

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3351 and 3364 and to adopt new sections 3364.1 and 3364.2 of the California Code of Regulations (CCR), Title 15, Division 3, governing the administration of Involuntary Psychiatric Medication.

In 2011, the Legislature passed and the Governor signed into law Assembly Bill (AB) 1114 (Lowenthal), which codified the process that CDCR was to utilize for the administration of involuntary medication for inmates housed in a State prison. This legislation became Penal Code (PC) Section 2602 and took effect January 1, 2012. Nine months later, on September 30, 2012, the Legislature passed, and the Governor signed into law AB 1907 (Lowenthal), which corrected minor drafting errors in the first bill, and did two other key things. AB 1907 created PC Section 2602(h), directing CDCR to adopt regulations to fully implement the new statutory scheme for involuntary medication of prison inmates. Additionally, Section 1 of AB 1907 contained the following Legislative declaration: “It is the intent of the Legislature, in amending Section 2600 and enacting Section 2602 in AB 1114 of the 2011–12 Regular Session, to terminate the permanent injunction stemming from the decision in *Keyhea v. Rushen*, 178 Cal.App.3d 536, and to replace the provisions of the injunction with the provisions contained within Section 2602 of the PC.”

These proposed regulations are necessary to implement, interpret, and make specific the general provisions of PC Section 2602. AB 1114 and AB 1907 completely replaced the *Keyhea* process and required the CDCR to create new procedures and updated forms to manage involuntary mental health treatment for inmates. The timeline between the start of medication and the hearing in front of an Administrative Law Judge (ALJ) dropped from 47 days to 21 days. The inpatient requirement was eliminated, certification review hearing officers were eliminated, and inmates gained the right to be given notice when the CDCR is seeking to renew a court order, as well as the right to file an objection to an institution’s request to medicate the inmate prior to the ALJ hearing. The Department gained the right to add a basis for the court order if the inmate’s serious illness began to manifest in new ways.

This regulatory action provides authority and direction to CDCR staff for proper identification of inmates who meet the criteria for psychiatric intervention in a correctional setting, using the least restrictive alternative. This action is necessary so that all institutions follow the same standardized set of procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of the involuntary medication process. In addition, this regulatory action is required to ensure that every inmate receives the same procedural and substantive due process, regardless of housing assignment or institution.

The Department recognizes that a portion of the proposed language duplicates PC Section 2602(c)(5), which states that an inmate shall be provided a hearing before an ALJ. This duplication of language under subsection 3364.2(j) of the proposed regulations is necessary to clarify that not only shall an ALJ be used, but also that the hearing shall be conducted at the institution where the inmate is located.

Consideration of Alternatives:

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

Alternatives Considered:

1. Use of Mentally-Disordered Offender Model

The Department considered some of the PC Section 2962 procedures used in the model for mentally disordered offenders (MDO), PC Sections 2960 et seq. In fact, the primary definition of “serious mental disorder” in this regulatory action is taken from PC Section 2962(a)(2). However, in other respects, the MDO scheme is not an appropriate model because it is too narrow and does not address inmates who are a danger to self. The MDO scheme is targeted at inmates for whom the serious mental illness was a factor in either sentencing or an aggravating factor, and who present a danger to society at the time of their parole or termination of parole. This scheme references a different population, and makes only a passing reference to what might be gravely disabled or danger to self by mentioning that it would apply to an inmate who has intentionally caused property damage. Additionally, this statutory scheme does not address the quick timelines for administrative hearings that PC Section 2602 presents. For these reasons, the Department rejected this alternative.

2. Use of Incompetent-to-Stand-Trial Model

The Department considered modeling current regulatory process on PC Section 1370(a)(2)(B), which also allows administration of psychiatric medication, and is the process used after a court has found a defendant mentally incompetent. There are parts of the PC Section 1370 scheme that are acceptable, specifically the parts relating to the inmate’s mental disorder resulting in adverse effects to his physical or mental health. Some other portions are directly contrary to legislative history of PC Section 2602, such as the six-year limit on referencing the defendant’s past bad behavior, which was specifically omitted when PC Section 2602 was drafted. Additionally, this statutory scheme does not address the quick timelines for administrative hearings that PC Section 2602 presents. For these reasons, the Department rejected this alternative.

3. Use of Civil Commitment Framework from *Keyhea v. Rushen* Injunction

The Department considered wholesale adoption of terms and procedures set forth in the injunction that resulted from the *Keyhea v. Rushen* decision (1986) 178 Cal.App.3d 526 (review den. July 10, 1986). This option was rejected for multiple reasons. As noted above, Section 1 of AB 1907 contained the following Legislative declaration: “It is the intent of the Legislature, in amending Section 2600 and enacting Section 2602 in AB 1114 of the 2011–12 Regular Session, to terminate the permanent injunction stemming from the decision in *Keyhea v. Rushen*, 178 Cal.App.3d 536, and to replace the provisions of the injunction with the provisions contained within PC Section 2602.”

The Department was directed to create new procedures and adopt regulations with enabling language as set forth in PC Section 2602(h). Therefore, the Department has put forth a regulatory proposal that addresses best practices, inmate rights, and the Department’s penological interests, and it should be noted that the procedural due process portions of the *Keyhea* injunction were retained and/or updated to correspond to the shorter timeframes. The use of legacy definitions from the *Keyhea* injunction was determined to be a poor choice because PC Section 2602 did away with the inpatient requirement and probable cause hearings, and shortened the timeline for hearings from 47 days to 21 days. As noted in a study published in 2012 by Lanterman-Petris-Short Act (LPS) Reform Task Force II, Separate and Not Equal: The Care for Updating California’s Mental Health Treatment Law, “a person with severe mental illness is now four times more likely to be in jail than in a hospital bed.” The LPS Act is 45 years old and has not changed in response to an evolving mental health delivery system.

The Department is choosing not to utilize the above alternatives because the Department has a duty to provide constitutionally-adequate mental health care, which equates to timely intervention before an inmate with serious mental illness deteriorates to the point of uncontrollable mania, delusions, paranoia, catatonia, or extreme depression. The Department has a duty to craft a regulatory scheme that protects staff and other inmates from an inmate who is manic or psychotic, and a duty to attempt protection for

an extremely depressed or catatonic inmate from harming himself/herself. Intervention should not be tied to an inpatient setting (as in *Keyhea*), nor should intervention be delayed until actual harm to self or others occurs.

ECONOMIC IMPACT ASSESSMENT:

In accordance with GC Section 11346.3(b), CDCR has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs and Expansion of Business within the State of California

The Department has determined that the proposed regulations will have no impact on the creation of new, or the elimination of existing jobs or business within California or affect the expansion of businesses currently doing business in California. The proposed regulations will positively impact the mental health and welfare of persons housed in State-run California correctional institutions. The proposed regulations will have no effect on non-incarcerated California residents, worker safety, or the State's environment.

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

The proposed regulations for administration of Involuntary Psychiatric Medication have no effect on the creation of new or elimination of existing business with the State of California because those businesses are not affected by the internal management of prisons.

Significant Adverse Economic Impact on Business

The Department has made an initial determination that the proposed language for administration of Involuntary Psychiatric Medication will not have a significant adverse impact on business in the State of California because those businesses are not affected by the internal management of prisons.

Local Mandates

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (section 17561) of Division 4.

Benefits of the Regulations

The proposed regulatory action will benefit CDCR staff and inmates by providing direction to staff for proper identification of inmates who meet the criteria for psychiatric intervention in a correctional setting, and using the least restrictive alternative. A standardized set of procedures regarding forms, inmate rights, service of documents, hearing procedures, and documentation of the involuntary medication process will be followed by all institutions. This will ensure consistent and fair treatment on a statewide basis concerning Involuntary Psychiatric Medication.

Materials Relied Upon:

1. Lanterman-Petris-Short Reform Task Force Study: "Separate and Not Equal: The Case for Updating California's Mental Health Treatment Law, March 2012" (<http://www.lpsreform.org/LPSTF2.pdf>)
2. Probate Code Sections 811, 812, 813
3. Penal Code Section 1370
4. Centers for Disease Control, Adults and Older Adult Adverse Drug Events, Medication Safety Program, October 2012 - (http://www.cdc.gov/medicationsafety/adult_adversedrugevents.html)

5. More Mentally Ill Persons are in Jails and Prisons than Hospitals: A Survey of the States (<http://www.tacreports.org/storage/documents/2010-jail-study.pdf>)
6. No Room at the Inn: Trends and Consequences of Closing Public Psychiatric Hospitals (<http://www.tacreports.org/bed-study>)
7. Treatment of Persons with Mental Illness in Jails: A State Survey (April 2014) (<http://www.tacreports.org/treatment-behind-bars>)
8. Mental Health Commitment Laws: A Survey of States (February 2014) (<http://www.tacreports.org/state-survey>)
9. Elements of an Ideal Statutory Scheme for Mental Health Civil Commitment (Stetin, Lamb, Frese) (<http://www.healio.com/psychiatry/journals>)

Copies of these documents are available for review as a part of the rulemaking file.

Specific Purpose of Each Section Adoption/Amendment

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

Subsection 3351(a) is amended to renumber and relocate regulation language, which is moved and split up throughout existing subsection 3351(a) and new subsections 3351(c) and 3351(e) to improve clarity in the proposed language. In addition, subsection 3351(a) retains the existing statement that healthcare treatment may be given in the event of an emergency and without consent. The language from this subsection which references *Keyhea* has been stricken. New language regarding healthcare treatment given in the event of an emergency has been added. Reference to the Natural Death Act (Health and Safety Code Section 7185-7194.5) was removed because the legislation was repealed. This is necessary to clarify and highlight those portions of subsection 3351(a) that deal with medical emergencies and to remove references to the Legislatively-repealed Natural Death Act.

Subsection 3351(b) is unchanged.

New subsection 3351(c) is adopted to add reference to the California Healthcare Decisions Law and to note that inmates may execute both advance directives, as well as Physicians Orders for Life Sustaining Treatment forms in compliance with State law. Reference to durable powers of attorney is removed. This is necessary in order to clarify and highlight those portions of section 3351 that deal with medical decision-making.

New subsection 3351(d) is adopted to establish that California has adopted the Health Care Decisions Law in lieu of the Natural Death Act. This language is necessary because institutions are directed to implement local procedures to comply with Healthcare Decisions Law per Probate Code, Division 4.7, Section 4600 et seq.

New subsection 3351(e) is adopted. This language was previously the first sentence of existing subsection 3351(a). It has been moved to new subsection 3351(e), with references to *Keyhea v. Rushen* removed, and references to PC Section 2602 added. This is necessary to more appropriately organize and update language in this section.

At the end of section 3351 in the authority and reference sections, PC Section 2602(h) is added as an authority; PC Section 2602 and Probate Code Section 4781.2 are added as references, as well as the addition of et seq after Section 4600 of the Probate Code in order to be consistent with text language. In

addition, reference to *Keyhea v. Rushen* (filed October 31, 1986) and the Health and Welfare Code Sections 7185-7194.5 are removed from the reference section.

Subsection 3364(a) is amended to clarify PC Section 2602 information regarding psychiatric medication, and to specify that a psychiatrist is the person who should determine whether an inmate needs psychiatric medication longer than 72 hours.

Subsections 3364(a)(1) through 3364(a)(3) are deleted to remove all references to *Keyhea v. Rushen*. This is necessary because this language is no longer applicable.

Subsection 3364(b) is amended to update language and align the medical terminology with that used in AB 1164 and AB 1907 ('psychiatric medication' in lieu of 'psychotropic medication'). The word "involuntarily" has been added before the word "administered" to explain that under normal conditions, psychiatric medication would not involuntarily be administered. In addition, the words "medically-suitable triage area," are added in front of the words "emergency room." This has been done to acknowledge that all prisons have Triage and Treatment areas, but not all prisons have hospitals. This language has been broadened to make it more properly reflect the actual facilities in the field where an inmate could be transferred prior to administration of medication.

Subsection 3364(b)(1) is amended to add the words "and/or mental health" after the word "medical." This is necessary in order to include mental health staff in the process to be done after medication has been administered. In addition, language is updated to correct grammatical sentence structure errors.

Subsection 3364(b)(2) is unchanged.

Subsection 3364(b)(3) is amended to specify that an inmate shall be observed at least twice per day after being given involuntary medication if not already in a setting offering 24-hour nursing. For clarity, the term "injection" is changed to "involuntary medication" because not all medication is given by injection, yet these procedures should be followed regardless of how the medication is delivered. This is necessary for purposes of clear understanding by staff and inmates. Since the time when original language was written 25 years ago, prisons have seen a variety of improvements in clinical infrastructure including licensed hospitals with 24-hour nursing, triage, and treatment areas. The inmate may already be in a medical setting where he or she is observed 24 hours per day and may be offered oral medication. This proposed language creates a more stringent standard of care, and is necessary to eliminate the uncertainty from prior language that an inmate "shall be considered for transfer" and instead states clearly that an inmate shall be observed twice per day if not already in a 24-hour nursing setting.

Subsection 3364(c) is amended to make grammatical changes, updates to position titles, as well as replacing the term involuntary "treatment" with involuntary "medication." This is necessary in order for the language to be consistent with the heading of the section. In addition, legacy language from the *Keyhea* injunction related to logging each instance of involuntary medication at each institution, and using a physical log book, is deleted. New language updates the process to reflect that the involuntary medication information will now be logged and maintained using the Department's recent conversion to electronic medical record systems.

New subsection 3364(d) is adopted to establish a standardized baseline for acceptable clinical practice with psychiatric drugs in order to protect patients. This language is necessary to set parameters for regularly-monitoring inmate blood levels and procedures for monitoring overall health issues that might occur from involuntary medication, including electrocardiogram (EKG). Institutions shall create a local operating procedure to ensure compliance. As noted by the Center for Disease Control's 2012 report, (http://www.cdc.gov/medicationsafety/adult_adversedrugsafety.html), "adverse drug events are a large

public health problem.” Blood tests and routine EKGs, when clinically indicated, are reasonable measures to allow clinical staff to monitor the effects of one or multiple psychiatric medications upon a patient’s physiology.

At the end of section 3364 in the authority and reference sections, PC Section 2602(h) is added as an authority and PC Section 2602 is added as reference. In addition, references to *Whitaker v. Rushen* and *Keyhea v. Rushen* are removed from the reference section.

New subsection 3364.1 is adopted to provide definitions for the terms used in PC Section 2602, and to specify standardized statewide criteria for evaluating whether an inmate is danger to others, danger to self, or gravely disabled, based on current clinical practice. The definitions for danger to others, danger to self, or gravely disabled were updated to reflect that AB 1114 eliminated the inpatient requirement and to reflect current clinical and correctional practice, which encourages intervention before a patient develops mental psychosis or harms someone. The definitions also take into account that prior definitions were largely based on the Lanterman-Petris-Short Act, a civil commitment scheme, which experience has shown do not apply across the board in a correctional setting, especially since LPS has not seen a material amendment since 1972 (<http://www.lpsreform.org/LPSTF2.pdf>). This language adds a new definition for ‘informed refusal,’ consistent with California law.

New subsection 3364.1(a)(1) is adopted to define the term ‘serious mental disorder’ for consistency with language in PC Section 2962(a)(2). This is necessary for clarity and to ensure that inmates who do not have a serious mental illness are not brought under the involuntary medication scheme.

New subsection 3364.1(a)(2) is adopted to define the term ‘danger to others,’ taking into account that AB 1114 eliminated the inpatient requirement and allowed the Department to introduce evidence of the historical course of an inmate’s mental disorder. This is necessary to establish uniform criteria for mental health staff to apply when evaluating a seriously mentally ill inmate as a danger to others, and to give adequate notice to inmates and interested parties about what type of conduct will qualify for a referral under PC Section 2602 uses. In addition, this is necessary to specify what type of conduct will qualify for a referral under PC Section 2602.

New subsection 3364.1(a)(3) is adopted to define the term ‘danger to self,’ taking into account that AB 1114 eliminated the inpatient requirement and allowed the Department to introduce evidence of the historical course of an inmate’s mental disorder. This is necessary to establish standardized criteria for mental health staff to apply when evaluating a seriously mentally ill inmate as a danger to self, and give adequate notice to inmates and interested parties about what type of conduct will qualify for a referral under PC Section 2602 uses. In addition, this is necessary to specify what type of conduct will qualify for a referral under PC Section 2602.

New subsection 3364.1(a)(4) is adopted to define ‘gravely disabled’ in the context of a correctional setting, where the State provides food, shelter, and clothing to inmates that are capable of appropriately using them. Under the 1986 *Keyhea* definition, inmates who were psychotic would not get psychiatric intervention in some instances. Because data now shows that “a person with severe mental illness is now four times more likely to be in jail than in a hospital bed,” the new definition moves more towards a need-for-treatment model where serious mental illness is shown and the inmate is unable to function or is unsafe in a correctional setting. This is necessary to establish that there is a substantial probability, due to a serious mental disorder and lack of capacity to accept or refuse psychiatric medication, an inmate not treated with psychiatric medication may suffer some type of serious mental or physical harm as a result.

New subsection 3364.1(a)(5) is adopted to define ‘informed consent’ in the context of psychiatric medication. It consists of a restatement of Probate Code Section 813(a), modified for use in a

correctional setting. This is necessary to establish standardized criteria for mental health staff to apply when evaluating a seriously mentally ill inmate because PC Section 2602 prohibits administration of involuntary medication without an inmate's informed consent. In addition, this is necessary to specify what type of conduct will qualify for a referral under PC Section 2602.

New subsections 3364.1(a)(5)(A) through 3364.1(a)(5)(H) are adopted to establish and clarify a set of standardized criteria for mental health staff to follow. This language is necessary as a directive to staff on the process to follow and also to specify the information that needs to be documented.

New subsection 3364.1(a)(6) is adopted to define 'informed refusal' in the context of psychiatric medication. It consists of a modified restatement of Probate Code Section 813(b), which is modified for use in a correctional setting. This is necessary to clarify that an inmate who has been informed of all aspects of the proposed medical treatment and has the capacity to make an informed decision may elect to knowingly refuse treatment.

New subsection 3364.1(a)(7) is adopted to define 'incapacity to refuse medication.' Included in the PC Section 2602 definition of gravely disabled, is the phrase 'incapacity to refuse medication.' This is commonly referred to as a lack of capacity to consent to a healthcare decision, in this case, as a result of serious mental illness. This new language is necessary to incorporate the concepts of capacity as set forth in Probate Code Sections 811 and 812.

New subsection 3364.1(a)(8) is adopted to define 'involuntary medication.' This language is brought forward from the *Keyhea* injunction and is necessary to clarify that medication shall be considered involuntary, and a hearing required, either when an inmate will not consent, or cannot consent due to mental psychosis.

New subsection 3364.1(a)(9) is adopted. This new language is necessary to bring the list of psychiatric medications in line with newer third and fourth-generation antipsychotics. These newer antipsychotic medications were not on the market when the *Keyhea* injunction was written. The term "psychotropic" is replaced with "psychiatric" throughout the text, in order to be consistent with the terms "psychiatric" as used in PC Section 2602.

New subsection 3364.2 is adopted.

New subsection 3364.2(a) is adopted to create a standardized statewide procedure and establish forms to initiate involuntary medication proceedings, and to ensure procedural due process for inmates by requiring that the inmate be served and advised of his/her rights, which changed with implementation of PC Section 2602. This is necessary so that all institutions are looking at the same factors when evaluating a seriously mentally ill inmate. In addition, all of the requirements for establishing elements of a case for initial medication are set forth in a declaration prior to submission of appropriate paperwork to the Office of Administrative Hearings. The following forms are established in this proposed regulation and incorporated by reference: CDCR MH-7363 (Rev. 03/14), Involuntary Medication Notice; CDCR MH-7366 (Rev. 03/14), Inmate Rights Notice-Involuntary Medication. These forms are included in the regulation package and copies are available for public review. The CDCR MH-7363 had to be completely redeveloped with the passage of Penal Code Section 2602 due to shorter timeframes for getting inmates to hearing and filing things with the Office of Administrative Hearings. The form that previously had this number was retired and replaced with an entirely new form that is now filled out by the psychiatrist at the prison and submitted by the Medication Court Administrator directly to the Office of Administrative Hearings and sent to inmate counsel.

New subsection 3364.2(b) is adopted to create standardized statewide procedures and establish a form to renew involuntary medication proceedings. This is necessary to ensure procedural due process for the

inmate by requiring that the inmate be served and advised of his/her rights, which changed with the implementation of PC Section 2602. The following form is established in this proposed regulation and incorporated by reference: CDCR MH-7368 (Rev. 03/14), Renewal of Involuntary Medication Notice. This form is included in the regulation package and copies are available for public review. The CDCR MH-7368 is a completely new form that was created with the passage of Penal Code Section 2602. Although it was customary to file renewal petitions prior to January 1, 2012, the procedure was not memorialized in statute. With the passage of Penal Code Section 2602, the Legislature codified the elements needed for renewal of an order as well as the applicable notice timelines. This new form was created, similar to the CDCR MH-7363, so that it could be filled out by the psychiatrists at the prison, served on the inmate and inmate counsel, and sent directly to the Office of Administrative Hearings as part of an entirely new paper flow.

New subsection 3364.2(c) is adopted to establish that ultimately a psychiatrist must review and sign either a CDCR MH-7363 or a CDCR MH-7368. In addition, it is established that a multidisciplinary treatment team may contribute information to both of those forms. This is necessary to acknowledge that information that would normally be typed or handwritten onto an official CDCR form can also be dictated through central dictation and authenticated by the psychiatrist electronically because fax and courier services have been replaced with electronic communication.

New subsection 3364.2(d) is adopted to memorialize the inmate's procedural due process rights to service of documents, which was expressly set out in *Keyhea v. Rushen* but it does not exist in PC Section 2602. This is necessary to clarify which documents are sent to the inmate and which documents are sent to the inmate's attorney, and to ensure that the process is handled the same way regardless of institution. The CDCR MH-7366 had to be completely redeveloped with the passage of Penal Code Section 2602 which created new substantive and procedural due process rights for inmates that did not exist prior to January 1, 2012. The form that previously had this number was retired and replaced with an entirely new form that is now filled out at the prison, handed to the inmate with every petition (both renewal and initial), and submitted by the Medication Court Administrator directly to the Office of Administrative Hearings.

New subsection 3364.2(e) is adopted to establish that PC Section 2602 proceedings are held in conformity with the California Medical Information Act ('CMIA') and the federal Health Insurance Portability and Accountability Act ('HIPAA'). This is necessary as a directive to CDCR staff that they should not send PC Section 2602 pleadings to the inmate's next-of-kin unless the inmate directs that the confidential documents be sent.

New subsection 3364.2(f) is adopted to memorialize the inmate's procedural due process rights to have his or her attorney receive the same packet of information that the State is relying upon to prove the case. This is necessary to establish a deadline for the institution to supply supporting documentation to the inmate's attorney, and to provide a remedy to allow the inmate's attorney to prepare for the hearing in the event discovery cannot be sent due to a hearing on short notice.

New subsection 3364.2(g) is adopted to establish that under the California Rule of Professional Conduct 2-100, the expectation that if an inmate already has an attorney, the appointed PC Section 2602 attorney should make contact. Procedurally this new language creates a way for that to happen uniformly. This section is necessary because cases involving condemned inmates frequently involve other, different attorneys, who have a need to know that an involuntary medication proceeding has been initiated or is being renewed.

New subsection 3364.2(h) is adopted to create a requirement that institutions provide a space for the inmate and attorney to meet confidentially to discuss or prepare for the PC Section 2602 proceeding. This new language is necessary to allow appointed counsel to effectively represent the inmate.

New subsection 3364.2(i) is adopted to ensure that inmates know what their rights are on the day of their hearing. Depending on what type of hearing they are having, they may have been given their rights five to twenty-five days before the hearing. This is necessary because, in order for an inmate to make an informed decision on the day of the hearing, he or she should be re-advised of their rights regarding the right to counsel, right to attend the hearing, right to discovery, and right to confront witnesses.

New subsection 3364.2(j) is adopted to specify that the involuntary medication hearing is to be conducted in front of an ALJ, as PC Section 2602(c)(5) does not specify where the hearing is to be conducted. This is necessary to provide information that the statewide practice is to hold the hearing at the institution where the inmate is located.

New subsection 3364.2(k) is adopted to establish the expectation that inmates will personally attend their hearings unless certain exceptions are documented. This is necessary to ensure that fundamental due process protections are in place and uniformly applied at all institutions.

New subsection 3364.2(k)(l) is adopted to establish a uniform statewide procedure to demonstrate to the ALJ that an inmate is medically unable to be brought to the hearing room, either because the inmate is too fragile to be moved or is at an outside hospital. This language and information is necessary in order to allow the ALJ to determine whether to continue the hearing, or to conduct the hearing at the inmate's cell location.

New subsection 3364.2(k)(2) is adopted to establish a uniform statewide procedure that will be used to convey an inmate's attempt to execute a knowing and intelligent waiver of hearing to the ALJ without coming to the hearing room. This is necessary in order to provide specific guidelines as to how and when an inmate's presence at the hearing may be excused, with the primary focus being on having inmates attend their hearings.

New subsections 3364.2(k)(2)(A) through 3364.2(k)(2)(G) are adopted to establish a uniform statewide procedure that will be used to convey an inmate's attempt to execute a knowing and intelligent waiver of hearing to the ALJ without coming to the hearing room. This is necessary in order to provide specific guidelines as to how and when an inmate's presence at the hearing may be excused, with the primary focus being on having inmates attend their hearings.

New subsection 3364.2(l) is adopted to establish a standardized statewide procedure defining the period of time an institution must wait to start a PC Section 2602 proceeding if an ALJ has just denied a request for involuntary medication. This 72-hour break also applies if a clinician, for any reason, drops involuntary medication proceedings and then decides to re-initiate. Clinicians may always intervene in the event of an emergency. This is necessary because in order to provide standardized procedures regarding how an institution should proceed if an order is denied at hearing or if at some point during the filing period an institution decides to drop the case.