



CALIFORNIA DEPARTMENT OF STATE HOSPITALS

CONTRABAND SEARCH REGULATIONS COMMENT RESPONSES/REBUTTAL

In response to the need for emergency, the Department of State Hospitals (DSH) continues to believe that there is a need for an emergency. DSH has the responsibility of providing treatment for the patients at the facility, while ensuring safety and security of patients, staff, and the public. DSH has complied with the showing of emergency and provides the following responses to the comments received regarding the proposed adoption of California Code of Regulations, title 9, section 4351, 4352, and 4353.

CONTRABAND SEARCH AND CONFISCATION

Emergency Regulation Package – Submitted to OAL 4/13/20

Comment received via fax on 4/9/20

Commenter: Jeffrey Lowry, Deputy Public Defender, San Bernardino County

1. Summary of Comment:

There is nothing in the Notice of Emergency that justifies avoiding the standard Office of Administrative Law (OAL) process for approving regulations. There is nothing in the “Notice of Proposed Emergency Action and Finding of Emergency” that comes close to the rules enumerated in Government Code section 11346.1, subd. (b)(2), which specifies what shall be included in the written statement regarding the finding of emergency.

DSH Response:

Thank you for your comment. Government Code section 11346.1, subd. (b)(2), requires that the written statement describing the finding of emergency shall include “a description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.” The Department of State Hospitals (Department) promulgated these regulations as an emergency due to the immediate safety and security concerns surrounding contraband items located in our facilities, and the need to have all staff assist in searching and monitoring for contraband at the facilities. The “Notice of Proposed Emergency Action and Finding of Emergency” provided to the public on April 6, 2020, and filed with OAL on April 13, 2020, describes the need for the emergency starting at the subheading titled “Necessity for the Proposed Emergency Regulatory Action” on page two and continuing through the subheading titled “Consequences of Failure to Address the Situation Through Emergency Regulations” on page 4.

2. Summary of Comment:

The Department cites statistics about the increase of incidents over a several year period; this increase is not particularly large, and the Department does not show there has been a sudden, unexpected increase in incidents that would justify short-circuiting the standard OAL procedure.

DSH Response:

Thank you for your response. Government Code section 11346.1, subd. (b)(2), requires, in pertinent part, that “the finding of emergency shall also identify each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies.” The Department has included statistics of the number of contraband cases known to the Department in the “Notice of Proposed Emergency Action and Finding of Emergency” provided to the public on April 6, 2020, and filed with OAL on April 13, 2020, as these statistics were relied upon in promulgating these regulations. These statistics were gathered from all of the Department’s facilities and relied upon by the Department to show an increase in contraband cases at the Department. Any contraband at the facilities presents a safety and security concern, and an increase in contraband is very concerning to the Department. The Department promulgated these emergency regulations in order to immediately address the issue of contraband at the facilities.

3. Summary of Comment:

The Department cites some general statements about drugs, their effect on treatment, other contraband, ect., but provides no explanation as to why, after all of these years, it has suddenly become an emergency.

DSH Response:

Thank you for your response. The Department has included descriptions of contraband cases known to the Department in the “Notice of Proposed Emergency Action and Finding of Emergency” provided to the public on April 6, 2020, and filed with OAL on April 13, 2020, as these descriptions of contraband and the associated impact on hospital operations and patient treatment were relied upon in promulgating these regulations. These descriptions were relied upon by the Department to show the severity of the issue of having contraband in our facilities. The Department promulgated these emergency regulations in order to immediately address the issue of contraband at the facilities.

4. Summary of Comment:

DSH provides only general statements and justifications and provides no explanation as to why emergency regulations are now needed nor, pursuant to the requirement in Government Code section 11346.1, subd. (b)(2), why the proposed regulation was not promulgated earlier, through the nonemergency regulations process.

DSH Response:

Thank you for the comment. The Department promulgated these regulations as an emergency due to the immediate safety and security concerns surrounding contraband items located in our facilities, and the need to have all staff assist in searching and monitoring for contraband at the facilities. The “Notice of Proposed Emergency Action and Finding of Emergency” provided to the public on April 6, 2020, and filed with the Office of Administrative Law (OAL) on April 13, 2020, describes the need for the emergency starting at the subheading titled “Necessity for the Proposed Emergency Regulatory Action” on page two and continuing through the subheading titled “Consequences of Failure to Address the Situation through Emergency Regulations” on page 4.