

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:

)	DECISION OF
)	DISAPPROVAL
AGENCY: DEPARTMENT OF YOUTH)	
AUTHORITY)	RULEMAKING ACTION
)	
RULEMAKING ACTION: ADOPT)	(Gov. Code, sec. 11349.3)
Sections 4742, 4743, 474, 4745, 4746,)	
and 4747; AMEND Sections 4730,)	
4732, 4733, 4734, 4735, 4736, 4737,)	
4739, and 4740 of)	
Title 15, California Code of)	OAL File No. 01-0719-02S
Regulations.)	
_____)	

SUMMARY OF RULEMAKING ACTION

This regulatory action adopts provisions dealing with the involuntary administration of psychotropic drugs.

SUMMARY OF DECISION

On August 29, 2001, the Office of Administrative Law (OAL) notified the Department of Youth Authority (Department) of the disapproval of the above action. The reasons for the disapproval are summarized here and explained in detail in "Discussion," below.

- A. Necessity/Clarity.** The necessity for Section 4747 (c)(1) and (2) is not established. Additionally, the section establishes three overlapping time periods, the purpose of which is not clear.
- B. Incorporation by Reference.** The Youth Authority Global Assessment of Functioning (YA-GAF) screening form is not included in the file, nor does the text of the regulation include the name and revision date of the form.

DISCUSSION

- A. Necessity**

Government Code section 11349.1, subdivision (a)(1) requires that OAL review all regulations for compliance with the “necessity” standard. Government Code section 11349, subdivision (a) defines “necessity” to mean that:

“. . . the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.”

Please note, the standard in title 1, CCR section 10 that became effective January 1, 2001, must also be met. It provides that to meet the “necessity standard” the rulemaking record must include:

“(1) A statement of the specific purpose of each adoption, amendment, or repeal; and

“(2) information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision. Such information shall include, but is not limited to, facts, studies, or expert opinion. When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information. An ‘expert’ within the meaning of this section is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question.”

Section 4747 of the proposed regulations requires:

“(c) The administration of involuntary psychotropic medication in excess of 72 hours for wards 18 years of age or older or emancipated minors shall be consistent with those procedures required in *Keyhea v. Rushen*, Solano County Superior Court No 67432, Order Granting Plaintiffs’ Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986.

“(1) The administration of involuntary psychotropic medication in excess of ten days shall be consistent with those procedures required in *Keyhea v. Rushen*, supra.

“(2) The administration of involuntary psychotropic medication in excess of 24 days shall be consistent with those procedures required in *Keyhea v. Rushen*, supra.”

Keyhea v. Rushen provides that a prisoner who has been administered involuntary medication for 72 hours or less, may be certified for not more than 21 additional

days of involuntary medication related to a mental disorder. The court order then provides the procedures to be used to establish the certification. Keyhea specifies only one time period for which certification is necessary, i.e. not more than 21 days.

The Final Statement of Reasons does not explain why the Department has decided to establish a requirement for the same Keyhea certification to be made at three different time periods. We are also concerned that, because of the lack of a showing of Necessity, the proposed language could be misinterpreted.

C. Incorporation by Reference.

Section 20 of Title 1 of the California Code of Regulations states:

“(a) “incorporation by reference” the method whereby a regulation printed in the California Code of Regulations makes provisions of another document part of that regulation by reference to the other document.

“(b)Material proposed for “incorporation by reference shall be reviewed in accordance with the procedures and standards for a regulation published in the California Code of Regulations. ...”

Additionally, Section 20 requires that an incorporated by reference document be clearly identified by title and date of publication or issuance in the regulation text. Government Code section 11343(c) requires that the Department provide the original and six copies of such a document.

Section 4745, of the proposed regulations requires the use of “a standardized YA-GAF screening form.” The form was not included in the file, nor does the language include the title of the form and the date of publication or issuance.

If the Department does not want to incorporate the form by reference, it could include the contents of the form in the regulation. In the alternative, it could include the form with the regulations to be printed in the CCR. Whatever the Department chooses to do, the form must be included in the rulemaking file.

OTHER OBSERVATIONS.

Although not listed here as grounds for disapproval, the following issues should be noted and/or corrected before resubmitting these regulations.

The subsections of Section 474 of the proposed language are not designated properly. Subsection (a) is the introductory phrase for a list of conditions in which an emergency exists. Subsections (1) and (2) describe those conditions. However, (3) and (4) are

separate thoughts and should be designated as (b) and (c). The subsections subsequent to these should also be corrected.

2. The Form 400 is not signed properly. Section 6 (b)(8)(C) of Title 1 of the California Code of Regulations requires that the certification on the Form 400 be signed by “the head of the agency, or a designee of the agency head, authorized to make the certification... .”

The Form 400 that accompanied this file, was signed by the Chief Deputy Director “for” the Director. If the Chief Deputy Director signs the file, he must sign pursuant to his own authority delegated by the Director.

CONCLUSION

For the reasons set forth above, OAL has disapproved the adoption of the above regulations. If there are any questions please contact me at (916) 323-7465, or call the Reference Attorney voice mail at (916) 323-6815.

Date: August 31, 2001

KATHLEEN EDDY
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