



CALIFORNIA DEPARTMENT OF
State Hospitals

REQUEST FOR AN EARLY EFFECTIVE DATE

Patient Electronic Property Regulation

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

The Department of State Hospitals (DSH or the Department) is requesting, pursuant to Government Code section 11343.4, subdivision (b)(3), that the effective date of these regulations be earlier than the next quarterly basis of April 1, 2019. DSH requests that the Office of Administrative Law (OAL) approve these regulations to be effective immediately upon filing with the Secretary of State.

The Department's request is based on the following good cause.

The Department's request is based on the following good cause. The regulations pertain to Patient Electronic Property initially adopted as emergency regulations on January 12, 2018 and subsequently re-adopted twice as emergency regulations on July 12, 2018 and October 11, 2018.

Child pornography and other illegal materials exist within the hospitals, but in the absence of the regulation's emergency amendments and immediate adoption of the proposed amendments, DSH cannot continue to address and eliminate this problem. Moreover, using the authority of the emergency regulations, DSH took significant steps to better secure its facilities. Due to DSH's concerns that allowing patients unsupervised digital storage and transfer would feed illegal activities, patients were required to turn in electronics in violation of the emergency amendments under a now expired period of amnesty in cooperation with local District Attorneys, or the property was later confiscated.

The new limitations will continue to keep the facility safe and secure and prevent the dissemination of illegal material including child pornography. The facilities now have clearer guidelines to properly enforce digital contraband and eliminate illegal material. Any delay in the effective date of these amendments will permit illegal activities to resume. Delay will also cause confusion. The patients are now accustomed to the new limitations

and the alternatives granted by the facilities. The definition of digital or electronic contraband is now clearer for both the patients and the facilities, law enforcement, and the public. Specifically, for child pornography concerns, children already victimized by involvement in sexual acts and poses will be revictimized every time their images are viewed instead of blocked. (*U.S. v. Kearney* (1st Cir. 2012) 672 F.3d 81.)

Good cause existing, DSH respectfully requests that, upon review, OAL approve the effective date of these regulations to be immediately effective upon filing with the Secretary of State.