

**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 CERTIFICATE OF
COMPLIANCE**

**Government Code Sections 11349.1 and
11349.6(d)**

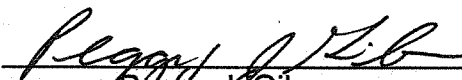
OAL Matter Number: 2018-1226-04

**OAL Matter Type: Certificate of Compliance
(C)**

The Department of State Hospitals submitted this timely certificate of compliance to make permanent regulations that 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 video game systems without access to the internet will be permitted, but those that are not commercially produced and video 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 regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: February 5, 2019



Peggy J. Gibson
Senior Attorney

For: Debra M. Cornez
Director

Original: Stephanie Clendenin, Interim
Director

Copy: Trini Balcazar

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2018-0724-04	REGULATORY ACTION NUMBER 2018-1226-04C	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

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

FEB 05 2019

1:47 PM

2018 DEC 26 P 2:11
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of State Hospitals

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE Patient Electronic Property	TITLE(S) 9	FIRST SECTION AFFECTED 4350	2. REQUESTED PUBLICATION DATE August 3, 2018
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Trini Balcazar	TELEPHONE NUMBER 916 562-2824	FAX NUMBER (Optional) 916 651-3090
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2018, 31-2	PUBLICATION DATE 8-3-2018

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Patient Electronic Property	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-0102-02E, 2018-0614-01EE
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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
	AMEND 4350
	REPEAL
TITLE(S) 9	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" 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 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)

N/A

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) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY


<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Trini Balcazar, Regulations Coordinator	TELEPHONE NUMBER 916 562-2824	FAX NUMBER (Optional) 916 651-3090	E-MAIL ADDRESS (Optional) trinidad.balcazar@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


 TYPED NAME AND TITLE OF SIGNATORY
 Stephanie Clendenin, Acting Director

DATE

12/13/18

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 05 2019

Office of Administrative Law

DEPARTMENT OF STATE HOSPITALS

FINAL REGULATION TEXT PATIENT ELECTRONIC 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 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 including, but not limited to, the following:

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

(B) 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.

- (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 patient-accessible memory storage, including but not limited to:
 - (A) Any device capable of patient-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 patient-accessible digital memory storage ability, the ability to access the internet, or the ability to play games or other media or access data 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 that do not conflict with subsection (a) that 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 that ~~does~~ do not contain personally accessible data storage. If a device designed for confined individuals is breached and/or modified, either the individual device or the type of device can be banned as violating subsection (a).
- (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 described in 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, 4011, 4027, 4100, 4101 and 4109, Welfare and Institutions Code.
Reference: Sections 4005.1, 4027, 4101, 4109 and 7295, Welfare and Institutions Code.