

**DEPARTMENT OF STATE HOSPITALS
FINAL STATEMENT OF REASONS
PROPERTY TRANSFER BETWEEN PATIENTS**

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 4.5. Patients' Rights and Related Procedures for Non-Lanterman-Petris-Short
Act Patients in Department of Mental Health Facilities
Article 3. General Limitations Applicable to Non-LPS Patients

ACTIONS TAKEN DURING THIS RULEMAKING

The Department of State Hospitals (Department) released the Initial Statement of Reasons for the proposed Property Transfer Between Patients regulations on May 7, 2021. All documents associated with this rulemaking were made available to the public and continue to be available on the Department website at <https://www.dsh.ca.gov/Publications/Regulations.html>.

The 45-day comment period to consider the proposed rulemaking closed on June 21, 2021. After the closing of the 45-day comment period, the Department considered all timely and relevant comments received.

The Notice of Proposed Action, published on May 7, 2021, explained that no public hearing was scheduled, but instructions on how to request a hearing were provided. A public hearing was requested, and the Department facilitated the public hearing on July 14, 2021, at which point comments were received. After holding the public hearing, the Department considered all timely and relevant comments received.

After the July 14, 2021, public hearing, the Department proposed modifications to the originally proposed regulations. The Department made modifications (with the changes clearly indicated) which are sufficiently related to the originally proposed regulations text, noticed to the public for 15 days. The public was noticed of changes to its regulations on March 30, 2022, and the information was published on the Department's website. After the 15-day notice period, the Department considered all timely and relevant comments received.

After the March 30, 2022 15-day notice period, the Department proposed modifications to the proposed regulations. The Department made modifications (with the changes clearly indicated with double underline and double strikethrough) which are sufficiently related to the originally proposed regulations text, noticed to the public for the initial 15 days. The public was noticed of changes to its regulations August 4, 2022 through August 19, 2022, and the information was published on the Department's website. After the second 15-day notice period, the Department considered all timely and relevant comments received.

UPDATE OF THE INFORMATION CONTAINED IN THE INITIAL STATEMENT OF REASONS

No changes or updates have been made to the information provided in the Initial Statement of Reasons noticed to the public on May 7, 2021.

LOCAL MANDATE STATEMENT

Mandate on local agencies and school districts: The Department of State Hospitals (Department) has determined that the proposed regulations would not impose a mandate on any local agency or school district that requires reimbursement by the state under Government Code, Division 4, Part 7 (commencing with Section 17500).

STATEMENT OF ALTERNATIVES CONSIDERED

The Department has made the determination that no reasonable alternative 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 the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

This determination was made because these regulations establish a uniform process across all state hospitals for the buying, trading, selling, or gifting of property, if the state hospital permits such an activity between its patients. By law, all state hospitals must be subject to uniform regulations. As such, a process must be established which gives the Department the means to monitor the buying, trading, selling, and gifting of property between its patients. This rule is necessary to ensure patients committed to the Department are safe and secure. Because patients committed to the Department have varying abilities and capacities, it is important that the Department has a mechanism to ensure the property exchanges between patients are appropriate.

STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made the determination that the proposed regulations will have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This determination was made because these regulations establish a uniform process across all state hospitals for the buying, trading, selling, or gifting of property, if the state hospital permits such an activity, between its patient population.

MODIFICATIONS TO THE ORIGINALLY PROPOSED REGULATIONS TEXT

First 15-Day Notice Modifications:

Section 893 Header:

Text: Section 893. Property Transfer Between Patients.

Rationale: This section header is bolded and periods added after both the section number and name for consistency with regulatory formatting conventions.

Section 893(a):

Text: ~~Patients shall not buy, sell, trade, or gift any property or items on the contraband list of the Department of State Hospitals (Department), or the contraband list of the facility in which the patient is committed.~~

Rationale: This text in its entirety is repealed for clarity and conciseness. This rule is addressed in Sections 893(c)(1) and (c)(2), which becomes Section 893(a)(1) and (a)(2) with the repeal of this section and the subsequent section.

Section 893(b):

Text: ~~Prior to any transfer of property, patients must first obtain an approval from their treatment team.~~

Rationale: This text in its entirety is repealed for clarity and conciseness. This rule is addressed in Sections 893(c)(2)(A), which becomes Section 893(a)(2)(A) with the repeal of this section and the previous section.

Section 893(c):

Text: “of State Hospitals,” and “or each state hospital” is added to the regulation.

Rationale: This change is made to accommodate the removal of the originally proposed Sections 893(a) and 893(b). Because of the removal of these regulations, this necessitates what was formerly Section 893(c) to become the new Section 893(a). In addition, “or each state hospital” is added to clarify that each state hospital may prohibit the buying, trading, selling, and gifting of property between patients. While each hospital also represents the Department and the terminology can be used interchangeably in this regulation, each state hospital has a unique need to prohibit patients from this conduct. For example, there is a contraband list for all of the Department of State Hospitals that is applied to all state hospitals and each state hospital also has its own contraband list; these lists provide the prohibited items for the state hospitals and differ from hospital to hospital. Where one hospital may be able to allow the buying, selling, trading, or gifting of particular property, that particular property may be on the site-specific contraband list at another hospital and be prohibited from this process. This additional language is added to make clear that the Department of State Hospital, the agency with oversight of each state hospital, as well as each individual state hospital,

may act on the authority described in this Section 893(c), which is renumbered to 893(a). Finally, because of the repeal of Section 893(a), “the Department” is changed to “the Department of State Hospitals” because this is the first instance of the use of the name of the department in these regulations.

Section 893(c)(1):

Text: The phrase “at the state hospital, state hospital staff will confiscate any” are added, and “personal property” is changed to “property.”

Rationale: The phrase “at the state hospital, state hospital staff will confiscate any” is a nonsubstantive addition made to clarify and emphasize that if the buying, trading, selling, and gifting of property is prohibited, then the regulations of this Section 893(c), renumbered to 893(a), and its subparagraphs shall apply. This additional clarity will ensure patients and staff are aware that the regulations are specific to the determinations made by each state hospital. If property is confiscated as a result of that property being in the possession of another patient, that confiscation shall be performed by state hospital staff. While it may be apparent that the confiscation would be done by state hospital staff, clarifying this in regulations removes any potential confusion or misunderstandings of who may confiscate property found on a patient which does not belong to that patient. The word “personal” has been removed from the phrase “personal property” because the regulations address all property transfer between patients and is not specific to personal property. This amendment aligns the language in the remainder of the regulations and provides additional clarity of the intent of the regulation. This paragraph is also renumbered to (a)(1) because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(1)(A):

Text: “May” is replaced by “will,” “confiscated” is added before the word property, and the phrase “illegal, or otherwise prohibited on state hospital grounds” is added to the end of the paragraph.”

Rationale: “Will” replaces the word “may” to establish that the treatment team will return the property to the original owner, if identified and the property is not prohibited from the possession of patients. The use of “may” as previously proposed indicated that it is at the discretion of the state hospital whether it returns the property to the patient. The state hospital intends to only prevent the return of the item to the original owner if the property is not permitted to be in the possession of the patient. The word “confiscated” is added to clarify the property being discussed; this is consistent with how the property is referred to in other sections of the regulation. The phrase “illegal, or otherwise prohibited on state hospital grounds” is added to this paragraph to further establish the conditions under which property will not be returned. In addition to the item being contraband, other items that are generally illegal or otherwise identified as not being permitted on state hospital grounds will not be returned to the original owner of the

property. This paragraph is also renumbered to (a)(1)(A) because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(1)(B):

Text: “Is not” is replaced with “cannot be.”

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation.

Section 893(c)(1)(C):

Text: “Ten” is replaced with “10,” and the reference to subdivision (b)(1) is replaced with subdivision (c)(1).

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation. For consistency and general grammatical standards, numbers 10 or higher will be written numerically. In addition, subdivision (b)(1) is replaced with subdivision (c)(1) to correct an erroneous reference.

Section 893(c)(1)(C)1.:

Text: “Thirty” is replaced with “30.”

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation. For consistency and general grammatical standards, numbers 10 or higher will be written numerically.

Section 893(c)(1)(C)(2):

Text: The term “Department” is changed to “state hospital.” This section is also renumbered to (a)(1)(C)(2).

Rationale: This change is nonsubstantive and made so there is no confusion between the Department as an overall entity, and each state hospital under the jurisdiction of the Department of State Hospitals. This paragraph is also renumbered because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(C):

Text: The reference to subdivision (b)(2)(B) is replaced with (c)(2)(B).

Rationale: This proposed modification is made to correct an erroneous reference. Subdivision (b)(2)(B) does not exist in these proposed regulations and is corrected to the correct reference of subdivision (c)(2)(B).

Section 893(c)(2)(C)1.:

Text: “And/” is removed from the regulation.

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation. For consistency with regulations writing standards, the Department is replacing “and/or” with “or.” “Or,” as used in this section, establishes that hospital staff may consider any safety risks or security risks that may be associated with the potential property transfer. This paragraph is also renumbered to (a)(2)(C)1. because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(C)3.:

Text: “Gifting of high-value items” is replaced with “The fair market value of the item(s).”

Rationale: This change is necessary because the language originally proposed was determined to be ambiguous. “Gifting of high-value items” is not clear because “high value” is a subjective term which can change from person to person. To eliminate some of this ambiguity, transfers of value will be reviewed by Department staff based on the fair market value of the items. Using the fair market value of an item to aid in the determination of the appropriateness of a transfer ensures that the value of items is not subjectively determined by hospital staff or the patients, but rather compared to the value of the same or like items on the open market. This paragraph is also renumbered to (a)(2)(C)3. because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(C)4.:

Text: “An unreasonably high” number of items in one transfer is replaced with “the” number of items in one transfer. This section is also renumbered to (a)(2)(C)4..

Rationale: This change is necessary because the language originally proposed was determined to be ambiguous. An unreasonably high number of items in one transfer is not clear because “unreasonably high” is a subjective term which can change from person to person. To eliminate some of this ambiguity, hospital staff may review the transfer request by considering the number of items in the trade. This change in language permits hospital staff to make an assessment of the appropriateness of the number of items in a transfer without mandating that staff reach a determination of whether the number of items in the transfer is unreasonably high. Some level of flexibility is necessary in this regulation as a high number of low-value items may be permissible whereas one high-value item that is potentially not being traded at equal value or with a full understanding of the transaction by the patient may be inappropriate and therefore not permitted. This paragraph is also renumbered to (a)(2)(C)4. because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(D):

Text: Language specifying that the treatment team review and program director approval of the request to buy, sell, trade or gift property will occur within 30 calendar days is added. This section is also renumbered to (a)(2)(D).

Rationale: This proposed modification adds a time frame of 30 calendar days to the amount of time state hospital staff will review the property transfer request of this section. Providing a 30-day time frame ensures property transfer requests are reviewed timely and a decision made so patients can complete the requested transaction or be informed of the denial of the transaction. This time frame aligns with the time frame already provided in the regulation text for the program director, or designee, to respond to the patient's written request to contest property confiscation and is considered a reasonable amount of time for the program director to review these types of requests. Thirty calendar days is reasonably short such as to not unduly delay patient's ability to transfer property but provides state hospital staff enough time to review the proposed transfer. This paragraph is also renumbered to (a)(2)(D). because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(3):

Text: "Store, or other similar establishment for the purchase of food or other goods" is added to the paragraph and "defined in these regulations as a location for the sale to or for the benefit of patients of the institution of candies, sundries, and other articles" is deleted. This section is also renumbered to (a)(3).

Rationale: This proposed modification is done as a nonsubstantive change and for clarity. "Defined in these regulations as a location for the sale to or for the benefit of patients of the institution of candies, sundries, and other articles" is removed because this phrase is copied directly from Welfare and Institutions Code section 4314. Because this definition already exists in statute, its defining in this section is redundant and unnecessary. "Store, or other establishment for the purchase of food or other goods" is added because each state hospital may or may not have the listed establishments. Adding these terms makes it clear for the reader of the regulation that whatever the name of the location where the patients purchase food or other goods for other patients, the requirements of Section 893(a)(3)(A) through (a)(3)(E) apply. This paragraph is also renumbered to (a)(3). because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(C)(3)(B):

Text: "Approvals for the purchase of food items will be approved immediately by the treatment team, unless the treatment team is aware of any health, safety, or security concerns that may result from an approval of this request" is added. This section is also renumbered to (a)(3)(B).

Rationale: This regulation is proposed for addition to Section (C)(3)(B) to describe that property transfer requests for items which are purchased from the canteen, store, or other similar establishment at the state hospital will be approved immediately by the treatment team, unless health, safety, or security concerns require either the rejection of the request or further consideration. This requirement is added so items such as food may be purchased and gifted or transferred to other patients without an unreasonable delay from the state hospital. Health, safety, and security concerns are added as rationales to clarify the factors which may be considered by state hospital staff in the denial of these requests or when additional considerations are needed. These factors are consistent with the factors identified in Sections 893(c)(2)(B)3. and (c)(2)(B)4.. The health, safety, and security for the approval of purchases is necessary to consider because these factors provide guides for the uniform review of requests for the purchase of food items. Because patients within each state hospital have varying levels of need and cognitive functioning, state hospital staff may consider if an item which may be safe to consume for one patient may not be safe for another patient. In addition, approval for the food purchase is necessary to provide state hospital staff the opportunity to ensure the purchase is done mutually, under no duress, and will not cause problems which could threaten the health, safety, or security of patients or state hospital staff.

Section 893(c)(3)(D):

Text: The term “Department” is changed to “state hospital.” This section is also renumbered to (a)(c)(3)(D).

Rationale: This change is nonsubstantive and made so there is no confusion between the Department as an overall entity, and each state hospital under the jurisdiction of the Department of State Hospitals. This paragraph is also renumbered because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Authority and Reference Section:

Text: Welfare and Institutions Code section 4109 is added as the law implemented, interpreted, or made more specific, and other statutory references are reordered.

Rationale: This citation is added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Welfare and Institutions Code section 4109, which grants the Department general control and direction of the property and concerns of each state hospital. The reordering of the referenced statutes in the regulation is nonsubstantive and amended to reflect ascending numeric order.

Second 15-Day Notice Modifications:

Section 893(a):

Text Change: The text “The Department of” and “s, or each state hospital,” has been removed. The word “Each” was added to the beginning of the sentence.

Purpose/Rationale: This change was made to clarify that the Department as a whole will not be prohibiting patients from buying, selling, trading, or gifting property between patients. Rather, the state hospital themselves may do this. Allowing the Department to prohibit this type of transfer defeats the purpose of the regulation and was removed for consistency among the regulation text.

Section 893(a)(1)(A):

Text Change: The text “In order to determine whether property found in the possession of a patient has been bought, traded, or gifted, the patient will be asked to verify property ownership, by means of property receipts, Property Transfer Forms referenced in subsection (a)(2)(A), or any other means available.” is added as a new subsection, to clarify how property ownership is verified.

Purpose/Rationale: This section was added to clarify how property ownership is verified. This subsection ensures that the patient can verify that they are the proper owner of the property in question. This will help staff confirm that the item was not traded, gifted or stolen, and assist staff in determining whether the property must be confiscated. This is necessary because the patient is the proper entity to confirm that the property in fact belongs to them. Patients are not limited to a specific type of information they must use to show property ownership. The Department does not want to limit the ability of patients to prove property ownership, and cannot list every possible way available, without inherently missing some. Property receipts and Property Transfer Forms are two identified documents in the regulation text to help guide patients in how they may be able to show property ownership; however, this is not an exclusive list.

Section 893(a)(1)(A)-893 (a)(1)(C):

Text Change: These subsections were re-numbered from 893(a)(1)(A) through 893(a)(1)(C) to 893(a)(1)(B) through 893(a)(1)(D)

Purpose/Rationale: These sections were re-numbered to accommodate the new section 893(a)(1)(A).

Section 893(a)(1)(C), renumbered to (a)(1)(D):

Text Change: The phrase “stating what property was confiscated, and that they are requesting “a” is added to the paragraph, and “for” has been removed. The phrase “or designee” has also been added.

Purpose/Rationale: The phrase, “stating what property was confiscated, and that they are requesting “a” was added to clarify what is included in a written request by the patient requesting a review of the confiscated property be conducted. The patient must state what property was confiscated so the program director or designee can properly evaluate the specific confiscation. The patient must also state the fact that they are requesting a review, so that the program director or designee knows what the written request is for. The phrase “or designee” was added because the program director may not always be available to review the request to transfer and may designate someone to do so in their absence. The word “for” has been removed; this proposed modification is a non-substantive change made to improve the overall readability of the regulation.

Section 893(a)(1)(C)2., renumbered (a)(1)(D)2.:

Text Change The text “including destruction” was added to the last sentence.

Purpose/Rationale: The text “including destruction” was added to clarify that the state hospital may destroy the patient’s property if the request contesting the confiscation is denied. This is necessary to ensure that the patient population is aware that an alternate disposition of property in situations where no patient is identified as the true owner of the property may include destruction of the property. This is necessary to ensure the hospital is not storing property that has no identified owner, and that the hospital can destroy this property in order to free-up storage space for other items, if necessary.

Section 893(a)(2)(A):

Text Change: The text “Written Requests to transfer property will be submitted on the Property Transfer Form (Rev 8/22), hereby incorporated by reference, to each patient’s treatment team or unit supervisor. The treatment team or unit supervisor will obtain written confirmation of the patient’s agreement to transfer from both the donating and the receiving patient.” is added to this section.

Purpose/Rationale:

This text was added to clarify how a patient can submit a request to transfer property. A Property Transfer Request Form must be sent to each patient’s treatment team or unit supervisor. The treatment team and unit supervisor include staff that are constantly on the unit interacting with patients and available to receive the patients’ requests for transfer; in addition, these regulations require the review of whether the transfer of property is appropriate to be conducted by the treatment team or unit supervisor. This is necessary so that both patient’s treatment teams or unit supervisors are aware of the transfer and review the request to give or receive based on the criteria included in the

regulation. A written confirmation of the patient's agreement to transfer from both the giving and receiving patient is necessary to ensure both patients agree to the transfer of property and to document the request for transfer.

Section 893(a)(2)(A) Form:

Text Change: A form is added for use by patients requesting to transfer property to one another, as well as by the treatment team or unit supervisor and program director to document the approval or denial of the request to transfer property.

Purpose/Rationale: This form is included to clarify the process for requesting transfer of property between patients and for use by the staff designated in this regulation to approve or deny the request to document their approval or denial. This form is being incorporated by reference into the regulation text, as it would be cumbersome and impractical to publish the actual document in the Code of Regulations. Use of this form will create a document for the receiving patient to document ownership of any property transferred to them. One form is being used for both the giver and receiver of property, in order to simplify the process; both the giver and receiver will need approvals from their treatment team or unit supervisor and program director before the transfer of property can occur.

The date is included at the top of the form to ensure a timely response to the request, which is already included in the regulation text. The statement at the top of the form by the patient giving property ensures they are aware that they are giving property away to a particular individual without reimbursement and that they are giving up any property right to the item(s). The statement at the top of the form by the patient receiving property ensures they are receiving property from a particular individual without providing compensation in exchange. The description of the property being transferred is necessary to ensure the exact property being transferred; the more descriptive the better. This form is considered a receipt for the transfer of property and may be used at a later date to confirm ownership; a detailed description of the property is necessary to ensure ownership transfer of the specified property. The donating and receiving patient must sign the form to ensure they are aware of the property transfer and consent to the transfer, which is required by this regulation text. The reviewing treatment team member or unit supervisor must identify themselves on the form and sign the form indicating if they approve or deny the transfer and on what date. Per these regulations, the treatment team or unit supervisor is responsible for reviewing whether property transfer for the patient is appropriate and by signing, they are memorializing their position. The program director must identify themselves and whether they approve or deny the treatment team or unit supervisor approval, and sign the form to memorialize their position. The dates are included to ensure timely response/approval. The final date on the form is required to document when the property transfer occurs; this closes out the request as approved. The addressograph space at the bottom of the form is standard in all patient forms at the Department and will be used to include patient identifying information for filing this form in their records.

Section 893(a)(2)(C):

Text Change: The text “money or other” was removed from this section.

Purpose/Rationale: the text “money or other” was removed because the hospitals do not allow patients to transfer money to other patients. Transfer of money at an in-patient psychiatric facility carries a high risk of abuse potential. By removing the ability to transfer money between patients, the Department is hoping to avoid situations that may cause more vulnerable patients to be taken advantage of by their higher-functioning peers.

Section 893(a)(2)(D):

Text Change: The text “or unit supervisor” was added.

Purpose/Rationale: “Unit supervisor” was added here to coincide with adding in “unit supervisor” as the first level of review for the request to exchange property between patients to subsection (a)(2)(A).

Section 893(a)(2)(E):

Text Change: The text “or unit supervisor” was added. The text “the date of property transfer” was added.

Purpose/Rationale: “Unit supervisor” was added here to coincide with adding in “unit supervisor” as the first level of review for the request to exchange property between patients to subsection (a)(2)(A) and (a)(2)(D). As the first level of review, the unit supervisor would have the same role as the treatment team in the original regulation text to document the approval. The date of property transfer is the final portion of the request/approval form for property transfer between patients; as the responsible party for documenting approval of the transfer, the treatment team or unit supervisor must also document the date of transfer of property to close out the request.

Section 893(a)(3):

Text Change: All of the original proposed text from Section 893(a)(3) has been repealed and the text “Patients are not allowed to buy, sell, trade, or gift food items to other patients” has been added to the regulation.

Purpose/Rationale : The Department amended the originally proposed regulation text that allowed for patients to purchase food and other canteen items for other patients due to concerns associated with allowing patients to purchase food items for other patients. Patients will not be allowed to buy, sell, trade, or gift food items to other patients for health and safety reasons such as food allergies, dietary restrictions, and unknown potential health issues. Many patients at the Department have strict dietary needs and allowing patients to purchase food items for each other creates a risk that

these individuals may receive items they are not clinically allowed to consume. This causes a safety concern for the patient population.

Nonsubstantive Changes Post Second 15-Day Notice Modifications:

Section 893(a)(2)(A):

Text Change: The text “Property Transfer Request Form DSH-9268 (Rev 8/22)” has been added to this section.

Purpose/Rationale: The form name and number has been added as a non-substantive change since the form was recently approved by the Department. The content of the form noticed to the public on August 4, 2022, during the second 15-day notice period, remains as noticed.

Third 15-Day Notice Modifications:

Section 893(a):

Text Change: The text “patients of that state hospital. To determine if the hospital will prohibit the buying, selling, trading, or gifting of property between patients, the hospital executive staff will weigh the factors in Section (a)(2)(B) as they apply to the hospital as a whole.” has been added. “Hospitals” has been changed to “hospital”

Purpose/Rationale: This text has been added to clarify that this section applies only to patients within the same state hospital. The second sentence has been added to provide a reference to Section (a)(2)(B) for how the hospital executive staff will weigh the factors relevant for prohibiting patients from buying, selling, trading, or gifting property. “Hospitals” was changed to “hospital” to clarify that we are referencing one hospital instead of multiple.

Section 893(a)(1)(A):

Text Change: The text “Either before or after confiscation,” “in violation of the prohibition,” and “If the patient demonstrates they did not violate the prohibition, then the patient will retain the property, and if confiscated, hospital staff will return that property to the patient” has been added.

Purpose/Rationale: The text “Either before or after confiscation,” has been added to clarify when the patient will be asked to verify property ownership. The text “in violation of the prohibition” has been added to clarify that this rule will not be applied retroactively. The text “If the patient demonstrates they did not violate the prohibition, then the patient will retain the property and if confiscated, hospital staff will return that property to the patient” has been added to clarify that the property will be returned to the patient if they can verify property ownership and show they did not violate the prohibition.

Section 893(a)(1)(C):

Text Change: The text “cannot be,” has been removed and is returned to “is not”.

Purpose/Rationale: The proposed amendment is necessary because the Department inadvertently changed the meaning of the section by changing "is not" to "cannot be" and is reverting back to the original language to keep the interpretation consistent.

Section 893(a)(1)(D):

Text Change: The text “within 10 working days of the date of confiscation” has been moved to the middle of the first sentence.

Purpose/Rationale: This text has been moved for clarity and ease of readability for the readers of these regulations.

Section 893(a)(1)(D)2.:

Text Change: The text “program director or designee finds the property was not transferred in violation of the prohibition, then the program director or designee will approve the request and” has been added. The text “request contesting the confiscation is approved,” and “If the request contesting the confiscation is denied, or the property remains unidentified, the state hospital may arrange for an alternate disposition of the property, including destruction” has been removed.

Purpose/Rationale: This text has been amended to clarify the program director or designee’s findings and what will happen with property that was not transferred in violation of the prohibition. The text at the end of this subdivision has been removed because there are already statutes in place regulating unidentified property, and it is unnecessary for the Department to regulate it ourselves.

Section 893(a)(2)(A):

Text Change: The text “Rev” has been changed to “New” and the number “9269” has been added. The word “Request” has been changed to “request”

Purpose/Rationale: This text has been added as a non-substantive change, since the form was recently approved. The word “request” was changed to lower case for grammar reasons and is a non-substantive change.

Section 893(a)(2)(B)1., 893(a)(2)(B)2., 893 (a)(2)(B)4., and 893 (a)(2)(B)5.:

Text Change: The text “involved” has been added.

Purpose/Rationale: This text has been added to clarify and specify who this list applies to.

Section 893(a)(2)(B)3.:

Text Change: The text “Safety or” and “risks associated with the transaction and” has been added. “Security” has been changed to “security” as a grammatical non-substantive change.

Purpose/Rationale: This text has been added to combine Section 893(a)(2)(B)3. and Section 893(a)(C)1.

Section 893(a)(2)(C):

Text Change: The text has been repealed.

Purpose/Rationale: This text has been repealed because any item can be considered to have value, therefore this list has been combined with the list in Section 893(a)(2)(B).

Section 893(a)(2)(C)1.:

Text Change: The text has been repealed.

Purpose/Rationale: This text has been repealed because this section has been combined with Section 893(a)(2)(B)3..

Section 893(a)(2)(C)2., 893(a)(2)(C)3., and 893(a)(2)(C)4.:

Text Change: The text has been changed from 893(a)(2)(C)2., 893(a)(2)(C)3., and 893(a)(2)(C)4. to 893(a)(2)(C)9., 893(a)(2)(C)10., and 893(a)(2)(C)11.

Purpose/Rationale: This text has been amended to renumber the sections as a non-substantive change.

Form:

Text Change: The word “give” has been replaced with the word “transfer.” The text “without receiving property, service or financial reimbursement in exchange” and “without providing property, service or financial compensation in exchange” has been removed from both bullet points.

Purpose/Rationale: This text has been amended to include not only gifts, but all transfers of property between patients. The text was removed because the form applies to buying, selling, and trading, as well as gifting, and this text appeared to limit the use of the form to only gifting.

SUMMARY OF COMMENTS RECEIVED

The following is a summary of comments received during the public comment period beginning on May 7, 2021, through June 21, 2021, including comments received during a public hearing facilitated on Wednesday, July 14, 2021, by the Department.

Listed below are those that provided comments during the 45-day comment period which ended on June 21, 2021:

No.	Commenter	Date Received
1.	Cory Hoch	06/04/2021

Summary Comment 1: Commenter 1

Comment: Coalinga State Hospital already has policies in place for the buying, trading, selling, or gifting of property to other patients and also has a process for donations. Buying, trading, selling, and gifting of property is not permitted at Coalinga and “high-value” property is defined in policy as “property in excess of \$500 in value.”

Department Response: Thank you for the comment. These regulations establish a uniform set of processes and procedures for the buying, trading, selling, and gifting of property between patients at each state hospital which permit such transfers. Per Welfare and Institutions Code section 4101, “all of the institutions under the jurisdiction of the State Department of State Hospitals shall be governed by the uniform rules and regulation of the State Department of State Hospitals.” These regulations are established to meet the requirements of Welfare and Institutions Code section 4101 and establish a base which all state hospitals will use in the enforcement of property rules.

The regulations have been modified in Section 893(c)(2)(C)3., which is now Section 893(a)(2)(C)3. after revisions, from “Gifting of high value items” to read “Fair market value of the item(s); and.” Staff will assess the fair-market value of any items including money or other items of value, if the hospital permits such a transaction, to determine if the property transfer is appropriate. The value individuals believe a property item is worth can be different, so the Department will not define a dollar amount for these regulations. Staff shall review the item and ensure there is fairness in the transfer.

Summary Comment 2: Commenter 1

Comment: How can items on the hospital specific contraband list be allowed for one patient at the hospital, but be considered contraband for another patient at the same facility.

Department Response: Thank you for the comment. The Department is responsible for the care and treatment of individuals committed to the Department. These individuals have varying levels of cognitive functioning and ability. As such, an item which may be harmless in the possession of a patient may be dangerous if in the possession of

another patient due to the potential of harm to self or others. Contraband, as defined for each state hospital and on the contraband list of the Department, is not permitted in the state hospital without the authorization of the state hospital. Generally, items identified as contraband should not be in the possession of patients except as approved under intentional and controlled circumstances, regardless of level of cognitive functioning and ability.

Summary Comment 3: Commenter 1

Comment: Why are regulations needed for the canteen when items purchased through the canteen already require pre-approval through a contract.

Department Response: Thank you for the comment. The contract establishing the ability for a canteen to operate at a state hospital is not relevant to these regulations. These regulations, in part, establish an approval process for patients who seek to purchase, receive, or gift items from the canteen to other patients. These regulations are developed to establish a uniform process for the buying, trading, selling, and gifting of property between patients, and to also establish a uniform process for staff in the approval or denial of these property requests. The regulations specific to canteen purchases are developed to establish a mechanism by which state hospital staff can reject the purchase of food items for another patients if staff is aware, or made aware, of any concerns with the transaction. These regulations are amended to include language that establishes that approvals for the purchase of food items will be approved by the treatment team unless there is a health, safety or security concern with the transfer. Should no such concerns exist, the request will be approved.

Summary Comment 4: Commenter 1

Comment: Conditions of confinement generally shall be equal for all involuntary civil commitments. Persons with mental illness have the same legal rights guaranteed all others by the Federal and California Constitutions and laws, unless specifically limited by federal or state law or regulations. Persons with mental health disorders are to be provided care and treatment, and not as inmates. Persons subject to commitment shall be treated not as criminals, but as sick person. Sexually Violent Predators, Offenders with Mental Health Disorders, individuals found not guilty by reason of insanity, and those held under the Lanterman-Petris Short Act are all similarly situated for the purpose of conditions of confinement. Those held at DSH-Coalinga, are to be held in a non-punitive environment that does not lead to elements of punishment.

Department Response: Thank you for the comment. These regulations are being established to ensure the uniform application of rules related to property transfer between patients across all state hospitals and all individuals committed to the Department.

Listed below are those that provided comments during the public hearing facilitated on July 14, 2021:

No.	Commenter	Date Received
1.	Randee E. Grassini	07/14/2021
2.	Anthony Willmes	07/14/2021
3.	Kenneth Herman	07/14/2021
4.	James Hydrick	07/14/2021
5.	Joshua Forster	07/14/2021
6.	Allan Fletcher	07/14/2021
7.	Christian W.	07/14/2021
8.	Steve Wilson	07/14/2021
9.	Tobias Mazzei	07/14/2021
10.	Billy Redding	07/14/2021
11.	Robert Dixon	07/14/2021
12.	Joel Oaks	07/14/2021

Summary Comment 1: Commenter 1

Comment: This regulation makes the hospital the most restrictive environment instead of the least restrictive environment, taking away the application of Welfare and Institution Code section 6600.

Department Response: Thank you for the comment. These regulations are adopted to establish a uniform process across each state hospital for the buying, trading, selling, or gifting of property on state hospital grounds, should each state hospital decide to do so based on patient population and unique needs. Without these regulations in place, a centralized set of rules will not exist, which may result in the uneven and inequitable application of those rules. Because of the unique, and various needs and capacities of the patients in the care of the Department, there is a need for a uniform set of rules to ensure any property exchanged by patients, if allowable, is appropriate.

Summary Comment 2: Commenter 1

Comment: The Director of Coalinga State Hospital initiated that the Department of Police Services perform random unit searches, and patients will be subjected to the abusive whims of staff in their individual capacity. There are already current Administrative Directives in place.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 3: Commenter 1, 3, 4

Comment: Hospital staff know who is being pressured and who is not being pressured, and that's where the focus needs to be. To take the rights of patients to do with their property as they want is stretching everything.

Department Response: Thank you for the comment. Per Welfare and Institutions Code section 4101, "all of the institutions under the jurisdiction of the State Department of State Hospitals shall be governed by the uniform rules and regulation of the State Department of State Hospitals." In the development of any rules, they must be developed and apply uniformly for each state hospitals. Without these rules, there exists no regulations to guide the approval or denial at each hospital for the buying, trading, selling, and gifting of property between patients. Because patients committed to the Department have varied needs, and not all patients are observed at all times, the Department must establish rules which will minimize conflict among patients and prevent patients from victimizing other patients who may be unable to make an appropriate determination regarding the buying, trading, selling, and gifting of property. As such, these rules provide each hospital the ability to determine whether the buying, trading, selling, or gifting of property is appropriate for the hospital.

Summary Comment 4: Commenter 2

Comment: The state hospitals seek for patients to obtain approval for everything while advocating for independence and self-determination from the patients.

Department Response: Thank you for the comment. The Department notes that requiring approval for the buying, trading, selling, and gifting of property between patients does not impede the ability of patients to develop and maintain independence and self-determination. Due to the unique needs of the patient population at each state hospital, rules must exist which provide each state hospital the ability to determine the appropriateness of the buying, trading, selling, and gifting of property between patients. Providing an environment in which patients of varying needs can receive treatment without issues associated with certain activities such as improper property transactions is essential to successful treatment.

Summary Comment 5: Commenter 2, 3, 12

Comment: It is rare to get a treatment team together for the purpose of an annual or quarterly review program. These regulations turn acts of generosity into rabbit holes of bureaucracy, spontaneous kindness into mazes of policy. This rule will increase the workload of treatment team members and create longer lines at the grill and canteen.

Department Response: Thank you for the comment. However, each state hospital has supervisors, treatment team members, or other designated level-of-care staff available to answer questions and respond to requests. The treatment team, other staff members, and program director or designee will remain available to attend to the needs of the

patient, both immediate and long term. In addition to treatment team members meeting to discuss the current and long-term needs of patients, Department staff will also convene as needed to review and discuss any pending property transfer requests. The patients do not need to be present for this review and the reviews do not need to occur at the scheduled rate of the patients upcoming treatment team meetings. This allows for the transfer request of a patient to be done timely and not on a schedule which may cause delays in approval. As such, the adoption of these rules are not anticipated to increase the workload of treatment team members and are not anticipated to create longer lines for patients seeking to make purchases at the canteen.

These regulations do not prohibit the ability of patients to participate in acts of generosity. The intent of these regulations is solely to establish in law a uniform system and set of rules which patients abide by, and hospital staff use, to determine the appropriateness of a property transfer. By establishing these rules, ambiguity of which property transfers are approved or declined is addressed and vulnerable patients who participate in the buying, trading, selling, or gifting of property can do so knowing that they will not be unfairly taken advantage of by others.

Summary Comment 6: Commenter 2, 1, 9

Comment: These regulations will result in an adverse atmosphere in the state hospital.

Department Response: Thank you for the comment. The Department notes that the purpose of these regulations is to create a safe and secure environment for all patients, staff, and visitors. As patients have various levels of capacity and ability, lawful rules must be in place which can be exercised to ensure property transfers, when permitted by the state hospital, are conducted and approved in a manner which maintains the safety and security of the state hospital.

Summary Comment 7: Commenter 2

Comment: There are ambiguities in the proposed regulations: (1) what is an item of high value, (2) what number of items is one transfer, and (3) what number of transfers is reasonable or unreasonable?

Department Response: Thank you for the comment. Upon reviewing the proposed regulations, the Department agrees with the commenter regarding potential ambiguities in the regulation text. In Section 893 (c)(2)(C)3., the Department is modifying the regulation to now read “The fair market value of the item(s); and.” As a result, staff will assess if the item to be bought, sold, traded, or gifted, is being done at market value. Using the fair market value of an item to aid in the determination of the appropriateness of a transfer ensures that the value of items is not subjectively determined by hospital staff or the patients, but rather compared to the value of the same or like items on the open market. Section 893 (c)(2)(C)4. is modified to read “The number of items in one transfer.” This is changed from “An unreasonably high number of items in one transfer” so that staff consider the number of items in the requested transfer. By changing this

requirement to the proposed language, it also removes the mandate to determine whether the number of items for transfer are unreasonable, and instead asks that the number of items for transfer are considered in general. This change in language permits hospital staff to make an assessment of the appropriateness of the number of items in a transfer without mandating that staff reach a determination of whether the number of items in the transfer is unreasonably high. Some level of flexibility is necessary in this regulation as a high number of low-value items may be permissible whereas one high-value item that is potentially not being traded at equal value or with a full understanding of the transaction by the patient may be inappropriate and therefore not permitted.

Summary Comment 8: Commenter 3, 5, 7

Comment: These regulations attempt to establish the Department of State Hospitals as having guardianship or conservatorship over the money and property of patients and circumvent the court's power to name conservatorships.

Department Response: Thank you for the comment. The Department notes that these rules cannot circumvent the court's authority to establish guardianship or conservatorship.

These regulations are adopted to provide each state hospital a uniform process for the buying, trading, selling, or gifting of property on state hospital grounds, should each state hospital decide to do so, based on the unique needs of its patient population and unique needs of the hospital. If property transfer is permitted between patients at a state hospital, these rules provide the mechanism for staff to ensure those transfers are appropriate. If property transfers are not permitted, these rules provide the mechanism for the property to be returned to its original owner, if possible. These rules do not establish guardianship, conservatorship, or circumvent established laws on the subject matter. The Department is responsible for the safety, security, and wellbeing for all patients admitted for care at its facilities, and its staff.

Summary Comment 9: Commenter 4

Comment: The Sexually Violent Predator Act places an emphasis on there being no punitive element. The rights of patients are withering away every year and the hospitals have restrictions on existing property. Patients cannot have Wi-Fi, Bluetooth, TVs with streaming capability, LAN port, or similar items. The hospitals want to destroy new property and prohibit patients from giving old property to patients who are less fortunate.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 10: Commenter 4, 5

Comment: Patients are registered voters for the governor and president of the United States yet cannot have control in what they do with their property.

Department Response: Thank you for the comment. The Department notes these rules do not remove control of property from the owner. Rather, these regulations establish uniform rules and processes for the buying, trading, selling, and gifting of property among patients, if appropriate for each state hospital based on the unique needs of its patient population and unique needs of the hospital. Because individuals committed to the Department are typically involuntary commitments, and because there is a range of cognitive functioning and capabilities for the population committed to each state hospital, rules regarding property transfer must be in place uniformly to establish mechanisms to protect the safety of each patient, and hospital staff.

Summary Comment 11: Commenter 5, 7, 9

Comment: This regulation is in place to prevent or deter patients from possibly committing acts of bullying, harassing, and strong-arming. The placement of a deterrent or preventative measure is considered punitive by state law and cannot be applied to civil detainees.

Department Response: Thank you for the comment. Per Welfare and Institutions Code section 4005.1, the Department may adopt and enforce regulations necessary to carry out its duties as identified in the Welfare and Institutions Code. Per Welfare and Institutions Code section 4101, all of the institutions under the jurisdiction of the State Department of State Hospitals are governed by the uniform rules and regulation of the Department. And per Welfare and Institutions Code section 4109, the Department has general control and direction of the property and concerns of each state hospital. The development and adoption of uniform rules for the buying, trading, selling, and gifting of property focuses on hospital operations and ensuring the safety and security of patients and staff. These regulations allow staff to review all requests for property transfer on a case-by-case basis, if property transfers are permitted by the state hospitals, and make appropriate decisions of the approval or rejection of the property transfer thereafter.

Furthermore, the establishment of uniform regulations provides a consistent process for the transfer of property between patients. While the establishment of these regulations may have the added benefit of providing a preventative measure against criminal activity, its deterring potential applies subjectively to those who may seek to commit acts contrary to law. However, even if the rules were developed solely as a deterrent or preventative measure, the statement that deterrents or preventative measures are considered punitive by state law and cannot be applied to civil detainees is incorrect. The Department, as noted in the cited laws, may enforce any and all lawful rules and regulations to ensure the successful operations of its state hospitals and ensure the safety and security of its patients and staff. There is no law the Department is aware of that prevents the establishment of these proposed regulations concerning the transfer of property between patients. There is also no law the Department is aware of that prevents such rules from applying to civil detainees committed to the Department.

Summary Comment 12: Commenter 5

Comment: A blanket policy violates legislative intent for individualized treatment.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 13: Commenter 6

Comment: The Office of Administrative Law determined this issue to be an underground regulation as provided in an Administrative Directive. In the determination, the Office of Administrative Law stated this specific regulation conflicted with other rules and regulations.

Department Response: Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action. The Department is not aware of any finding by the Office of Administrative Law that these regulations conflict with any law.

Summary Comment 14: Commenter 6

Comment: When a patient seeks to speak with a treatment team member, the conversation should be about medical needs, treatment goals, and groups that will assist in the patient going home.

Department Response: Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 15: Commenter 6

Comment: A patient has the autonomy, as either a high-functioning individual or a lower-functioning individual to purchase their own food and provide appropriate social interaction with other patients.

Department Response: Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 16: Commenter 7

Comment: Patients at Coalinga State Hospital have the capacity to make appropriate decisions regarding their property. As such, these regulations are not needed.

Department Response: Thank you for the comment. Per Welfare and Institutions Code section 4101, "all of the institutions under the jurisdiction of the State Department of State Hospitals shall be governed by the uniform rules and regulation of the State Department of State Hospitals." These regulations establish a uniform process for the buying, trading, selling, or gifting of property on state hospital grounds, should each state hospital decide to do so, based on the unique needs of its patient population and unique needs of the hospital. The purpose of these regulations is to create a safe and secure environment for all patients, staff, and visitors. As patients have various levels of capacity and ability, lawful rules must be in place which can be exercised to ensure property transfers, when permitted by the state hospital, are both conducted and approved in a manner which maintains the safety and security of the state hospital. The comment provided does not account for the necessity of creating uniform regulations which apply to all state hospitals, as required by Welfare and Institutions Code section 4101, and the various capacities and abilities of each patient at each state hospital, including Coalinga State Hospital. Furthermore, these regulations also protect patients with sufficient capacity and ability to make decisions regarding their property as it aids in preventing coercion by ensuring the property transfer is amenable to all involved patients and provides a standard process to ensure the approval or rejection of property transfers is done uniformly.

Summary Comment 17: Commenter 8

Comment: I have been told I need to find friends and demonstrate that I am capable of having social interactions with people. A few facilities at Coalinga State Hospital, such as the Union Grill, library, and socialization centers, are intended to be social points to sit down and chat with other patients. Patients are taught to be kind, caring, empathetic, sympathetic, and compassionate, yet with these regulations, I now have to check with my treatment team and wait a week to see if I can buy a burger and soda for another patient who may not be feeling well.

Department Response: Thank you for the comment. The purpose of these regulations is to establish a uniform system of rules for the review and approval or rejection of property transfer between patients, for state hospitals which approve such transfers, based on safety and security needs of the patient and hospital. These uniform rules also aid in preventing situations where patients may take advantages of vulnerable peers. Each state hospital has supervisors, treatment team members, and other designated level-of-care staff available to answer questions and respond to requests from patients. This general availability of staff is in place at each state hospital and will remain in place to ensure the needs of each patient are met.

Reviews and discussions of property transfer request from a patient can be done by the treatment team quickly and does not necessarily need to occur on the same schedule

as other standard reviews and assessments conducted by the treatment team. Reviews and approvals must be conducted at state hospitals which permits these transfers based on the various levels of functioning of each patient. In addition, a standard set of rules must be in place to ensure equity in how these reviews are performed.

Summary Comment 18: Commenter 9

Comment: There is a dichotomy between what the state set up and what is intended as a state hospital. Patients are civil detainees for medical and therapeutic care, yet the policies are run by a prison. Coalinga State Hospital is not operated by a licensed medical professional which creates many problems such as these policies.

Department Response: Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 19: Commenter 9

Comment: The state hospital trains and teaches giving, caring, and being a responsible individual, including the ability to do with their property as they wish. As an example, patients are only permitted to own a certain number of movies. When patients watch the movies and want more movies, they must buy them, but what are done with the old movies? There are patients without jobs and without families and they cannot be helped because of interfering policies.

Department Response: Thank you for the comment. The Department notes that these regulations do not prevent the buying, trading, selling, and gifting of property at state hospitals which permit such actions. When permitted, these regulations establish a uniform process and rules for property transfers which are important for establishing a transparent process by which hospital staff must abide. Furthermore, the proposed regulations do not limit the quantity of an item a patient may possess. Finally, though some patients possess the capability to handle property transfers, regulations must be developed uniformly across all hospitals. These proposed regulations aid patients by ensuring the transfer of property is mutually agreed upon and not the result of coercion, extortion, or other improper activities. Upon ensuring the appropriateness of the property transfer, the transfer will be approved, if the state hospital permits the transfer of property between patients.

Summary Comment 20: Commenter 10

Comment: I am fully registered as a Native American. I am opposed to this regulation because I have ceremonial items that are governed by the county and the state as sacred items and should not be touched. My property is in jeopardy of being tampered with and disrespected by staff and patients.

Department Response: Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action. These regulations only cover property transfers between patients that mutually agree to the transfer, and do not address other aspects of property at the hospital, such as the search and confiscation of contraband items.

Summary Comment 21: Commenter 11, 12

Comment: I object to both the Contraband Search and Confiscation regulations and the Property Transfer Between Patients regulations.

Department Response: Thank you for the comment and your objection to the Property Transfer Between Patients regulations is noted. However, the Department plans to move forward with these regulations as it must establish a uniform process for the buying, trading, selling, and gifting of property between patients for state hospitals which permit such transfers. These regulations protect patients and hospital staff by establishing transparent rules for property transfers, if permitted. Patients of all levels of functioning are protected by ensuring the property transfer is appropriate and not transferred coercively, as an extortion, or by other inappropriate means of manipulation. Patients are further protected as transparent rules ensure uniform and appropriate application of the rules. Staff are protected by ensuring patients do not obtain property which may be a danger to themselves or others.

Summary Comment 22: Commenter 12

Comment: I have been told by people in supervisory positions that if I have a bible study and want to pass out the schedule of what is happening, I must obtain the approval of the treatment team.

Department Response: Thank you for the comment. These regulations establish a uniform process for the buying, trading, selling, and gifting of property between patients for state hospitals which permit such transfers. These regulations protect patients and hospital staff by establishing transparent rules for property transfers, if permitted. Patients of all levels of functioning are protected by ensuring the property transfer is appropriate and is not the result of coercion, extortion, or other prohibited behaviors. Patients are further protected because transparent rules ensure the uniform application of the rules in all state hospitals for all patients. Staff are likewise protected by ensuring that patients do not obtain property which may be a danger to themselves or others. Pamphlets are subject to review pursuant to these regulations because not only are they property transferred between patients, but the contents of the pamphlet may contain information which may be insensitive, threatening, and lead to potential harm or incite trouble. As such, all property transfers are reviewed to ensure the safety and security of patients and hospital staff.

Summary Comment 23: Commenter 12

Comment: These regulations refer to the canteen and grill at Coalinga State Hospital. Its staff have nothing to do with patient treatment and should not be privy to the medical information of patients.

Department Response: Thank you for the comment. The Department strives to ensure patient medical information is kept safe, secure, and only provided to personnel and people permitted to have the information. These regulations, neither implicitly nor explicitly, permit staff at the canteen and grill to be privy to the medical information of patients. Section 893(a)(3)(C) establishes that upon approval of the treatment team, “the unit supervisor, or designee, will issue a document that the patients will present along with their identification badges to a canteen staff member.” The purpose of the unit supervisor or designee providing this document is to provide a means by which patients can efficiently make approved purchases for other patients. The regulations do not require a specific form to use; each approving unit supervisor or designee may provide any approval document to the canteen staff that provides their approval. There are already established laws that require the protection of medical information of patients and only allow for the dissemination to those with a legally authorized need to know. These regulations do not establish an exception to the rule that would prohibit sharing protected medical information with individuals that do not possess a legally recognized need to know.

Summary Comment 24: Commenter 12

Comment: Ideally, a treatment team should only deny property transfers if there are problems such as strong-arming or other negative actions occurring.

Department Response: Thank you for the comment. These regulations (1) establish a uniform process for the buying, trading, selling, and gifting of property between patients for state hospitals which permit such transfers, and (2) protect patients and hospital staff by establishing transparent rules for property transfers, if permitted. Patients of all levels of functioning are protected by ensuring the property transfer is appropriate and is not done coercively or as an extortion. Additionally, these regulations establish the factors for the consideration of state hospital staff when making the determination on whether a property transfer is appropriate. Each factor is described and justified in the Initial Statement of Reasons noticed with the regulations.

Listed below are those that provided comments during the 15-day notice period which ended on April 14, 2022:

No.	Commenter	Date Received
1.	Allan Fletcher	04/12/2022

Summary Comment 1: Commenter 1

Comment: Welfare and Institution Code section 4005.1 does not permit the Department to create and enforce regulations pertaining to rights and property transfer for civil detainees under Welfare and Institution Code section 6600 et seq. Welfare and Institution Code section 4109 is ambiguous and cannot be cited as an authority or reference for these regulations, and the Department has failed to cite any authority or reference to implement or interpret regulations for any specified group of mental health patients residing at the various state hospitals.

Department Response: Thank you for the comment. All authorities and references cited in these regulations provide the authority for the Department to develop regulations and well as the statutes being implemented, interpreted, or made more specific with the development of the regulations. The Department is charged with the responsibility of providing treatment and care for individuals committed either civilly or forensically per the appropriate statute. As long as an individual is committed to the Department as required by applicable statute, that individual is subject to the jurisdiction of the Department and therefore subject to its rules and regulations. Welfare and Institutions Code section 4005.1 i states, “the State Department of State Hospitals, the State Department of Health Care Services, and the State Department of Social Services may adopt and enforce rules and regulations necessary to carry out their respective duties under this division.” Section 4027 of the Welfare and Institutions Code provides that the department may adopt regulations concerning the rights of patients and related procedures applicable to inpatient treatment of individuals pursuant to its listed sections of code. Section 4109 of the Welfare and Institutions Code provides, in part, that the Department has general control and direction of the property and concerns of each state hospital and shall (1) take care of the interests of each state hospital, and (2) establish the rules and regulations necessary for the expedient regulating of the duties of its officers and employees of the hospital. Collectively, covered within Welfare and Institutions Code sections 4005.1, 4027, and 4109, are the authorities necessary to regulate both individuals committed to its state hospitals and the processes used by the state hospital and its staff in the implementation of the rules of each state hospital.

Summary Comment 2: Commenter 1

Comment: Section 893(a)(1) inordinately discourages pro-social interactions between adult patients.

Department Response: Thank you for the comment. These regulations establish a uniform process for the buying, trading, selling, or gifting of property on state hospital grounds, should each state hospital decide to permit such actions, based on the unique needs of its patient population and unique needs of the hospital. The purpose of these regulations is to create a safe and secure environment for all patients, staff, and visitors. As patients have various levels of capacity and ability, lawful rules must be in place which can be exercised to ensure property transfers, when permitted by the state hospital, are conducted and approved in a manner which maintains safety and security. Furthermore, because all patients committed to the Department have varying levels of cognitive functioning, a patient considered an “adult” is irrelevant to the intent and

purpose of these regulations as its goal is to establish rules which minimize the potential of coercion and manipulation and also ensures the property transfer is amenable to all involved patients.

At state hospitals which permit the buying, trading, selling, or gifting of property between patients, these regulations should not discourage prosocial interactions. These regulations ensure the transfer of property is safe, appropriate, and approved by the involved parties.

Summary Comment 3: Commenter 1

Comment: Section 893(a)(1)(C)(2) uses ambiguous language such as “remains unidentified” and “alternative disposition of property.” Additionally, the form to be completed by the Department is not stated nor its process for accountability designated. This ambiguity denied patients their due rights process for claims filing.

Department Response: Thank you for the comment. For the terms quoted by the commenter, and all language in the regulations, its meaning is that which is commonly defined and understood in the English language unless otherwise defined in regulations, statute, or other applicable laws. Additionally, these regulations cannot feasibly apply the same outcome for every instance of unidentified property across each state hospital. As such, each hospital is given the discretion to process the unidentified property as it deems appropriate. Upon the approval of a property transfer request, the state hospital may choose to provide a document to be presented to the canteen staff member. There is no uniform requirement for the use of a form and no required form to use to document an approved transaction. The patient has no interaction with this document except to provide it to canteen staff as proof of the approval for the transfer of property if the state hospital staff chooses to provide one. This allows each state hospital and state hospital staff the discretion to provide a document for the approval of property transfer for an item at the canteen as appropriate, ensuring timeliness and efficiency in the process. This regulation is developed with the intent of creating a process by which property transfers between patients are safe and security and state hospital staff approve of the transaction. It is not intended to formally track transfers for audit purposes. Each state hospital that chooses to permit property transfer between patients may do so to the extent provided in these regulations.

Summary Comment 4: Commenter 1

Comment: There are substantial changes not solely grammatical in nature and a public hearing is requested.

Department Response: Thank you for the comment. The Department will not be providing a public hearing at this time. Per Government Code section 11346.8(c), the Department may adopt regulations without additional notification to the public if changes are made to the regulations which are “(1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately

placed on notice that the change could result from the originally proposed regulatory action.” The Department must make the full text of the regulations, with the changes clearly indicated, available to the public for at least 15 days before its adoption. As required pursuant to Government Code section 11346.8(c), the Department noticed the modified regulations, with changes clearly indicated, to the public from March 30, 2022, through April 14, 2022, and responded to all relevant comments, fulfilling its statutory obligation.

Listed below are those that provided comments during the second 15-day notice period which ended on August 19, 2022:

No.	Commenter	Date Received
1.	Christian Williams	08/18/2022

Summary Comment 1: Commenter 1

Comment: It is unreasonable for a patient who has been committed for a long time to keep receipts, or other proof of ownership, of every property transaction taken place during the length of their stay.

Department Response: Thank you for your comment. This section will only be implemented under circumstances when there is an indication or concern about property ownership. If the patient does not agree with the decision that is made per Section 893(a)(1)(A), they have the opportunity to contest per Section 893(a)(1)(D). Allowing the patient the opportunity to prove ownership of property is necessary because the patient is the proper entity to confirm that the property in fact belongs to them. Patients are not limited to a specific type of information they must use to show property ownership. The Department does not want to limit the ability of patients to prove property ownership, and cannot list every possible way available, without inherently missing some. Property receipts and Property Transfer Forms are two identified documents in the regulation text to help guide patients in how they may be able to show property ownership; however, this is not an exclusive list.

Summary Comment 2: Commenter 1

Comment: The use of the words “alternate disposition” is ambiguous vague language and it is not clear what this entails other than destruction.

Department Response: Thank you for your comment. This comment is not in response to changes made to the text that was noticed to the public during the second 15-day comment period; however, the Department provides the following response. If the property remains unidentified, meaning without an owner identified, the Department will determine the disposition of the property on a case-by-case basis.

Summary Comment 3: Commenter 1

Comment: The language in section 893(a)(3) which states: "Patients are not allowed to buy, sell, trade or gift food items to other patients" contradicts the language in section 893(a) which states, "Each State Hospital may prohibit patients from buying, selling, trading, or gifting property between patients."

Department Response: Thank you for your comment. Upon further review of the regulation text, the Department determined that transfer of food items posed unique issues to the Department that needed to be addressed separately. Many patients at the Department have strict dietary needs and allowing patients to buy, sell, trade or gift food items for each other creates a risk that these individuals may receive items they are not clinically allowed to consume. Transferring food items between patients raises the following areas of health and safety concerns by the Department: food allergies, dietary restrictions, and unknown potential health issues. This causes a safety concern for the patient population. The regulatory sections cited in the comment address different property types; Section 893(a)(3) refers to only food items, whereas Section 893(a) refers to all other property, therefore they are not contradictory.

There were no comments during the third 15-day notice period which ended on December 21, 2022: