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Health and Welfare

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Health and Welfare

Health and Welfare; Medi-Cal reform

Business and Professions Code §655.1 (new); Government Code §6254 (amended); Health and Safety Code §§441.3, 441.5 (repealed); §§441.3, 441.5, 442.13, 1251.3, 1322 (new); §§441.1, 441.18, 442.3, 1266, 1442, 1442.5, 32121 (amended); Insurance Code §§10133.1, 10133.5, 10402, 10402.1, 11512.1 (new); §§10133, 10401, 11512 (amended); Welfare and Institutions Code §§14005.13, 14005.16, 14491.5 (repealed); §§4073, 5705.1, 14005.10, 14005.16, 14011.5, 14019.1, 14019.6, 14040, 14041, 14052, 14081, 14081.5, 14082, 14082.5, 14083, 14084, 14085, 14086, 14087, 14087.1, 14087.2, 14087.25, 14087.26, 14087.27, 14087.28, 14087.29, 14087.3, 14087.4, 14087.45, 14087.5, 14087.55, 14087.6, 14087.7, 14087.8, 14087.95, 14088, 14088.1, 14088.2, 14088.3, 14088.4, 14088.5, 14088.6, 14088.7, 14089, 14105.1, 14110.2, 14123.1, 14123.2, 14124.89, 14133.25, 14133.3, 14154.1, 14165, 14165.1, 14165.2, 14165.3, 14165.4, 14165.5, 14165.6, 14165.7, 14165.8, 14165.9, 14171.5, 14178, 14316, 14491.5, 16709, 16717 (new); §§5624, 5705, 5705.1, 11150, 14005, 14005.1, 14005.4, 14005.9, 14005.10, 14005.12, 14006, 14008, 14011, 14016, 14019, 14019.1, 14021.5, 14052, 14081, 14082, 14083, 14086, 14087, 14087.1, 14087.2, 14087.27, 14087.28, 14087.55, 14087.6, 14087.8, 14088, 14088.1, 14089, 14103.4, 14104.3, 14105, 14105.1, 14105.3, 14106, 14115, 14123, 14124.89, 14132, 14132.1, 14133.25, 14133.3, 14134, 14171.5, 14172, 14172.5, 14173, 14178, 14653, 14665, 16700, 16703, 16704, 16705.5, 16706, 16707, 16708 (amended).

AB 799 (Robinson); STATS. 1982, Ch 328

(Effective June 30, 1982)

AB 3480 (Robinson); STATS. 1982, Ch 329

(Effective June 30, 1982)

SB 2012 (Maddy) STATS. 1982, Ch 1594

(Effective September 30, 1982)

Support: Department of Finance; Department of Health Services; Department of Planning and Research; Office of Statewide Health Planning

Chapters 328, 329, and 1594 were enacted to provide cost effective

medical care to those persons dependent on the State for health care.¹ These chapters enable the State to negotiate and contract for medical services,² authorize formation of commissions to aid in implementing these provisions,³ modify the health services of those still covered by the State,⁴ and shift the health care duties of certain classes of low-income persons from the State to the individual counties.⁵

Authorization to Contract

Prior law stated that providers of health care to Medi-Cal recipients would be paid on a fee-for-service basis⁶ according to a standard rate that was based on the reasonable cost for services.⁷ Chapter 328 provides for a special negotiator who has sole authority until July 1, 1983⁸ to enter into contracts with certain Medi-Cal providers to furnish health services to Medi-Cal recipients.⁹

The special negotiator will be selected by the Governor from his or her office and will contract with hospitals for inpatient services either through negotiations or a call for bids.¹⁰ The payment method to contracting hospitals may be either a certain amount per service or on a flat rate basis.¹¹ Subject to certain exception,¹² only contracting hospitals will be reimbursed for services provided to Medi-Cal recipients.¹³

Under Chapter 328, the special negotiator may enter into a contract with the county to allow the county to provide for the health care of Medi-Cal recipients in its area.¹⁴ A county that wishes to contract with the State must submit a proposed plan to the State¹⁵ and may either

1. See Senator Ken Maddy, Press Release, Medi-Cal Reform Bills (copy on file at the *Pacific Law Journal*).

2. See CAL. WELF. & INST. CODE §14082.

3. See CAL. HEALTH & SAFETY CODE §441.3; CAL. WELF. & INST. CODE §14165.

4. See CAL. STATS. 1982, c. 328, §53, at —.

5. See *id.* §8.3, at —.

6. See *id.* 1977, c. 1036, §2.5, at 3103 (amending CAL. WELF. & INST. CODE §14106(a)).

7. See *id.* 1979, c. 256, §2, at 572 (amending CAL. WELF. & INST. CODE §14105(a)).

8. CAL. WELF. & INST. CODE §14082.5.

9. See *id.* §14082.

10. See *id.* For the 1982-83 fiscal year, children's hospitals and charitable research hospitals need not contract under these provisions and will be reimbursed. *Id.* §14087.2.

11. See *id.* §14084.

12. See *id.* §14087(a). Noncontracting hospitals will be reimbursed for services rendered in a life threatening or emergency situation. Chapter 1594 defines emergency situation as one that could result in permanent impairment and expands reimbursement to certain aged and disabled persons and to those who live some distance from a contract hospital.

13. See *id.* §14081. Chapter 1594 further provides that previously eligible hospitals may continue to be reimbursed for services to Medi-Cal recipients until the special negotiator has contracted with a sufficient number of hospitals and has notified the hospital that it is no longer eligible. *Id.* §14087(a), (b).

14. See *id.* §14087.5.

15. See *id.*

provide health services directly or subcontract for health services.¹⁶

Chapter 328 also authorizes the special negotiator to enter into contracts with health care plans.¹⁷ A county may include county employees in any plan selected to provide health benefits to Medi-Cal recipients.¹⁸

In addition to the special negotiator, Chapter 328 authorizes the director of the State Department of Health Services to enter into contracts with noninstitutional health care providers.¹⁹ The director may enter into contracts on a bid or non-bid basis with physicians, groups of physicians, or others who provide health services to Medi-Cal recipients.²⁰ Providers of health services will not be reimbursed for services if they declined to enter into a contract.²¹ Additionally, the director may enter into contracts with drug companies, medical appliance and equipment companies, medical supply companies, and medical laboratories.²² The director, however, may not enter into contracts with pharmacies.²³

Prior to the enactment of Chapter 329, insurance companies were not allowed to furnish hospital services to patients or to control an insured's selection of a hospital.²⁴ Under Chapter 329, insurance companies are now authorized to contract with hospitals to provide medical services to their insureds and to limit reimbursement to contracting hospitals.²⁵ Chapter 1594 further provides that a contracting hospital may not limit its medical staff to only those physicians who contract with the insurer.²⁶

Commissions

Prior law authorized the formation of the California Health Facilities Commission composed of 15 members appointed by the Governor.²⁷ All health facilities were required to report certain accounting

16. *See id.* §14087.6.

17. *See id.* §14089(b). Health care plans include but are not limited to, health maintenance organizations, prepaid health plans, independent practice associations, various insurance coverage, organized county health systems, private foundations, and university medical center systems. *Id.* §14089(a).

18. *See id.* §14089(g).

19. *See id.* §14087.3(a).

20. *See id.* §14087.4(c).

21. *See id.* §14087.3(b).

22. *See id.* §14105.3(b).

23. *See id.*

24. CAL. STATS. 1967, c. 311, §1, at 1495 (amending CAL. INS. CODE §10133).

25. *See* CAL. INS. CODE §10133 (after July 1, 1983 this section will also be applicable to professional providers).

26. *See* CAL. HEALTH & SAFETY CODE §1322.

27. *See* CAL. STATS. 1979, c. 373, §183, at 1332 (amending CAL. HEALTH & SAFETY CODE §441.3).

information to the California Health Facilities Commission²⁸ and to report patient discharge data.²⁹ Under Chapter 329, the California Health Facilities Commission is now to be composed of nine members;³⁰ five will be appointed by the Governor,³¹ two by the Speaker of the Assembly,³² and two by the Senate Rules Committee.³³ Chapter 329 also requires health facilities to report *additional* data³⁴ when a patient is discharged.³⁵

In addition to the reformation of the California Health Facilities Commission, Chapter 329 provides for the formation of the California Medical Assistance Commission.³⁶ Under Chapter 328, this commission will replace the special negotiator at the end of the 1982-83 fiscal year; at this time the special negotiator will become the executive director of the Commission.³⁷ Chapter 329 further provides that the Commission will be composed of seven voting members³⁸ to be appointed by the Governor, the Speaker of the Assembly, and the Senate Rules Committee,³⁹ and two nonvoting members.⁴⁰ Voting Commission members will serve four-year terms⁴¹ and the Commission will direct the planning, development, and negotiation of contract services.⁴²

Medi-Cal Providers

Under prior law, it was within the discretion of the Director of Health Services to suspend a Medi-Cal health care provider who was convicted: (1) of fraud, (2) of abuse of the Medi-Cal program or a Medi-Cal recipient, or (3) of a crime related to the provider's qualifications.⁴³ Under Chapter 328, suspension is mandatory under these con-

28. See CAL. STATS. 1980, c. 998, §1, at 3182 (amending CAL. HEALTH & SAFETY CODE §441.18).

29. *Id.* (discharge data includes date of birth, sex, race, zip code, admission date, source of admission, type of admission, discharge date, principal diagnosis, principal procedures, disposition of patient, and expected source of payment).

30. CAL. HEALTH & SAFETY CODE §441.3.

31. *Id.* §441.3(a).

32. *Id.* §441.3(b).

33. *Id.* §441.3(c).

34. *Id.* §441.18(g) (additional data includes other diagnosis, principal procedure dates, other procedures and dates, and total charges).

35. *Id.*

36. CAL. WELF. & INST. CODE §14165.

37. See *id.* §14082.5.

38. *Id.* §14165.1.

39. *Id.* §14165.2.

40. *Id.* §14165.1 (the two non-voting members will be the Directors of the Department of Health Services and Department of Finance).

41. *Id.* §14165.2.

42. *Id.* §14165.6.

43. See CAL. STATS. 1980, c. 303, §1, at 630. (amending CAL. WELF. & INST. CODE §14123(a)).

ditions⁴⁴ and no hearing will be allowed if the provider is convicted for an abuse of the Medi-Cal program.⁴⁵ Additionally, Chapter 328 provides that a suspension may be granted for a definite or indefinite period of time, with or without conditions, and may provide for a stay of suspension or probation granted.⁴⁶ Under Chapter 1594, clinics, groups, corporations, and associations may also be suspended from participation in the Medi-Cal program.⁴⁷ Moreover, Chapter 328 states that any provider or person who presents a Medi-Cal claim for a service that (1) was not provided, (2) is not covered, or (3) is in violation of an agreement between the person and the State will be subject to civil money penalties of not greater than three times the amount claimed.⁴⁸ Furthermore, Chapter 1594 provides that any institutional provider that receives reimbursement when it is not entitled to be reimbursed, will be subject to certain interest charges and penalties.⁴⁹

Prior law authorized a one dollar copayment for certain Medi-Cal recipients for each drug prescription.⁵⁰ Chapter 328 expands the category of Medi-Cal recipients who must pay the one dollar copayment and makes the collection of the copayment a condition for reimbursement to the provider.⁵¹ Chapter 1594, however, allows prior law to remain in effect until the effective date of federal approval of these copayment provisions.⁵²

Medi-Cal Eligibility

Chapters 328 and 1594 make the eligibility requirements for Medi-Cal more stringent than under prior law.⁵³ Prior to the enactment of Chapter 1594, all recipients of public assistance were eligible to receive health care service under the State Medi-Cal program.⁵⁴ Chapter 1594 states that all public assistance recipients are eligible to receive Medi-Cal except adults who receive aid due to unemployment, *and* for whom federal financial participation is not obtainable for their medical costs.⁵⁵

44. See CAL. WELF. & INST. CODE §14123(a).

45. See *id.* §14123.1.

46. See *id.* §14123(a).

47. See *id.*

48. See *id.* §14123.2.

49. See *id.* §14171.5.

50. See CAL. STATS. 1981, c. 1163, §16, at — (amending CAL. WELF. & INST. CODE §14134(b)).

51. See CAL. WELF. & INST. CODE §14134(b).

52. *Id.* §14134(g).

53. Compare CAL. WELF. & INST. CODE §14006 with CAL. STATS. 1979, c. 465, §2, at 1619 (amending CAL. WELF. & INST. CODE §14006).

54. See CAL. STATS. 1971, c. 577, §3, at 1108 (amending CAL. WELF. & INST. CODE §14005).

55. CAL. WELF. & INST. CODE §14005.1.

Prior law also allowed a special income exemption for blind, disabled, and aged persons⁵⁶ and allowed other applicants for Medi-Cal to earn up to 115 percent of what was allocated to public assistance recipients.⁵⁷ Under Chapter 328, the special income exemption for the blind, disabled, and aged is eliminated⁵⁸ and the income level allowed for applicants for Medi-Cal is the lowest level allowed for a grant of public assistance for which federal participation is provided.⁵⁹

Prior law allows applicants for Medi-Cal an exemption for real property, other than a home, up to a value of \$25,000.⁶⁰ Chapter 328 instead states that the assessed value of the real property other than a home, minus encumbrances cannot be greater than \$6,000 and that the real property must be income producing.⁶¹

Prior to the enactment of Chapter 1594, a parent or parents were financially responsible for the cost of health care for any child between the ages of 18 and 21 only if the child resided in the parents' home.⁶² Under Chapter 1594, a parent is only financially responsible for a child over the age of 18 if the parent claims that child as a tax deduction or exemption for federal or state tax purposes.⁶³

Prior law allowed the acceptance of a Medi-Cal applicant's statements as evidence of the facts concerning income, resources, and other qualifications for eligibility⁶⁴ and allowed Medi-Cal coverage to be retroactive for three months prior to application.⁶⁵ Chapter 328, however, requires independent documentation of income, resources, and other benefits that the applicant receives⁶⁶ and prohibits retroactivity for those medically indigent adults with excess income and further prohibits it for any person who has excess property.⁶⁷ Additionally, Chapter 328 provides that counties will be held financially liable for persons who receive Medi-Cal who were ineligible or who had an incorrect share of cost.⁶⁸

56. See CAL. STATS. 1976, c. 126, §4, at 199 (enacting CAL. WELF. & INST. CODE §14005.13).

57. See CAL. STATS. 1981, c. 237, §1, at — (amending CAL. WELF. & INST. CODE §14005.12).

58. See CAL. STATS. 1982, c. 328, §8, at —.

59. See CAL. WELF. & INST. CODE §14005.12.

60. See CAL. STATS. 1979, c. 465, §2, at 1619 (amending CAL. WELF. & INST. CODE §14006).

61. See CAL. WELF. & INST. CODE §14006(b).

62. See CAL. STATS. 1979, c. 451, §2, at 1595 (amending CAL. WELF. & INST. CODE §14008).

63. See CAL. WELF. & INST. CODE §14008(b).

64. See CAL. STATS. 1965, 2nd Ex. Sess., c. 4, §2, at 108 (enacting CAL. WELF. & INST. CODE §14011).

65. See CAL. STATS. 1974, c. 1240, §7, at 2687 (amending CAL. WELF. & INST. CODE §14019).

66. See CAL. WELF. & INST. CODE §14011(b).

67. See *id.* §14019.6.

68. See *id.* §14016(e).

Medi-Cal Services

In order to save money under the Medi-Cal program, Chapter 1594 provides that some services will be reduced or eliminated.⁶⁹ Reimbursement for services provided by physicians, podiatrists, and outpatient departments of hospitals will be reduced by 10 percent.⁷⁰ In addition, Chapter 1594 makes other specified reductions.⁷¹ Furthermore, Chapter 328 provides for in-home medical care services if a Medi-Cal recipient would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services.⁷²

Medically Indigent

Prior law defined a medically indigent person or family as a person or family whose income and resources are insufficient to provide for the costs of health care but who could not qualify for public assistance or as a medically needy individual.⁷³ A medically indigent person or family was eligible to receive health care under the State Medi-Cal program.⁷⁴ If a medically indigent person's or family's income or resources exceeded the allowable amounts, that person could still receive Medi-Cal for any health costs over their excess income or resources.⁷⁵ Under Chapter 328, medically indigent has been redefined to include only children under 21 years of age and adults in skilled nursing⁷⁶ or intermediate care facilities.⁷⁷ Chapter 1594 expands medically indigent to include a woman of any age with a confirmed pregnancy.⁷⁸ The effective date of these provisions is January 1, 1983.⁷⁹

69. See CAL. STATS. 1982, c. 1594, §27, at —.

70. See *id.*

71. See *id.* (other areas of reduction include pharmacy expenditures, transportation, hearing aids, acupuncture, portable x-rays, chiropractic services, drug dispensing, laboratory and pathology services for inpatients, adult vision care, dental services, and psychological services).

72. CAL. WELF. & INST. CODE §14132(t). Chapter 1594 adds coverage for certain home and community based services. See *id.* §14132(u).

73. See CAL. STATS. 1979, c. 451, §4, at 1595 (amending CAL. WELF. & INST. CODE §14052). A medically needy person is defined as a person who could receive public assistance as a blind, aged, or disabled person or as a parent or child but for the fact that their income or resources are over the allowable limits for public assistance but under what is necessary to provide for health care. See CAL. WELF. & INST. CODE §14051(a).

74. See CAL. WELF. & INST. CODE §14005.

75. See CAL. STATS. 1979, c. 451, §1, at 1594 (amending CAL. WELF. & INST. CODE §14005.4).

76. CAL. HEALTH & SAFETY CODE §1250(c) (defines skilled nursing facility).

77. CAL. WELF. & INST. CODE §14052; CAL. HEALTH & SAFETY CODE §1250(d) (defines intermediate care facility). Chapter 1594 states that for those medically indigent adults in skilled nursing or intermediate care facilities whose income or resources are over the allowable limits, acute care hospital services will not be covered. CAL. WELF. & INST. CODE §14005.4(f).

78. CAL. WELF. & INST. CODE §14052.

79. *Id.*

Chapter 328 further provides that counties will take over the State role of providing health care for those low-income persons who are no longer eligible as medically indigent.⁸⁰ Under Chapter 1594, the counties must develop eligibility criteria and notify the State Department of Health Services by including the criteria in the health services plans.⁸¹ Additionally, Chapter 1594 provides that the counties will receive state funds to support health care for the former medically indigent beginning January 1, 1983.⁸²

Prior to the enactment of Chapter 328, counties were required to file with the State Department of Health Services a scheme to provide services or facilities that were eliminated when a county closed a county medical facility, eliminated any area of service from a county medical facility, or reduced any level of services to indigents.⁸³ Prior law also provided for public notice at least 90 days prior to a public hearing that was required prior to the leasing, selling, or transfer of management of a county health care facility.⁸⁴ Chapter 328 modifies this time period for public notice from 90 days to 30 days but requires that the notice contain a detailed list of the proposed reductions or changes.⁸⁵ Additionally, Chapter 328 deletes the requirement of a plan to provide services or facilities that were eliminated when a county closed facilities or modified services.⁸⁶

Mental Health

Existing law provides that mental health services may be provided through state-approved county Short-Doyle plans.⁸⁷ Prior to the enactment of Chapter 328, the rates to be paid for mental health services under Short-Doyle plans were the actual costs of the services.⁸⁸ Under

80. See CAL. STATS. 1982, c. 328, §8.3, at —.

81. CAL. WELF. & INST. CODE §16700(c). Counties with a population under 300,000 may elect to have the State administer their health programs or act jointly with other counties. *Id.* §16709.

82. See CAL. WELF. & INST. CODE §16703(c). Counties may also elect to contract with the State to provide health care services to certain low-income persons prior to January 1, 1983. *Id.* §14005.10. A ratio of what each county paid for medically indigent persons during fiscal years 1979-80, 1980-81, and 1981-82 will be determined in comparison to what all counties paid and this ratio will determine what percentage of total state funds each county will receive. *Id.* §16703(d).

83. See CAL. STATS. 1981, c. 1162, §1, at — (amending CAL. HEALTH & SAFETY CODE §1442).

84. See *id.* §2, at — (amending CAL. HEALTH & SAFETY CODE §1442.5).

85. CAL. HEALTH & SAFETY CODE §1442.5.

86. See *id.* CAL. STATS. 1981, c. 1162, §1, at — (amending CAL. WELF. & INST. CODE §1442).

87. See CAL. WELF. & INST. CODE §5600 (the Short-Doyle Act provides for mental health services jointly administered and financed by the State and local entities); see also CAL. WELF. & INST. CODE §5705(a).

88. See CAL. STATS. 1981, c. 1042, §2, at — (amending CAL. WELF. & INST. CODE §5705(a)).

Chapter 1594, the Director of Mental Health will set rates⁸⁹ that will not exceed the lower of each individual provider's actual cost or 125 percent of statewide costs for services under the Short-Doyle plans for the fiscal year 1980-81.⁹⁰ Chapter 328 provides for consolidation of the Medi-Cal mental health and Short-Doyle programs by July 1, 1983 if approved in the Budget Act.⁹¹

Conclusion

Chapter 328, 329, and 1594 represent a major departure from the prior Medi-Cal program provided for low-income persons.⁹² The State is now authorized to contract with hospitals and other providers in order to obtain medical services at lower prices.⁹³ The State will also save money by placing responsibility for the health care of certain persons on the individual counties⁹⁴ and by eliminating certain services and medical supplies from the Medi-Cal program.⁹⁵

89. See CAL. WELF. & INST. CODE §5705.1(a).

90. See *id.* §5705(b).

91. *Id.* §14665.

92. See Senator Ken Maddy, Press Release, Medi-Cal Reform Bills (copy on file at the *Pacific Law Journal*).

93. See CAL. WELF. & INST. CODE §14082.

94. See CAL. STATS. 1982, c. 1594, §86, at —.

95. See *id.* §77, at —.

Health and Welfare; civil commitment—intensive treatment and certification, postcertification treatment and release

Welfare and Institutions Code §§4023, 4024, 5250, 5251, 5252, 5252.1, 5253, 5254, 5254.1, 5255, 5256, 5257, 5258 (repealed); §§5250, 5251, 5252, 5253, 5254, 5254.1, 5255, 5256, 5256.1, 5256.2, 5256.3, 5256.4, 5256.5, 5256.6, 5256.7, 5256.8, 5257, 5258, 5259, 5259.1, 5259.2, 5259.3, 5276.2, 5300.5, 5306.5, 5307, 5308, 5309, 5651.3 (new); §§5263, 5300, 5301, 5304, 5305, 5354, 5362 (amended).

AB 351 (Stirling); STATS. 1982, Ch 1563

Support: Department of Mental Health; Los Angeles County District Attorney

Opposition: Department of Finance

AB 3454 (Bates); STATS. 1982, Ch 1598

Support: Citizens Advisory Council; Department of Mental Health; State Public Defenders Office

Opposition: County of Los Angeles; Department of Finance

The Lanterman-Petris-Short Act¹ provides for involuntary commitment² of persons who as a result of a mental disorder³ are a danger to others or themselves,⁴ or who are gravely disabled.⁵ Included within the provisions of Chapters 1598 and 1563 are new standards and procedures relating to intensive treatment certification, and postcertification treatment and release of involuntarily committed persons.⁶

Intensive Treatment Certification

Under existing law, a person may be involuntarily committed for short-term⁷ evaluation and treatment as a result of either a superior court order⁸ in response to a petition⁹ or custodial action by designated parties.¹⁰ If the evaluation shows that, because of a mental disorder or impairment by chronic alcoholism, the person is a danger to self or others, or gravely disabled, the person may be certified for involuntary intensive treatment.¹¹ Notice of the certification decision¹² must be delivered to the person certified and the person's attorney or advocate.¹³ Furthermore, persons certified must be informed of their right to judicial review and assistance by counsel.¹⁴

In apparent response to federal case law,¹⁵ Chapter 1598 adds provi-

1. CAL. WELF. & INST. CODE §§5000-5464.

2. *See id.* §5003 (nothing in the act is to be construed as limiting the right of any person to accept voluntary treatment).

3. 9 CAL. ADMIN. CODE §813 (a mental disorder is any disorder recognized by the American Psychiatric Association).

4. *See generally* Harrington, *Involuntary Commitment of Mentally Disordered Persons Under the Lanterman-Petris-Short Act*, 8 LINCOLN L. REV. 55, 56 (1973) (discussing the range of behavior encompassed by the cited expression); Comment, *Civil Commitment of the Mentally Ill in California: The Lanterman-Petris-Short Act*, 7 LOY. L.A.L. REV. 93, 104-10 (1974) (discussing the difficulty of predicting "dangerous" behavior).

5. CAL. WELF. & INST. CODE §5008(h) (definition of "gravely disabled"); *see id.* §§5150-5309.

6. *See id.* §§5250-5259.3, 5300, 5301, 5304-5309.

7. *Id.* §5151 (the maximum period of detention is 72 hours, excluding weekends and holidays if treatment services are unavailable on those days).

8. *Id.* §5200.

9. *See id.* §5201 (any individual may apply to the person or agency designated by the county for a petition alleging that a person is mentally disordered and dangerous or gravely disabled, and requesting an evaluation of the person's mental condition).

10. *See id.* §5150 (upon reasonable cause, a peace officer or staff member of an evaluation facility may cause a person to be taken into custody). *See generally* 2 B. WITKIN, CALIFORNIA PROCEDURE, *Actions* §25(a) (2d ed. 1970) (detention for observation and evaluation).

11. CAL. WELF. & INST. CODE §5250. In addition, (1) the person must have been advised of the alternative to seek voluntary treatment, but will not or cannot accept it; and (2) the facility designated to provide intensive treatment must agree to admit the person. *Id.* §5250(b), (c).

12. *See generally id.* §§5251, 5252 (specifying persons required to sign the certification notice and the format of the notice).

13. *Id.* §5253.

14. *Id.* §5254.1.

15. *See generally* Doe v. Gallinot, 486 F. Supp. 983 (C.D. Cal. 1979), *aff'd* 657 F.2d 1017 (9th Cir. 1981). The court held that the intensive treatment certification provisions were unconstitu-

sions for a certification review hearing process.¹⁶ Unless review by habeas corpus¹⁷ is requested, Chapter 1598 provides that the person certified is entitled to a review hearing to determine whether or not probable cause exists to detain the person for intensive treatment.¹⁸ Barring postponement,¹⁹ the hearing is to be conducted by designated officials²⁰ within seven days of the person's initial detention²¹ and it is to be at a location that is compatible with the treatment being provided to the person certified.²² Evidence in support of the certification decision must be presented by a person designated by the director of the treatment facility, and in addition, the district attorney or county counsel may, at their discretion, elect to present evidence.²³ Under Chapter 1598 all evidence relevant to the certification decision may be admitted and considered by the hearing officer.²⁴ Furthermore, persons certified have the right to be present at the hearing.²⁵ Chapter 1598 provides that these persons have the following rights: 1) to be assisted by an attorney or advocate; 2) to present evidence on their own behalf; 3) to question persons presenting evidence in support of the certification decision; 4) to make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision; and 5) to have the person conducting the hearing informed of the probable effects of medication that has been administered to the person certified within a specified time frame prior to the hearing.²⁶

Persons certified must be released if probable cause for the certification is not found to exist.²⁷ Should the hearing officer find probable cause to support the certification, the person certified will remain de-

tional because they allowed the state to deprive a person of fundamental liberty without an automatic review or hearing to show probable cause for the certification. *Id.* at —.

16. See generally CAL. WELF. & INST. CODE §§5254-5263. These procedures, however, apply only to persons certified on or after January 1, 1983. *Id.* §5256.8.

17. See generally 2 B. WITKIN, CALIFORNIA PROCEDURE, *Actions* §21 (2d ed. 1970) (habeas corpus).

18. CAL. WELF. & INST. CODE §5254. In addition, parties delivering notice must inform the persons certified of their right to assistance in preparing for the hearing. *Id.*

19. *Id.* §5256 (persons, their attorney or advocate may request a postponement not to exceed 48 hours).

20. See *id.* §5256.1 (designated officials are either a court-appointed commissioner or referee, or a review hearing officer).

21. *Id.* §5256; see also *id.* §5276.2 (if a judicial review request is withdrawn, the hearing is to be held within four days following withdrawal).

22. *Id.* §5256.1.

23. *Id.* §5256.2.

24. See *id.* §5256.4(c); see also *id.* §5256.4(b) (the hearing officer is not bound by the rules of evidence or procedure applicable to judicial proceedings).

25. *Id.* §5256.3 (persons certified may, with the assistance of their attorney or advocate, waive this right).

26. *Id.* §5256.4(a).

27. See *id.* §5256.5.

tained for 14 days beyond the initial detention period.²⁸ Written notification of the decision, including a statement of the evidence relied upon and reasons for the decision, must be delivered to the person's attorney or advocate.²⁹ The attorney or advocate must inform the person of the decision of the court and of the person's right to make a request for release before the superior court.³⁰ Finally, Chapter 1598 extends immunity from civil or criminal liability to the hearing officer for any action committed by a person released at or before the end of intensive treatment.³¹

Postcertification Treatment and Release

Prior law provided that the professional person in charge of a treatment facility could petition the superior court to obtain an order extending the period of intensive treatment for 90 days.³² The grounds for the petition had to be that (1) the person certified had either threatened, attempted, or inflicted physical harm upon another either before or after being taken into custody, and (2) as a result of mental disorder, this person presented an imminent threat of substantial harm to others.³³ Under Chapter 1563, the petition is to be submitted at the discretion of the designated public officer.³⁴ Furthermore, Chapter 1563 requires the petition to summarize the facts and be accompanied by affidavits supporting the contention that the person meets specified standards.³⁵ Persons within the standards prescribed by Chapter 1563 are those who, as a result of mental disorder, present a *demonstrated danger*³⁶ of substantial physical harm to another and have either (1) attempted or inflicted physical harm upon another resulting in the person being taken into custody,³⁷ or (2) attempted, inflicted, or made a sub-

28. See *id.* §5256.6.

29. *Id.* §5256.7.

30. *Id.*; see also *id.* §§5275-5278 (procedures related to a hearing on the request).

31. See *id.* §5259.3. This section includes the provisions for former California Welfare and Institutions Code §5257, CAL. STATS. 1968, c. 1374, §33, at 2650, that provides similar immunity for the person in charge of the treatment facility, or his or her designee, and the peace officer responsible for the person's detention.

32. CAL. STATS. 1968, c. 1374, §§41, 42, at 2655, 2656 (amending CAL. WELF. & INST. CODE §§5300, 5301).

33. *Id.* See generally WITKIN, *supra* note 17, §25(d).

34. See CAL. WELF. & INST. CODE §5301 (the professional person in charge of the facility may request the public officer to submit the petition); see also *id.* §5114 (the designated public officer is the county district attorney, unless the board of supervisors delegates this responsibility to the county counsel).

35. *Id.* §5301.

36. *Id.* §5300.5(c) (demonstrated danger may be based upon an assessment of present mental condition, which is based upon a consideration of past behavior and other relevant evidence).

37. *Id.* §5300.5(a) (custody means involuntary detention under these provisions uninterrupted by any period of unconditional release from the facility providing involuntary treatment).

stantial threat of physical harm upon the person of another after having been taken into custody.³⁸

Existing law specifies the procedural requirements relating to a postcertification hearing.³⁹ Courts are required to advise persons named in a petition of their right to counsel and to demand trial by jury.⁴⁰ Proceedings on the petition must be conducted within four judicial days of the filing, unless a jury trial is demanded.⁴¹ Prior to a final decision on the merits, the person must continue to receive treatment until the person is released by court order or the petition is withdrawn.⁴² The person must be released if no decision on the petition is reached within 30 days after filing.⁴³

Chapter 1563 provides that if the court or a unanimous jury⁴⁴ finds that the person petitioned falls within specified standards,⁴⁵ the person must be remanded to custody for further intensive treatment⁴⁶ not to exceed 180 days.⁴⁷ At the expiration of this period the person must be released unless a new petition for postcertification treatment is filed.⁴⁸

Under prior law a person receiving postcertification treatment could be released if, in the opinion of the facility superintendent, the person no longer constituted an imminent threat of substantial physical harm to others.⁴⁹ Chapter 1563 changes the basis for the opinion from "imminent threat" to "demonstrated danger",⁵⁰ thus allowing the superintendent to take the person's past behavior into consideration.⁵¹ Under these unconditional release provisions, the release plan will become effective within five judicial days of notice to specified parties, unless any of these parties request a hearing on the matter.⁵²

38. *Id.* §5300(a), (b).

39. *See generally id.* §§5302, 5303.

40. *Id.* §5302 (in addition, the court is required to assist these persons in obtaining counsel).

41. *Id.* §5303 (in the case of trial by jury, the trial must commence within 10 judicial days unless a continuance is granted; the continuance may be for a maximum of 10 days).

42. *Id.*

43. *Id.* (this time period does not include extensions requested by the person's attorney or advocate).

44. *Id.* (requiring unanimous verdict by the jury).

45. *See generally id.* §5300. In addition, amenability to treatment is not required to support this finding. *Id.*

46. *See generally id.* (treatment programs need only be made available). Treatment does not mean that it be potentially successful or that the person must recognize his or her problem and willingly participate in the treatment program. *Id.*

47. *Id.* §5304 (the period runs from the date of judgment).

48. *Id.* (the grounds supporting this additional petition are substantially the same as those previously discussed, the only exception being that the petition must be based upon the person's conduct during postcertification treatment).

49. CAL. STATS. 1968, c. 1374, §45.5, at 2658 (amending CAL. WELF. & INST. CODE §5305).

50. CAL. WELF. & INST. CODE §5309.

51. *See id.* §5300.5(c) (explaining the basis for "demonstrated danger").

52. *Id.* §5309 (the specified parties are the court, the district attorney or county counsel, counsel for the person to be released and the county mental health director).

As an alternative to unconditional release, however, Chapter 1563 provides for a supervised outpatient status program.⁵³ A person undergoing postcertification treatment may be released on outpatient status if all of the following are present: (1) in the opinion of a specified official the person will no longer be a danger to others,⁵⁴ (2) the person would benefit from outpatient status,⁵⁵ and (3) the county mental health director identifies an appropriate program of supervision and treatment.⁵⁶ Outpatient status will become effective within five judicial days of actual notice to specified parties, unless any of these parties request a hearing regarding the status.⁵⁷ In the case of a requested hearing, the outpatient release plan will not take effect until it is approved by the court.⁵⁸

Chapter 1563 requires the outpatient treatment supervisor to submit reports regarding the progress and status of the released patient.⁵⁹ In addition, a hearing concerning revocation of outpatient status may be requested if, at any time during the outpatient period: (1) the outpatient treatment supervisor believes that the person requires extended inpatient treatment or the person refuses to accept outpatient treatment and supervision,⁶⁰ or (2) the district attorney or county counsel believes that the person is dangerous to others.⁶¹ The patient may be confined in a treatment facility, pending the decision of the court,⁶² if the county mental health director believes that a delay in hospitalization would pose a demonstrated danger of harm to the person or another.⁶³ Finally, Chapter 1563 provides that, upon a determination by the court that the person represents a danger to the health and safety of others, the person must be recommitted.⁶⁴

In summary, Chapter 1598 brings the intensive treatment certifica-

53. *See generally id.* §§5305-5308.

54. *Id.* §5305(a)(1) (this determination is to be made by the superintendent or professional person in charge of the facility).

55. *Id.* §5305(a)(2) (this determination is to be made by the superintendent or professional person in charge of the facility and the county mental health director).

56. *Id.*

57. *Id.* §5305(b) (the hearing must take place within five judicial days of the required notice).

58. *Id.*

59. *Id.* §5305(d) (these reports are to be submitted at 90 day intervals to the court, the district attorney or county counsel, patient's counsel and the professional in charge of the facility that the patient was released from); *see id.* §5305(c) (the county mental health director, or the director's designee, is to be the outpatient treatment supervisor).

60. *Id.* §5306.5.

61. *See id.* §5307.

62. *Id.* §§5306.5, 5307, 5308 (the noticed hearing is to be held within 15 judicial days of receipt of a request or petition).

63. *Id.* §5308 (in addition, a person confined pursuant to these opinions is entitled to judicial review and an explanation of rights).

64. *Id.* §§5306.5, 5307.

tion process into conformance with Constitutional requirements.⁶⁵ Chapter 1563 appears to afford the public increased protection from the release of potentially dangerous, disordered persons by: (1) extending the postcertification treatment period,⁶⁶ (2) allowing the court to consider an individual's past behavior in assessing that person's present mental condition,⁶⁷ (3) providing for a supervised outpatient program,⁶⁸ and (4) specifying procedures for the revocation of outpatient status.⁶⁹

65. See *Doe v. Gallinot*, 486 F. Supp. 983, 992 (C.D. Cal. 1979), *aff'd* 657 F.2d 1017 (9th Cir. 1981); CAL. WELF. & INST. CODE §§5256-5256.8.

66. CAL. WELF. & INST. CODE §5304.

67. See *id.* §5300.5(c) (explaining the basis for "demonstrated danger").

68. *Id.* §5305.

69. *Id.* §§5306.5-5308.

Health and Welfare; imitation controlled substances

Health and Safety Code §§11670, 11671, 11672, 11673, 11674, 11675, 11680, 11681, 11682, 11683 (new).

AB 2342 (Katz); STATS. 1982, Ch 1288

(Effective September 21, 1982)

Support: California Pharmacists Association; Department of Alcohol and Drug Problems; Department of Finance; Department of Health Services

Chapter 1288 creates the California Imitation Controlled Substances Act¹ (hereinafter referred to as CICSA) in an effort to reduce the inherent risks associated with the use of any drug and the dangers caused by the confusion between controlled substances² and their imitations.³ The CICSA establishes laws to regulate the manufacture⁴ and distribution⁵ of imitation controlled substances⁶ and penalties for the violation of those laws.⁷

Existing law provides that it is a felony to sell, furnish, transport, administer, or give any drug as a substitute for a controlled substance,⁸

1. CAL. HEALTH & SAFETY CODE §§11670-11683.

2. See *id.* §11007, 11053, 11054, 11055, 11056, 11057, 11058 (these sections define controlled substances).

3. See CAL. STATS. 1982, c. 1288, §1, at —.

4. CAL. HEALTH & SAFETY CODE §11674 (definition of manufacture).

5. *Id.* §11673 (definition of distribute).

6. *Id.* §11675 (definition of imitation controlled substances).

7. See *id.* §§11680-11683.

8. See *id.* §§11355, 11382.

and that it is a misdemeanor to misbrand any drug.⁹ The CICSA goes even further by regulating substances that resemble controlled substances.¹⁰ As a result, it is now a misdemeanor to knowingly manufacture,¹¹ distribute,¹² or possess with the intent to distribute an imitation controlled substance.¹³ An exception, however, exists when the imitation controlled substance is manufactured for, distributed to, or possessed by practitioners¹⁴ for use in their lawful professional practice or research.¹⁵

Violations of the CICSA are punishable by imprisonment in the county jail for a maximum term of six months, a maximum fine of \$1,000, *or both*.¹⁶ Moreover, a distributor over the age of 18 who knowingly distributes an imitation controlled substance to anyone under the age of 18 will be subject to a maximum sentence of one year in the county jail, a maximum fine of \$2,000, *or both*.¹⁷ Upon a subsequent conviction of distributing an imitation controlled substance to a minor the convicted adult will be subject to a maximum sentence of one year in the county jail *and* a minimum fine of \$6,000.¹⁸ Finally, imitation controlled substances are subject to the same forfeiture procedures¹⁹ as those provided for controlled substances.²⁰

9. *See id.* §§26630, 22642 (definition of misbranded drug), 26650, 26801.

10. *See id.* §§11675, 11680.

11. *Id.* §11674 ("Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, labeling or relabeling, of an imitation controlled substance).

12. *Id.* §11673 ("Distribute" means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance).

13. *Id.* §11680.

14. *Id.* §11026 (definition of practitioner).

15. *Id.* §11682.

16. *Id.* §11680.

17. *Id.* §11681.

18. *Id.*

19. *See id.* §§11470-11499.1.

20. *Id.* §11683.