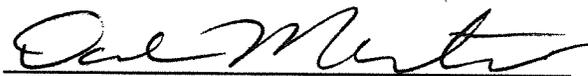
OAL Matter Type: Emergency (E)

This emergency rulemaking action by the Department of State Hospitals adopts new Article 6 (End of Life Option Act) in Chapter 16 of Division 1 of Title 9 of the California Code of Regulations. The new Article establishes the process by which terminally ill state hospital patients may exercise their rights under the End of Life Option Act (California Health and Safety Code Section 443 et seq.).

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 6/27/2016 and will expire on 12/28/2016. The Certificate of Compliance for this action is due no later than 12/27/2016.

Date: June 27, 2016



**Dale P. Mentink
Senior Attorney**

For: Debra M. Cornez
Director

Original: Pamela Ahlin
Copy: Dennalee Folks

NOTICE PUBLICATION/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 2016-0616-02E
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For use by Office of Administrative Law (OAL) only

<p style="text-align: center;">NOTICE</p>	<p style="text-align: center;">REGULATIONS</p>
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 27 2016
1:37 P.M.

2016 JUN 16 P 2:29
OFFICE OF
ADMINISTRATIVE LAW

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	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 <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) End of Life Option Act	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)	<i>Om</i>
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 4600, 4601, 4602, 4603
	AMEND
TITLE(S) 9	REPEAL

Om
per agency request
6/27/16

3. TYPE OF FILING	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"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 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"/> 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	7. CONTACT PERSON	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.
<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)	Dennalee Folks TELEPHONE NUMBER: 916-651-8544 FAX NUMBER (Optional): 916-651-3090 E-MAIL ADDRESS (Optional): dennalee.folks@dsh.ca.gov	For use by Office of Administrative Law (OAL) only <div style="text-align: center;"> <p>ENDORSED APPROVED</p> <p>JUN 27 2016</p> <p>Office of Administrative Law</p> </div>

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Pam Ahlin</i>	DATE 6/15/16
TYPED NAME AND TITLE OF SIGNATORY Pam Ahlin, Director	

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16 State Hospital Operations
Article 6. End of Life Option Act

Adopt as follows:

Section 4600. End of Life Option Act Participation

- (a) All terminally ill patients in the custody and care of the Department of State Hospitals shall receive appropriate and necessary medical care for their situation, including counseling, hospice, and palliative care, as appropriate and desired.
- (b) The Department of State Hospitals will not permit employees, independent contractors, or other persons, except as provided in section 4601 subdivision (c)(1), to participate in activities under the End of Life Option Act, Health and Safety Code section 443 et. seq., while on premises owned or under the management or direct control of the Department of State Hospitals, or while acting within the course and scope of any employment by, or contract with, the Department of State Hospitals.

NOTE: Authority cited: Sections 4005.1, 4207, and 4101, Welfare and Institutions Code. Reference: Sections 443, and 443.15 Health and Safety Code.

Section 4601. Petitions to the Superior Court and Access to the End of Life Option Act

- (a) A terminally ill patient, as defined by the End of Life Option Act, may petition the superior court for access to participate in activities under the End of Life Option Act by requesting release from the custody of the Department of State Hospitals from the court. If the court orders release from the custody of the Department of State Hospitals, the Department of State Hospitals shall release the patient to the ordered entity or person.
- (b) If the superior court does not release a patient, the terminally ill patient may petition the court to determine if the patient is a qualified individual, as defined by the End of Life Option Act, to participate in the activities under the End of Life Option Act.

(1) The court shall use the criteria in Health and Safety Code sections 443.1 subdivision (o) and 443.2 subdivisions (a) and (b) in determining whether the patient is a qualified individual.

(A) If the court determines that a patient meets the criteria under Health and Safety Code section 443.2 subdivision (a), with the exception of subdivision Health and Safety section 443.2 subdivision (a)(4), the court may order the Department of State Hospitals to proceed pursuant subdivision (c).

(c) If, following a petition under subdivision (b), a court orders that the patient meets the qualifications under the End of Life Option Act, and that the Department of State Hospitals shall facilitate the patient's access to participate in activities under the End of Life Option Act, the Department of State Hospitals will facilitate the patient's access to an off-site facility that allows the patient the ability to participate in activities under the End of Life Option Act. The Department of State Hospitals will facilitate the necessary transportation to and from the off-site facility and ensure that the patient has access to his or her off-site physician, who has primary responsibility for the patient's participation in activities under the End of Life Option Act under Health and Safety Code section 443.1 subdivision (c). The Department of State Hospitals will provide the off-site facility and physician with the patient's necessary medical records.

(1) If the court orders that the patient meets the qualifications under the End of Life Option Act, and the Department of State Hospitals is unable to find an off-site facility for the patient to participate in activities under the End of Life Option Act, the Department of State Hospitals will facilitate the patient's ability to participate in activities under the End of Life Option Act on-site. The Department of State Hospitals will contract with off-site medical healthcare professionals in order to facilitate the patient's participation in activities under the End of Life Option Act on site in a safe and secure location. The patient's ability to participate in activities under the End of Life Option Act on-site shall not contradict Department of State Hospital policy regarding the safety and security of the facilities.

NOTE: Authority cited: Sections 4005.1, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 443, 443.1, 443.2, and 443.15 Health and Safety Code; and Code of Federal Regulations, title 45, section 164.502 and 164.504.

Section 4602. Record Keeping for the End of Life Option Act

- (a) The Department of State Hospitals will request a copy of all forms required by Health and Safety Code section 443 et seq., from the contracted entity, to put into the patient's medical file.
- (b) The superior court order directing the Department of State Hospitals to facilitate the patient's participation in activities under the End of Life Option Act will be kept in the patient's medical file.
 - (1) If access to participation in activities under the End of Life Option Act is provided pursuant to section 4601, subdivision (c)(1), a copy of all forms required by Health and Safety Code section 443 et seq. shall be placed in the patient's medical file.

NOTE: Authority cited: Sections 4005.1, 4027, and 4101, Welfare and Institutions Code. Reference: Sections 443, and 443.9 Health and Safety Code; and Code of Federal Regulations, title 45, section 164.502 and 164.504.