

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 240
SACRAMENTO, CA 95814
TTY (916) 654-2054 (For the Hearing Impaired)
(916) 654-3405

**NOTICE OF PROPOSED RULEMAKING**

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE IS HEREBY GIVEN that the California Department of Developmental Services ("DDS" or "Department") is proposing to take the action described in the Informative Digest after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

DDS will hold a public hearing from **10:00 a.m. until 2:00 p.m. on July 10, 2017**, at 1600 9th Street, Sacramento, in Room 360. This location is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action. DDS requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DDS. Comments may be submitted at the public hearing and may also be submitted by facsimile (FAX) at (916) 654-1716, by email to Alyssa.Carroll@dds.ca.gov, or by U.S. mail to:

Alyssa Carroll, Staff Counsel
California Department of Developmental Services
1600 9th Street, Suite 240
Sacramento, CA 95814

The written comment period closes, and comments must be received by, **5:00 p.m. on July 10, 2017**.

AUTHORITIES AND REFERENCES

Authority: Sections 4441 and 4449, Welfare and Institutions Code.

Reference: Section 1370.1, Penal Code; Sections 4418.7, 6500, 6506, 6509, 6510.5, and 7505 Welfare and Institutions Code.

"Building Partnerships, Supporting Choices"

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

A. Informative Digest

Welfare & Institutions Code Section 6510.5 states that “[u]nder 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.”

This statute permits the Department to determine if an individual committed to a developmental center cannot be safely served at that facility. The proposed rulemaking action creates a uniform policy to establish a Committee to evaluate any individuals who the Department believes will be not safe to serve, to report their findings to the appropriate court, and to receive and consider comments from interested parties in making its determination.

Section 51100: 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.

Section 51101: 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.

Section 51102: 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.

Section 51103: 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.

Section 51104: 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.

Section 51105: 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.

Section 51106: 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.

B. Policy Statement Overview

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 civilly 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.*

For a comprehensive explanation of the benefits of the proposed rulemaking, please see “Benefits Analysis” under RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS below.

C. Evaluation of Inconsistency/Incompatibility with Existing State Regulations

DDS has evaluated existing statutes and regulations and has determined that these are the only regulations concerning the Developmental Center Safe-to-Serve Evaluation

Process. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing laws.

LOCAL MANDATES

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 cost to any local agency or school district 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).

COST BENEFITS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

SMALL BUSINESS DETERMINATION

DDS has determined that the proposed regulations will not likely affect small businesses. The individuals who undergo the safe-to-serve evaluation will be housed at public expense in a state-run treatment facility, existing locked facility, or a facility vendored by a regional center. These institutions and facilities are currently in existence and transporting and housing individuals in such facilities will have no impact on small businesses.

STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES AND INDIVIDUALS

DDS initially determines that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

In accordance with Government Code section 11346.3(b), DDS has reviewed the economic impact of the regulations. DDS has made a determination that the regulations would not affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California. DDS has made the initial determination that the proposed regulations will not have a significant adverse economic impact on businesses because the regulations only apply to DDS' facilities.

Benefit Analysis:

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 their 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 and state-operated facility by ensuring that individuals who are not safe to serve are not admitted to a developmental center.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Please direct all inquiries regarding the proposed administrative action to:

Alyssa Carroll, Staff Counsel
California Department of Developmental Services
1600 9th Street, Suite 240
Sacramento, CA 95814
Phone: (916) 654-3405
FAX: (916) 654-1716
Email: Alyssa.Carroll@dds.ca.gov

In the event that the contact person is unavailable, please direct inquiries to the backup contact:

Eric Gelber, Assistant Director, Legislation & Regulations
California Department of Developmental Services
1600 9th Street, Suite 322 MS 3-10
Sacramento, CA 95814
Phone: (916) 654-1884
FAX: (916) 654-1913
Email: Eric.Gelber@dds.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULE MAKING FILE

The Department will make the proposed text, the Initial Statement of Reasons, and the entire rulemaking file available for inspection upon request directed to DDS' designated contact, Alyssa Carroll. The proposed text, Notice of Proposed Action, and the Initial Statement of Reasons will also be posted on DDS' website, <http://www.dds.ca.gov/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the hearing and consideration of all timely and relevant comments submitted, DDS may adopt the proposed regulations substantially as described in the notice. In the

event that DDS makes modifications sufficiently related to the originally proposed text, it will make the modified text, indicating the changes, available to the public for at least 15 days before DDS adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Alyssa Carroll at the aforementioned address. DDS will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Alyssa Carroll, at the aforementioned address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the DDS website at <http://www.dds.ca.gov/>.