

**DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS
ENHANCED TREATMENT PROGRAM REGULATIONS**

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 17. Enhanced Treatment Program

THE PROBLEM(S) THE PROPOSED REGULATIONS INTEND TO ADDRESS

Existing law pursuant to AB 1340 (2014) authorizes the Department of State Hospitals (DSH) to establish and maintain pilot Enhanced Treatment Programs (ETP) to treat patients at high risk of most dangerous behavior when safe treatment is not possible in a standard treatment environment. (Health & Safety Code section 1265.9.) Welfare and Institutions Code (WIC) section 4144 provides parameters for referral to the pilot ETP, and the evaluation, assessment, and treatment process. However, the statute does not provide guidance on logistics and patients' rights issues, which must necessarily be clarified in these proposed regulations to implement the ETP.

THE SPECIFIC PURPOSE AND NECESSITY FOR THE ADOPTION OF EACH REGULATION

Section 4800(a)

Specific Purpose and Necessity:

This section is adopted to define "DSH" as meaning the Department of State Hospitals in these regulations. This definition is necessary to establish a consistent understanding of the term.

Section 4800(b)

Specific Purpose and Necessity:

This section is adopted to define "ETP" as meaning Enhanced Treatment Program in these regulations, as well as to establish who the program treats and the goal of the program. This definition is necessary to establish a consistent understanding of the term and goals of the program as established in Welfare and Institutions Code section 4143 and 4144 and Health and Safety Code (HSC) section 1265.9.

Section 4800(c)

Specific Purpose and Necessity:

This section is adopted to define "FNAP" as meaning Forensic Needs Assessment Panel in these regulations. This definition is necessary to establish both the meaning of the term FNAP as used in these regulations and the personnel and professions that make up the FNAP.

A designee was added to the medical director of the hospital component of the FNAP to allow for the medical director to designate someone in their absence or in the event that they are involved in the patient's treatment or diagnosis at the time of their placement meeting and are therefore prohibited from participating in the FNAP by statute (see WIC section 4144, subdivision (l)(2)).

Section 4800(d)

Specific Purpose and Necessity:

This section is adopted to define "FNAT" as meaning Forensic Needs Assessment Team in these regulations. This definition is necessary to establish both the meaning of the term FNAT as used in these regulations and the personnel and professions that make up the FNAT.

The coordination of the FNAT psychologists' duties and scheduled evaluations, and supervision of the psychologists is a task that is vital to the success of the program. This task shall be delegated to the FNAT supervising psychologist. The FNAT supervising psychologist shall be responsible for the collection of data, coordination with the FNAP, coordination of referrals from the hospitals, and assisting in the communication between the FNAT psychologist and the ETP treatment team. It is essential to establish the role of the FNAT supervising psychologist in order to provide for consistency and coordination in the referral process.

Section 4800(e)

Specific Purpose and Necessity:

This section is adopted to define the term "Individualized Treatment Interventions" as used in these regulations. This definition is necessary to establish a consistent understanding of the term and its process.

Section 4800(f)

Specific Purpose and Necessity:

This section is adopted to define the term "Most Dangerous Behavior" as used in these regulations. This definition is necessary to establish a consistent understanding of the term and what acts fall within this definition.

Section 4800(g)

Specific Purpose and Necessity:

This section is adopted to define the term "Standard Treatment Environment" as used in these regulations. This definition is necessary to establish a consistent understanding of the term when referring to locations at a state hospital not considered the ETP.

Section 4800(h)

Specific Purpose and Necessity:

This section is adopted to define the term "Standardized Violence Risk Assessment" as used in these regulations. This definition is necessary to establish a consistent understanding of the term.

Section 4800(i)

Specific Purpose and Necessity:

This section is adopted to define the term "Standardized Violence Risk Assessment Methodologies" as used in these regulations. This definition is necessary to establish a consistent understanding of the term and the standards and methodologies for assessing the violence risk of patients.

Section 4800(j)

Specific Purpose and Necessity:

This section is adopted to define the term "Treatment Team" as used in these regulations. This definition is necessary to establish a consistent understanding of the term as well as the general personnel composition of the group.

Section 4800(k)

Specific Purpose and Necessity:

This section is adopted to define the term "Patient at High Risk of Most Dangerous Behavior" as used in these regulations. This definition is necessary to establish a consistent understanding of the term when used in these regulations as well as to describe patients and differentiate behavior that falls into this definition from other behaviors.

Section 4900(a)

Specific Purpose:

This section is adopted to specify the criteria for referral of a patient to the ETP by a Standard Treatment Environment psychiatrist or psychologist. California WIC section 4144 authorizes a state hospital psychiatrist or psychologist to refer a patient to the ETP for temporary placement and risk assessment upon determining that the patient may be at high risk for Most Dangerous Behavior and when safe treatment is not possible in a Standard Treatment Environment. All conditions within subsection 4900(a) must be met to refer a patient to the ETP.

Necessity:

The proposed regulations are necessary to specify what conditions must be met to refer a patient to the ETP. It is essential to have a process for identifying an ETP along a continuum of care that best meets the patient's needs. DSH adheres to WIC section 4144 criteria to ensure a patient shall not be placed into the ETP as a means of punishment, coercion, convenience, or retaliation. By creating identifiable requirements and benchmarks, DSH encourages patient improvement, recovery, and a return to a Standard Treatment Environment.

Section 4900(a)(1)

Specific Purpose:

This section is adopted to specify one of the conditions that must be met for a patient to be referred to the ETP. A Standard Treatment Environment treatment team must determine a patient may be at high risk for Most Dangerous Behavior in a Standard Treatment Environment.

Necessity:

The proposed regulation is necessary because a Standard Treatment Environment treatment team must determine a patient may be at a high risk of Most Dangerous Behavior in a Standard Treatment Environment to refer a patient to the ETP. It is essential to have a process for identifying the ETP along a continuum of care that best meets the patient's needs. To ensure the public, hospital staff, and patients' safety and security, the referred patient must be at a high risk of Most Dangerous Behavior and appropriate for ETP treatment. This determination by the Standard Treatment Environment treatment team as a referral requirement and condition for ETP placement is the clinical best practice for referring a patient for treatment. Patients whose behavior falls within this defined category of Most Dangerous Behavior, per legislative notes associated with HSC section 1265.9, may benefit from concentrated, clinical therapy.

Section 4900(a)(2)**Specific Purpose:**

This section is adopted to specify one of the conditions that must be met for a patient to be referred to the ETP. When the 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, a Standard Treatment Environment psychiatrist or psychologist may refer a patient to the ETP.

Necessity:

The proposed regulation is necessary because a Standard Treatment Environment treatment team must attempt, without success, to provide Individualized Treatment Interventions or determine that a patient's high risk for Most Dangerous Behavior precludes safely providing Individualized Treatment Interventions in a Standard Treatment Environment. To ensure the public, hospital staff, and patients' safety and security, the referred patient must be at a high risk of Most Dangerous Behavior and appropriate for ETP treatment. Clinical assessment and review focused on behavior, history, high risk of most dangerous behavior, and the patients' clinical needs to receive treatment in ETP ensure the patient is being treated in the least restrictive environment. DSH ensuring the patient is being treated in the least restrictive environment is the clinical best practice for referring a patient for treatment. Patients whose behavior falls within this defined category, per legislative notes associated with HSC section 1265.9, may benefit from concentrated, clinical therapy.

Section 4900(a)(3)

Specific Purpose:

This section is adopted to specify one of the conditions that must be met for a patient to be referred to the ETP. When there is no existing contract or memorandum of understanding that provides alternative and clinically appropriate treatment outside of DSH, a Standard Treatment Environment psychiatrist or psychologist may refer a patient to the ETP.

Necessity:

The proposed regulation is necessary because there must be no existing contract or memorandum of understanding that provides alternative and clinically appropriate treatment outside of DSH to ensure the patient is being treated in the least restrictive environment. Therapy in the least restrictive environment is the clinical best practice for referring a patient for treatment. Patients whose behavior falls within this defined category, per legislative notes associated with HSC section 1265.9, may benefit from concentrated, clinical therapy.

Section 4900(a)(4)

Specific Purpose:

This section is adopted to specify one of the conditions that must be met for a patient to be referred to the ETP. When a Standard Treatment Environment treatment team has concluded the patient has no medical issues that would contraindicate treatment in the ETP, a Standard Treatment Environment psychiatrist or psychologist may refer a patient to the ETP.

Necessity:

The proposed regulation is necessary because a Standard Treatment Environment treatment team must conclude that a patient has no medical issues that would contraindicate treatment in the ETP before referring a patient to the ETP. It is essential to ensure the patient receives adequate medical treatment and is appropriate for ETP treatment. Confirming ETP treatment is appropriate for the individual is the clinical best practice for referring a patient for treatment. Patients whose behavior falls within this defined category, per legislative notes associated with HSC section 1265.9, may benefit from concentrated, clinical therapy.

Section 4900(a)(5)

Specific Purpose:

This section is adopted to specify one of the conditions that must be met for a patient to be referred to the ETP. When a Standard Treatment Environment treatment team has completed the ETP referral form, a Standard Treatment Environment psychiatrist or psychologist may refer a patient to the ETP.

Necessity:

The following sections of the ETP referral form are necessary to provide appropriate treatment, continuity of care, and data collection: Risk and Aggression, Criminal History, Diagnosis, Conditions and Adaptive Equipment, Medications, Cognitive Functioning, History of Treatment for Violence Reduction, Legal Documentation, and Other Information. DSH has standardized what patient identifying information needs to be kept in the ETP referral form. The FNAP uses this information in making its certification decision for admission into the ETP. The signature section of the ETP referral form is necessary to ensure a psychiatrist or psychologist is the referring discipline as required by statute. Patients whose behavior falls within this defined category, per legislative notes associated with HSC section 1265.9, may benefit from concentrated, clinical therapy.

Section 4900(a)(6)

Specific Purpose:

This section is adopted to specify one of the conditions that must be met for a patient to be referred to the ETP. The Standard Treatment Environment treatment team must forward the completed ETP referral form to the FNAT supervising psychologist as criteria to refer a patient to the ETP.

Necessity:

The referral form must be provided to the FNAT supervising psychologist to make sure the referral process is consistent. It is necessary for the FNAT supervising psychologist to receive the ETP Referral Form in order to commence the ETP referral process.

Section 4900(b)

Specific Purpose:

This section is adopted to specify that upon receipt of a completed ETP Referral Form, the FNAT supervising psychologist or designee shall review and determine whether an ETP Referral Form includes all requisite conditions pursuant to subdivision (a) of this section, and whether to approve the referral for initial evaluation pursuant to section 4901.

Necessity:

The proposed regulation is necessary to clarify the process for submitting an ETP referral because DSH follows the procedure outlined in the statute. It is necessary to make sure the referral process is consistent. It is essential to ensure that the FNAP has the required information to determine whether a patient requires ETP treatment. The FNAT supervising psychologist coordinates the referral process, oversees the work of the FNAT psychologists and schedules FNAP meetings. A comprehensive review of a patient is the clinical best practice for referring a patient for treatment.

Section 4900(c)

Specific Purpose:

This section is adopted to specify the FNAT Supervising Psychologist or designee shall verify that the referring hospital has notified the patients' rights advocate and conservator, if applicable, of the ETP referral.

Necessity:

The proposed regulation is necessary to establish the referring hospital shall notify the patients' rights advocate and conservator, if applicable, of the ETP referral. It is necessary to ensure DSH does not prevent a patient from being represented in the ETP referral process.

Section 4901(a)

Specific Purpose:

This section is adopted to specify procedures for the FNAT psychologist to conduct an initial evaluation of the referred patient to verify the need for treatment in the ETP and establish what is to be reviewed in the initial evaluation. Once the FNAT supervising psychologist approves a patient referral pursuant to 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 outlined in WIC section 4144, subdivision (b).

Necessity:

The proposed regulation is necessary to clarify the requirements for an initial evaluation conducted by a dedicated forensic evaluator. DSH follows WIC section 4144, subdivision (b), which states a dedicated forensic evaluator, who is not on the patient's treatment team, shall complete an initial evaluation of the patient that shall include an interview of the patient's treatment team, an analysis of diagnosis, past violence, current level of risk, and the need for enhanced treatment.

Section 4901(a)(1)

Specific Purpose:

This section is adopted to specify an interview of a referred patient's Standard Treatment Environment treatment team is included in the initial evaluation of the patient by the assigned FNAT psychologist.

Necessity:

The proposed regulation is necessary because it is essential to include an interview of a referred patient's Standard Treatment Environment treatment team in the initial evaluation. It is essential because it ensures the most comprehensive perspective possible of the patient from each member of the treatment team is obtained. The treatment team members may have different information about the patient that is relevant to this decision. It ensures the evaluator uses their due diligence to obtain and review all relevant information to conduct a clinically-sound assessment. An interview of the treatment team in the initial evaluation ensures all required information has been reviewed, and a clinically-sound evaluation has been completed. This interview and obtaining all relevant information is the clinical best practice of referring a patient for treatment. It is necessary because, pursuant to WIC section 4144, subdivision (b), a dedicated forensic evaluator, who is not on the patient's treatment team must complete an initial evaluation of the patient that includes an interview of the patient's treatment team. The statutory requirement for including this element in the initial evaluation is included in the regulation to help clarify the need and purpose for including this element in the evaluation process.

Section 4901(a)(2)**Specific Purpose:**

This section is adopted to specify a review of a referred patient's medical record is included in the initial evaluation of the patient by the assigned FNAT psychologist.

Necessity:

The proposed regulation is necessary to conduct a clinically-sound evaluation. It includes reviewing a referred patient's medical record in the initial evaluation to ensure the evaluators use their due diligence to obtain and review all necessary information available to them. The inclusion of pertinent data from the medical record in the initial evaluation is required to ensure an accurate assessment of the referred patient. A review of a referred patient's medical record during the initial evaluation is the clinical best practice for referring a patient for treatment. The proposed regulation is necessary because DSH follows WIC section 4144, subdivision (b), which provides that a dedicated forensic evaluator, who is not on the patient's treatment team, shall complete an initial evaluation of the patient that shall include an analysis of diagnosis, past violence, current level of risk, and the need for enhanced treatment. Information pertinent to this evaluation is found in the patient's medical record.

Section 4901(a)(3)

Specific Purpose:

This section is adopted to specify a review of a referred patient's history of violence is included in the initial evaluation of the patient by the assigned FNAT psychologist.

Necessity:

The proposed regulation is necessary to conduct a clinically-sound evaluation by reviewing a referred patient's history of violence in the initial evaluation. This review ensures the evaluators use their due diligence in obtaining and reviewing all necessary information available to them. The inclusion of violence history provides an accurate evaluation of the referred patient, since the purpose of the ETP is to treat patients at high risk for Most Dangerous Behavior. A review of a referred patient's history of violence in the initial evaluation is the clinical best practice for referring a patient for treatment. The proposed regulation is necessary because DSH follows WIC section 4144, subdivision (b), which provides that a dedicated forensic evaluator, who is not on the patient's treatment team, shall complete an initial evaluation of the patient that shall include an analysis of past violence. It is essential to review a patient's history of violence in order to include an analysis of the patient's past violence in the initial evaluation.

Section 4901(a)(4)

Specific Purpose:

This section is adopted to specify that a referred patient's violence risk level is included in the initial evaluation of the patient by the assigned FNAT psychologist.

Necessity:

The proposed regulation is necessary for conducting a clinically-sound evaluation by including a referred patient's violence risk level in the initial evaluation to ensure the evaluators use their due diligence in obtaining and reviewing all relevant and necessary information available to them. This review is the clinical best practice for referring a patient for treatment. The proposed regulation is necessary because DSH follows WIC section 4144, subdivision (b), which provides that a dedicated forensic evaluator, who is not on the patient's treatment team, shall complete an initial evaluation of the patient that shall include an analysis of current level of risk. It is essential to review a patient's violence risk level in order to include an analysis of the patient's current level of risk in the initial evaluation.

Section 4901(a)(5)

Specific Purpose:

This section is adopted to specify a review of a referred patient's need for treatment in the ETP is included in the initial evaluation of the patient by the assigned FNAT psychologist.

Necessity:

The proposed regulation is necessary for conducting a clinically-sound evaluation by including the need for treatment in the ETP for the referred patient in the initial evaluation to ensure the evaluators use their due diligence in obtaining and reviewing all relevant and necessary information available to them. The inclusion of a review of a referred patient's need for treatment in the ETP in the initial evaluation is required to ensure a proper referral and an accurate evaluation of the referred patient. The proposed regulation is necessary because DSH follows WIC section 4144, subdivision (b), which provides that a dedicated forensic evaluator, who is not on the patient's treatment team, shall complete an initial evaluation of the patient that shall include an analysis of the need for enhanced treatment. It is essential to review a patient's need for treatment in the ETP in order to include an analysis of the patient's need for enhanced treatment in the initial evaluation.

Section 4901(b)

Specific Purpose:

This section is adopted to specify that upon completion of the initial evaluation by the FNAT psychologist, the FNAT supervising psychologist shall provide the initial evaluation to the FNAP for a placement evaluation meeting pursuant to section 4902.

Necessity:

The proposed regulation is necessary to clarify the process for the FNAT supervising psychologist to submit the referral to the FNAP. The proposed regulation is necessary because DSH follows WIC section 4144, subsection (c)(2)(A), which provides the threshold standard for treatment in an ETP is met if a psychiatrist or psychologist, utilizing standard forensic methodologies for clinically assessing violence risk, determines that a patient meets the definition of a Patient at High Risk of Most Dangerous Behavior and ETP treatment meets the identified needs of the patient and safe treatment is not possible in a Standard Treatment Environment. The FNAT supervising psychologist ensures the proper process is followed, and ensures the initial evaluation gets to the FNAP timely. The statute requires inclusion of the dedicated forensic evaluator who performed the initial evaluation in the FNAP, and therefore necessarily includes review of the evaluator's initial evaluation.

Section 4902

Specific Purpose:

This section is adopted to establish that a placement evaluation meeting is held by the FNAP when an evaluation of the patient by the FNAT psychologist is completed. This section also establishes the participants of that meeting, and how documents can be submitted for consideration by the patient and/or their patients' rights advocate. This section also allows for options for patient participation in the FNAP placement evaluation meeting, if the patient is unable to physically attend.

Necessity:

The proposed regulation is necessary to clarify the process to convene a placement evaluation meeting. It is necessary because DSH follows WIC section 4144, subdivision (c)(1), which provides the FNAP shall conduct a placement evaluation meeting with the referring psychiatrist or psychologist, the patient and patients' rights advocate, and the dedicated forensic evaluator who performed the initial evaluation. A determination shall be made at the placement evaluation meeting as to whether the patient clinically requires ETP treatment. The FNAP placement evaluation meeting is held after the assigned FNAT psychologist completes the initial evaluation to ensure the FNAP has all necessary records available to conduct a clinically-sound determination. This placement evaluation meeting process is the clinical best practice for evaluating a patient for treatment.

The proposed regulation is necessary to specify that the patient is able to participate in the placement evaluation meeting in person, or by alternative means because DSH ensures meaningful patient participation and active participation in their treatment decisions. It is necessary to specify that patients and their patients' rights advocate may submit documentation to be considered by the FNAP, to ensure the patient and the patients' rights advocate have input during the placement evaluation meeting. The patient and the patients' rights advocate have input during the placement evaluation meeting to ensure the patient is included in the decision-making process and is the clinical best practice for evaluating a patient for treatment. DSH follows WIC section 4144, subdivision (d)(1), which provides the FNAP shall review all material presented at the FNAP placement evaluation meeting conducted under WIC section 4144, subdivision (c).

Section 4903

Specific Purpose and Necessity:

This section is adopted to specify the requisite criteria and procedures for the FNAP to accept a patient for ETP treatment. It is necessary to establish consistent, clinically-appropriate, admission criteria in order to ensure that each patient is treated equally and that the proper criteria are being utilized in making the admission decision.

Section 4903(a)

Specific Purpose:

This section is adopted to specify a factor in determining whether a patient shall be accepted for ETP treatment by the FNAP. It is adopted to establish a referred patient must be determined to be a Patient at High Risk of Most Dangerous Behavior.

Necessity:

The proposed regulation is necessary to ensure the patient is appropriate for ETP treatment. The determination that a referred patient is a Patient at High Risk of Most Dangerous Behavior ensures the patient is appropriate for referral to the ETP. HSC section 1265.9 and WIC section 4144 authorize DSH to establish and maintain an ETP, for the treatment of patients who are at high risk of Most Dangerous Behavior, and when safe treatment is not possible in a Standard Treatment Environment. It is necessary because DSH follows WIC section 4144, subdivisions (a) and (c)(2)(A), which provide that a state hospital psychiatrist or psychologist may refer a patient to an ETP upon determining that the patient is a Patient at High Risk of Most Dangerous Behavior. The statutory requirement for including this element as a threshold determination for admission to the ETP is included in the regulation to help clarify the need and purpose for including this factor in the admission process.

Section 4903(b)

Specific Purpose:

This section is adopted to specify a factor in determining whether a patient shall be accepted for ETP treatment by the FNAP. If the FNAP determines 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, the patient has met one of the criteria for being accepted for ETP treatment.

Necessity:

The proposed regulation is necessary to ensure a patient is appropriate for ETP treatment and has met the admission criteria. It is necessary for the FNAP to determine 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 before accepting a patient for ETP treatment as it is a clinical best practice to ensure the patient is being treated in the least restrictive environment. If Individualized Treatment Interventions in the Standard Treatment Environment are successful for a referred patient, they would not be a proper candidate for the ETP. This factor is necessary because DSH follows WIC section 4144, subdivisions (a) and (c)(2)(A), which provide that a state hospital psychiatrist or psychologist may refer a patient to an ETP upon determining that the ETP treatment meets the identified needs of the patient and safe treatment is not possible in a standard treatment environment.

Section 4903(c)**Specific Purpose:**

This section is adopted to specify a factor in determining whether a patient shall be accepted for ETP treatment by the FNAP. It is adopted to specify the criteria that a referred patient has no medical issues that would preclude safe treatment in the ETP.

Necessity:

The proposed regulation is necessary to ensure the patient is appropriate for ETP treatment. The determination that a referred patient has no medical issues that would preclude safe treatment in the ETP ensures the patient receives adequate medical treatment in the ETP. This factor is necessary because DSH follows WIC section 4144, subdivisions (a) and (c)(2)(A), which provide that a state hospital psychiatrist or psychologist may refer a patient to an ETP upon determining that the ETP treatment meets the identified needs of the patient.

Section 4903(d)**Specific Purpose:**

This section is adopted to specify a factor in determining whether a patient shall be accepted for ETP treatment by the FNAP. It identifies the criteria that a referred patient is appropriate for ETP treatment, considering the number of ETP referrals across DSH facilities and the number of available ETP beds.

Necessity:

The proposed regulation is necessary for appropriately referring patients for ETP treatment because it ensures the patients determined to be Patients at High Risk of Most Dangerous Behavior towards other patients or hospital staff are placed into ETP treatment. The number of ETP referrals across DSH facilities and the number of available ETP beds are criteria for ensuring the patient with the most need is placed in ETP treatment. This process is the clinical best practice for referring a patient for treatment.

Section 4904(a)**Specific Purpose:**

This section is adopted to specify a referred patient may be placed in the ETP prior to completion of the initial evaluation by the FNAT, 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. It also specifies that the procedure provided under WIC section 4144, subdivisions (b) and (c) is applicable to these emergency placements.

Necessity:

The proposed regulation is necessary to provide the required procedures for emergency placement within the ETP to preserve life or prevent serious bodily harm to others. It is necessary because there are some individuals that are too dangerous to allow for the referral process to occur prior to admission. If the referral process were to occur prior to their admission to the ETP, serious harm could come to those in the Standard Treatment Environment. It is necessary to refer to the requirements of WIC section 4144, subdivision (b) and (c) in this section, as these statutory subdivisions provide necessary timelines for the initial evaluation by the FNAT (within three business days of placement in the ETP) and for the placement evaluation meeting by the FNAP (within seven business days of placement in an ETP and with 72-hour notice to the patient and patients' rights advocate), for individuals placed in the ETP on this emergency basis.

Section 4904(a)(1)**Specific Purpose:**

This section is adopted to specify the FNAT Supervising Psychologist or designee shall verify that the referring hospital has notified the patients' rights advocate and conservator, if applicable, of the ETP placement.

Necessity:

The proposed regulation is necessary to establish DSH must notify the patients' rights advocate and conservator, if applicable, of the ETP placement. It is necessary to ensure the patient is properly represented in the ETP referral process and DSH is protecting the due process rights of the patient.

Section 4904(a)(2)**Specific Purpose:**

This section is adopted to specify that within seven business days of placement in an ETP and with 72-hour notice to the patient and patients' rights advocate, the FNAP shall conduct a placement evaluation meeting with the referring psychiatrist or psychologist, the patient and patients' right advocate, and conservator if applicable, and the FNAT psychologist who performed the initial evaluation. It is adopted to specify the FNAP shall make a determination as to whether the patient clinically requires ETP treatment pursuant to Welfare and Institutions Code section 4144, subdivision (c)(1).

Necessity:

The proposed regulation is necessary to establish DSH must notify the patients' rights advocate, and conservator if applicable, of the ETP placement. It is necessary to ensure DSH is protecting the due process rights of the patient.

Section 4904(a)(3)**Specific Purpose:**

This section is adopted to specify that if a patient has shown improvement during their placement in an ETP, the FNAP may delay its certification decision for another seven business days.

Necessity:

The proposed regulation is necessary to establish DSH shall not unnecessarily certify a patient that does not need ETP treatment.

Section 4905(a)

Specific Purpose:

This section is adopted to specify that patients shall be appropriately certified for placement and continued placement in the ETP. By clarifying the process for certifying patients to the ETP per WIC section 4144, subdivisions (c), (d), (f), (g), (h), and (i), DSH clarifies how to identify and triage patients for ongoing certification and continued treatment in the ETP.

Necessity:

The proposed regulation is necessary to clarify the certification process for each ETP patient. A determination shall be made as to whether the patient clinically requires ETP treatment. This establishes that only proper referrals are certified for treatment in the ETP and ensures a clear standard process for certification. It is necessary to refer to the particular subdivisions of the WIC section 4144 statute that are relevant to certification in order to provide clarity on the statutory requirements surrounding the ETP certification process.

Section 4905(b)

Specific Purpose:

This section is adopted to specify that each patient referred to the ETP shall have a completed ETP Certification Form. The ETP Certification Form documents the final decision of the FNAP.

Necessity:

The proposed regulation is necessary to ensure the final certification decision of the FNAP is documented consistently for all patients. The patient identifying information section of the ETP Certification Form is needed to maintain consistency with the standard patient identifying information for all DSH forms. The certification decision section of the ETP Certification Form is necessary to ensure written documentation of the certification decision. It is necessary because DSH follows WIC section 4144, subdivision (c)(1), which requires a determination to be made by the FNAP. It is necessary because DSH follows WIC section 4144, subdivisions (d)(1) and (d)(3), which requires the FNAP to certify the patient for treatment, and that the FNAP determination be in writing. It is necessary because DSH follows WIC section 4144, subdivision (f), which requires further FNAP certification prior to the patient being in the ETP for 90 days, and requires this determination to be in writing. It is necessary because DSH follows WIC section 4144, subdivision (g), which requires 90-day reviews of the patient placed in an ETP, requiring further certification for treatment and for these determinations to be in writing. It is necessary because DSH follows WIC section 4144, subdivisions (h) and (i), which requires further certification of treatment prior to the patient being in the ETP for 1 year, and requires this determination to be in writing.

Section 5000(a)**Specific Purpose:**

This section is adopted to specify the FNAT psychologist, in conjunction with the Treatment Team, shall develop an individualized treatment plan for each patient, which complies with the requirements set forth in WIC section 4144, subdivision (e).

Necessity:

The proposed regulation is necessary to clarify that the treatment plan for each patient admitted to the ETP includes clinically-indicated determinations regarding the least restrictive treatment environment for the patient, and to ensure the appropriateness of treatment, best clinical practices, and accountability. It is necessary because DSH follows WIC section 4144, subdivision (e)(1), which provides that upon admission to the ETP, a FNAT psychologist who is not on the patient's multidisciplinary treatment team shall perform an in-depth violence risk assessment and make an individual treatment plan for the patient based on the assessment. It is necessary to include the Treatment Team in the development of the individualized treatment plan because these are the individuals who will be working with the patient on a day-to-day basis and including their input is considered best clinical practice.

Section 5000(b)

Specific Purpose:

This section is adopted to specify DSH shall establish for each ETP patient an Individualized Treatment Plan that includes whether it is clinically indicated to be the least restrictive treatment environment for a patient to have their room locked at certain times.

Necessity:

The proposed regulation is necessary to ensure the least restrictive treatment environment for the patient. It is essential to include this clinical indication for a locked door in the Individualized Treatment Plan to ensure the review and documentation of a patient's locked/unlocked door status. Including this information in the Individualized Treatment Plan is the clinical best practice for patient treatment. DSH follows HSC section 1265.9, subdivision (d)(5), which allows ETP patient room doors to be locked when clinically indicated and determined to be the least restrictive treatment environment for the patient's care and treatment.

Section 5100(a)

Specific Purpose:

This section is adopted to specify the process for an ETP patient to be discharged and transitioned out of the ETP. It specifies the process for reviewing each certified ETP patient to determine whether they no longer clinically require treatment in the ETP. It specifies that subsequent to certification for ETP treatment, prior to expiration of the 90-day certification, and 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 WIC section 4144, subdivisions (f), (g) and (h).

Necessity:

The proposed regulation is necessary to clarify the review process outlined in the statute and ensure consistent treatment review from the FNAP and appropriate continued placement in the ETP. The clinical best practice for patient treatment requires consistent evaluation and appropriate placement. It is necessary because DSH follows WIC section 4144, subdivision (f), which provides that the FNAP shall convene a treatment placement meeting prior to the expiration of the 90-day certification to determine if the patient clinically requires continued treatment in the ETP. It is necessary because DSH follows WIC section 4144, subdivision (g), which provides that if a patient has been certified for ETP treatment for one year pursuant to subdivision (f), the FNAP shall review the patient's treatment summary at least every 90 days to determine if the patient no longer clinically requires treatment in the ETP. It is necessary because DSH follows WIC section 4144, subdivision (h), which provides that prior to the expiration of the one-year certification of ETP placement under subdivision (f), the FNAP shall convene a treatment placement meeting with the Treatment Team, the patients' rights advocate, the patient, and the FNAT psychologist who performed the in-depth violence risk assessment, to determine whether the patient clinically requires continued ETP treatment. The statutory requirements for review of the appropriateness for continued ETP treatment is included in the regulation to help clarify the timelines for when these reviews are required to occur. It is important to note that WIC section 4144, subdivision (j), provides for a recommendation to the FNAT and FNAP to transfer a patient out of the ETP if at any time during ETP placement, the patient's Treatment Team determines that the patient no longer clinically requires ETP treatment.

Section 5100(b)**Specific Purpose:**

This section is adopted to specify the process for an ETP patient to be discharged and transitioned out of the ETP. It specifies that 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 WIC section 4144, subdivision (e)(2)(l) and (e)(7). This determination shall be based on clinical progress reports, along with any other relevant information, and shall be accompanied by 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 WIC section 7301. It specifies the patient shall be transferred within thirty days of the FNAP determination.

Necessity:

The proposed regulation is necessary because DSH follows WIC section 4144, subdivision (e)(2)(I), which provides that the Individualized Treatment Plan must include the discharge criteria and goals for an aftercare plan in a Standard Treatment Environment and a plan for post-ETP discharge follow up. It is necessary because DSH follows WIC section 4144, subdivision (e)(7), which provides that an aftercare plan for a Standard Treatment Environment shall be developed. It is necessary for DSH to develop an aftercare plan for a Standard Treatment Environment because discharge to a less restrictive treatment environment is the goal for patients leaving the ETP. It is essential to base a discharge decision on clinical progress reports, other relevant information, and a determination that a patient should be transferred to a Standard Treatment Environment, or other appropriate placement, because it is the clinical best practice to utilize this information in making this determination. The requirement to transfer a patient within 30 days of the determination follows WIC section 4144, subsections (f), (g), and (i)(7). The statutory requirements for aftercare planning and the timeframe for discharge from an ETP is included in the regulation to help clarify the requirements found in multiple places in the statute that apply to discharge from the ETP.

Section 5100(c)**Specific Purpose:**

This section is adopted to specify the process for an ETP patient to remain in the ETP. This section is adopted to specify that 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 WIC section 4144, subdivisions (f), (i) and (k).

Necessity:

The proposed regulation is necessary because ensuring the patient continues to clinically require treatment in the ETP is the clinical best practice for retaining a patient in ETP treatment. It is necessary because DSH follows WIC section 4144, subdivision (k), which provides that the patient may continue in ETP until the patient no longer clinically requires ETP treatment or until the patient is discharged from DSH.

Section 5100(d)**Specific Purpose:**

This section is adopted to specify that if a patient's Treatment Team determines that the patient no longer clinically requires ETP treatment, a recommendation to transfer the patient out of the ETP shall be made to the FNAT or FNAP, pursuant to Welfare and Institutions code section 4144, subdivision (j).

Necessity:

The proposed regulation is necessary to establish DSH remove a patient from an ETP when the Treatment Team determines the patient no longer clinically requires ETP treatment. It is necessary to ensure a patient can be removed earlier than the prescribed time within the ETP, if the patient no longer demonstrates the requisite behaviors for entry into the ETP.

Section 5200(a)**Specific Purpose:**

This section is adopted to specify DSH may monitor and record the ETP patient rooms and common areas via video or audio.

Necessity:

It is necessary because DSH follows HSC section 1265.9, subdivision (d)(3), which provides that each patient room shall allow visual access by staff 24 hours per day. It is necessary for DSH to continuously monitor ETP patient rooms and common areas because staff can respond immediately to any disturbance that endangers patients and staff. Continuous audio or visual monitoring, and required routine in-person safety rounds, enhance patient safety as a supplemental measure, allowing constant visual access to patients at all times. Continuous audio or visual observation allows for increased response times to patient behavioral issues, thus enhancing patient and staff safety. Continuous audio or visual monitoring is the most comprehensive method for continuous observation of patient areas while making the most efficient use of staff resources and providing the fullest visual access to patient rooms.

Section 5200(b)**Specific Purpose:**

This section is adopted to specify that DSH shall retain as private and confidential, with restricted access, any audio or video recordings of patient rooms and common areas.

Necessity:

The proposed regulation is necessary to ensure patient privacy and restrict access to audio or video recordings of ETP patient rooms and common areas, except for specific purposes specified in subdivision (c) and (d) of this section. Patient privacy is necessary to ensure all patients are afforded dignity and respect. Restricted access is necessary in the particular situations specified under the following two subdivisions to this regulation.

Section 5200(c)

Specific Purpose:

This section is adopted to specify that 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, neglect, injury or death, or an incident involving the safety and security of ETP patients or staff.

Necessity:

The proposed regulation is necessary to ensure patient privacy and restrict access to audio or video recordings of ETP patient rooms and common areas except for the specified cause in this subdivision and the one following. The proposed regulation only gives access to the appropriate entities for the investigation of an allegation of patient abuse, neglect, injury, or death or an incident involving the safety and security of ETP patients or staff. It is important to allow hospital police to have the necessary information needed for these type of investigations. It is necessary for the executive director, or designee, to provide written permission to allow hospital police to have access to the audio or video recordings of patient rooms and common areas for the specified purpose above, in order to ensure that the highest authority at the hospital is involved in making these determinations.

Section 5200(d)

Specific Purpose:

This section is adopted to specify that in accordance with WIC sections 4902, subdivision (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.

Necessity:

The proposed regulation is necessary because DSH follows WIC section 4902, which provides that the protection and advocacy agency shall have reasonable unaccompanied access to public or private facilities, programs, and services, and to recipients of services therein, at all times as are necessary to investigate incidents of abuse and neglect. The proposed regulation is necessary because DSH follows WIC section 4902, subdivision (b), which provides that individual records shall be available to the protection and advocacy agency under this section. Audio and video recordings are considered records. It is necessary because DSH follows WIC section 4903, subdivision (c), which provides that information in the possession of a program, facility, or service that must be available to the agency investigating instances of abuse or neglect, whether written or in another medium, draft or final, includes, but is not limited to, handwritten notes, electronic files, photographs, videotapes, audiotapes, or records. The statutory requirements regarding release of records to the protection and advocacy agency are included in the regulation to help clarify when the audio and video recordings of ETP patient rooms and common areas may be released. This addition to the regulation provides clarity for how this statute applies to the ETP records.

Section 5200(e)**Specific Purpose:**

This section is adopted to specify 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 subdivisions (c) or (d) of this section. It is adopted to specify a process for retention of audio or video recording of patient rooms or common areas, when necessary.

Necessity:

The proposed regulation is necessary because 45 calendar days is an appropriate retention period for keeping audio or video recordings without notice of an investigation. DSH may retain the audio or video recordings beyond the 45 calendar days with the authorization of the executive director, or designee. It is necessary for the executive director, or designee, to make these decisions in order to ensure that the highest authority at the hospital is involved in making determinations about retention of these recordings. There is no need to keep the recordings longer than 45 calendar days except under circumstances outlined in subdivision (c) or (d). The proposed regulation is essential for meeting the needs of the ETP and the needs of hospital police and protection and advocacy agencies investigating allegations of abuse, neglect, injury or death.

Section 5300(a)

Specific Purpose:

This section is adopted to specify ETP patients shall have assigned secure storage space for their personal property while residing on an ETP unit.

Necessity:

The proposed regulation is necessary to ensure an ETP patient has the right to access individual secured storage space for personal possessions, subject to denial for good cause. ETP patients are moved from the Standard Treatment Environment, and DSH wants to make sure that they are entitled to personal storage space when they are moved to the ETP unit. DSH worked in collaboration with the California Office of Patients' Rights to ensure consistency and compliance with the California Code of Regulations, Title 9, section 884, which provides for a patient's right to retain property and specifies how that right may be denied for good cause.

Section 5300(b)

Specific Purpose:

This section is adopted to specify that patient property that does not fit in the assigned storage space on the ETP unit, is contraindicated to the ETP patient's treatment, or is deemed contraband in the ETP, shall be stored at that patient's referring state hospital. ETP patients may request specific property items stored at their referring state hospital, except those items that are treatment-contraindicated or deemed contraband in the ETP. This section specifies that such a request is processed through ETP unit staff and program management.

Necessity:

The proposed regulation is necessary to permit ETP patients to request specific property items be stored at their referring state hospital, except those treatment-contraindicated or deemed contraband. It is necessary to ensure the ETP meets the requirements of California Code of Regulations, Title 9, section 884, and provides storage and access to a patient's personal property. It is necessary to clarify the process for accessing the patient property from the referring hospital. It is necessary to protect the health and safety of the patients and staff on the ETP.

ECONOMIC IMPACTS ASSESSMENT

DSH does not anticipate that the proposed regulations will have any significant statewide adverse economic impact.

Creation or elimination of jobs within the State of California:

These regulations are designed to clarify the referral, admission, and discharge to the ETP as well as other relevant treatment components necessary to establish the ETP. Referral, admission, and discharge of patients to the ETP is performed by existing state staff. The regulations only clarify their duties and the scope of their work and workload. The regulations affect only state positions already existing. Thus, no jobs will be created or eliminated within the State of California because of these regulations.

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

These regulations are designed to clarify the referral, admission and discharge to the ETP as well as other relevant treatment components necessary to establish the ETP. Referral, admission and discharge of patients to the ETP is performed by existing state staff and the regulations only clarify their duties and the scope of their work and workload. The regulations affect only DSH and no other business within the state. Thus, no businesses will be created or eliminated within the State of California because of these regulations.

Expansion of businesses currently doing business within the State of California:

These regulations are designed to clarify the referral, admission, and discharge to the ETP as well as other relevant treatment components necessary to establish the ETP. Referral, admission, and discharge of patients to the ETP is performed by existing state staff, and the regulations only clarify their duties and the scope of their work and workload. The regulations affect only DSH and no other business within the state. Thus, no businesses will be expanded within the State of California because of these regulations.

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

These regulations will benefit the health and welfare of California residents by ensuring that transparent due process is in place for the referral, admission, and discharge to the ETP, as well as other relevant treatment components necessary to establish the ETP. The proper referral of patient's at risk of Most Dangerous Behavior to the ETP benefits California residents' health and welfare, worker safety, and the State of California's environment. The regulations may benefit the state's environment by making more efficient the referral, admission, and discharge processes by (1) eliminating redundancies in the referral, admission and discharge processes, thus decreasing the need for paper and other office supplies and reducing energy costs; and (2) reducing waste and additional costs by ensuring that only those patients who have gone through the regulatory process are the ones referred to and treated in the ETP; (3) reducing violence in a population of patients that will likely be discharged to the community. The safety for both patients and staff at the facilities is improved when patients at risk of Most Dangerous Behavior are removed from the Standard Treatment Environment.

STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has determined that there is no significant statewide adverse economic impact that directly affects businesses because the regulations only directly affect DSH.

STATEMENT OF ALTERNATIVES CONSIDERED

Government Code section 11346.2, subdivision (b)(4), requires DSH to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. To date, DSH has not received any proposed alternatives. DSH welcomes alternatives provided by the public for consideration. The Department will consider reasonable alternatives to the regulation, and DSH will provide reasons if DSH rejects those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

ANTICIPATED BENEFITS FROM THE REGULATORY ACTION

These regulations clarify referral, admission, and discharge to the ETP and other relevant treatment components necessary to establish the ETP. With these regulations, DSH will be able to implement the ETP and better treat and serve our unique patient population.

DOCUMENTS RELIED UPON

1. [Violence Report DSH Hospital Violence 2010 – 2018](https://www.dsh.ca.gov/Publications/Reports_and_Data/docs/DSH_Violence_Report_2010-2018.pdf), https://www.dsh.ca.gov/Publications/Reports_and_Data/docs/DSH_Violence_Report_2010-2018.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 172176 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.

STATEMENT ON THE REQUIREMENT FOR PRESCRIPTIVE STANDARDS

The proposed action does not mandate the use of specific technologies or equipment or prescribe specific actions or procedures.