

NOTICE OF PROPOSED ACTION – CHANGES IN THE REGULATIONS OF THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS

Property Transfer Between Patients Regulations

The Department of State Hospitals (Department) proposes the adoption of the regulation described below. A public hearing is not currently scheduled. No later than 15 days prior to the close of the public comment period, any interested person, or their duly authorized representative, may make a written request for a public hearing pursuant to Section 11346.8 of the Government Code, and a public hearing will be held. Requests for a public hearing should be sent to the address or number below. If a request for public hearing is received, the date, time, and means by which the public hearing will be conducted will be provided in a separate notice.

Any interested person or their representative may provide comments relevant to the proposed regulatory action to the Department in writing, email, or facsimile to the address or number listed below. The public comment period for this regulatory action will begin on **May 7, 2021**.

For any written comment to be considered, it must be received by the Department no later than the close of the 45-day comment period, which is **June 21, 2021**. Comments sent to persons or addresses other than that specified in this document or received after the date and time specified may be included in the record of this proposed regulatory action, but may not be summarized or responded to by the Department. For consideration, written comments shall be submitted to:

California Department of State Hospitals
Regulations and Policy Unit
Property Transfer with Patients
1600 9th Street, Room 410
Sacramento, CA 95814
Tel: (916) 654-2478, Fax: (916) 651-3090
Email: DSH.Regulations@dsh.ca.gov

AUTHORITY AND REFERENCE

Welfare and Institutions Code sections 4005.1, 4109, and 4101.

INFORMATIVE DIGEST AND POLICY OVERVIEW

Existing laws, including Sections 4005.1, 4109, and 4101 of the Welfare and Institutions Code, authorize the Department to adopt and enforce rules and regulations it determines necessary to manage its responsibility for the care of patients committed to its facilities. These laws also mandate that all institutions under the jurisdiction of the Department are governed by the rules written by the Department.

This proposed regulation would adopt new rules defining the process under which the buying, selling, trading, or gifting of property either between or with patients committed to the care of the Department and housed in state facilities may occur, when permitted. This permission is determined by each facility based on its patient population and the security and safety needs. These rules would be located in Title 9, Division 1, Chapter 4.5, Article 3, of the California Code of Regulations.

These proposed rules define how property is identified and confiscated when the buying, selling, trading or gifting of the property is prohibited. In these situations, the original owner would be identified, if possible, and the property returned. If the original owner of the property is not identified, the property would be deemed unidentified property. These rules also outline the process in which the patient may contest the confiscation of the property.

These proposed rules define the process under which the buying, selling, trading, or gifting of property may occur, and include considerations to be made by the appropriate Department staff at the facility, such as a mutual agreement on the transfer of property from the patients, the competency and cognitive functioning of the patient, and all other safety and security considerations. These rules provide for additional factors to be considered when determining if the buying, selling trading or gifting of money or other property of value is permitted. For facilities with an onsite canteen, the purchase of canteen items for other patients would also follow an approval process that ensures the transaction is appropriate and not a threat to the safety and security of the patients, Department staff, or the public.

These proposed rules ensure that permitted buying, selling, trading, or gifting of property is approved and tracked by the facility. The rules also ensure 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.

ANTICIPATED BENEFITS

These regulations 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 these regulations, any property transferred with patients are 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 items which may present a safety hazard to the patient and staff by violating safety protocols such as applicable fire codes and sanitation standards.

EVALUATIONS AND DETERMINATIONS

Mandate on local agencies and school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Cost or savings to any State agency: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the State: None.

Significant effect on housing costs: None.

Effect on small business: The proposed regulations do not effect small businesses because the proposed regulations will only effect patients and state hospital facilities.

Cost impacts to a representative private person or business: None.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

During the development of this proposed regulatory action, the Department reviewed any existing regulations on this subject matter and concluded that the proposed regulation is neither inconsistent nor incompatible with existing state regulations or statutes. In arriving at this conclusion, the Department reviewed the Welfare and Institutions Code, title 22 of the California Code of Regulations, and its own regulations in title 9 of the California Code of Regulations.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS AND INDIVIDUALS

There is no anticipated significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or

expand businesses in the State of California. The proposed regulations benefit the health and welfare of California residents, worker safety, and the state's environment.

STATEMENT OF ALTERNATIVES CONSIDERED

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 the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to submit statements or arguments with respect to alternatives to the proposed regulation during the comment period.

CONTACT PERSONS

The primary contact for this regulatory action is Tarik Allen, and the backup contact is Sylvester Okeke. They can be reached by contacting the Department of State Hospitals, Regulations and Policy Unit phone number at (916) 654-2478 or email at DSH.Regulations@dsh.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

Department staff prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic impacts of the proposal and all the information upon which the proposal is based, including the purpose and necessity for the proposed regulatory action and the proposed text (the "express terms") of the regulation.

Copies of the proposed regulation text and the ISOR may be accessed on the Department's website, listed below, or may be obtained from the Department using the contact information provided in this document.

Further, interested persons may direct comments concerning the proposed regulatory action to Tarik Allen, Regulations Coordinator, at (916) 654-2478 or DSH.Regulations@dsh.ca.gov. DSH has compiled a record of this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the public comment period, and after any requested public hearing, the Department will consider all timely and relevant comments, and it may adopt the proposed regulation substantially as described in this notice. If the Department makes

modifications which are sufficiently related to the originally proposed text, except for grammatical or organizational changes, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts the regulation as revised and noticed as appropriate. These documents will be available on the [Department's website](https://www.dsh.ca.gov/Publications/Regulations.html) at <https://www.dsh.ca.gov/Publications/Regulations.html>. The Department will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons (FSOR) shall be available and copies may be requested from the contact persons in this notice or may be accessed on the Department's Internet web site listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the [Department's website](https://www.dsh.ca.gov/Publications/Regulations.html) at <https://www.dsh.ca.gov/Publications/Regulations.html>.