

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections: 4800, 4900, 4901, 4902,
4903, 4904, 4905, 5000,
5101, 5200

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2020-0413-03

OAL Matter Type: Emergency (E)

The Department of State Hospitals submitted this emergency action to establish criteria and procedures for treating patients who are at high risk of most dangerous behavior in a pilot enhanced treatment program when safe treatment is not possible in a standard treatment environment, pursuant to Welfare and Institutions Code section 4144.

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



Richard L. Smith
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Stephanie Clendenin, Director
Copy: Tarik Allen

OAL REPORT TO THE PUBLISHER

OAL Matter Number 2020-0413-03

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)** History notes for all sections should state the following:
"Section filed 4-23-2020 as an emergency; operative 4-23-2020 (Register 2020, No. **). This action is a deemed emergency pursuant to Welfare and Institutions Code section 4144(m). A Certificate of Compliance must be submitted to OAL by 10-20-2020 or the emergency language will be repealed by operation of law on the following day."

**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: Richard L. Smith
richard.smith@oal.ca.gov, (916) 323-6809

April 23, 2020

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2020-0413-035
For use by Office of Administrative Law (OAL) only			
NOTICE AGENCY WITH RULEMAKING AUTHORITY DEPARTMENT OF STATE HOSPITALS		REGULATIONS 2020 APR 13 P 2:24 OFFICE OF ADMINISTRATIVE LAW	
AGENCY FILE NUMBER (If any)			ENDORSED - FILED in the office of the Secretary of State of the State of California APR 23 2020 1:49 p.m.

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

1. SUBJECT OF NOTICE Enhanced Treatment Program		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) Enhanced Treatment Program		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 4800, 4900, 4901, 4902, 4903, 4904, 4905, 5000, 5101, 5200, 5300 per agency request	
TITLE(S) TITLE 9		AMEND	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<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 emergency filing (Gov. Code, §11346.1)	
		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify)	
		<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only	
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"/> Other (Specify)		<input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON Tarik Allen per agency request		TELEPHONE NUMBER 916 573-1056	FAX NUMBER (Optional) 916 651-3090 E-MAIL ADDRESS (Optional) 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

DATE

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

Proposed Regulation Text

Enhanced Treatment Program Regulations

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health

Adopt new Chapter 17, Article 1, sections 4800, 4801; Article 2, sections 4900, 4901, 4902, 4903, 4904, 4905; Article 3, sections 5000; Article 4, section 5100; and Article 5, section 5200 to Title 9, California Code of Regulations to read as follows.

NOTE: The entire text is new regulatory language to be added to the California Code of Regulations.

Chapter 17. Enhanced Treatment Program

Article 1. General Provisions

§ 4800. Definitions.

- (a) "DSH" shall mean the Department of State Hospitals.
- (b) "Enhanced Treatment Program" or "ETP," as used in this chapter, authorized under Health and Safety Code section 1265.9, is a pilot program aimed at treating Patients at High Risk of Most Dangerous Behavior who may benefit from concentrated, evidence-based clinical therapy and structured milieu or treatment with the goal of reducing the risk of violent behavior in a standard hospital setting.
- (c) "Forensic Needs Assessment Panel" or "FNAP," as used in this chapter, is a panel that consists of one psychiatrist, one psychologist, and the medical director of the hospital or designee. The FNAP convenes a placement evaluation meeting for each ETP patient in accordance with Welfare and Institutions Code section 4144, subdivisions (c) and (d). None of the FNAP members shall be involved in an ETP patient's treatment or diagnosis at the time of that patient's placement evaluation meeting.
- (d) "Forensic Needs Assessment Team" or "FNAT," as used in this chapter, is a panel of psychologists, not part of the ETP treatment team, with expertise in forensic assessment or violence risk assessment. Each FNAT shall have a supervising psychologist, who shall assign an ETP case or group of cases to each FNAT psychologist.
- (e) "Individualized Treatment Interventions," as used in this chapter, means interventions provided to a patient to address patient-specific risk factors for highest risk of violence.

- (f) "Most Dangerous Behavior," as used in this chapter, means aggressive acts that may cause substantial physical harm upon others in an inpatient setting.
- (g) "Standard Treatment Environment," as used in this chapter, means any non-ETP setting at a DSH state hospital.
- (h) "Standardized Violence Risk Assessment," as used in this chapter, is a violence risk assessment of an ETP patient using the Standardized Violence Risk Assessment Methodologies defined in subdivision (j) of this section.
- (i) "Standardized Violence Risk Assessment Methodologies," as used in this chapter, are reliable and valid methods used in violence risk assessment, which may include but are not limited to an analysis of the severity, frequency, and intensity of a patient's past violent behavior and an evaluation of the static and dynamic violence risk factors.
- (j) "Treatment Team," as used in this chapter, is a group of ETP treatment providers assigned to an ETP patient and generally includes a primary psychiatrist, psychologist, a clinical social worker, rehabilitation therapist, registered nurse, and psychiatric technician.
- (k) "Patient at High Risk of Most Dangerous Behavior" means a patient has a history of physical violence and currently poses a demonstrated danger of inflicting substantial physical harm upon others in an inpatient setting, as determined by an evidence-based, in-depth violence risk assessment conducted by DSH.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 2. Admissions

§ 4900. Referral Process.

- (a) A Standard Treatment Environment psychiatrist or psychologist may refer a patient to the Enhanced Treatment Program when all the following conditions are met:
- (1) A Standard Treatment Environment treatment team has determined that a patient may be at high risk for Most Dangerous Behavior in a standard treatment setting.
 - (2) A Standard Treatment Environment treatment team has attempted, without success, to provide Individualized Treatment Interventions or a Standard Treatment Environment treatment team has determined that a patient's high risk for Most Dangerous Behavior precludes safely providing Individualized Treatment Interventions in a Standard Treatment Environment.
 - (3) There is no existing contract or memorandum of understanding that provides alternative and clinically appropriate treatment outside of DSH.
 - (4) A Standard Treatment Environment treatment team has concluded that a patient has no medical issues that would contraindicate treatment in the ETP.
 - (5) A Standard Treatment Environment treatment team has completed the ETP Referral Form, DSH-9220 (Rev. 9/17), hereby incorporated by reference.
 - (6) A Standard Treatment Environment treatment team or designee has forwarded the completed ETP Referral Form to the FNAT.
- (b) Upon receipt of a completed ETP Referral Form, the FNAT supervising psychologist or designee shall review and determine whether it includes all requisite information pursuant to subdivision (a) of this section and whether to approve the referral for initial evaluation pursuant to section 4901.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4901. Initial Evaluation.

- (a) Once the FNAT supervising psychologist approves a patient referral pursuant to the section 4900, they shall assign that referred patient to an FNAT psychologist. The assigned FNAT psychologist shall conduct an initial evaluation to verify a referred patient's need for treatment in the ETP. The initial evaluation shall follow the timelines set forth in Welfare and Institutions Code section 4144, subdivision (b) and shall include but not be limited to the following:
- (1) An interview of a referred patient's Standard Treatment Environment treatment team.
 - (2) A review of a referred patient's medical record.
 - (3) A review of a referred patient's history of violence.
 - (4) A referred patient's violence risk level.
 - (5) A review of a referred patient's need for treatment in the ETP.
- (b) Upon completion of the initial evaluation, the FNAT shall provide the initial evaluation to the FNAP for a Placement Evaluation Meeting pursuant to section 4902.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4902. Placement Evaluation Meeting.

Upon receipt of the initial evaluation from the FNAT, the FNAP shall convene a placement evaluation meeting in accordance with Welfare and Institutions Code section 4144, subdivisions (c) and (d). A patient and their patients' rights advocate shall be provided instructions as to how a patient may submit documents to the FNAP to consider in making its placement evaluation decision. If a patient is unable to safely participate in the placement evaluation meeting in person, alternate modalities for participation, such as teleconference, shall be considered.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4903. Admission Criteria.

A patient shall be accepted for ETP treatment if the FNAP determines all of the following:

- (a) A referred patient is determined to be a Patient at High Risk of Most Dangerous Behavior.
- (b) Individualized Treatment Interventions provided to a referred patient have not been successful or that a patient's high risk for Most Dangerous Behavior precludes safely providing Individualized Treatment Interventions in a Standard Treatment Environment.
- (c) A referred patient has no medical issues that would preclude safe treatment in the ETP.
- (d) A referred patient is appropriate for ETP treatment, in consideration of the number of ETP referrals across DSH facilities and the number of available ETP beds.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4904. Emergency Placement.

A referred patient may be placed in the ETP prior to completion of the initial evaluation by the FNAT, pursuant to section 4901, if they present a high risk of Most Dangerous Behavior such that placement in the ETP is immediately necessary for the preservation of life or the prevention of serious bodily harm to others. The FNAT shall complete the initial evaluation of a patient placed in the ETP pursuant to this section in accordance with section 4901 and the requirements set forth in Welfare and Institutions Code section 4144, subdivision (b).

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4905. Certification Requirement.

- (a) Each ETP patient shall be certified in accordance with the requirements set forth in Welfare and Institutions Code section 4144, subdivisions (c), (d), (f), (g), (h), and (i).
- (b) An ETP Certification Form, DSH-9219 (Rev. 4/18), hereby incorporated by reference, shall be completed for each patient referred to the ETP, documenting the final decision of the FNAP.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 3. Services

§ 5000. Individualized Treatment Plan.

For each ETP patient, the FNAT psychologist in conjunction with the Treatment Team, shall develop an Individualized Treatment Plan, which shall comply with the requirements set forth in Welfare and Institutions Code section 4144, subdivision (e) and shall include the following:

- (a) a determination of whether it is clinically indicated to be the least restrictive treatment for a patient to have their room locked at a certain time;
- (b) goals that a patient must achieve in order to be placed in less restrictive treatment such as in a Standard Treatment Environment; and
- (c) treatment that the Treatment Team shall utilize and provide to assist a patient in reaching their goals.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 4. Discharge

§ 5100. Discharge and Transition.

- (a) Subsequent to certification for ETP treatment, at least every 90 days, and prior to expiration of the one-year certification, the FNAP shall review each certified ETP patient to determine whether they no longer clinically require treatment in the ETP, pursuant to Welfare and Institutions Code section 4144, subdivisions (g) and (h).
- (b) If the FNAP determines that a certified patient no longer clinically requires treatment in the ETP, an ETP patient shall be discharged in accordance with their aftercare plan pursuant to Welfare and Institutions Code section 4144, subdivision (e)(2)(I) and (e)(7), based on clinical progress reports, along with any other relevant information, and a determination that a patient should be transferred to a Standard Treatment Environment or any other appropriate placement or referred to a more secure treatment environment pursuant to Welfare and Institutions Code section 7301. The FNAP shall transfer an ETP patient within 30 days of its determination.
- (c) If the FNAP determines that a certified patient continues to clinically require treatment in the ETP, an ETP patient shall remain in the ETP, pursuant to provisions set forth in Welf. & Inst. Code section 4144, subd. (i) and (k).

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 5. Audio and Visual Monitoring/Recording

§ 5200. Audio and Visual Monitoring/Recording

- (a) DSH may monitor or record via video or audio the ETP patient rooms and common areas.
- (b) DSH shall retain as private and confidential, with restricted access, any audio or video recordings of patient rooms and common areas.
- (c) With the written permission of the executive director or designee of the hospital where the ETP is located, DSH shall grant access to the audio or video recordings of patient rooms and common areas to the hospital police to investigate an allegation of patient abuse or neglect or an incident involving the safety and security of ETP patients or staff.
- (d) In accordance with Welfare and Institutions Code sections 4902, subd. (b)(1), and 4903, DSH shall grant access to the audio or video recordings of patient rooms and common areas to a protection and advocacy agency investigating incidents of abuse, neglect, injury or death.
- (e) DSH shall destroy all audio or visual recordings after 45 calendar days, unless the executive director or designee of the hospital where the ETP is located has provided authorization to retain the audio or video recordings beyond the 45 calendar days for a purpose noted in either subdivision (c) or subdivision (d) of this section.

Authority cited: Section 1265.9, Health and Safety Code; Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

ADOPT

State of California - Health and Human Services Agency

Department of State Hospitals

Form DSH9219 - ETP Certification

Identifying Information

				Date Of ETP Referral:		ETP Case #:	
Patient First Name:			Patient Last Name:		Patient Middle Name:		First Hospital Case #:
Patient Case #:	Referring Hospital Name:	DSH Admission Date:	Committing County:		Commitment Code:		
Date of birth:	Age:	Sex:	Sex at Birth:	Ethnicity:	Religion:	Primary Language:	

Referring hospital

Staff Contact:	Staff Phone #:	Staff Email:	Staff Job Title:
Alternate Staff Contact:	Alternate Staff Phone #:	Alternate Staff Email:	Alternate Staff Job Title:
Conservator name:	Phone# :	Address:	
Family contact name:	Phone# :	Address:	

Certification Decision

**ETP Certification Form
DSH-9219 (Rev. 4/18)**
Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508
Filing Guidelines Assessment

Case Number:
Patient Name:
Date of Birth:

DO NOT PURGE FROM CLINICAL RECORD

ADOPT

State of California - Health and Human Services Agency

Department of State Hospitals

Form DSH-9220 - ETP Referral Form

Identifying Information						
Patient First Name:		Patient Last Name:		Patient Middle Name:	First Hospital Case #:	
Patient Case #:	Referring Hospital Name:	DSH Admission Date:	Committing county:	Primary Legal Class:		
Date Of Birth:	Age:	Gender:	Sex at Birth:	Ethnicity:	Religion:	Primary Language:
Referring hospital						
Staff Contact:		Staff Phone #:	Staff Email:		Staff Job Title:	
Alternate Staff Contact:		Alternate Staff Phone #:	Alternate Staff email:		Alternate Staff Title:	
Conservator name:		Phone# :	Address:			
Family contact name:		Phone# :	Address:			
Risk & Aggression						
Current violence risk formulation (risk factors, triggers, cause of aggression, protective factors, etc):						
Recent physical aggression history - (within 6 months)						
General information about recent aggression						
Describe all selected recent aggression						
Describe type(s) of aggression (i.e., organized, impulsive, psychotic)						
Describe type(s) of aggression						

ETP Referral Form
DSH-9220 (Rev 9/17)
 Confidential Patient Information
 See W&I Code Section 5328 and
 HIPAA Privacy Rule CFR Section 164.508

Case Number:
Patient Name:

DO NOT PURGE FROM CLINICAL RECORD

Form DSH-9220 - ETP Referral Form**Criminal History****Describe instant offense****Summary of criminal history****List any identified enemies or gang affiliations****Diagnoses, conditions & adaptive equipment****Current Mental Health Diagnosis of Record****Diagnoses****Significant medical conditions****Current Medical Diagnosis of Record****Medical Conditions****Describe effectiveness of treatment****Adaptive equipment****List any adaptive equipment needed****Describe potential impact on risk****Medications****Involuntary medication order:****Currently prescribed medication****Medication Name****Dose****Route****Frequency****Last Dose Date****ETP Referral Form****DSH-9220 (Rev 9/17)**

Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508

Case Number:**Patient Name:****DO NOT PURGE FROM CLINICAL RECORD**

Form DSH-9220 - ETP Referral Form**Medication Allergies:****Has the patient received a psychopharmacology resource network (PRN) consultation:****Date:****Outcome:****Other relevant information:****Has Patient been compliant with medications:****Has Patient been tried on Clozapine?****Has Patient been tried on a long acting injectable antipsychotic?:****Cognitive Functioning****Cognitive screening administered****Neuropsychological assessment completed
Yes/No****Other relevant information regarding cognitive functioning****History of treatment for violence reduction****List all psychosocial treatment interventions, outcomes, and barriers to treatment that have been attempted:****Psychosocial Treatment Intervention:****Barriers:****Outcomes: Legal Documentation****ETP Referral Form
DSH-9220 (Rev 9/17)**Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508**Case Number:**
Patient Name:**DO NOT PURGE FROM CLINICAL RECORD**

Form DSH-9220 - ETP Referral Form**Other Information****Any relevant patient information not captured elsewhere on this form:****Rationale for ETP placement:****Signature****Employee Number****Team members name:****Job Title:****Signature:** _____**Date:** _____

ETP Referral Form
DSH-9220 (Rev 9/17)
Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508

Case Number:
Patient Name:

DO NOT PURGE FROM CLINICAL RECORD