

State of California Office of Administrative Law

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections:

Amend sections: 4350

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-0102-02


OAL Matter Type: Emergency (E)

The Department of State Hospitals is amending section 4350 of title 9 of the California Code of Regulations to address the possession, viewing, and distribution of illicit materials by removing digital memory storage, other means of memory storage, specified digital media players, and digital media burners from the personal possession of patients. Additionally, commercially produced CDs and DVDs and players without access to the internet will be permitted, but those that are not commercially produced and game systems with access to the internet will be prohibited. Finally, the amendments allow hospitals to provide digital media on a supervised basis.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/12/2018 and will expire on 7/12/2018. The Certificate of Compliance for this action is due no later than 7/11/2018.

Date: January 11, 2018


Peggy J. Gibson
Senior Attorney

For: Debra M. Cornez
Director

Original: Pamela Ahlin, Director
Copy: Amy Whiting

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2018-0102-02E
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For use by Office of Administrative Law (OAL) only

2018 JAN -2 P 4:05

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of State Hospitals

For use by Secretary of State only

ENDORSED - FILED
in the office of the Secretary of State
State of California

JAN 12 2018

1:44 P.M.

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)		FIRST SECTION AFFECTED		2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER		FAX NUMBER (Optional)	
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Electronic Patient Property		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 9		AMEND 4350	
		REPEAL	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) per agency request	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Amy Whiting, Regulations Coordinator	TELEPHONE NUMBER (916) 651-3247	FAX NUMBER (Optional) (916) 651-3090	E-MAIL ADDRESS (Optional) Amy.Whiting@dsh.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Pam Ahlin</i>	DATE 12.13.17
TYPED NAME AND TITLE OF SIGNATORY Pam Ahlin, Director	

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ENDORSED APPROVED

JAN 12 2018

Office of Administrative Law

DEPARTMENT OF STATE HOSPITALS

EMERGENCY REGULATION TEXT Electronic Patient Property

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 3. Safety and Security

Amend section 4350, title 9, California Code of Regulations to read as follows:

[Note: Set forth is the amendments to the proposed emergency regulatory language. The amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions from the existing regulatory text.]

§ 4350. Contraband Electronic Devices with Communication and Internet Capabilities.

(a) Except as provided in subsection (d), patients are prohibited from having personal access to, possession, or on-site storage of the following items:

(1) Electronic devices with the capability to connect to a wired (for example, Ethernet, Plain Old Telephone Service (POTS), Fiber Optic) and/or a wireless (for example, Bluetooth, Cellular, Wi-Fi [802.11a/b/g/n], WiMAX)-communications network to send and/or receive information-are prohibited, including, but not limited to, the following:

(A) Desktop computers; laptop computers; single-board computers or motherboards such as "Raspberry Pi;" cellular or satellite phones; personal digital assistant (PDA); graphing calculators; and satellite, shortwave, CB and GPS radios.

(D) Devices devices-without native capabilities that can be modified for network communication. The modification may or may not be supported by the product vendor and may be a hardware and/or software configuration change. Some examples of the prohibited devices include desktop computers, laptop

computers, cellular phones, electronic gaming devices, personal digital assistant (PDA), graphing calculators, and radios (satellite, shortwave, CB and GPS).

(2) Digital media recording devices, including but not limited to CD, DVD, Blu-Ray burners.

(3) Voice or visual recording devices in any format.

(4) Items capable of memory storage, including but not limited to:

(A) Any device capable of accessible digital memory or remote memory access.

(B) Recordable disks, including but not limited to CDs, DVDs, Blu-Ray, and CD-ROM

(C) Universal Serial Bus (USB) devices, also known as flash drives or thumb drives.

(D) Hard drives, subscriber identity module (SIM) cards, secure digital (SD) drives or cards, micro-secure digital drives or cards (MicroSD), compact flash drives, secure digital high capacity (SDHC), secure digital extended capacity (SHXC), and other similar insertable memory devices.

(E) Gaming devices with digital memory storage ability, the ability to access the internet, or the ability to play games or other media not specifically designed for the device or only able to be played on that particular gaming device as provided by an approved third-party vendor.

(F) Floppy disks, hard disks, and vertical helical scan or video home system (VHS) cassettes.

(b) Electronic items patients are permitted to possess or have personal access to include:

(1) One (1) television or computer monitor; one (1) DVD, Blu-ray, or similar player; one (1) CD player; and one (1) radio or music player. These items shall not have internet, external communication, or wireless communication capability.

(2) No more than thirty (30) commercially manufactured and unmodified CDs, DVDs, and Blu-Rays received in factory-original packaging in a patient's room or unit storage. Patient may store additional manufactured and unmodified CDs, DVDs, and Blu-Rays in off-unit storage.

(3) Tablets or other devices designed for confined individuals through authorized vendors of the Department of State Hospitals and California Department of Corrections and Rehabilitation.

(c) Nothing in this regulation, including permissible items of subsection (b), is designed to interfere with a hospital issuing and enforcing a more restrictive contraband list as appropriate to address the needs or safety of a patient population or the hospital.

(d) While items of subsection (a) shall not be in the personal possession of patients, hospitals have the discretion to permit items to be accessible to patients on a supervised basis only. This would include a check-out basis or a temporary basis for use in an observable common room, a computer lab, or group and/or individual therapy. In no case shall digital storage devices for patient access purposes contain a storage capability greater than eight gigabytes (8 GB).

(e) While this section is being enforced initially as an emergency regulation, patients who are currently in personal possession of, store, or otherwise have access to any of the contraband items set forth in subsection (a) may grant permission to the Department for the item to be reviewed for illegal material without file, folder, or document-type limitation, other than documents protected by attorney/client privilege. Such a search for illegal material must be granted to and conducted by the hospital. If consent is granted by the patient and there is no illegal material found on the contraband items set forth in subsection (a), the item shall be mailed to a location designated by the patient. If consent is not granted by the patient to search the contraband items set forth in subsection (a), the hospital shall destroy the contraband item.

Note: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 4005.1, 4101, 4027, and 7295, Welfare and Institutions Code.