



**CALIFORNIA DEPARTMENT OF
STATE HOSPITALS**

**NOTICE OF EMERGENCY ADOPTION AND
FINDING OF EMERGENCY**

Enhanced Treatment Program (ETP) Emergency Regulations

FINDING OF EMERGENCY REGULATORY ACTION IS NECESSARY

The Department of State Hospitals (Department or DSH) finds that the proposed emergency adoption to California Code of Regulations, title 9, new chapter 17, new articles 1, sections 4800, 4801; new article 2, sections 4900, 4901, 4902, 4903, 4904, 4905; new article 3, section 5000; new article 4, section 5100; new article 5, section 5200; and new article 6, section 5300 is deemed to address an emergency for purposes of Government Code sections 11346.1 and 11349.6. DSH is exempted from the requirements of Government Code section 11346.1, subdivision (b). (Welf. and Inst. Code, § 4144, subd. (m).)

NOTICE AND INTRODUCTION

NOTICE IS HEREBY GIVEN that the Department proposes the emergency adoption of the regulations. Government Code section 11346.1, subdivision (a)(2), requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, it shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In addition to the five-day comment period for the emergency filing indicated above, there will also be a 45-day public comment period when these proposed regulations are amended and noticed via the regular rulemaking process, to be completed within 180 days of OAL's approval of this emergency package.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed emergency action to OAL. Comments may also be submitted to OAL by facsimile at 916-323-6826. The Department plans to file the emergency rulemaking package with OAL within five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed emergency regulations, the comments must be received by both the Department and OAL within five calendar days of the Department's filing of the emergency regulations with OAL.

Please check the OAL website at www.oal.ca.gov to find out when the emergency regulations are filed with OAL.

Comments should be sent **simultaneously** to:

Department of State Hospitals
Attn: Regulations Unit
“ETP Emergency”
1600 9th Street, Rm 410
Sacramento, CA 95814
Facsimile: (916) 651-3157

and

Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Facsimile: (916) 323-6826

FINDING OF EMERGENCY

The proposed emergency regulations are deemed to address an emergency for purposes of Government Code sections 11346.1 and 11349.6. DSH is exempted from the requirements of Government Code section 11346.1, subdivision (b). (Welf. and Inst. Code, § 4144, subd. (m).)

A. Authority and Reference Citations

Authority: Welfare and Institutions Code sections 4005.1, 4027, 4101, and 4144.

References: Health and Safety Code section 1265.9; and Welfare and Institutions Code sections 4027, 4101, 4123, 4144, and 4145.

B. Informative Digest and Policy Statement Overview

Policy Statement

It is the policy of DSH to expand the continuum of care by establishing the ETP to provide safer treatment to patients who are at high risk of most dangerous behavior and who are able to benefit from concentrated, evidence-based clinical therapy and structured milieu therapy or treatment aimed at reducing the risk of violent behavior, with the goal of returning the patient to a standard treatment environment. DSH is committed to providing treatment in the least restrictive environment.

Existing Law

Existing law pursuant to AB 1340 (2014) authorizes DSH to establish and maintain pilot ETPs to treat patients who are at high risk of most dangerous behavior when safe treatment is not possible in a standard treatment environment. (Health & Saf. Code, § 1265.9.) The statutes do not, however, provide guidance on logistics and patients' rights issues which must necessarily be clarified in these proposed regulations in order to implement the ETP.

C. Summary of Proposed New Regulations

The proposed new regulations sections 4800-5300, are summarized as follows:

Add Section 4800

This regulatory action would add Title 9, Division 1, Chapter 17, section 4800 provide definitions of terminology that are used by current statutes and by the proposed regulations, to clarify how these terms are utilized for ETP.

Add Section 4900

This regulatory action would add Title 9, Division 1, Chapter 17, section 4900 to clarify current statute by providing requisite criteria and procedures for patient referral to the ETP, by submitting the ETP Referral Form for approval by the Forensic Needs Assessment Team Supervising Psychologist for initial evaluation.

Add Section 4901

This regulatory action would add Title 9, Division 1, Chapter 17, section 4901 to clarify current statute by providing procedures for the Forensic Needs Assessment Team Psychologist to conduct an initial evaluation of the referred patient to verify the need for treatment in the ETP.

Add Section 4902

This regulatory action would add Title 9, Division 1, Chapter 17, section 4902 to specify that upon completion of the Initial Evaluation under section 4901, the Forensic Needs Assessment Panel shall convene a Placement Evaluation Meeting in accordance with Welfare and Institutions Code section 4144, subdivisions (c) and (d). This section also specifies how the patient and their Patients' Rights Advocate may submit documentation to be considered by the Forensic Needs Assessment Panel.

Add Section 4903

This regulatory action would add Title 9, Division 1, Chapter 17, section 4903 to clarify existing statute by providing criteria and procedures for the Forensic Needs Assessment Panel to accept a patient for ETP treatment.

Add Section 4904

This regulatory action would add Title 9, Division 1, Chapter 17, section 4904 to clarify existing statute by providing criteria and procedures for immediate admission into the ETP when a patient presents a high risk of 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.

Add Section 4905

This regulatory action would add Title 9, Division 1, Chapter 17, section 4905 to clarify existing statute by indicating certification requirements for a patient in the ETP, including use to the ETP Certification Form.

Add Section 5000

This regulatory action would add Title 9, Division 1, Chapter 17, section 5000 to clarify existing statute for ensuring that each patient admitted to the ETP has an individualized treatment plan and that the treatment plan includes clinically indicated determinations regarding the least restrictive treatment environment for the patient.

Add Section 5100

This regulatory action would add Title 9, Division 1, Chapter 17, section 5100 to clarify existing statute by providing criteria and procedures for discharging or transitioning a patient from the ETP, including the timeline for any transfer out of the ETP.

Add Section 5200

This regulatory action would add Title 9, Division 1, Chapter 17, section 5200 to define conditions under which audio and video monitoring or recording of patient rooms in the ETP may be conducted, how recordings shall be retained as private and confidential, how access is restricted to such recordings, and the DSH retention policy for such recordings. Audio and video monitoring and recording of the ETP patient rooms and common areas is necessary to ensure patient safety and security.

Add Section 5300

This regulatory action would add Title 9, Division 1, Chapter 17, section 5300 to delineate patient property limitations, storage, and access on the ETP.

D. Technical, Theoretical, and Empirical Study or Report

1. Department of State Hospital 2010 - 2017 Violence Report
http://www.dsh.ca.gov/Publications/docs/Violence_Report_DSH_2010-2017.pdf
2. Stephen M. Stahl, Debbi A. Morrissette, Michael Cummings, Allen Azizian, Shannon Bader, Charles Broderick, Laura Dardashti, Darci Delgado, Jonathan Meyer, Jennifer O'Day, George Proctor, Benjamin Rose, Marie Schur, Eric Schwartz, Susan Velasquez and Katherine Warburton (2014). California State

Hospital Violence Assessment and Treatment (Cal-VAT) guidelines. CNS Spectrums, 19, pp 449-465 doi:10.1017/S1092852914000376

3. Katherine D. Warburton (2015). A new standard of care for forensic mental health treatment: prioritizing forensic intervention. CNS Spectrums, 20, pp 172-176 doi:10.1017/S1092852915000140
4. Katherine Warburton (2014). The new mission of forensic mental health systems: managing violence as a medical syndrome in an environment that balances treatment and safety. CNS Spectrums, 19, pp 368-373 doi:10.1017/S109285291400025X

E. Determinations

Substantial Difference from Existing Comparable Federal Regulations or Statute:

None.

Incompatibility with Existing Laws and Regulations:

The proposed regulations are neither inconsistent nor incompatible with existing state laws and regulations.

Mandates:

DSH has determined that the proposed regulations would not impose a mandate on any local agency or school district that requires reimbursable by the State under Government Code, division 4, part 7 (commencing with section 17500).

Fiscal Impacts:

Costs to any local agency or school district that requires reimbursement pursuant to part 7, commencing with Section 17500, of Division 4 of the Government Code:

DSH anticipates no fiscal impact to local agencies or school districts.

Costs or savings to any State agency:

DSH anticipates no additional costs, apart from the costs associated with the implementation and operation of the ETP program.

Other non-discretionary costs or savings imposed on local agencies:

DSH has determined that the proposed regulations would not create costs or savings or other nondiscretionary cost or savings to State or local agencies.

Costs or savings in federal funding to the State:

DSH has determined that the proposed regulations would not create costs or savings in federal funding to the State.

Costs or savings to individuals or businesses:

DSH is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DSH has determined that no reasonable alternative which it will consider or that will otherwise be identified and brought to its attention will be more effective in carrying out the purpose for which this action is proposed or will be as effective and less burdensome to affect private persons than the proposed action described in this Notice.

DSH invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation amendment during the written comment period.

AVAILABILITY OF FINDING OF EMERGENCY, TEXT OF PROPOSED EMERGENCY REGULATIONS, AND RULEMAKING FILE

The rulemaking file is available for inspection and copying at the Department of State Hospitals, Regulations Unit, 1600 9th Street, Room 410, Sacramento, CA 95814. As of the date this Notice is published, the rulemaking file consists of a copy of the exact language of the proposed regulations and the Finding of Emergency. These documents may also be viewed and downloaded from DSH's website at www.dsh.ca.gov.