

**State of California
DEPARTMENT OF STATE HOSPITALS**

UPDATED INFORMATIVE DIGEST

AMENDMENTS TO THE PATIENT ELECTRONIC PROPERTY REGULATION

Sections Affected:

Amendment(s) to California Code of Regulations, title 9, section 4350

Background and the Effect of the Rulemaking:

In 2009, DSH (known as the Department of Mental Health at that time) filed emergency regulations to adopt CCR section 4350. At the time, the DSH hospitals were reporting increasing numbers of patients possessing contraband wireless communication devices and using them to import illegal pornographic materials, facilitate contraband exchanges, and communicate with external and internal individuals for victimization purposes. DSH adopted the 2010 regulations to help eliminate these significant safety and security risks.

DSH-Coalinga patients immediately sought injunctions against these regulations, leading to a moratorium on complete enforcement of the regulations for patients at DSH-Coalinga currently possessing prohibited devices. The remaining hospitals incorporated standards in compliance with the 2010 regulations.

DSH-Coalinga's moratorium remained in place until January 2018, when DSH implemented emergency amendments to the regulations to counter changing technology allowing patients to download, record, and exchange child pornography using various non-prohibited non-internet designed devices. DSH-Coalinga became aware of the exchange of child pornography and due to advances in technology, recognized the need to amend the regulation to improve the facility's security as well as address the continued need to limit contraband exchange and victimization of victims. DSH then submitted regular rulemaking to formally adopt the amendments of Section 4350.

Description of Regulatory Action:

On August 3, 2018, regular rulemaking for the proposed amendments were posted and a 45-day comment period began. On September 20, 2018, the Department of State Hospitals conducted a public hearing in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

The 45-day comment period to consider the proposed rulemaking for amendments to the Patient Electronic Property regulations closed on September 17, 2018. Sixteen comments were received. Five oral comments were received at the September 20, 2018, public hearing. After holding the public hearing, DSH considered all timely and relevant comments received, and responded to them in the Final Statement of Reasons.

Changes to Underlying Laws or Effect of the Regulation:

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

Comparable Federal Regulations:

There are no federal regulations comparable to the Patient Electronic Property regulation.