

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 January 30, 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 January 30, 2017**.

AUTHORITIES AND REFERENCES

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

References: Sections 443.1, 443.2, 443.3, 443.4, 443.14, and 443.15, Health and Safety Code; Section 1370.1, Penal Code; Sections 4404, 4440, 4484, 4485, 4486, 6500, 6509, and 7505, Welfare and Institutions Code.

"Building Partnerships, Supporting Choices"

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

A. Informative Digest

Welfare and Institutions Code section 4441 provides, in part, that the institutions under the jurisdiction of DDS “shall be governed by uniform rule and regulation of the State Department of Developmental Services.”

Welfare and Institutions Code section 4449 provides, in part, that the Department has general control and direction of the property and concerns of each developmental center and state-operated facility. The statute states that the Department shall “establish such bylaws, rules, and regulations as it deems necessary and expedient for regulating the duties of officers and employees of the hospital, and for its internal government, discipline, and management.” (Welfare & Institutions Code, § 4449, subdivision (b).)

These statutes permit the Department to issue regulations that apply to the facilities under its jurisdiction. The proposed rulemaking action creates a uniform policy to address the impact caused by the End of Life Option Act.

Section 51000: This regulation reiterates the entitlement to treatment for terminally ill individuals residing in a developmental center or state-operated facility, and precludes DDS employees and others acting on the Department’s behalf from providing end-of-life options on DDS premises.

Section 51001: This regulation sets forth the procedures applicable when a terminally ill individual residing in a developmental center or state-operated facility requests to exercise his or her rights under the End of Life Option Act.

Section 51002: This regulation establishes an appeal process for terminally ill individuals seeking to participate in end-of-life options under the Act on the premises of a developmental center when no community option is available.

B. Policy Statement Overview

The Lanterman Developmental Disabilities Services Act (“Lanterman Act”), Welfare & Institutions Code section 4500 *et seq.*, requires the Department to ensure the care and treatment of individuals with developmental disabilities. Approximately 900 individuals who require critical care and services under the Lanterman Act reside in developmental centers and a state-operated facility, which are under the jurisdiction of the Department. Individuals with developmental disabilities can be committed to a DDS facility under Penal Code section 1370.1 for competency training and restoration, or civilly committed pursuant to Welfare and Institutions Code section 6500 *et seq.* when the person is dangerous to himself or others.

Presently, individuals residing in the developmental centers and suffering from a terminal illness receive appropriate and necessary medical care for their condition, including counseling, hospice, and palliative care. However, as of June 9, 2016, qualified terminally ill individuals residing in a DDS facility have the ability to seek to participate in the end-of-life activities permitted under the Act. Given the various developmental challenges of persons residing in a state developmental center or a state-operated facility, the Act's requirement to dispense aid-in-dying drugs to terminally ill patients can constitute a threat to the health and safety of the facilities' other residents and staff.

The End of Life Option Act expressly permits a health care facility to opt-out of providing the end-of-life activities permitted under the Act. DDS exercises this opt-out right in most instances. However, individuals residing in DDS facilities have the same legal rights enjoyed by other Californians. The proposed regulations recognize this by permitting developmental centers or state-operated facility residents to transfer to community facilities in order to exercise the rights afforded by the Act.

On July 25, 2016, the proposed text was approved in the form of emergency regulations, which are scheduled to expire on January 24, 2017. It is necessary for DDS to enact permanent regulations that provide clear directives to employees, facility residents, and the public regarding the Department's response to the End of Life Option Act. These regulations benefit consumers residing in the developmental centers and state-operated facility by creating a clear and specific process for individuals wishing to exercise their rights under the Act. They also prove a clear process for notifying the court and relevant parties when a person committed to a DDS facility pursuant to a court order wishes to exercise his or her rights under the End of Life Option Act. Additionally, the regulations promote the health and safety of the residents and staff of the developmental centers and state-operated facility by ensuring that aid-in-dying drugs are generally not distributed on facility grounds.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

DDS has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After a search of existing regulations that would relate to or affect this area, DDS concluded that these proposed regulations, and the identical and effective emergency regulations, are the only regulations that concern the Department's policy on the implementation of the End of Life Option Act.

LOCAL MANDATES

DDS has determined that these regulations do not impose a mandate on a local agency or school district that requires reimbursement pursuant to Section 17500 *et seq.*

FISCAL IMPACT

-Cost to any local agency or school district that requires reimbursement:	None
-Cost or savings to any state agency:	None
-Other nondiscretionary cost or savings imposed upon local agencies:	None
-Costs or savings in federal funding of state:	None

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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. DDS made a determination that the emergency 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.

Benefit Analysis:

These regulations benefit consumers residing in the developmental centers and state-operated facilities by creating a clear and specific process for an individual wishing to exercise his or her rights under the Act. They also provide a clear process for notifying the court and relevant parties when a person committed to a DDS facility pursuant to a court order wishes to exercise his or her rights under the End of Life Option Act. Additionally, the regulations promote the health and safety of the residents and staff of the developmental centers and state-operated.

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. It is determined that this action has no significant adverse economic impact on small business because they are not affected by DDS' directives to employees and facility residents concerning the Department's policies on the End of Life Option Act.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals:

DDS concludes that the proposed action will not directly affect businesses statewide, including the ability of California businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES

DDS must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency: (1) would be more effective in carrying out the purpose for which the action is proposed; (2) would be as effective and less burdensome to affected private persons than the proposed action; or (3) 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) 653-0817
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/>.