

## DEPARTMENT OF STATE HOSPITALS – NOTICE OF PROPOSED ACTION FOR THE ENHANCED TREATMENT PROGRAM

The Department of State Hospitals (Department) hereby gives notice of the proposed regulatory action(s) described in this document. A public hearing regarding this proposal is not currently scheduled. Not 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 Government Code 11346.8, and a public hearing will be held. Requests for a public hearing should be sent to:

California Department of State Hospitals  
Regulations and Policy Unit  
RE: Enhanced Treatment Program  
1215 O Street, MS-20  
Sacramento, CA 95814  
Tel: (916) 654-2478, Fax: (916) 651-3090  
Email: [DSH.Regulations@dsh.ca.gov](mailto:DSH.Regulations@dsh.ca.gov)

### WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Statements or arguments relevant to the proposed regulatory action may be submitted to the Department in writing, email, or facsimile to the address and number listed above. All comments must be received by **September 20, 2021**.

Comments sent to persons or addresses other than that specified or received after the date specified above may be included in the record of this proposed regulatory action but may not be summarized or responded to regardless of the manner of transmission.

### AUTHORITY AND REFERENCE

*Authority:* Welfare and Institutions Code sections 4005.1, 4011, 4027, 4101 and 4144.

*Reference:* Health and Safety Code section 1265.9, and Welfare and Institutions Code sections 4027, 4101, 4144 and 4312.

### INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

#### Sections Affected:

The Department proposes to adopt new Chapter 17, Article 1, section 4800; Article 2, sections 4900, 4901, 4902, 4903, 4904, 4905; Article 3, section 5000; Article 4, section 5100; Article 5, section 5200; and Article 6, section 5300, to Title 9 of the California Code of Regulations.

Existing Laws / Regulations:

The Department includes duplicative language provided by Welfare and Institutions Code section 4414, cited as a “reference” for these proposed regulations, to provide clarity on the enumerated aspects of these regulations. This is necessary to differentiate between numerous procedural aspects included in the statute that are specified in the Department’s regulations.

Welfare and Institutions Code section 4005.1 provides that the Department may adopt and enforce rules and regulations necessary to carry out its respective duties.

Welfare and Institutions Code section 4011 provides that the Department shall have jurisdiction over the execution of the laws relating to care and treatment of persons with mental health disorders under the custody of the Department.

Welfare and Institutions Code section 4027 provides that the Department may adopt regulations concerning patients’ rights and related procedures applicable to the inpatient treatment of mentally ill offenders committed to the Department pursuant to Penal Code sections 1026, 1026.2, 1364, 1370, 1610, and 2684, pursuant to Welfare and Institutions Code section 1756, mentally disordered sex offenders, and inmates of jail psychiatric units.

Welfare and Institutions Code section 4101 provides that unless specifically authorized by law, all institutions under the jurisdiction of the Department shall be governed by uniform rule and regulation of the Department.

Welfare and Institutions Code section 4312 provides that state hospital director may establish rules and regulations concerning the care and treatment of patients, research, and clinical training and for the government of the hospital buildings and grounds.

Existing law pursuant to Assembly Bill 1340 (2014) authorized the Department to establish and maintain pilot ETPs to treat patients at a 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, section 4144.) However, the statutes do not provide guidance on logistics and patients’ rights issues, which must necessarily be clarified in these proposed regulations to implement the ETP.

Effect of the Proposed Regulatory Action:

This proposed rulemaking clarifies the referral, admissions, and discharge processes of the ETP, and other relevant treatment, security, and patients’ rights components necessary to operate the ETP. With these regulations, the Department will be able to implement the ETP and better treat and serve our unique patient population.

Policy Statement Overview / Broad Objectives:

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

Anticipated Benefits of the Proposed Regulation:

These regulations clarify referral, admissions, and discharge to the ETP and other relevant treatment, security, and patients' rights components necessary to operate the ETP. With these regulations, the Department will be able to implement the ETP and better treat and serve our unique patient population. The Department's implementation of the ETP will lead to the beneficial treatment of those most dangerous individuals at the hospitals, thus reducing overall violence in the hospitals.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations:

The Department surveyed for any other regulations on this subject matter and found none. During the development of this proposed regulatory action, the Department reviewed any regulations similar to this topic 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, the Penal Code, and its own regulations in title 9 of the California Code of Regulations.

Substantial Difference from Existing Comparable Federal Regulations or Statute:

None.

**FORMS INCORPORATED BY REFERENCE**

1. ETP Referral Form, DSH-9220 (Rev. 9/17)
2. ETP Certification Form, DSH 9219 (Rev. 4/18)

It is necessary to incorporate these two forms by reference as it would be unduly burdensome for the Department to publish these forms in the regulation text due to these forms being electronic forms utilized by the Department and the inability to print these forms as they appear in the electronic health record. These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations.

## **LOCAL MANDATE STATEMENT**

Mandate on local agencies and school districts: The Department has determined that the proposed regulations would not impose a mandate on any local agency or school district that requires reimbursement by the state under Government Code, Division 4, Part 7 (commencing with Section 17500).

## **FISCAL IMPACT**

Cost to any local agency or school district requiring reimbursement: The Department anticipates no fiscal impact to local agencies or school districts.

Cost or savings to any state agency: The Department anticipates no additional costs, apart from the costs associated with the implementation and operation of the ETP program, authorized by statute.

Other non-discretionary cost or savings imposed upon local agencies: The Department has determined that the proposed regulations would not create other non-discretionary costs or savings to state or local agencies. The Department anticipates no fiscal impact to local agencies.

Cost or savings in federal funding to the state: The Department has determined that the proposed regulation would not create costs or savings in federal funding to the state.

## **HOUSING COST**

Significant effect on housing costs: None.

## **SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS AND INDIVIDUALS**

The Department is not aware of any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: The Department is not aware of any cost impacts that a small business would necessarily incur due to the proposed regulations. Small businesses are not affected by the regulations.

## **STATEMENT OF RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

Creation or elimination of jobs within California: The Department anticipates no creation or elimination of jobs within California.

Creation of new business or elimination of existing businesses within California: The Department does not anticipate the creation of new businesses or elimination of existing

businesses with California.

Expansion of businesses currently doing business within the state: The Department anticipates no expansion of businesses currently doing business within the state.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: The proposed regulation benefits the health and welfare of California residents because the ETP will provide advanced treatment for patients at high risk of most dangerous behavior. It benefits the health and welfare of California residents because ETP may help a patient become capable of safely reintegrating with the general public upon their release. This regulation will benefit workers, making them safer by removing patients at high risk of most dangerous behavior from the standard treatment environment. The Department does not anticipate benefits affecting the state's environment because the regulation does not have any relation to environmental issues.

### **COST IMPACTS TO A REPRESENTATIVE PRIVATE PERSON 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 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 regulations are 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 telephone at (916) 654-2478.

### **AVAILABILITY STATEMENTS**

The Department has 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, and the proposed text (the "express terms") of the regulation. Copies of the proposed regulation text and 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, non-substantive inquiries concerning the proposed regulatory action may be directed to the contact person named in this document at (916) 654-2478. The Department has compiled a record of this rulemaking action, which includes all the information upon which the proposal is based and is available for inspection upon request to the contact persons.

Following the close of the public comment period or date of the public hearing, if one is held, the Department may adopt the proposed regulations substantially as described in this notice or may modify the proposed regulation if the modifications are sufficiently related to the original text. Except for non-substantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the contact person identified in this document.

#### **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 person in this notice or may be accessed on the Department's website 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 website](https://www.dsh.ca.gov/Publications/Regulations.html) at <https://www.dsh.ca.gov/Publications/Regulations.html>.