



CALIFORNIA DEPARTMENT OF
STATE HOSPITALS

Addendum to the Finding of Emergency

Enhanced Treatment Program (ETP) Emergency Regulations

I. GENERAL

On April 13, 2020, the Department of State Hospitals (Department) submitted the Notice of Emergency and Finding of Emergency for the Rulemaking entitled “Enhanced Treatment Program Emergency Regulations”, to the Office of Administrative Law for its review and approval.

In the course of its review, OAL noted that several modifications were required to correct errors. These modifications are described below.

Welf. & Inst. Code section 4144, subd. (m), provides that the Department may adopt emergency regulations in order to “implement the treatment components of this section.” The procedural aspects of these proposed regulations are intricately related to the treatment components provided in the statute and are therefore being implemented as emergency regulations.

II. MODIFICATIONS

Modifications and Additions made to the Notice of Emergency and Finding of Emergency

A. Authority and Reference Citations

Authority: Health and Safety Code section 1265.9; and, Welfare and Institutions Code sections 4005.1, 4027, 4101, and 4144.

References: Welfare and Institutions Code section 4144.

B. Informative Digest

Existing Law

The Department includes duplicative language provided by Welf. & Inst. Code section 4144, cited as a “reference” for these proposed regulations, to provide clarity on the enumerated aspects of these regulations. This is necessary to differentiate between the numerous procedural aspects included in the statute that are specified in the Department’s regulations.

Benefits Anticipated

These regulations clarify referral, admission and discharge to the ETP as well as other relevant treatment components necessary to establish the ETP. With these regulations, the Department will be able to implement the ETP, and better treat and serve our unique patient population.

Incompatibility with Existing Laws and Regulations

The Department surveyed for any other regulations on this subject-matter and found none. These regulations are not inconsistent or incompatible with existing regulations.

C. Summary of Proposed New Regulations

Section 4800

It is necessary to define the terminology utilized in the regulations to provide clarity to the statutory language and the regulation language and to provide for equal application of these terms to patients in the ETP. Department deemed it necessary to include a designee for the medical director of the hospital as a member of the FNAP under subdivision (c), as the FNAP may not include any member that is involved in an ETP patient's treatment or diagnosis at the time of that patient's placement evaluation meeting. Therefore, the medical director would not be able to participate in the FNAP if they were so involved. Department deemed it necessary that the panel of psychologists on the FNAT under subdivision (d) not include members of the treatment team, in order for the group to remain independent of the treatment. The Department routinely distinguishes between treatment and forensic assessment in order to keep the forensic assessment independent of the treatment being provided. This allows for independent opinion and assessment of risk factors.

Section 4900

It is necessary to clarify the process for referral to the ETP in order to make sure everyone follows the same process and that each patient being considered for a referral is treated the same way. It is necessary to include the Standard Treatment Environment treatment team in the decision regarding the patient's risk for dangerous behavior, in subd. (a)(1), because each member of the treatment team may have different information about the patient that is relevant to this decision. Due to the concentrated therapy and structured milieu of the ETP program, it is necessary to have the FNAT supervising psychologist or designee (if they are unavailable or involved in the treatment or diagnosis of the individual), in subd. (b), to review ETP referral forms received to ensure that a proper referral has been made. Referral initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual being considered for ETP treatment is being referred properly.

Section 4901

It is necessary to clarify the initial evaluation process for a patient being referred to the ETP in order to make sure everyone follows the same process and that each patient evaluated is treated the same way. Initial evaluation by an FNAT psychologist, who has an expertise in forensic and violence risk assessment, is necessary to ensure that each patient referred to the ETP is a proper candidate for a referral, consistent with and implementing the requirements for a dedicated forensic evaluation pursuant to Welfare and Institutions Code section 4144, subd. (b). Referral initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual being considered for ETP treatment is being referred properly.

Section 4902

It is necessary to clarify the placement evaluation meeting process for a patient being referred to the ETP in order to make sure everyone follows the same process and that each patient evaluated is treated the same way. Participation by the referred patient and their patients' rights advocate is necessary to ensure that the patient is given a voice in this process. Welf. and Inst. Code section 4414, subd. (c)(1), provides for the patient and their patients' rights advocate to be involved in the FNAP meeting. Referral initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual being considered for ETP treatment is being referred properly and allowed an opportunity to provide their own information to be reviewed as part of the ETP treatment determination.

Section 4903

It is necessary to clarify the required criteria for the FNAP in making their determination that a patient requires ETP treatment to make sure that only those individuals that require concentrated therapy and structured milieu of the ETP are accepted into the program. Assessment of admission criteria is critical to the patient receiving ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual is being considered based on standard criteria.

Section 4904

It is necessary to clarify that a patient may be placed in the ETP upon referral under Welf. & Inst. Code section 4414, subd. (a), without first complying with sections 4901 and 4902 of the regulations, if it would be too dangerous to provide the FNAT initial evaluation and FNAP placement evaluation meeting prior to ETP admission. The Department strives to provide each patient being considered for ETP placement with review and assessment prior to admission to the ETP; however, due to the nature of the behaviors of the patients being referred, it may require the Department to immediately admit the patient upon referral by the psychologist or psychiatrist. Emergency admission to the ETP would only be in cases that require the patient to receive the concentrated therapy and structured milieu of the ETP program immediately. Admission to the ETP prior to the FNAT initial review and the FNAP meeting is contemplated in the statute by allowing the dedicated forensic evaluator specified in Welf. and Inst. Code section 4144,

subd. (b), designated as an FNAT psychologist in the regulations, to complete the initial evaluation within three days of the patient being placed in the ETP.

Section 4905

It is necessary to clarify how a patient referred to the ETP is certified as requiring the ETP, in order to make sure everyone follows the same process and that each patient being considered for ETP is treated the same way. Certification is how the Department initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP; it is important to make sure that the certification decision is properly documented.

Section 5000

It is necessary to clarify the requirements of the individualized treatment plan in order to ensure that each patient's individualized treatment plan includes necessary information for the least restrictive housing determinations. Due to the concentrated therapy and structured milieu of the ETP, whether or not a patient requires their room to be locked is a critical decision that affects not only the patient's access while receiving treatment in the ETP, but also the safety and security of staff and other patients at the facility. It is necessary to include the Treatment Team along with the FNAT psychologist in developing the Individual Treatment Plan as the Treatment Team is composed of the treatment providers working with the patient and implementing the treatment plan with the individual.

Section 5100

It is necessary to clarify the process for discharge from the ETP in order to make sure everyone follows the same process and that each patient being considered for discharge is treated the same way. Discharge from the ETP and transition to the Standard Treatment Environment is a decision that affects the type of treatment the patient will receive. Aftercare planning for a patient discharging from an ETP unit is essential and provides for the patient's successful transition back to the Standard Treatment Environment, as well as successful integration amongst other patients and staff in the new treatment environment.

Section 5200

It is necessary to clarify that due to the type of patients receiving treatment in the ETP, those at high risk for the most dangerous behavior, it is important to ensure that the concentrated therapy and structured milieu of the ETP program includes a way to monitor the patients at all times while they are in their rooms or in common areas available to the ETP patients. In addition, it is necessary to specify that audio and video recordings of the ETP may be provided to other entities for the purpose of investigating abuse or neglect and to specify the length of retention of these recordings at the hospital, so all entities are aware of the potential use and destruction of these records.

III. DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated by reference in the regulation:

1. ETP Referral Form DSH-9220, Rev. 9/17
2. ETP Certification Form DSH-9219, Rev. 4/18

It is necessary to incorporate these two forms by reference as it would be unduly burdensome for the Department to publish these forms in the regulation text due to these forms being electronic forms utilized by the Department and the inability to print these forms as they appear in the electronic health record. These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations.