

# EMERGENCY

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW  
NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2009-1015-04E</b>
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For use by Office of Administrative Law (OAL) only	
2009 OCT 15 PM 2:56	
OFFICE OF ADMINISTRATIVE LAW	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY <b>Dept. of Mental Health</b>	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)
<b>OAL USE ONLY</b> 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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	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) State Hospital Operations	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)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT Sections 4100, 4105, 4205, 4210, 4300, 4310, 4315, 4320, 4325, 4330, 4340, 4350, 4400, 4415, & 4420.
	AMEND Section 864
TITLE(S) Title 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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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 Resubmittal of disapproved or withdrawn emergency filing (Gov.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) _____	

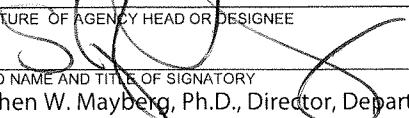
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<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 Jon Cordova	TELEPHONE NUMBER (916) 651-1446	FAX NUMBER (Optional) (916) 651-3852	E-MAIL ADDRESS (Optional) DMH.Regulations@dmh.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 <b>8/11/09</b>
TYPED NAME AND TITLE OF SIGNATORY Stephen W. Mayberg, Ph.D., Director, Department of Mental Health	

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## **TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES**

### **DIVISION 1. DEPARTMENT OF MENTAL HEALTH**

#### **CHAPTER 16. STATE HOSPITAL OPERATIONS**

##### **ARTICLE 1. GENERAL PROVISIONS**

###### **§ 4100. Application of Chapter**

The regulations set forth in Chapter 16 are applicable to all facilities owned and operated by the Department of Mental Health.

**Authority:** Welfare & Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** Welfare and Institutions Code Sections 4027 and 4101

###### **§ 4105. Definitions**

(a) The terms, "state hospital," or "facility," as used in this chapter shall mean "any hospital owned and operated by the Department of Mental Health."

(b) The terms, "individual patient," or "patient," as used in this chapter shall mean "any state hospital patient who is committed to and/or receiving treatment in a state hospital."

**Authority:** Welfare & Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** Welfare and Institutions Code Sections 4027 and 4101

##### **ARTICLE 2. TREATMENT**

###### **Section 4210. Interim Involuntary Medication Hearing Procedures Regarding Individual Patients at State Hospitals**

(a) State hospitals may conduct administrative hearings on hospital grounds to determine the necessity to administer non emergency interim involuntary antipsychotic medication to an individual patient 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 state hospitals 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 state hospital'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 state hospital 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 may be present at the hearing, present evidence, and cross examine witnesses.
- (5) The individual patient may be represented by a disinterested lay adviser versed in the applicable psychological issues, and who will explain the hearing procedures 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 state hospital or his or her designee. The state hospital 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 follow the interim administrative hearing process set forth in these regulations. After the 14-day treatment period, further treatment could 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 follow 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 state hospital to involuntarily medicate the individual patient in emergency situations.

**Authority:** Welfare and Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526; *In Re Qawi* (2004) 32 Cal.4<sup>th</sup> 1; *In Re Locks* (2000) 79 Cal.App.4<sup>th</sup> 890; *In Re Calhoun* (2004) 121 Cal.App.4<sup>th</sup> 1315; Penal Code Sections 2600, 2684, 2962, 2972, 1026, 1367 and 1370; Welfare and Institutions Code Sections 5008, 5300, 5332, 5333, and Sections 6600, et seq.

### **ARTICLE 3. SAFETY AND SECURITY**

#### **§ 4300. Visits for Individual Patients**

(a) Facility visiting hours shall be scheduled seven days a week for a minimum of five hours each day.

(b) The facility shall provide private areas for individual patients to consult with an attorney for confidential communications.

(c) The facility may modify the visiting hours or suspend visiting days when necessary for safety and security concerns and staffing limitations.

(d) No conjugal visits shall be allowed.

**Authority:** Welfare & Institutions Code Sections 4005.1, 4027, and 4101

**Reference:** Welfare & Institutions Code Sections 4027, 5325 (c)

#### **§ 4310. Offsite Visits of Individual Patients**

(a) An individual patient who is committed pursuant to legal authority other than the Lanterman-Petris-Short Act and is being treated at an offsite hospital for longer than one week may be allowed to have visitors, subject to the visiting limitations of the hospital facility where the individual patient is being treated.

(b) An individual patient who is being treated at an offsite hospital and is either in critical condition or is being treated for a terminal illness may be allowed to have visitors each day beginning on the first day of offsite treatment, subject to the visiting limitations of the hospital facility where the individual patient is being treated.

**Authority:** Welfare & Institutions Code Sections 4005.1, 4027 and 4101

Reference: Welfare & Institutions Code Section 4027

**§ 4315. Department of Police Services.**

(a) The department of police services at each state hospital is the local authority for the investigation of criminal activity and criminal violations upon the grounds of the state hospital. The department of police services shall be responsible for the following:

- (1) the enforcement of the law on hospital grounds;
- (2) maintaining peace and security on hospital grounds;
- (3) ensuring the security of all persons on hospital grounds;
- (4) protecting and preserving the property on hospital grounds; and
- (5) directing traffic, conducting traffic investigations and enforcement on the hospital grounds.

(b) The department of police services may work with, or obtain assistance from other local law enforcement agencies and/or the California Department of Corrections and Rehabilitation.

(c) The Hospital Administrator is the senior law enforcement official of a state hospital.

**Authority: Welfare & Institutions Code Sections 4005.1, 4027 and 4101**

**Reference: Welfare & Institutions Code Sections 4109, 4311-4313**

**§ 4320. Offsite Transportation.**

The facility may coordinate with any law enforcement agency, including but not limited to the state hospital's department of police services or the California Department of Corrections and Rehabilitation, to arrange for the transportation of an individual patient to and from an offsite location and supervision of the individual patient while at that location.

**Authority: Welfare & Institutions Code Sections 4005.1, 4027 and 4101**

**Reference: Welfare & Institutions Code Sections 4109, 4311-4313**

**§ 4325. Complaints Against Police Officers.**

(a) Each facility may require individuals and the public that complain against a police officer employed by the hospital to set forth such complaint in writing. The facility may offer an optional complaint form. The optional complaint form and the written complaint shall include the following information:

1. The written complaint shall include at least the following information:

- a. Name and contact information of the complainant
- b. Name and contact information of witnesses to the event
- c. Information about the location of the incident
- d. Information about the officer or officers involved
- e. A description of the event or incident that led the complainant to file the form
- f. Relevant time or date information which relates to the incident.
- g. Signature of the complainant and date of signature
- h. Any other relevant information about the event or incident that led the complainant to file the form

(b) An investigation of each complaint shall be initiated within a reasonable time after receipt based on and subject to staffing limitations and workloads, and the complexity of the complaint. The investigation shall consist of the following procedures:

1. Examination of relevant documents
2. Interviewing relevant witnesses
3. Interviewing the complaining party and the peace officer who was implicated in the complaint
4. Examining other relevant evidence

(c) The disposition of the investigation shall be one of the following four findings based on the outcome of the investigation:

1. Unfounded -- The action complained of did not occur, or the employee accused was not involved.
2. Exonerated -- The action complained of did occur, but was justified, lawful and/or proper.
3. Not Sustained -- The investigation failed to confirm the validity of the allegation.

4. Sustained -- The action complained of occurred, and it was improper, unlawful, or unacceptable.

**Authority:** Welfare & Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** California Penal Code, Sections 832.5 and 832.7

#### **§ 4330. Counting of Individual Patients**

In order to maintain the security and safety of individual patients, staff and visitors at state hospitals, each such state hospital may implement a system of counting individual patients that will include following:

(a) A counting of individual patients shall be conducted a minimum of three times per day or once per shift, whichever is more frequent.

(b) The scope of the counting activities may be facility wide or focused on specific areas, subject to the discretion of the hospital staff based on safety and security concerns.

**Authority:** Welfare and Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** Title 9, California Code of Regulations Section 4027

#### **§ 4340. Protocol for Interment of Unclaimed Deceased Individuals.**

If an individual patient dies and the individual patient's body is not claimed by any of the individual patient's family members within a reasonable time period, then the following procedures shall be adhered to:

(a) If the individual patient has a valid advance directive concerning interment, then that advance directive should be adhered to.

(b) If the individual patient does not have a valid advance directive concerning interment, and the duty of interment does not devolve upon any other person residing in the state or if such person can not after reasonable diligence be found within the state, then custody of the individual patient's remains shall be turned over to the local coroner to inter the remains in the manner provided for the interment of indigent dead.

**Authority:** Welfare & Institutions Code Sections 4005.1, 4015, 4027 and 4101

**Reference:** California Health & Safety Code, Section 7104

### **§ 4350. Contraband Electronic Devices With Communication and Internet Capabilities**

Electronic devices with the capability to connect to a wired (for example, Ethernet, POTS, Fiber Optic) and/or a wireless (for example, Bluetooth, Cellular, Wi-Fi [802.11a/b/g/n], WiMAX) communications network to send and/or receive information are prohibited, including devices without native capabilities that can be modified for network communication. The modification may or may not be supported by the product vendor and may be a hardware and/or software configuration change. Some examples of the prohibited devices include desktop computers, laptop computers, cellular phones, electronic gaming devices, personal digital assistant (PDA), graphing calculators, and radios (satellite, shortwave, CB and GPS).

**Authority:** Welfare and Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** Title 9, California Code of Regulations Section 884 (b)(1)

## **ARTICLE 4. SUPPORT SERVICES**

### **§ 4415. Definition of Mail**

Mail is defined as paper documents sent in a standard sized, legal sized, or special handling envelope (Priority mail, express mail, etc.) with a weight of 16 ounces or less, and thickness of ½ inches or less.

**Authority:** Welfare and Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** Welfare and Institutions Code Section 5326 and Title 9, California Code of Regulations Section 884 (b)(6)

### **§ 4420. Limitations on Size, Weight, Volume and Frequency/Number of Packages Allowed**

This section constitutes the formal facility policy on the size, weight, volume and frequency/number of packages allowed.

(a) All send or received items that do not fall under the definition of “Mail” in Section 4415 of these regulations constitute packages.

(b) Each package sent and each package received shall not be more than 24 inches long by 19 inches in length by 12 inches high, and shall weigh no more than 30 pounds.



(c) A state hospital may limit an individual patient's maximum number of incoming packages based on staffing and hospital ground limitations to the following: three packages per individual patient per calendar quarter for the first three quarters of the year (January - March, April - June, July - September) and four packages per individual patient during the fourth quarter of the year (October - December).

(d) Packages sent to the facility that are not within the limits set forth in subsection (b) and (c) above shall be returned to the sender.

(e) The limitations set forth in the section shall not apply to Confidential Mail as such term is defined in Section 881(c) of these regulations.

**Authority:** Welfare and Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** Welfare and Institutions Code Section 5326 and Title 9, California Code of Regulations Section 884 (b)(7)

**Title 9, California Code of Regulations Section 864 shall be amended to read as follows:**

**§ 864. Complaint Procedure.**

(a) The list of rights that shall be posted, provided, or explained to the patient/resident pursuant to Section 862 shall contain:

(1) Notification that any patient/resident who believes a right of his/hers has been abused, punitively withheld, or unreasonably denied may file a complaint with the Patients'/Residents' Advocate.

(2) The name of the Patients'/Residents' Advocate who has been assigned to handle such complaints, his telephone number, and the times during which he may be contacted.

(b) When a complaint is received by the Patients'/Residents' Advocate he shall, within two working days, take action to investigate and resolve it.

(c) If the complainant expresses dissatisfaction with the action taken, the matter shall be referred, within five working days, to the local mental health director if the complaint originated in the mental disabilities program or to the regional center director if the complaint originated in the developmental disabilities program.

(d) If the complaint cannot be satisfactorily resolved by the local mental health director or by the regional center director within ten working days, it shall be referred to the Patients' Rights Specialist, Department of Health, whose

responsibility it shall be to make a decision in the case. Appeal from the decision of the Patients' Rights Specialist may be made to the Director of State Department of Health, or his designee.

(e) This section shall not apply to state mental health hospitals. The complaint procedures for Lanterman-Petris-Short individual patients in state mental health hospitals shall be the same as those that apply to Non-LPS patients as set forth in Title 9, California Code of Regulations Section 885.

**Authority:** Welfare and Institutions Code Sections 4005.1, 4027 and 4101

**Reference:** Title 9, California Code of Regulations Section 4027

## FINDING OF EMERGENCY

### A. Department of Mental Health Finding That Emergency Regulatory Action Is Necessary

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

### B. Description of Specific Facts Which Constitute The Emergency

#### The Department of Mental Health (DMH) and the Office of Administrative Law (OAL) Have Been Inundated with Petitions Challenging DMH's Rules and Procedures as Underground Regulations

Since August 2007, DMH and its state mental hospitals have received 34 underground regulations challenges to their special orders, administrative directives, manuals and memoranda, and one motion for a temporary restraining order filed with the California Supreme Court challenging a version of the standardized assessment protocol that was being used to assess whether a person is a sexually violent predator.

To date, the OAL has denied a dozen or so of these underground regulations challenge petitions. These petitions have challenged hospital administrative directives on the topics of: the wellness and recovery planning team and manual; the clinical outcome evaluation system; research; treatment intervention; facility plan for services; computer moratorium; transfer to the California Department of Corrections and Rehabilitation Pursuant to Welfare and Institutions Code Section 7301; individual's mail and incoming packages; access to court and legal research materials; physical restraint; behavioral seclusion or restraint; the psychiatric physician manual, spending limit, trust office, search policies and procedures, and cost of care implementation.

However, OAL has made eight determinations of underground regulations. The eight OAL determinations of underground regulations involve hospital administrative directives and DMH's special order on matters dealing with individual patients' property and storage, contraband, individual patients' mail and packages, necessary involuntary administration of antipsychotic medication, the standardized assessment protocol used in evaluating whether a person is a sexually violent predator, and the "By Choice" incentive system.

In response to three other petitions, DMH has withdrawn from use one hospital administrative directive regarding rights of individuals served, one special order regarding research proposal review policy, and a version of the standardized assessment protocol used to evaluate whether a person is a sexually violent predator.

Other petitions are pending OAL's review or consideration. These petitions challenge DMH's policy against contraband, mail and packages, search policies and procedures, and generally on all subjects covered by the special orders and administrative directives. The number of underground regulations petition challenges is anticipated to continue to increase.

### The Necessity for the Proposed Regulations

DMH and its state hospitals are responsible for the execution of the laws relating to the care and custody of mentally disordered persons. The proposed regulations are necessary to effectuate the statutes relating to such care and custody of mentally disordered persons, as well as to clearly set forth in regulations the necessary legal requirements in order to ensure that DMH will not be hampered in its ability to carry out its responsibilities, and to ensure that the individual patients' and the public's safety and security will not be compromised by underground regulations challenges that have occurred and will continue to occur. The proposed regulations address the important safety and security topics of visitation of individual patients, state mental hospital police services, offsite transportation, complaints against hospital policy officers, counting of individual patients, contraband electronic devices and interment of unclaimed deceased individual patients. These emergency regulations also address the individual patients' well being issues regarding mail and packages, spending limits, patient's rights complaints, and in house hearing procedures regarding medication of mentally disordered offenders.

Regarding the proposed regulations concerning contraband electronic devices, there has been an influx of cell phones and wireless devices into DMH state hospitals. The use of wireless communication devices in DMH state hospitals presents a security risk by circumventing monitoring processes instituted to ensure patient, staff, and public safety. All DMH state hospitals report increasing numbers of contraband wireless communication devices among the patient population which are being inappropriately used to import illegal pornographic materials, facilitate contraband exchanges, communicate with external and internal individuals, and otherwise pose significant safety and security risks. One particular DMH hospital that specifically tracked reports involving wireless communication devices noted 19 incidents in just one month. Additionally, there was an incident at another DMH hospital where a wireless recording device was brought in and used to surreptitiously record confidential staff and patient conversations. These recordings were later smuggled to third parties outside of the state hospital.

### The Finding of Emergency

DMH finds that the proposed regulations are necessary to address an emergency. An emergency is "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." Gov. Code Section 11342.545. Any disruption or prevention of DMH's ability to enforce the safety and security requirements, and the provisions regarding the well being of the individual patients in its

facilities, that are set forth in the proposed regulations will create serious harm to the public peace, health, safety, and general welfare.

The non-emergency rulemaking process timetable will not afford DMH with the expediency necessary to adopt regulations should a court, in giving deference to an existing or future determination of underground regulations, prohibit DMH from using the affected administrative directives or special orders that are important to safety and security and to the well being interests of the individual patients. Emergency regulations are necessary to ensure that important safety, security and individual well being interests are addressed quickly and properly through the OAL's rulemaking process once and for all.

Also, the above-described petitions and OAL determinations of underground regulations, and anticipated petitions and possible future OAL determinations of underground regulations, have drawn and will continue to draw time and attention away from, and create barriers to, the carrying out of DMH's and the state hospitals' responsibilities. A non-emergency rulemaking action would not allow DMH and its state hospitals the ability to as quickly as possible remove existing and anticipated barriers to their ability to provide the best mental health care to individual patients, and to hopefully once and for all put to rest the underground regulations petition challenges.

### C. Authority and Reference Citations

Authority: Welfare and Institutions Code Sections 4005.1, 4015, 4027, 4101, 5326, and 7225

Reference: Welfare and Institutions Code Sections 4005.1, 4027, 4101, 4109, 4311-4313, 5008, 5300, 5325(a), (e), 5326, 5332, 5333, 7104 and 7232, and 6600 et seq.

Penal Code Sections 832.5, 832.7, 1026, 1367, 1370, 2600, 2684, 2962 and 2972.

Title 9, California Code of Regulations Sections 864, 884(b)(1), (6) and (7), and 885

*Keyhea v. Rushen* (1986) 178 Cal.App.3d 526; *In re Kanuri Surgury QAWI*, on Habeas Corpus (2004) 32 Cal.4<sup>th</sup> 1; *In Re Locks* (2000) 79 Cal.App.4<sup>th</sup> 890; *In Re Calhoun* (2004) 121 Cal.App.4<sup>th</sup> 1315.

### D. Informative Digest and Policy Statement Overview

#### Policy Statement

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 amend Title 9, California Code of Regulations Sections 884 and 885 to ensure operation efficiency and compliance with all lawful requirements involving areas of safety and security, and individual patient's support services.

## Existing Law

Welfare and Institutions Code Section 4005.1 provides that DMH may adopt and enforce rules and regulations necessary to carry out its duties.

Welfare & Institutions Code Section 4027 allows DMH to adopt regulations relating to patients' rights and procedures applicable to inpatient services.

Welfare and Institutions Code Section 4101 provides that all institutions under the jurisdiction of DMH shall be governed by uniform rule and regulation of DMH.

Welfare & Institutions Code Sections 4109 and 4311-4313, allow DMH to establish regulations regarding police officers in state hospitals for the enforcement of hospital rules and regulations in hospital buildings and for the preservation and protection of state property.

Welfare & Institutions Code Section 5008 contains definitions for "Evaluation," "Court-ordered evaluation," "Intensive treatment," "Referral," "Crisis intervention," "Prepetition screening," "Conservatorship investigation," "Peace Officer," "Court," "Antipsychotic medication," and "Emergency," as used in the Welfare & Institutions Code.

Welfare & Institutions Code Section 5300 specifies that after an individual patient's 14-day period of intensive treatment, the individual patient may be confined for up to an additional 180 days if any of the following exist: (a) has made a threat of bodily harm to another while in custody and presents a danger of inflicting harm on others as a result of a mental disorder; (b) has inflicted or attempted to inflict bodily harm to another while in custody; (c) the person made a serious threat within 7 days of being taken into custody and demonstrates a danger of inflicting substantial physical harm upon others.

Welfare & Institutions Code Section 5325(c), and Title 9 of the California Code of Regulations Section 884(b)(4) require that patients in state hospitals be allowed to see visitors.

Welfare & Institutions Code Section 5325(a) provides that LPS patients may spend a reasonable sum of their own money.

Welfare & Institutions Code Section 5325(e) and Title 9 of California Code of Regulations Section 884(b) (6), provide that both LPS and Non-LPS patients have a right to send and receive mail. "LPS" means that the placement in or commitment to the facility is pursuant to the Lanterman-Petris-Short (LPS) Act, commencing with Section 5000, of Part 1, Division 5 of the Welfare and Institutions Code). "Non-LPS" means that the placement in or commitment to the facility is pursuant to legal authority other than the LPS Act.

Welfare and Institutions Code Section 5326 provides that a DMH facility may, for good cause, deny a person certain rights under Section 5325.

Welfare and Institutions Code Section 5332 provides that antipsychotic medication may be administered to persons detained pursuant to section 5150, 5250, 5260 or 5270.15 when treatment staff have determined that treatment alternatives are unlikely to meet the needs of the patient. Additionally, each State Hospital is required to develop internal procedures for the facilitation of filing petitions for capacity hearings for individual patients.

Welfare and Institutions Code Section 5333 states that persons subject to a hearing on capacity pursuant to Section 5332 has a right to representation. Additionally, petitions for capacity hearings must be filed with the superior court.

Welfare and Institutions Code Sections 6600 et seq. define the term “sexually violent predator” and detail the procedures for finding that a person is a sexually violent predator, in addition to stating the requirements for confinement, post-commitment examinations, treatment and release criteria for such persons.

California Welfare & Institutions Code Section 7232, provides that state hospitals shall require individual patients to wear clothing that allows them to be readily identified.

Penal Code Sections 832.5 and 832.7, provide that there shall be a complaint process for citizens to initiate against police officers.

Penal Code Section 1026 describes the requirements for when a person may plead not guilty by reason of insanity and the commitment and placement requirements for such persons.

Penal Code Section 1367 states that a person may not be required to be tried for a felony unless certain competency requirements are met.

Penal Code Section 1370 describes the commitment procedures for a person found to be incompetent to stand trial.

Penal Code Section 2600 states that although rights may only be denied prisoners which are reasonably related to legitimate penological interests, that a hearing pursuant to *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526 may permit the administration of involuntary medication, and such hearing may be conducted at the facility where the inmate is located.

Penal Code Section 2684 states that a mentally ill individual patient may be transferred from a State Prison to a State Hospital if the director of corrections determines that the individual patient’s treatment would be expedited at such State Hospital.

Penal Code Section 2962 describes the commitment procedures for a paroled prisoner found to have a severe mental disorder that is not in remission and cannot be kept in remission without treatment.

Penal Code Section 2972 describes the commitment procedures upon discharge for a prisoner found to be mentally disordered. It also provides that DMH may adopt regulations to modify the rights of patients involuntarily admitted to a DMH facility.

California Health & Safety Code Section 7104, requires the coroner to take possession of the body of an indigent person for interment.

Title 9, California Code of Regulations Section 864 describes the complaint procedure and the appeal process for LPS patients.

Title 9, California Code of Regulations Section 884, parts (b)(1), (6) and (7) give patients the right to keep and use personal possessions as space permits, except items and materials that are listed as contraband, a right to have access to letter writing materials and to mail and receive correspondence, and a right to receive packages.

Title 9, California Code of Regulations Section 885 describes the complaint procedure and the appeal process for Non-LPS patients.

*In re Kanuri Surgery QAWI*, on Habeas Corpus (2004) 32 Cal.4<sup>th</sup> 1, held that “an MDO can be compelled to be treated with antipsychotic medication under the following nonemergency circumstances: (1) he is determined by a court to be incompetent to refuse medical treatment; (2) the MDO is determined by a court to be a danger to others within the meaning of Welfare and Institutions Code section 5300.” That court also held that a hearing is not required for patients found to be imminently dangerous under Welfare and Institutions Code Section 5300.

*Keyhea v. Rushen* (1986) 178 Cal.App.3d 526, held that a state prisoner cannot be involuntarily given psychotropic medication for more than three days unless the prisoner is found, as a result of a mental disorder, to be (1) gravely disabled and incompetent to refuse medication, or (2) a danger to others, or (3) a danger to self. A state prisoner may be certified for additional involuntary medication up to 21 days pursuant to the requirements and procedures set forth in Section II of the *Keyhea* Injunction.

*In Re Locks* (2000) 79 Cal.App.4<sup>th</sup> 890, held that patients found not guilty by reason of insanity are not entitled to a competency hearing. “Locks had a judicial hearing under section 1026 in which he was found not guilty by reason of insanity...Section 1026 requires that he be confined in a mental hospital for treatment...By implication, section 1026.2 presumes that he is a danger to others...while Locks is being treated at a state hospital for his continuing insanity, he is not entitled to a hearing to determine his competence to refuse treatment.” *Id.* at 897.



*In Re Calhoun* (2004) 121 Cal.App.4<sup>th</sup> 1315 held that sexually violent predators (SVPs) may be compelled to be treated with antipsychotic medication under certain non-emergency circumstances: “[I]n conformity with the Qawi holding concerning MDO’s, we hold “that an [SVP] can be compelled to be treated with antipsychotic medication under the following nonemergency circumstances: (1) he is determined by a court to be incompetent to refuse medical treatment; (2) [he] is determined by a court to be a danger to others within the meaning of ...section 5300.” *Id.* at 1354.

#### E. Summary of Proposed New Regulations and Amendment to Existing Regulations

##### Section 4100

Section 4100 describes the scope of the regulations in Title 9, Chapter 16.

##### Section 4105

Section 4105 contains definitions for the terms, “state hospital,” “facility,” “individual patient,” and “patient” as used in Title 9, Chapter 16.

##### Section 4205

Section 4205 sets forth a patient spending limit which governs the expenditure of patients’ personal funds. **(Although this explanation and the proposed regulations language of Section 4205 were included in the five-day notice of the intended filing of these emergency regulations, DMH has decided not to include Section 4205 in the emergency regulations filing. DMH wants to give further thoughts and consideration to the spending limit requirements.)**

##### Section 4210

Section 4210 sets forth procedures for conducting administrative hearings on state hospital grounds to determine whether individual patients may be administered medication involuntarily. Section 4210 also provides that the appropriate court hearing as required by applicable law shall be requested as soon as possible by the state hospitals concurrent with, or subsequent to, the administrative hearing. Subsection (a) states that State Hospitals may conduct hearings to determine whether individual patients may be given interim involuntary antipsychotic medication. Subsection (b) states the prerequisite requirements which must be met before the administrative hearing process may be initiated. Subsection (c) describes the criteria for the administrative hearing including the requirements for: (1) patient notice; (2) hearing panel members; (3) evidence to be presented by the State Hospital; (4) evidence which may be presented by the patient; (5) patient representation; (6) panel decision-making; (7) appeal process; and (8) duration and effect of the panel’s decision. Subsection (d) specifies that this regulation shall not affect any existing patient’s right to judicial review of these proceedings; and Subsection (e) specifies that this regulation shall not affect any existing legal authority of the state hospital to involuntarily medicate these patients in emergency situations.

### Section 4300

Section 4300 sets forth the visiting hour standards for all individual patients and prohibits conjugal visits. Subsection (a) sets the days of the week and times for visiting hours. Subsection (b) sets out requirements for private attorney-client meeting areas. Subsection (c) allows for suspension of visiting hours for safety and security concerns and staffing limitations. Subsection (d) prohibits conjugal visits.

### Section 4310

Section 4310 sets forth the visiting hour standards for all Non-LPS individual patients who are being treated in offsite hospitals. Subsection (a) gives the parameters for when patients in offsite hospitals may receive visitors. Subsection (b) gives the parameters of visiting hours for patients being treated in offsite hospitals who are in critical condition or suffering from a terminal disease.

### Section 4315

Section 4315 sets forth the responsibilities of the Department of Police Services and states that the Department of Police Services may work with and obtain assistance from other local, state or federal law enforcement agencies. Subsection (a) delineates the responsibilities of the hospital's police services department. Subsection (b) clarifies that it is permissible for hospital police to work with state and local law enforcement. Subsection (c) states that the Hospital Administrator is the senior law enforcement official of a state hospital.

### Section 4320

Section 4320 sets forth the ability of state hospitals to coordinate with the California Department of Corrections and Rehabilitation and law enforcement agencies to arrange for the transportation of individual patients to and from state hospitals.

### Section 4325

Section 4325 sets forth the complaint procedures and the process for handling of complaints against a state hospital peace officer. Subsection (a) sets forth the requirement that all complaints be submitted in writing, and the requirements for information which must be contained in the written complaint and optional complaint form. Subsection (b) sets forth the requirements for investigating complaints; and Subsection (c) sets forth the possible dispositions for the complaint.

### Section 4330

Section 4330 sets forth the procedures in counting individual patients of state hospitals. Subsection (a) specifies the number of counts that must be performed each day. Subsection (b) proscribes the scope of counts.

#### Section 4340

Section 4340 sets forth the protocol for interment of unclaimed deceased individual patients in state hospitals. Subsection (a) states that if a patient has an advance directive, then it must be followed. Subsection (b) states the procedures for interring the patient with a relative or the coroner if the patient does not have an advance directive.

#### Section 4350

Section 4350 identifies as a prohibited contraband wired and/or wireless electronic devices that have communication and/or internet capabilities, and provides examples of such prohibited electronic devices.

#### Section 4400

Section 4400 sets forth the procedures for patients to submit a complaint. This section also sets forth requirements for information which must be contained in the written patient's rights complaint and optional complaint form. Subsection (a) specifies the process for a patient to file a patient's rights complaint. Subsection (b) specifies what content must be on an optional complaint form. **(Although this explanation and the proposed regulations language of Section 4400 were included in the five-day notice of the intended filing of these emergency regulations, DMH has decided not to include Section 4400 in the emergency regulations filing. DMH wants to give further thoughts and consideration to the exact language and approach regarding written patient's rights complaint requirements.)**

#### Section 4415

Section 4415 sets forth the formal facility policy on the dimensions, weight and volume of mail allowed as such policy is required pursuant to Title 9, California Code of Regulations Section 884 (b)(6).

#### Section 4420

Section 4420 sets forth the formal facility policy on the dimensions, weight, volume, and number of packages allowed as such policy is required pursuant to Title 9, California Code of Regulations Section 884 (b)(7). Subsection (a) gives the definition of "packages", as differentiated from "mail." Subsection (b) gives the maximum dimensions and weight of packages. Subsection (c) allows the hospital to limit the volume of a patient's packages in certain circumstances. Subsection (d) states that packages sent to the facility that are not within the limits set forth in subsection (b) and (c) above shall be returned to the sender. Subsection (e) states that these limitations do

not apply to confidential mail. **(Please note that a non substantive change was made to correct a cross reference error in the earlier noticed version of subsection (a) of Section 4420. Subsection (a) of Section 4420 had referenced the definition in “Section 4415 (a)”. As Section 4415 is only one sentence and does not have a subsection (a), the notation “(a)” was removed in the cross reference.)**

Amendment to Title 9, California Code of Regulations Section 864

Section 864 is being amended, by adding a subsection (e) to clarify that the procedures in section 864 do not apply to state hospitals, but that the complaint procedures for LPS state hospital patients are the same as those set forth in Title 9, California Code of Regulations Section 885 for Non-LPS state hospital patients.

F. Technical, Theoretical, and Empirical Study or Report

None

G. Determinations

The Substantial Difference from Existing Comparable Federal Regulations or Statute. None.

Mandates on Local Agencies or School Districts. None.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. None.

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. None

Non-discretionary Costs or Savings Imposed on Local Agencies. None.

Costs or Savings to Any State Agency. None

Costs or Savings in Federal Funding to the State. None.

Costs or Savings to Individuals or Businesses. None.