

**DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS
PROPERTY TRANSFER BETWEEN PATIENTS REGULATION**

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 4.5. Patients' Rights and Related Procedures for Non-Lanterman-Petris-Short
Act Patients in Department of Mental Health Facilities
Article 3. General Limitations Applicable to Non-LPS Patients

THE PROBLEM THAT THE PROPOSAL IS INTENDED TO ADDRESS

Patients committed to the Department of State Hospitals (Department) may attempt to make monetary gains, or gain special consideration or favor from other patients using bribery, threats, or other unlawful means. The proposed regulation establishes procedures for the approval and transferring of property with patients in a Department facility to prevent this from occurring. The control and monitoring of property is necessary for the safety and security of the Department's patient population, the public, Department staff, and the facility.

THE SPECIFIC PURPOSE AND NECESSITY FOR EACH PROPOSED REGULATION

Section 893(a)

Purpose

This section is adopted to specify that patients shall not buy, trade, sell, or gift any property on the contraband list of the Department or on the contraband list of the facility in which the patient resides.

Necessity

The proposed regulation is necessary because contrabands jeopardize the health and safety of the patients, staff, visitors, contractors, and the public. Contrabands are not permitted to be in any facility without approval and thus inappropriate to be in the possession of patients. Because of this, it is also inappropriate for patients to buy, sell, trade, or gift items deemed to be contraband to another patient.

Section 893(b)

Purpose

This section is adopted to specify that before any transfer of property between patients, the patients must first obtain approval from their respective treatment teams.

Necessity

The proposed regulation is necessary to prevent patients from possessing items deemed a danger to themselves, and the security and safety of the public, Department staff, and other patients. Due to the varying level of cognitive functioning of each patient, an item that may be suitable in the possession of one patient may become dangerous in the possession of another. As such, it is important for the responsible treatment teams to evaluate each transaction with each patient to maintain the security of the patients and others in the facility.

Section 893(c)

Purpose

This section is adopted to specify the Department may prohibit patients from buying, selling, trading, or gifting property with or to other patients.

Necessity

The proposed regulation is necessary because patients in the care of the Department have varying levels of cognitive functioning. Patients in some facilities have higher functioning and may be able to facilitate a purchase, selling, trading, or gifting of property, but other patients may not have the same level of function, creating the potential for patients to take advantage of the situation. As such, the Department must reserve the ability to prohibit the buying, selling, trading, or gifting of property based on the needs of the facility and the patient population it serves.

Section 893(c)(1)

Purpose

This section is adopted to specify that if the buying, selling, trading, or gifting of personal property is prohibited, property found in possession of a patient identified as having been bought, traded, or gifted will be confiscated utilizing these regulations. It is adopted to clarify the procedures regarding patient property, when buying, selling, trading or gifting of personal property is prohibited.

Necessity

The proposed regulation is necessary to guide the Department in confiscating property identified as belonging to another patient. It is required to prevent a patient from taking possession of another patient's personal property without the Department's approval. It is necessary for the safety and security of the public, patients, and employees of the Department. This is also necessary to ensure property is not unlawfully taken.

Section 893(c)(1)(A)

Purpose

This section is adopted to specify the Department may return the confiscated property to the original owner, who sold, traded, or gifted the property, if identified.

Necessity

The proposed regulation is necessary to prevent a patient from taking possession of another patient's personal property without the Department's approval. It is necessary to establish the option of the patient's treatment team, determining who will possess the confiscated property.

Section 893(c)(1)(B)

Purpose

This section is adopted to specify that if the original owner who sold, traded, or gifted the property is not identified, the confiscated property will be deemed unidentified property.

Necessity

The proposed regulation is necessary to prevent a patient from taking possession of another patient's personal property without the Department's approval. It is required to establish procedures to control the transfer of property for the safety and security of the public, patients, and employees of the Department. The confiscated property is deemed unidentified property when the Department is unable to identify the original owner.

Section 893(c)(1)(C)

Purpose

This section is adopted to specify the procedure for a patient contesting the confiscation of personal property. It is adopted to establish that if a patient contests the confiscation or return of the property, the patient may submit a written request for review to the program director within ten working days of the date of confiscation.

Necessity

The proposed regulation is necessary to provide the patient a process to contest the confiscation or return of property. The written request and submission within ten working days allows for the Department to consistently and timely respond to the patient's contest of the confiscation of property. It is essential for patients affected by these regulations to know the procedures needed for challenging property confiscation.

Section 893(c)(1)(C)1.

Purpose

This section is adopted to specify the response time to a written request contesting property confiscation and the personnel responsible for reviewing the confiscation of property.

Necessity

The proposed regulation is necessary to establish a general understanding of the process for patients contesting property confiscation. These procedures are necessary to ensure the property is not erroneously confiscated from the possession of a patient. It is necessary to provide the appropriate personnel responding to the patients' written request and how the Department must respond to the request. Thirty calendar days allows for the Department to consistently and timely respond to the patient's contest of the confiscation of property.

Section 893(c)(1)(C)2.

Purpose

This section is adopted to specify that if the written request contesting the confiscation is approved, the Department will return the property to the patient from which it was confiscated, and if the request contesting the confiscation is denied, the Department may arrange for an alternate disposition of the property.

Necessity

The proposed regulation is necessary to provide the patient a process to contest the confiscation or return of property. It is essential for patients affected by these regulations to know the procedures needed for challenging property confiscation. It is necessary to provide closure to the contestation process for the patient.

Section 893(c)(2)

Purpose

This section is adopted to specify the processes and considerations for permitting the buying, selling, trading, or gifting of property between patients.

Necessity

The proposed regulation is necessary to clarify how a patient seeking to buy, sell, trade, or gift property to another patient must follow procedures to receive permission for the property transfer. It is necessary to ensure the safety and security of the facility,

patients, staff, and the public by tracking the exchange of property between patients. Property that is safe in the possession of one patient may be dangerous in the control of another patient, so it is necessary to establish considerations to determine the appropriateness of a transfer.

Section 893(c)(2)(A)

Purpose

This section is adopted to specify that the patients must mutually agree on the transfer of the property for the buying, selling, trading, or gifting of property to be permitted.

Necessity

The proposed regulation is necessary to prevent coercion, protect patients, and maintain facility safety and security. The Department must determine that each patient involved in the transfer of property has agreed to buy, sell, trade, or gift the property because there must be an agreement between both parties of the exchange to have an approved transfer.

Section 893(c)(2)(B)

Purpose

This section is adopted to specify that the treatment team will use specific factors to determine the property transfer's appropriateness.

Necessity

The proposed regulation is necessary to ensure the treatment team properly reviews property transfers between patients. It is necessary to identify and consider the relevant factors to determine the transfer's appropriateness to ensure the safety and security of the public, Department staff, and patients.

Section 893(c)(2)(B)1.

Purpose

This section is adopted to specify the treatment team will consider the patients' competency and cognitive functioning when determining the appropriateness of the property transfer.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer will be permitted. It is necessary to consider

the patients' competency and cognitive functioning because it ensures the treatment team will assess each patient's capacity to enter into such an agreement before permitting a property transfer between patients. It is necessary to protect vulnerable patients from others that may try to take advantage of them.

Section 893(c)(2)(B)2.

Purpose

This section is adopted to specify the treatment team will consider the patients' identified behaviors, risk factors, and history when determining the appropriateness of the property transfer.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer will be permitted based on the patient's current behaviors, and risk factors for violence, aggression or assault. It is necessary to review the patients' history in regard to these factors to determine whether the property transfer may adversely affect anyone. It is necessary to consider these factors before safely permitting the property transfer between patients.

Section 893(c)(2)(B)3.

Purpose

This section is adopted to specify the treatment team will consider the facility's security needs when determining the appropriateness of the property transfer.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer will be permitted. It is necessary to consider the security needs of the facility before permitting the property transfer between patients because property that is safe in the possession of one patient may be dangerous in the control of another patient. The security needs of different units within the facility may determine the appropriateness of the property transfer because the item may be safe in one unit, but may not be safe in another. In addition, reviewing the type of item being transferred is necessary to ensure that contraband items are not being distributed within the facility.

Section 893(c)(2)(B)4.

Purpose

This section is adopted to specify the treatment team will consider the patients' health concerns when determining the appropriateness of the property transfer.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer will be permitted. The treatment team must consider the health concerns of the patients before permitting the property transfer between patients. It is necessary because a patient may not be cognizant of the dangers associated with specific items, such as food allergies, choking hazards, etc.

Section 893(c)(2)(B)5.

Purpose

This section is adopted to specify the treatment team will consider the facility or patients' sanitation concerns when determining the property transfer's appropriateness.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer will be permitted. It is essential to consider the sanitation concerns of the patients or facility before approving the property transfer between patients because it may help prevent the cultivation of infectious diseases that may jeopardize the health and safety of the patients, staff, and the public, as well as minimize compulsive hoarding that may lead to additional sanitation issues and violations, as well as assist in vector control.

Section 893(c)(2)(B)6.

Purpose

This section is adopted to specify that the treatment team will consider infection control when determining the property transfer's appropriateness.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer will be permitted. It is necessary to ensure that all property transfers meet infection control standards for the type of treatment unit that the patient resides on, and for the safety of the patients, any infectious diseases/conditions (COVID, MRSA, scabies) of the patients before permitting the

property transfer between patients. It is necessary for the health and safety of the patients, staff, and facility to prevent the spread of infectious diseases through the property transfer.

Section 893(c)(2)(B)7.

Purpose

This section is adopted to specify the treatment team will consider the physical space limitations of the facility, including fire code restrictions and regulations, when determining the property transfer's appropriateness.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer between patients will be permitted. The treatment team must consider the California fire code regulations for the prevention of fire and for the protection of life before permitting the property transfer between patients. The Department is required to follow regulations in regard to space limitations. It is necessary for the safety of the patients, staff, and facility. The Department must adhere to established regulations, including Title 22 of the California Code of Regulations, sections 73507 and 73611.

Section 893(c)(2)(B)8.

Purpose

This section is adopted to specify that the treatment team will consider environmental health guidelines when determining the property transfer's appropriateness.

Necessity

The proposed regulation is necessary because it guides the treatment team in determining whether the property transfer will be permitted. Environmental health standards must be considered before permitting the property transfer between patients. The Department must adhere to established regulations, including Title 22 of the California Code of Regulations, section 73611.

Section 893(c)(2)(C)

Purpose

This section is adopted to specify that transfer requests between patients that include money or other transfer of value shall be reviewed with additional considerations.

Necessity

The proposed regulation is necessary to prevent vulnerable patients from being targeted for gain by other patients. It is essential to identify the factors a treatment team uses to review a property transfer request because these types of transfers require a higher level of scrutiny. It is necessary for the safety and security of the public, patients, and employees of the Department.

Section 893(c)(2)(C)1.

Purpose

This section is adopted to specify the Department will review safety and security risks associated with the transaction for transfers of money or value.

Necessity

The proposed regulation is necessary because the treatment team must reasonably identify safety and security risks associated with the transaction. Safety and security are factors considered because not all patients have the same level of cognitive functioning. Patients may be unaware of the value of the items they are buying, selling, trading, or gifting, or may be under duress to proceed with the trade. These types of transactions may also lead to the strong-arming of patients to agree to the trade. As such, these regulations are necessary to protect the patients and ensure the security of their property.

Section 893(c)(2)(C)2.

Purpose

This section is adopted to specify that multiple requests from the same patient or individual not committed to the facility is a significant factor in determining whether a transfer of money or value from one patient to another is permitted.

Necessity

The proposed regulation is necessary to prevent vulnerable patients from being targeted for gain by other patients or individuals not committed to the facility. It is necessary for the safety and security of the public, patients, and employees of the Department.

Section 893(c)(2)(C)3.

Purpose

This section is adopted to specify that the gifting of high-value items is a significant factor in determining whether a property transfer of money or value will be permitted.

Necessity

The proposed regulation is necessary to prevent vulnerable patients from being targeted for gain by other patients. When a patient is gifting high-value items, the property transfer must be closely scrutinized. Patients giving high-priced items to another patient without receiving any compensation presents a risk to the public, staff and patients' safety and security.

Section 893(c)(2)(C)4.

Purpose

This section is adopted to specify that an unreasonably high number of items in one transfer is a significant factor in determining whether the property transfer of money or value is permitted.

Necessity

The proposed regulation is necessary to prevent vulnerable patients from being targeted for gain by other patients. It is required because patients giving an unreasonably high number of items to another patient, without receiving any compensation, presents a risk to the safety and security of the public, staff, and patients.

Section 893(c)(2)(D)

Purpose

This section is adopted to specify the treatment team review of the request to buy, sell, trade, or gift property requires approval by the program director, or designee.

Necessity

The proposed regulation is necessary to provide the approval or denial of the property transfer between patients. The analysis of the property transfer by the program director, or designee, provides another layer of review before the transfer is approved, to ensure the safety and security of the public, Department staff, and patients.

Section 893(c)(2)(E)

Purpose

This section is adopted to specify that the treatment team will document the approval.

Necessity

The proposed regulation is necessary to provide patients the next step in the process after the property transfer is approved. Documentation by the treatment team provides a process to complete the patient transfer of property and provides a way to track the transfer of the property.

Section 893(c)(3)

Purpose

This section is adopted to specify patients may purchase items in the canteen for other patients by following the conditions outlined in this section and to establish the purpose of a canteen in this regulation.

Necessity

The proposed regulation is necessary to establish the conditions that must be satisfied to permit the purchasing of items between patients. It is necessary to ensure the safety and security of the public, Department staff, and patients. The term canteen is also defined in this regulation using the specific definition found in WIC section 4314(a).

Section 893(c)(3)(A)

Purpose

This section is adopted to specify that before a patient can purchase an item from the canteen for another patient, it must first be mutually agreed upon by the patients involved in the purchase.

Necessity

The proposed regulation is necessary to ensure the participating patients agree to the purchase. This agreement ensures that patients involved in the purchase are not taken advantage of and the purchase is mutually approved by the patients.

Section 893(c)(3)(B)

Purpose

This section is adopted to specify that before each purchase in the canteen for another patient, the patients must first obtain approval from their respective treatment teams.

Necessity

The proposed regulation is necessary to prevent patients from possessing items deemed a danger to themselves, and the security and safety of the public, Department staff, and other patients. Due to the varying level of cognitive functioning of each patient, an item that may be suitable in the possession of one patient may become dangerous in the possession of another. As such, it is important for the responsible treatment teams to evaluate each transaction with each patient to maintain the security of the patients and others in the facility.

Section 893(c)(3)(C)

Purpose

This section is adopted to specify that upon receiving the treatment team's approval, the unit supervisor will issue a document noting the approval for the purchase, that the patients will present along with their identification badges to a staff member in the canteen.

Necessity

The proposed regulation is necessary to establish the conditions that must be followed to purchase items in the canteen for another patient. Canteens are located off-unit and the canteen staff need a way of knowing the purchase is approved by the treatment teams before allowing the purchase.

Section 893(c)(3)(D)

Purpose

This section is adopted to specify all food items purchased for another patient from the canteen must be consumed in an area approved by Department staff.

Necessity

The proposed regulation is necessary to provide guidelines to patients of where to consume food items as well as to specify that patients may consume those food items in areas determined by appropriate by the facility. It is necessary to ensure the safety of the patients and security of the facility.

Section 893(c)(3)(E)

Purpose

This section is adopted to specify that canteen staff will return the patients' documents approving the purchase to the unit supervisors of the patients.

Necessity

The proposed regulation is necessary to retain documentation of the approval for hospital records and for proof of ownership.

ECONOMIC IMPACTS ASSESSMENT

The Department does not anticipate these proposed regulations to have a significant statewide adverse economic impact.

Creation or Elimination of Jobs within the State of California

This regulation establishes rules for the buying, selling, trading, or gifting of personal property between patients at state hospitals. This regulation only affects existing state positions within the Department. As such, no jobs will be created or eliminated within the State of California because of this regulation.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

This regulation establishes rules for the buying, selling, trading, or gifting of personal property between patients at state hospitals. This regulation only affects existing state positions within the Department. As such, no businesses will be created or eliminated within the State of California because of this regulation.

Expansion of Businesses Currently Doing Business within the State of California

This regulation establishes rules for the buying, selling, trading or gifting of personal property between patients at state hospitals. This regulation only affects existing state positions within the Department. As such, this regulation will not cause the expansion of businesses currently doing business within the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State of California's Environment

This regulation will benefit the health and welfare of California residents, ensure worker safety, and benefit the environment by establishing a process for the buying, selling, trading, or gifting of personal property either between or with patients. In establishing this regulation, any property transferred between patients is monitored and approved to ensure the transfer does not include items which could be considered a danger to the

patients or the safety and security of Department staff and the public. Property considered safe in the possession of one patient may become an imminent danger in the possession of another patient. This regulation monitors the volume of transfers and the possession of items which may present a hazard to the patient and staff by violating safety protocols such as applicable fire codes and sanitation standards.

STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed regulation will have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because the regulation only affects property to be bought, sold, traded, or gifted between the patient population at Department facilities.

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 this regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, 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

This regulation will define the process and procedures for the buying, selling, trading, or gifting of property either between or with patients committed to the Department and housed in a facility managed by the Department. With this regulation, the Department will codify the rules for property transfers, that best serve the needs of the patients and ensures the safety and security of the patients, Department staff, and the public.

This proposed rule ensures that each facility permitting the buying, selling, trading, or gifting of property is aware of and approves the transaction. The rule also ensures each patient is aware of the transaction and the transaction is mutually agreed upon. Cognitive functions vary from patient to patient, necessitating rules which permit the appropriate Department staff to review the potential transfer and approve or deny it based on all applicable safety and security concerns and needs.

STATEMENT OF SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposed regulation will not mandate the use of new, specific technologies or equipment.