

**DEPARTMENT OF STATE HOSPITALS  
INITIAL STATEMENT OF REASONS  
CONTRABAND SEARCH AND CONFISCATION REGULATIONS**

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

**THE PROBLEM(S) THE PROPOSED REGULATIONS INTEND TO ADDRESS**

This regulation will clarify the contraband safety and security search procedures at each Department of State Hospitals (Department) facility. Contraband poses a risk to the safety and security of patients, visitors, and staff members. Contraband items include drugs, needles, patient manufactured alcohol (pruno), weapons, and seemingly harmless items modified for illegal purposes, such as weapons, for lighting fires, or for hiding contraband. These improvised items can be used to commit assaults on staff members, other patients, and can be utilized to consume or ingest controlled substances. Patients hide controlled substances in clothing or other objects until it can be used, ingested, or distributed later. The Department employees need to conduct searches of the patients and their living areas to interdict the possession and transfer of contraband. These searches include searches of the entire Secured Treatment Area (STA), patient living areas, and the grounds of the Department's facilities. Staff members' searches will reduce the possibility of patient possession of contraband, including but not limited to, patient manufactured alcohol (pruno), weapons, and dangerous drugs. Staff members need to conduct both random and for cause searches of the patients, patient living areas, and common areas while the patients are undergoing treatment. These searches will protect the patients, visitors, and staff members and facilitate patient treatment.

**THE SPECIFIC PURPOSE AND NECESSITY FOR THE ADOPTION OF EACH REGULATION**

**Adopt Section 4351(a)**

**Purpose**

This section is adopted to specify the ability of non-peace officers to monitor for contraband within the Secured Treatment Area (STA) or patient living areas, and conduct searches of any area, announced or unannounced, to locate and secure contraband.

## **Necessity**

The proposed regulation is necessary for the safety and security of the public, patients, and employees of the Department. Non-peace officer staff members designated as able to conduct searches for contraband provide additional safety to the hospitals by designating those personnel with the authority to monitor, identify, and secure contraband from various locations accessible by patients within the STA and patient living area. Non-peace officer staff provide direct patient care, work closely with patients, and can locate and secure contraband effectively. This provides Department peace officers the ability to perform security duties for the hospitals, which non-peace officer staff cannot perform, and enhances the ability of staff to find contraband. Hospital police will be alerted upon the discovery of contraband, in order to ensure proper removal of the contraband and address any further safety and security needs of the facility.

## **Adopt Section 4351(b)**

### **Purpose**

This section is adopted to permit non-peace officer staff who reasonably believe contraband may be present on a patient, or an issue exists which may be a threat to the health and safety of those in the hospital, to perform a pat-down search on a patient.

### **Necessity**

The proposed regulation is necessary to protect the health and safety of those on hospital grounds. Non-peace officer staff are abundant amongst the hospital and work closely with patients. Permitting non-peace officer staff to perform a search when there is reasonable suspicion of contraband, or the non-peace officer staff identify a threat to the health and safety of others, provides additional safety and security to the hospitals by providing an immediate mechanism to address identified contraband. A pat-down search, as defined in the regulation, is necessary to find contraband or otherwise illegal items located on a patient and remove the item from the patient. Hospital police shall be notified if contraband is located to allow for more control and reporting of the process. A pat-down search is also necessary because contraband or other items may be hidden underneath the clothing of the patient that is not detectable by vision alone. Defining a pat-down also provides clarity and consistency for the staff performing this function.

## **Adopt Section 4351(c)**

### **Purpose**

This section is adopted to designate the hospital executive director, or designee, with the ability to identify employee classifications, aside from peace officers, which may conduct searches for contraband.

## **Necessity**

The proposed regulation is necessary to establish who can designate the employee classifications able to perform searches for contraband. Defining who may establish the classifications ensures accountability in the designation process and ensures that each designation is appropriate, supportable, and enforceable. Designations are needed to ensure non-peace officer staff conducting searches are trained and follow established hospital guidance for the safety and privacy of patients.

## **Adopt Section 4351(d)**

### **Purpose**

This section is adopted to establish that patients may be removed from an area of search if the patients become intrusive, aggressive, noncompliant, or if it is determined the nature of the search requires the patients, for the safety of the patients and staff, to be removed from the area.

### **Necessity**

This proposed regulation is necessary to provide a safe environment for patients, designated staff, and peace officers to conduct searches. Patients exhibiting intrusive, aggressive, or other noncompliant behavior during a search pose a risk to themselves, other patients, non-peace officer staff, and peace officer staff, and may be removed for those reasons or other emergent circumstances. Additionally, as the search is performed, patients exhibiting intrusive, aggressive, or otherwise noncompliant behavior may tamper with or cause the damage or destruction of evidence in the area that may be necessary for a criminal investigation.

## **Adopt Section 4352(a)**

### **Purpose**

This section is adopted to provide a common understanding of peace officers as hospital police officers and sworn investigators.

### **Necessity**

The proposed regulation is established law that is restated to provide clarity and consistency that hospital police officers and sworn investigators have legal authority to conduct person and property searches within the hospital and on hospital grounds as part of their duties and within their jurisdiction.

## **Adopt Section 4352(a)(1)**

### **Purpose**

This section is adopted to establish that hospital police and investigators may conduct both searches on persons and searches on property on hospital grounds and in any location throughout the state in the performance of their duties, and provides a non-exhaustive list of the types of searches peace officers and investigators may conduct in the performance of their duties.

### **Necessity**

The proposed regulation is necessary to describe the authority for hospital police officers and sworn investigators to perform their duties on any hospital grounds and establishes the general range of authority and scope of their duties. The ability of hospital police officers and sworn investigators to perform searches is an integral part of protecting the health and safety of its staff, patients, and visitors to the facility, as well as a core function of police activity. These searches prevent the entry of items identified as contraband and support the Department's obligation to comply with Sections 4138 and 4139 of the Welfare and Institutions Code (WIC).

Vehicle searches are used to find and prevent contraband from entering state grounds. Inventory searches are used to inventory the personal property of a patient to ensure contraband does not enter the facility through this property. Pat-down searches are used to prevent contraband from entering the facility while hidden on the body of the person searched. Canine sniff searches detect contraband concealed in a way that is undetectable through other means except for canine sniffs. Physical examination searches are necessary to discover contraband concealed within the body of a person, that may not be discoverable without a medical examination, and prevent its entry into the facility.

These types of searches not only ensure the safety of hospital staff, visitors, and persons being searched, they provide law enforcement personnel the ability to minimize or prevent undocumented and illegal contraband and other items harmful to the health and safety of the public from entering the facility.

## **Adopt Section 4352(a)(2)**

### **Purpose**

This section is adopted to specify that searches may be conducted by hospital peace officers and sworn investigators at random or with reasonable suspicion based on evidence and applicable laws.

## **Necessity**

The proposed regulation is necessary to define under what circumstances searches may be performed by hospital police officers and sworn investigators, including the scope of permissible searches under state and federal laws and exemptions. This section is necessary to identify that some searches require a different level of cause or evidence depending on the level of intrusion of the search.

## **Adopt Section 4352(a)(3)**

### **Purpose**

This section is adopted to describe that if a strip search or visual body cavity search is performed by a hospital police officer or sworn investigator, the rationale to do so must be based on reasonable suspicion and evidence.

### **Necessity**

The proposed regulation is necessary because while hospital police officer and sworn investigators may perform searches, including but not limited to the type of searches described in Section 4352(a)(1), not all types of searches may be performed at random as described in Section 4352(a)(2). This subdivision ensures strip searches and visual body cavity searches are performed only based upon reasonable suspicion and with information obtained from an investigation. A strip search or visual body cavity search, when the basis to perform the search has been met, is necessary to find contraband or other items small enough to be hidden under clothing or within a person and prevent the item, or items, from entering hospital grounds or preventing their use within hospital grounds.

## **Adopt Section 4352(a)(4)**

### **Purpose**

This section is adopted to inform that if a body cavity search is performed by a hospital police officer or sworn investigator, it shall be done only as part of the execution of a search warrant.

### **Necessity**

The proposed regulation is necessary because though hospital police officers and sworn investigators may perform searches, including but not limited to the type of searches described in Section 4352(a)(1), not all searches may be performed at random as described in Section 4352(a)(2). This subdivision ensures body cavity searches are performed only upon execution of a search warrant. A body cavity search, when a search warrant authorizes it, is necessary to find contraband or other items

small enough to be hidden within a person and prevent the item, or items, from entering hospital grounds or preventing their use within hospital grounds.

### **Adopt Section 4353(a)**

#### **Purpose**

This section is adopted to establish that contraband shall not enter the STA, or patient living areas, without a prior written authorization from the executive director, or designee, or the hospital police chief.

#### **Necessity**

The proposed regulation is necessary to allow items identified as contraband, but approved by the executive director, or designee, or the hospital police chief, to enter the STA. This ensures the safety and security of the facility, patients, staff, contractors, and visitors, and assists in identifying what items are within the STA legally and with approval to perform necessary hospital functions such as contracted repair work and maintenance. This regulation also provides accountability by mandating an authorization before an item designated as contraband will be permitted into the hospital.

### **Adopt Section 4353(a)(1)**

#### **Purpose**

This paragraph is adopted to establish a non-exhaustive list of items that are considered contraband, but necessary for a contractor to perform the contracted work as well as mandate the documentation of the contraband on a log when entering and leaving the STA or patient living areas.

#### **Necessity**

This proposed regulation is necessary to establish examples of items considered contraband that may be necessary for a contractor to perform contracted work. Establishing these examples provide guidance and consistency for approving or disapproving other similar items which may be considered contraband, but necessary in the performance of work for the hospital. This regulation also mandates, for accountability and tracking, that items designated as contraband be recorded when entering and exiting the STA or patient living areas. Tracking the contraband in this way enhances the safety of the hospital grounds by ensuring no contraband items are within the STA, visiting center, or patient living areas which hospital police officers are not aware of before or after the work of the contractor is completed.

## **Adopt Section 4353(b)**

### **Purpose**

This section is adopted to establish that all persons entering the STA, visiting centers, and patient living areas are subject to searches using a variety of tools and techniques such as metal detectors or metal detector wands, canine-sniffs, x-ray devices, cell phone detecting devices, devices to detect controlled substances, and pat-down searches.

### **Necessity**

This proposed regulation is necessary to ensure the safety and security of the hospital grounds, patients, staff, contractors, and visitor by preventing the entry of contraband. Visitors may unknowingly bring items identified as contraband to hospital grounds. Hospitals must be diligent in searching for and finding these items to prevent their entry into the STA, visiting centers, and patient living areas. The methods and tools necessary to conduct these searches on all persons entering the STA, visiting centers, and patient living areas are tools and methods commonly used to detect items designated as contraband that may be missed by visual searches alone. These methods and tools enhance the hospital's ability to prevent the entry of contraband onto hospital grounds.

## **Adopt Section 4353(c)**

### **Purpose**

This section is adopted to establish that all property entering the STA, visiting centers, and patient living areas are subject to both visual and physical searches with the use of a non-exhaustive list of methods and tools.

### **Necessity**

This proposed regulation is necessary to ensure the safety and security of the hospital grounds, patients, staff, contractors, and visitors by preventing the entry of contraband. This is achieved by reserving the right to search all property on or with all persons entering the STA, visiting centers, and patient living areas. Contraband and other illegal items can be hidden from plain sight in the property introduced into these areas, therefore, a search of those items is necessary to ensure the safety of those on hospital grounds. The methods and tools necessary to conduct these searches on property of persons entering the STA and patient living areas are tools and methods commonly used to detect contraband that may be missed by visual searches alone. These methods and tools enhance the hospital's ability to prevent the entry of contraband onto hospital grounds.

## **Adopt Section 4353(d)**

### **Purpose**

This section is adopted to establish that all contraband found on a person entering the STA, visiting centers, and patient living areas, identified on the contraband list established by the Department, or the contraband list established by each state hospital, must either be returned to the vehicle of that person or removed from hospital grounds. This section also specifies that failure to remove such items may result in their confiscation.

### **Necessity**

This proposed regulation is necessary to establish that items found on a person which are identified as contraband on either the Department statewide contraband list or facility-specific list, are not permitted onto hospital grounds, but does not necessarily warrant confiscation. The person in possession of the item identified as contraband will be permitted to either return the contraband to the person's vehicle or remove the items from the hospital grounds entirely before entry into the facility. Not every item identified as contraband must be confiscated as there are seemingly harmless and legal items that are included on the statewide or hospital contraband lists, so this regulation provides a mechanism to deny the entry of these types of contraband without the escalation of methods to achieve the desired outcome, such as seizing the contraband. The Department complies with WIC section 4139(b) in regard to any property confiscated from a visitor.

## **Adopt Section 4353(d)(1)**

### **Purpose**

This section is adopted to establish that contraband found on a person, which violates state or federal law, shall be confiscated and that person subject to criminal prosecution.

### **Necessity**

This section is necessary to establish that the illegal possession of contraband on hospital grounds is a criminal offense subject to both confiscation and prosecution to the maximum extent of the law. This regulation serves not only as a deterrent to those in possession of illegal contraband on hospital grounds, but a means to seize the contraband and ensure that it does not enter hospital grounds, where it may cause harm to patients, staff, contractors and visitors, or return to the general public, where it may also cause harm.

## **Adopt Section 4353(e)**

### **Purpose**

This section is adopted to establish that all persons who refuse a search shall be denied the ability to enter the STA or patient living areas.

### **Necessity**

This proposed regulation is necessary to ensure the safety and security of the hospital grounds, patients, staff, contractors, and visitors. Searches are necessary to ensure contraband is not introduced to hospital grounds, either intentionally or unintentionally, where the contraband may endanger others. Persons not searched prior to entering the STA or patient living areas present a risk to the overall security of patients and staff.

### **ECONOMIC IMPACT ASSESSMENT**

The Department does not anticipate any non-discretionary costs or savings imposed on any local agency due to this proposed regulation, during the current fiscal year and subsequent fiscal years, nor does the Department anticipate any additional costs to the Department or any other State agency.

#### Creation or elimination of jobs within the State of California:

None. The proposed regulation deals only with effectively maintaining a secured facility for the benefit of the patients and the public. The proposed regulation only makes specific Department staff duties as they relate to contraband search and confiscation. As a result, the proposed regulation will neither create nor eliminate jobs within the State of California.

#### Creation of new businesses or the elimination of existing businesses within the State of California:

None. The proposed regulation deals only with the search and confiscation of contraband on the grounds of a Department state hospital, by Department staff. Businesses within the State of California have no role in the search and confiscation of contraband on the grounds of a Department state hospital. As a result, the proposed regulation will neither create nor eliminate jobs within the State of California.

#### Expansion of businesses currently doing business with the State of California:

None. The proposed regulation only makes specific Department staff duties as they relate to contraband search and confiscation. Businesses currently doing business within the State of California have no role in contraband search and confiscation. As a result, the proposed regulation will not affect the expansion of businesses currently doing business within California.

Benefits to California residents' health and welfare, worker safety, and the State of California's environment:

The proposed regulation may benefit California residents' health and welfare, primarily the patients committed to the Department. The existence of contraband in any state hospital facility poses a serious risk to the patient population's safety and the safety of staff. The Department operates five state hospitals that treat acutely psychiatric patients. The items deemed contraband by the Department, and each state hospital, have been reviewed and included on the contraband lists due to the risk posed by these items being on hospital grounds. Although the Department has published lists of what is considered contraband and, therefore, not allowed in the facilities, contraband items continue to make their way into the facility. These items put the patient population and staff at risk for severe injury or harm, as contraband items have been used as weapons. The Department has found unregulated or illegal drugs in the facilities. These drugs pose a very serious risk to any patient utilizing these items (as these drugs are not regulated, and many of these patients are on prescribed medication that could have an adverse effect if combined with other medicines), and to their peers and staff members. The drugs may negatively alter the users' behavior.

The proposed regulation may also benefit the health and welfare of the California public. When patients do well, they return to the community better than when they entered the state hospital system, thereby reducing the risk of harm to the community. Contraband may compromise the patients' welfare and their ability to properly reintegrate into the community.

The proposed regulation may also benefit worker safety. A standardized contraband search and confiscation system gives staff a reliable way to manage items that are not supposed to be on hospital grounds and maintain the safeguards in place to keep both staff and patients safe.

The proposed regulation may also benefit the State's environment by making the search and confiscation of contraband more efficient. This higher efficiency reduces waste in both time and resources, carbon footprints, and energy costs.

**STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT  
DIRECTLY AFFECTING BUSINESS**

The Department has made an initial determination that the proposed regulations will have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulations, when implemented, serve as preventative instructions and regulatory requirement with the purpose of preventing the entry of contrabands into Department facilities. only affect property to be bought, sold, traded, or gifted with the patient population at each Department facility.

## **STATEMENT OF ALTERNATIVES CONSIDERED**

In developing this regulatory action, the Department did not find any alternatives for consideration.

The Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which these regulations are proposed, would be as effective and less burdensome to affected private persons than the proposed regulations, would lessen any adverse impact on small businesses, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **ANTICIPATED BENEFITS FROM THE REGULATORY ACTION**

The benefits of these regulations are that they establish the authority for authorized, non-peace officer employees of state hospitals, to conduct searches within designated areas of the hospital, using a variety of searches as defined, to confiscate contraband. These searches are vital to protect the health, safety, and security of hospital grounds, staff, patients, contractors, and visitors to the hospital by expanding the number of personnel able to identify and remove contraband from patients or designated areas on hospital grounds without the need to initially call hospital police officers. This action minimizes the potential of the contraband being moved before the arrival of hospital police to perform the search and therefore remaining unaccounted on hospital grounds and able to cause harm. These regulations also improve safety by establishing processes for approved contraband entering hospital grounds to be accounted for and tracked by hospital police. Defining various search methods, techniques, and tools for use to search for contraband in addition to the types of searches hospital police officers and sworn investigators are permitted to perform, as well as the conditions under which the searches can be performed, provides transparency to those affected by these regulations and establishes consistency in the application of these regulations. Persons who do not consent to these regulations are prohibited from entering the STA or patient living areas, ensuring the potential for the entry of contraband is prevented altogether and providing persons seeking entry into the STA, visiting centers, or patient living areas a choice in whether to subject themselves and their property to a search. Collectively, these rules minimize the ability for contraband to enter the designated areas of the hospital grounds undetected, which improves the health and safety of everyone on hospital ground.

## **DOCUMENTS RELIED UPON**

DSH - Department of Police Services Contraband Report

## **STATEMENT ON THE REQUIREMENT FOR PRESCRIPTIVE STANDARDS**

The Department believes these prescriptive standards are required. The Department has peace officers on staff, these officers are not always readily available to assist in contraband searches within the STA and patient living areas. At Department facilities, non-peace officer staff spend more time with patients and are in direct contact with the patients. Patients in each facility are housed in units with non-peace officer staff, and these staff are typically the first responders to any incident within the facility. As contraband poses a safety and security risk to both the patient population and Department staff, the prompt identification, securing, and removal of contraband is necessary. Because non-peace officer staff are in direct contact with the patient population more often than others, their assistance in the identifying and securing identified contrabands is as an important function which requires identified staff to conduct searches for contraband when necessary.