

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections: 4351, 4352, 4353

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2020-0413-02

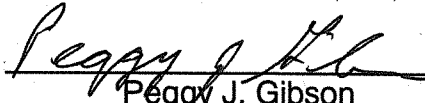
OAL Matter Type: Emergency (E)

In this emergency action the Department of State Hospitals is establishing procedures for safety and security searches of patients and living areas, common areas, staff areas and grounds.

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 4/23/2020 and will expire on 10/21/2020. The Certificate of Compliance for this action is due no later than 10/20/2020.

Date: April 23, 2020


Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Stephanie Clendenin, Director

Copy: Tarik Allen

OAL REPORT TO THE PUBLISHER

OAL Matter Number 2020-0413-02
OAL Matter Type Emergency (E)
Agency Name Department of State Hospitals
Title(s) 09
OAL Action Approval
Date filed with Secretary of State 4/23/2020
Effective Date 4/23/2020

Custom History Note (if any)

Note to Publisher/Special Instructions (if any)

Print Attachments? Yes No N/A

Changes in text from prior emergencies? Yes No N/A

Certificate of Compliance due date (if applicable) 10/20/2020

Expiration Date (if applicable) 10/21/2020

Reviewed by: Peggy J. Gibson
peggy.gibson@oal.ca.gov, (916) 323-6805

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

EMERGENCY

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2020-0413-02E
For use by Office of Administrative Law (OAL) only		For use by Secretary of State only	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY DEPARTMENT OF STATE HOSPITALS			AGENCY FILE NUMBER (If any)

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

APR 23 2020
1:48 p.m.

2020 APR 13 P 2:21
OFFICE OF ADMINISTRATIVE LAW

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 <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) Contraband Search and Confiscation	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 4351, 4352, 4353 (Section numbers 4360, 4361, and 4362 have been renumbered)
	AMEND per agency request
TITLE(S) TITLE 9	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"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
	<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"/> File & Print
	<input type="checkbox"/> Print Only
	<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 type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON	TELEPHONE NUMBER
	916 573-1056
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
916 651-3090	Tarik.Allen@dsh.ca.gov

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
[Signature]

DATE
4/13/20

TYPED NAME AND TITLE OF SIGNATORY
Stirling Price, Chief Deputy Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 23 2020

Office of Administrative Law



DEPARTMENT OF STATE HOSPITALS
PROPOSED EMERGENCY REGULATION TEXT
Contraband Search and Confiscation

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

Adopt new sections 4351, 4352, and 4353, title 9, California Code of Regulations, to read as follows:

[Note: The entire text of sections 4351, 4352 and 4353, is new language to be added to the California Code of Regulations.]

§ 4351. Contraband Searches and Confiscation within the Secured Facility by Non-Peace Officer Staff.

- (a) Non-peace officer DSH staff may conduct searches as appropriate to locate and confiscate contraband and otherwise ensure the safety and security of the facility, patients, staff, contractors, and public.
- (b) Non-peace officer DSH staff shall visually monitor for contraband at all times while within the secured patient area and shall take custody of contraband and/or alert Hospital Police when discovered. If a Non-peace officer DSH staff member observes contraband outside of the secured area, Hospital Police must be contacted.
- (c) Non-peace officer DSH staff may conduct searches of any room, common area, and/or bathroom at any time, announced or unannounced. Each DSH hospital may identify or limit position classifications of employees authorized to conduct these searches by policy as needed for the individual hospital. Patients that become intrusive or aggressive during a search may be removed from the area during the search by Non-peace officer DSH staff or peace officers.
- (d) If there is a reasonable belief that a patient possesses contraband, Non-peace officer DSH staff may conduct pat-down searches on the patient, in which a hand search of a patient's body over clothing is conducted. Non-peace officer DSH may also contact Hospital Police to consider conducting a pat-down or other search as appropriate instead of the Non-peace officer staff member.

April 13, 2020

Authority: Sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code.
Reference: Sections 4011, 4109 and 7295, Welfare and Institutions Code.

§ 4352. Contraband Searches and Confiscation by DSH Peace Officers.

- (a) Hospital Police Officers and sworn Investigators of the Office of Special Investigations are peace officers pursuant to Penal Code section 830 et. seq.
 - (1) Peace officers may conduct person and property searches throughout the hospital grounds and in any location throughout the state while conducting the primary functions of their duties in accordance with the Penal Code and guided by California Peace Officer Standards and Training Standards.
 - (2) Permitted searches include but are not limited to: visual searches of all areas on the grounds of a DSH facility or while conducting duties throughout the state, vehicle searches, pat-down and physical examination searches of all persons and property on the facility, use of K-9 searches, as well as strip searches and body cavity searches of patients with probable cause and/or a warrant as appropriate.
 - (3) Nothing in these regulations is intended to limit or expand peace officer authority to conduct searches and/or confiscation.

Authority: Sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code.
Reference: Sections 4011, 4101, 4109, 4139 and 7295, Welfare and Institutions Code;
Sections 830.3, 830.38 and 830.5, Penal Code.

§ 4353. Contraband Searches and Confiscation of those Entering the Secured Patient Area.

- (a) Contraband shall not enter the premises without written authority from the Executive Director or designee. Contractors with authority to utilize a contraband item, including but not limited to tools, metal items, or electronic devices necessary to perform the contracted work, shall log the item(s) upon entering and confirm their removal upon exiting the secured facility.
- (b) All persons entering the secured area are subject to searches of their person, including but not limited to metal detectors, wand searches, K-9, X-ray, cell phone detecting devices, devices to detect controlled substances, and pat down searches.

- (c) All persons entering the secured area are subject to property searches both visually and physically. This includes but is not limited to the removal of hats, shoes, jewelry, jackets or coats for inspection; purses, bags, lunch boxes, containers, etc. K-9, X-ray, cell phone detecting devices, devices to detect controlled substances, and metal detector or wand searches.
- (d) Contraband considered illegal pursuant to Penal Code provisions shall be confiscated. Persons with contraband specific to DSH or the hospital shall be instructed to return the item to the car or officers may agree to hold the item for person to retrieve when exiting the secured facility.
- (e) Persons refusing searches are not permitted within the secured facility.

Authority: Sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code.
Reference: Sections 4011, 4109, 4139 and 7295, Welfare and Institutions Code.
