

**DEPARTMENT OF DEVELOPMENTAL SERVICES**

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**California Department of Developmental Services  
Initial Statement of Reasons**

**TITLE 17. CALIFORNIA CODE OF REGULATIONS  
DIVISION 2. DEPARTMENT OF DEVELOPMENTAL SERVICES**

**Subject of Proposed Regulations: Procedures for Determining the Denial of Admission to a DDS Developmental Center under Welfare and Institutions Code section 6510.5**

**Sections Affected: Title 17, Sections 51100, 51101, 51102, 51103, 51104, 51105, and 51106**

**Description of the Problem Addressed:**

The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions Code section 4500 *et seq.*, requires the State of California to ensure the care and treatment of individuals with developmental disabilities. Under the Lanterman Act, care and services for individuals with developmental disabilities (consumers) is coordinated by 21 regional centers, which are responsible for securing the day-to-day services and supports that each consumer needs.

Among the State's legal obligations are the care, evaluation, and treatment of incompetent consumers charged with criminal offenses. Under Penal Code section 1370.1, a consumer facing criminal charges who is found incompetent to stand trial (IST defendant) can be committed to the Secured Treatment Program at the Porterville Developmental Center (PDC), a facility under the jurisdiction of the Department of Developmental Services (Department or DDS), for competency training and evaluation. An IST defendant committed to PDC under Penal Code section 1370.1 is often confined in county jail until he or she can be admitted to PDC.

If a regional center recommends that an IST defendant be committed to PDC, Welfare and Institutions Code section 4418.7 requires that the consumer be assessed for his or her service and support needs by the Porterville Regional Project. Among other things, this assessment requires an in-person interview with the consumer, and includes a review of the individual's criminal record, medical and psychiatric history, educational background, and behavioral issues. If the section 4418.7 assessment indicates that admission to PDC would pose a danger to that person or others already admitted to the facility, PDC may deny admission under California Welfare and Institutions Code section 6510.5 (section 6510.5).

In addition to IST defendants, an individual with developmental disabilities may be civilly committed to a DDS developmental center pursuant to Welfare and Institutions Code section 6500 *et seq.*, if a court finds that the individual is a danger to himself or others. Consumers

civily committed to a developmental center under section 6500 *et seq.*, can also be denied admission under section 6510.5.

Enacted in 2012, section 6510.5 states that: “Under no circumstances shall the court order placement of a person described in this article or a dangerous person committed pursuant to Section 1370.1 of the Penal Code to a developmental center if the department has specifically notified the court in writing that the individual cannot be safely served in that developmental center.”

When PDC considers exercising its right to deny admission to an IST defendant pursuant to section 6510.5, it forms a Safe-to-Serve Committee (Committee) which looks at specific criteria when making an admission determination. In 2013, litigation was initiated challenging DDS’ authority to deny admission of an IST defendant to PDC under section 6510.5. In the case of In re Williams, (2014) 228 Cal.App.4th 989, the California Court of Appeal upheld the Department’s authority to deny admission of an IST defendant to PDC under section 6510.5. However, the court ruled that if DDS exercised its authority to deny admission pursuant to section 6510.5, the Department must identify an alternative placement option. Among other things, the Court of Appeal held that a superior court may request DDS to confirm its initial decision to reject admission of an IST defendant. After the Williams decision, the Judicial Council requested that DDS provide greater public transparency regarding how it makes its not-safe-to-serve determination under section 6510.5.

Given the Williams decision and the general interest among the courts, prosecutors, defense attorneys and regional centers regarding how DDS exercises its authority under section 6510.5, the Department proposes these regulations. Since IST defendants being assessed for admission to PDC often are in custody, the proposed regulations seek to establish clear timelines and procedures regarding how the Committee will operate, and when it will make an admission decision. The proposed regulations seek to provide clear directives to DDS employees, regional centers, district attorneys, criminal defense attorneys, the courts, and the public regarding the Department’s procedures for determining whether to deny admission to a developmental center (DC) for a person committed pursuant to either Penal Code 1370.1 or Welfare and Institutions Code section 6500 *et seq.*

### **Rationale for the Provisions of the Proposed Regulations:**

#### **51100: Intent and Purpose.**

*Specific Purpose:* Section 6510.5 grants DDS the authority to decline admission to a person committed by the superior court to a developmental center under Welfare and Institutions Code 6500 *et seq.* or Penal Code section 1370.1. This regulation explains that the purpose of the subchapter is to describe DDS’ section 6510.5 not-safe-to-serve evaluation process.

#### *Necessity:*

The laws governing admission to a state developmental center and the policies and procedures of such facilities require the Department to protect the health and safety of the center’s

residents and provide appropriate care and treatment. This responsibility includes making a determination under section 6510.5 whether a person committed to a developmental center should not be admitted because that person cannot be safely served. This regulation expresses the Department's intent to explain its process of determining when a person will be found not safe to serve.

**51101: Constituting a Safe-to-Serve Committee.**

*Specific Purpose:* This regulation creates a Safe-to-Serve Committee when DDS is considering exercising its authority under section 6510.5 to deny admission to a developmental center, prescribes the time period in which the Committee shall be formed, and identifies the professional individuals who shall serve as members of the Committee.

*Necessity:*

*51101(a):* Subdivision (a) is necessary to authorize the executive director of the developmental center to form a Safe-to-Serve Committee when a section 4418.7 assessment indicates that admission of a particular individual could pose a significant threat to that person, developmental center staff members, or other developmental center residents.

Subdivision (a)(1) and (2) are necessary to ensure that a Committee is formed in a timely manner. For consumers who have been receiving regional center services within three years of the issuance of a commitment order, subdivision (a)(1) specifies that the Committee will be formed within seven days of receipt of the relevant court commitment order. For IST defendants committed to PDC pursuant to Penal Code section 1370.1, the Committee will be formed within seven days of a court order that allows a section 4418.7 assessment. Since IST defendants are often in county jail awaiting a decision regarding their admission, seven days to form the Committee ensures that PDC moves promptly in making its admissions determination for individuals when a regional center has been providing services and has relevant clinical records.

In instances where a regional center has not been providing recent services, subdivision (a)(2) permits more time to form the Committee (15 days initially, with the possibility of 15 more days for good cause shown) since the Committee cannot begin its work without necessary clinical records from the regional center. If the consumer does not have an active case within the past three years, the regional center will need more time to reactivate the client's file, and find and generate appropriate records. If a consumer has not been served by a regional center in the recent past, it can take 30 days to locate the appropriate records from sources such as police departments, court records, schools, private doctors and mental health professionals. This additional time allows the Committee to gather the documents required for a thorough review, while balancing and considering the time that someone will be required to remain in custody during this process.

*51101(b):* This subdivision specifies that the time period in which the records described in section 51102 must be gathered by a regional center for delivery to the Committee. Seven days should provide the regional center with adequate time to transfer the relevant records to the

developmental center for review when a consumer has been actively receiving recent services. Fifteen to thirty days in instances where a consumer's case has been inactive with the regional center should be sufficient for the regional center to collect and deliver records to the Committee. Again, the timelines are selected to afford sufficient time to collect records balanced against the time an IST defendant may be in custody during the review period.

*51101(c):* This subdivision identifies the professionals that will be included on the Committee: at least one physician, the program director, a psychologist, staff from the Office of Protective Services, staff from the regional resource development project, a regional center representative, and such other staff that the developmental center executive director deems necessary for a complete assessment of whether the consumer can be safely served. Members of the Committee will focus on the risks to and safety of both the committed person and other residents of the DC. If the individual is admitted, the physician, program director, psychologist and any other clinical Committee members will likely be responsible for providing direct services to the individual. Staff from the Office of Protective Services will be responsible for providing security to the facility and are needed to give their assessment of the risks of admitting the consumer.

**51102: Documents to be Reviewed by the Committee.**

*Specific Purpose:* This regulation specifies when the Committee will begin its assessment of the consumer committed to the developmental center, identifies the documents that the Committee shall review in conducting its assessment, and specifies that a court order may be sought to gain access to additional documents needed to make the safe-to-serve determination.

*Necessity:*

*51102(a):* This subdivision specifies that the Committee shall make its safe-to-serve determination within 15 days of receiving from the regional center the documents listed in paragraphs (1) through (10). By establishing 15 days for making the assessment, subdivision (a) ensures that, once the needed documents are received, the Committee will work quickly to make a safe-to-serve determination. Fifteen days permits the Committee adequate time to review the documentary evidence while also balancing the consumer's interest in having a speedy determination regarding admission to the developmental center. The documents listed in paragraphs (1) through (10) should permit the Committee to understand: the treatment history of the committed individual; the history and risk of harm to himself or others by admission to the developmental center; the person's ability to care for himself; his intellectual capacity and functioning; the potential to attain competency; his mental health history; possible knowledge of the legal process; and the potential for malingering.

*51102(b):* If the Committee requires additional documents to make its safe-to-serve determination, it must make its request for the documents within seven days. The Committee shall ask the entity possessing the needed documents – the regional center, county jail, court, district attorney or defense attorney – to submit them within 14 days of the request. The Committee may request a court order directing an entity to disclose the requested documents.

In some instances, the documents initially received by the developmental center will only provide the consumer's initial determination of regional center services, and may not include all events or circumstances that led to the commitment. Additional information may identify the consumer's possible triggers, his history of similar behaviors, and whether any behaviors are escalating. Such information will assist the Committee in making its safe-to-serve determination.

*51102(c):* If the Committee seeks a court order for the production of additional documents, subdivision (c) requires that the Committee advise the court of what documents it has received, why the information it has is insufficient to make a safe-to-serve determination, what additional material is being requested, and the timeframe in which the Committee will make its determination once the additional documents are received. This subdivision ensures that additional documents are not being sought merely for the purposes of delay, and that the court is informed when the Committee's decision can be expected.

**51103: Safe-to-Serve Determination.**

*Specific Purpose:* This section specifies the time in which the Committee shall make its safe-to-serve determination once it has the documents it needs, identifies the factors the Committee must consider before denying admission to a developmental center, and establishes a time by which the Committee must transmit its decision to the court and other interested parties.

*Necessity:*

*51103(a):* Subdivision (a) specifies that once it has all the needed documents, the Committee shall make its determination to grant admission, or deny it under Welfare & Institutions Code section 6510.5, within 15 days. In cases where the facts are complex or the person committed presents with difficult clinical indicators, the Committee may extend this deadline once by seven days at their own discretion. If more time is needed for the admission determination, the Committee may seek another seven-day extension from the committing court upon a showing of good cause. These time periods were selected to afford the Committee sufficient time to make a thorough determination whether the committed consumer could be safely served at the developmental center, while also requiring prompt enough action so that the consumer does not unnecessarily remain in a custodial setting.

*51103(b):* Subdivision (b) requires that the Committee shall make its decision based upon the totality of the circumstances, and after evaluating the particular facts of each case. It shall balance the committed consumer's need for training and services with the critical need to protect the health, safety and security of other residents and staff, particularly where the court commits the consumer to PDC.

*51103(c):* Subdivision (c) identifies specific factors that the Committee must consider before making its admission decision to ensure that a comprehensive evaluation is made. Expressly requiring consideration of all the enumerated factors ensures that the committed person receives the benefit of a full review of his history before the Committee renders a decision. Consideration of the factors ensures that before declining admission, the Committee

makes a comprehensive review of PDC's ability to safely treat and house the committed consumer.

*51103(d):* Subdivision (d) provides that if the Committee decides to admit the committed consumer, it shall notify the court, district attorney, defense attorney and regional center within seven days of its decision. Prompt notification ensures that the consumer is admitted to the developmental center without further delay from the section 6510.5 evaluation process.

**51104: Report to the Court and Interested Parties.**

*Specific Purpose:* If the Committee determines that the committed consumer is not safe to serve, the executive director of the developmental center shall review the decision. If the executive director agrees with the not-safe-to-serve determination, the developmental center shall prepare a report detailing the basis for the decision, and file and serve the report with the committing court and on interested parties within 15 days of the determination. If the executive director disagrees with the Committee's determination, he or she can authorize the admission of the committed consumer.

*Necessity:*

*51104(a):* If it decides that admission should be denied, the Committee must submit its assessment for review to the developmental center's executive director. The executive director shall determine if the not-safe-to-serve determination was properly made. If the executive director agrees that the consumer committed to the developmental center cannot be safely served, the developmental center shall prepare a detailed report describing the basis of its decision. The report must be filed with the committing court and served on the interested parties within 15 days of the Committee's determination.

*51104(b):* Subdivision (b) permits the developmental center executive director to reject the Committee's not-safe-to-serve determination, and authorize the admission of the consumer. The subdivision allows the executive director to reject flawed, incomplete, or incorrect determinations.

**51105: Opportunity for Response by Interested Parties.**

*Specific Purpose:* This section allows the district attorney, defense attorney or regional center to ask the developmental center to reconsider its not-safe-to-serve determination if additional information and evidence is provided to the developmental center from the party requesting the reconsideration. The developmental center shall consider the additional information and evidence submitted and prepare a report for the court and interested parties responding to the additional information, comments, arguments and evidence submitted. The developmental center may either reaffirm or reverse its not-safe-to-serve determination.

*Necessity:* This section provides a mechanism for the district attorney, defense attorney or regional center to submit information, evidence, and arguments that may have inadequately been considered by the developmental center in making the not-safe-to-serve determination. It also requires the developmental center to consider and respond through a supplemental

report to the district attorney, defense attorney or regional center's comments, evidence or arguments. If the developmental center finds the additional material persuasive, it may reverse its not-safe-to-serve determination, and admit the committed consumer in the same admission order as if the consumer had never been declined for admission.

**51106: Alternative Placement Recommendations by the Regional Center and Department.**

*Specific Purpose:* If the developmental center's decision to deny admission is not contested or its supplemental report affirms the original decision to deny admission, the regional center must work with the Department to find alternative placement options. The regional center and the Department must jointly report to the committing court on any placement options and necessary services that will meet the committed consumer's needs in the community.

*Necessity:* Under the Lanterman Act, regional centers are responsible for securing services to individuals with developmental disabilities. In the Williams case, the Court of Appeal held that if DDS exercised its authority to deny admission to a developmental center, the Department must identify an alternative placement option. This section requires the regional center and the Department to work together to secure a placement option that meets the person's needs.

**Economic Impact Assessment/Analysis:**

The purpose of the proposed regulations is to create a Safe-to-Serve Committee that will be called upon when DDS is considering exercising its authority under section 6510.5 to deny admission to a developmental center. The regulations articulate the parameters for the Committee's operation and outline the Committee's considerations during its evaluation process.

*Creation or Elimination of Jobs within the State of California*

The regulations create and direct a Safe-to-Serve Committee that will be called upon when DDS considers denying admission to a developmental center under section 6510.5. The Committee is comprised exclusively of existing state employees and regional center representatives. The regional center representatives are funded by the Department of Developmental Services. Therefore, DDS has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs in the State of California.

*Creation of New or Elimination of Existing Businesses within the State of California*

The regulations create and direct a Safe-to-Serve Committee that will be called upon when DDS considers denying admission to a developmental center under section 6510.5. The Committee is comprised exclusively of existing state employees and regional center representatives. The regional centers have contracts with and are funded by the Department of Developmental Services. Therefore, DDS has determined that this regulatory proposal will not have any impact on the creation of new or elimination of existing businesses in the State of California.

### *Expansion of Businesses or Elimination of Existing Businesses within the State of California*

The regulations create and direct a Safe-to-Serve Committee that will be called upon when DDS considers denying admission to a developmental center under section 6510.5. The Committee is comprised exclusively of existing state employees and regional center representatives. The regional centers have contracts with and are funded by the Department of Developmental Services. Therefore, DDS has determined that this regulatory proposal will not have any impact on the expansion of businesses or the elimination of businesses in the State of California.

### *Benefits of the Regulations*

The regulations lay out a clear evaluation process when DDS is considering exercising its authority under section 6510.5 to deny admission to a developmental center. The regulations allow the Department to achieve this goal within current funding streams and allocation of resources.

### **Technical, Theoretical, and/or Empirical Study, Reports or Documents:**

No technical, theoretical, or empirical studies/reports were relied upon in the proposal of these regulatory actions.

### **Benefits Anticipated from the Regulatory Action:**

These regulations benefit consumers residing in the developmental centers and state-operated facilities by creating a clear and specific process by which the Department will make a safe-to-serve determination. These regulations also benefit committed individuals awaiting admission to the developmental center because there are clear timelines for making a safe-to-serve determination. They also provide a clear process for notifying the court and relevant parties when the Department and the Committee elect to exercise the right to deny admission to a developmental center. Additionally, the regulations promote the health and safety of the residents and staff of the developmental centers by ensuring that individuals who are not safe to serve are not admitted to a developmental center.

### **Evaluation of Consistency/Compatibility with Existing Regulations:**

DDS has evaluated existing statutes and regulations and determined that the proposed regulations are consistent with existing law.

### **Mandate on Local Agencies and School Districts:**

DDS has determined that the proposed regulations do not impose a mandate on local agencies or school districts.

### **Fiscal Impact:**

DDS has determined that the regulations do not impose any additional costs or savings requiring reimbursement under Government Code section 17500 *et seq.*, any non-discretionary cost or savings to local agencies or school districts, or any cost or savings in federal funding to



the state. DDS has determined there will be no cost or savings to any state agency pursuant to Government Code section 11346.1(b) or 11346.5(a)(6).

**Considerations of Alternatives:**

The Department has determined that there are no reasonable alternatives to the regulatory proposal that would be more effective in carrying out the purpose for which the action is proposed. No proposed alternative would be as effective or less burdensome and equally effective in implementing the statutory policy or other provisions of law.