

EMERGENCY NOTICE OF PROPOSED ACTION AND FINDING OF EMERGENCY

Contraband Search and Confiscation

REQUEST FOR THE READOPTION OF EMERGENCY REGULATIONS

The Department of State Hospitals (Department) finds that an emergency continues to exist regarding the emergency regulations originally approved by the Office of Administrative Law (OAL) on April 13, 2020 (OAL Matter Number: 2020-0413-03), and approved for readoption by OAL on June 9, 2021 (OAL Matter Number: 2021-0609-01ER). The emergency regulations implemented to California Code of Regulations, title 9, sections 4351, 4352, and 4353, are necessary for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code section 11346.1.

NOTICE AND INTRODUCTION

Notice is hereby given that the Department proposes to readopt the regulations on an emergency basis as described below. Government Code section 11346.1, subd. (a)(2), requires that at least five working days prior to the submission of the proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In addition to the five-day comment period for the emergency filing indicated above, a 45-day public comment period was provided from April 9, 2021 through May 24, 2021, to permanently adopt these regulations via the regular rulemaking process. In addition, a public hearing was facilitated on July 14, 2021, in which testimony from the public was received.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed emergency action to OAL. Comments may also be submitted to OAL by facsimile (fax) at (916) 323-6826. The Department plans to file the emergency rulemaking package with OAL within five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the readoption of the proposed emergency regulations, the comments must be received by both the Department and OAL within five calendar days of the Department's filing of the emergency regulations with OAL. Please check the OAL website at www.oal.ca.gov to find out when the emergency regulations are filed with OAL.

Comments should be sent simultaneously to:

California Department of State Hospitals
Regulations and Policy Unit
RE: Contraband Search and Confiscation
1600 9th Street, Room 410
Sacramento, CA 95814
Fax: (916) 651-3157

and

Office of Administrative Law Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax: (916) 323-6826

NECESSITY FOR THE PROPOSED EMERGENCY REGULATORY ACTION

The proposed regulations are needed to create universal procedures across state hospitals for safety and security searches. These regulations are designed to provide guidance for the state hospitals, which are also known as a facility in the regulatory language as defined in the California Code of Regulations, title 9, section 4105, regarding searches of patients and the importance of monitoring secured treatment areas, visiting areas, and patient living areas, as well as the state hospital grounds in general. These regulations also affirm that hospital police officers and sworn investigators are peace officers within the meaning of applicable law and as such, may conduct searches as necessary on state hospital grounds and throughout the state in fulfillment of their duties. Hospital police officers may conduct searches of all persons who seek to enter hospital ground to ensure items identified as contraband do not enter hospital grounds. Persons refusing to comply with these regulations are not permitted to be in certain areas of the state hospital, as defined in the regulations.

Collectively, these regulations assist in ensuring that contraband does not enter the state hospital without appropriate approvals and documentation and provides each state hospital with authority to designate Department staff with the authority to search for contraband on a patient when there is a reasonable suspicion that the patient may be in the possession of contraband.

FACTS

Searches are necessary in secured institutions such as state hospitals to eliminate contraband and maintain safety and security for the treatment of its patients. Through searches, the Department attempts to locate contraband to provide a safe environment for the patients, staff, vendors, contractors, and the public. The Department houses civil commitments and forensic populations deemed dangerous to the public by law. Welfare and Institutions Code (WIC) section 4011 states the Department shall have jurisdiction over the execution of the laws related to the care and treatment of persons with mental disorders under the custody of the Department. WIC section 4109 provides that the Department has general control and direction of the property and concerns of each state hospital; shall take care of the interests of the hospital; shall establish rules and regulations to regulate the duties of officers and employees of the hospital for internal government, discipline, and management; and, shall maintain an effective inspection of the hospital. WIC section 7295 provides that the Department may control and eliminate items deemed contraband.

The Department treats several commitment types, both civil and forensic. Among the populations are Sexually Violent Predators, Offenders with Mental Health Disorders, Not Guilty by Reason of Insanity, prisoners from the California Department of Corrections and Rehabilitation (CDCR) under Penal Code section 2684, Incompetent to Stand Trial, and Lanterman-Petris-Short conservatees unable to be placed at a lesser restrictive environment.

Most Department patients are civil commitments. Pursuant to WIC section 4132, those committed to the Department are to be considered patients rather than inmates for the purposes of public safety, therefore patients are generally permitted to freely move within the facility.

Contraband are items prohibited to be in the possession of patients and prohibited to be on state hospital ground without express permission granted by the state hospital. The Department maintains a statewide contraband list and each state hospital maintains an additional contraband list specific to its hospital and unique needs for safety and security. Contraband listed on either contraband list can be items such as drugs, needles, patient-made alcohol (pruno), weapons, or seemingly innocent items that have been modified for illegal purposes such as weaponry, lighting fires, or hiding contraband. The Department has found contraband behind bulletin boards, in dome mirrors, in electric outlets, in holes made in the walls, in chairs, in toilets, on the top of doors, in an amplifier, in books, in guitars, in curtain rods, in a toy car, and in walkers and wheelchairs, to name a few examples. Contraband in electrical outlets or casings and holes made in the wall create additional fire hazards for the facility as well as security issues. In addition to contraband, dangerous situations may require hospital staff to secure other items, such as a patient about to use a chair, or other items as weapons, or a sheet found in the bathroom of a suicidal patient.

In addition to contraband which may pose a direct and immediate health and safety risk to persons within the state hospital, contraband are also items which may not pose an immediate life-threatening risk, but can become the catalyst to situations which may become dangerous. These items may include, but not be limited to, symbols which may be gang related, illegal electronic devices which may be used to store data illegal to possess, and items not approved to be in the possession of patients which may be used to facilitate illegal or prohibited activities. As the Department houses patients of various cognitive abilities and functioning, as well as various history involving the criminal justice system, the ability of the Department to use its trained staff to monitor, search, and remove contraband is essential to the efficient and effective operation of each state hospital.

To ensure the security of the facility, the Department maintains a police department at each facility. The CDCR also protects the perimeter of two Department hospitals as mandated by WIC sections 4107 and 6604. Department hospital police officers, sworn investigators of the Department's Office of Special Investigation, and CDCR correctional officers have search and seizure authority granted by Penal Code section 830, et seq. However, as Department committees are patients, clinical staff continuously observe the patients during their stay. Therefore, non-peace officer staff serve a vital and immediate role in inspecting the hospital environment to ensure its safety. These staff, by the nature of their duties and proximity to patients, are often the first line of defense in ensuring patients are not in possession of contraband.

Finally, the ability for all persons employed at the Department to ensure the safety of the public, staff, contractors, and patients is consistent with the Fourth Amendment of the United States Constitution. The Fourth Amendment prohibits unreasonable search and seizures. Where there is no expectation of privacy, searches are not unreasonable.

There is no reasonable expectation of privacy¹ within a secured mental health treatment facility, supported by the above law. Additionally, WIC section 5325 identifies patient rights, but does not include any right to be free from property or person searches, and section 5325.1 permits patient rights to be specifically limited by regulation.

EVIDENCE

The Department has seen the number of contraband cases involving patient-made alcohol (pruno) increase from 34 in 2015 to 136 in 2018. The Department has also seen the number of contraband cases involving drugs increase from 26 in 2009 to 47 in 2018 with a peak of 50 reported instances in 2012. In 2016, 19% of the arrests at the Coalinga hospital were drug related. The Department also has patients who exhibit symptoms of being under the influence of a controlled substance or pruno but refuse to submit to drug testing. As such, there may be a much higher number of patients under the influence of a controlled substance than documented above. The Department staff also find weapons during searches, including shanks (items made sharp for stabbing or cutting) and tools. The shanks take many forms, including metal binder clips sharpened

¹ Smith v. Maryland (1979) 442 U.S. 735; Bell v. Wolfish (1979) 441 U.S. 520; Andrews v. Neer (2001, 8 Cir.) 253 F.3d 1052

to create a slicing weapon, sharpened eye glass arms, sharpened pens or pens with sharp metal attached, and sharpened toothbrushes.

The Department also consistently finds patients in possession of prohibited electronic devices. Patients sometimes use these devices to access, exchange, and/or profit from illegal material, including child pornography, locating victims, finding and creating new victims, accessing visuals of the hospitals for escape or other illicit purposes, and obtaining information with which to harass or victimize staff, etc.

EVIDENCE FOR THE EMERGENCY

While peace officers have statutory authority to perform contraband searches, the Department seeks to readopt regulatory authority which clarifies the ability of non-peace officer staff to also ensure the security of the facility through participating in the search and potential confiscation of contraband. Patients are primarily observed by non-peace officer staff, so it is critical to immediately clarify this ability to protect the public, staff, patients, and contractors.

Government Code section 11342.545 defines emergency as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.” The existence of contraband in any state hospital facility poses a serious risk to the safety of both the patient population and the staff. The Department operates five state hospitals that treat acutely psychiatric patients. Items deemed contraband by the Department and each individual state hospital have been reviewed and included on the contraband lists due to the risk posed by the presence of these items in the facility. Although the Department has published lists of what is considered contraband, and therefore not allowed in the facilities, contraband items continue to make their way into the state hospitals. These items put the patient population and staff at risk for serious injury or harm, as some contraband items have been used as weapons. In addition, the Department has found drugs in its state hospitals, which poses a very serious risk to any patient using these items, as well as other patients and staff, if the drugs alter the behavior of the user negatively. These drugs are not regulated, and many patients are on prescribed medication that could have an adverse effect if drugs are combined.

Although the Department has peace officers on staff, these officers are not always immediately available to assist in contraband searches within the secured treatment areas and patient living areas of the state hospital. At each state hospitals, non-peace officer staff are the personnel that spend the most time with the patients and are in direct contact with the patients. Patients in the hospital are housed in units with non-peace officer staff; these staff are typically the first responders to any incident in areas occupied by patients. As contraband poses such a serious risk to both the patients and staff, prompt removal of any contraband is necessary, essential, and in some instances, may be life saving.

Although the Department has been aware of contraband within its facility for years, the need to regulate the ability of non-peace officer staff to conduct searches for contraband

is new. Non-peace officer staff have historically called on peace officers when they suspect or know of contraband in the facility. It has become apparent to the Department that this is not sufficient in order to timely remove contraband from the state hospital to ensure contraband does not potentially harm others. Timeliness has become an emergent need within the state hospitals as the Department strives to make its hospital environment safer for both the patient population and staff, as well as contractors and visitors to the state hospital. In addition, during the COVID-19 pandemic and to date, to increase social distancing, staff schedules are being staggered to allow for the continued operation of state hospitals and to continue providing treatment in a safe manner. As a result, it is important to allow non-peace officer staff to also remove contraband when they are aware of it and it is safe to do so. The immediate confiscation and removal of contraband is necessary and the Department needs to rely on its non-peace officer staff, our first responders, to handle all appropriate immediate removals.

The COVID-19 pandemic has had a significant impact on the Department, including preparation for potential treatment of infected patients. Part of this preparation includes designating space at each state hospital to house and treat infected patients. Due to the risk of spreading the virus, and in conjunction with orders from the Governor and public health entities, the Department established a protocol for operating the COVID-19 units that includes limiting the number of non-essential personnel from entering a designated COVID-19 treatment area. In the event the Department must activate a COVID-19 treatment area, peace officer accessibility to that unit would be reserved for emergency situations. The ability of staff to utilize peace officers to conduct contraband searches in the COVID-19 treatment areas will be hindered by the limitation of personnel in these treatment areas. It is essential for these regulations to be readopted for non-peace officer staff to conduct any necessary contraband searches of the COVID-19 treatment areas and other secured areas of the hospital. If non-peace officer staff are unable to conduct these searches, the safety of patients and staff on these units will be at risk due to the inability of staff to search for and remove contraband.

EVIDENCE FOR THE CONTINUED EMERGENCY

Since the adoption of the emergency regulations, there has been a continued need for these regulations. The Department is responsible for ensuring the safety and security of its patients, as well as its staff, vendors, contractors, visitors, and the public.

As mandated by WIC 7295, the Department must control and eliminate contraband in its facilities. As vendors, contractors, and visitors enter and exit the facility, and as new patients are admitted and new staff hired, these create unique instances in which contraband, whether intentionally or inadvertently, may enter the facility. Contraband poses a serious risk to the safety of those in the facility, and in some instances, may be life threatening. As such, each facility and its staff must remain diligent in monitoring for contraband. The Department continuously seeks ways to improve its monitoring and removal of threats. The Department monitors for contraband by ensuring individuals seeking to enter the facility are searched and their property is inspected. Patients are also searched for contraband when there is a reasonable suspicion the patient is either

in possession of contraband or contraband is suspected to be in the area. Non-peace officer staff continue to be the personnel most frequently in contact with patients due to their duty to monitor and care for the patients. As a result of the COVID-19 pandemic, to minimize the potential spread of the virus, hospital police officers conduct telephone checks at least twice a shift to ensure the units do not have issues, and do not come in contact with patients except when necessary for security purposes. During necessary contact, the officer must use an N-95 respirator and gloves as a minimum form of Personal Protective Equipment to mitigate the spread of COVID-19 throughout the hospital. As such, a greater emphasis falls upon non-peace officer staff to monitor patients, increasing the need for these staff to have the ability to isolate and confiscate contraband. The ability of these non-peace officer staff to immediately perform searches and secure contraband keeps the facility safe and minimizes the issues that may occur as a result of a delay between the time hospital police officers are notified for assistance, and the time they are able to respond. A non-peace officer staff, who is trained and capable of identifying and confiscating contraband, is essential as their action may minimize the amount of escalation necessary to resolve the issue and confiscate the contraband. As an example, at the Patton facility, officer contact and interaction with patients and staff have decreased and officers are not conducting standard foot patrol on units considered "quarantined." The number of officers responding to calls have been limited unless necessary for the safety of the patients, staffs, and officers. Sally Port searches, an area of the hospital outside of the secured treatment area, have been suspended due to the pandemic.

The Department consistently finds patients in possession of prohibited electronic devices. These devices, which are deemed contraband by regulation when they are able to store digital information, have been found in many locations in the facilities since January of 2018. Many of these devices contain additional contraband such as child pornography. This material, when viewed, victimizes children with each view and has been deemed harmful by law. Patients are using these devices to do things such as access, exchange, or profit from illegal material including, but not limited to, child pornography, locating victims, finding new victims, accessing visuals of the hospitals for escape or other illicit purposes, and obtaining information with which to harass or victimize staff or others.

Through July 2019, the Department had 23 narcotic incidents, nine narcotic paraphernalia incidents, one patient-made alcohol (pruno) incident, 10 weapon incidents, and 14 incidents of another nature. The Department has seen the frequency of contraband cases involving patient-made alcohol (pruno) increase from 2015 to 2019, with a peak of 136 patient-made alcohol (pruno) cases in 2018. The Department has also seen the number of contraband cases involving drugs increase from 26 in 2009 to 47 cases in 2018 and 30 cases through the first half of 2019. The peak was 50 reported instances of contraband cases involving drugs in 2012. There are patients who either, by their actions, statements from the patient or from other patients, vital signs, and evaluation by trained personnel, are believed to be under the influence of a controlled substance or patient-made alcohol (pruno), yet refuse to submit to a confirmatory chemical test. This indicates a higher number of patients under the influence of a

controlled substance than documented. The removal of contraband such as controlled substances will improve the treatment of patients because doctors and mental health professionals are hindered from treating a patient who is under the influence of a controlled substance.

The Department continues to monitor, find, and confiscate contraband in its facilities. In the Atascadero facility, from January of 2020 through January of 2021, the facility found contraband including, but not limited to, pills such as Phenytoin, Depakote, Metformin, and Lipitor, a piece of glass, Leatherman's tool, two pieces of wire, two bags of patient-made alcohol (pruno), a partially smoked cigarette, a sharpened patient pen, nail, one piece of concrete, a needle-nosed plier, and one disposable knife. In the Metropolitan facility, there have been 19 contraband incidents involving patients. The rate of miscellaneous contraband found on patients increased from five incidents in 2020 to 11 from January of 2021 through April of 2021. From January through May of 2021, the Metropolitan facility generated one report involving a patient in possession of a possible controlled substance and three reports involving patients in possession of a weapon. At the Patton facility, from June of 2020 through December of 2020, 12 reports were generated due to mail testing positive for methamphetamine, and searches of units resulted in three positive alerts for narcotics. In that same time span, K-9 units had 45 service calls related to narcotics. Currently, the Metropolitan K-9 unit is involved daily in the detection of narcotics in mail and packages in the mail room.

From January of 2020 through May of 2021, the Coalinga facility has reported 531 cases of contraband. Some of the 531 contraband cases contain more than one type of contraband. Sixty reports were due to non-prescribed medication or illicit drugs being discovered, 135 cases are due to alcohol or patient-manufactured alcohol (pruno), 128 cases were electronic devices found that violate law, 13 cases involve the discovery of currency in the form of cash or credit cards, 20 cases were regarding weapons, tattoo equipment, or other tools, and three cases were involving tobacco. Department staff have found weapons during searches including, but not limited to, shanks (items made into a sharp object for stabbing or cutting) and tools. The shanks take many forms, including metal binder clips sharpened to create a slicing weapon, sharpened eye glass arms, sharpened pens or pens with sharp metal attached, and sharpened toothbrushes. Any of these tools, which can be used to harm others, pose an immediate safety and security risk and must be controlled.

The Department strives to find ways to keep contraband from entering its facilities. Increasing the number and presence of non-peace officer staff capable of identifying and removing contraband serves as a deterrent to patients acquiring or developing contraband. During the COVID-19 pandemic, non-peace officer staff performing searches for contraband is a necessity for the Department to deter patients and others from possessing contraband, but after the pandemic, the ability of non-peace officers staff to perform searches remains a necessity as it provides the Department the ability to act quickly to identify and remove the threat of contraband. This increased presence of those with the ability to confiscate contraband is anticipated to be pivotal in ensuring the safety and security of the patient population, staff, vendors, contractors, and visitors

to the facility. Every action taken towards preventing contraband from entering the facility or being in the possession of patients is an action that minimizes or mitigates harm to an individual or a potential loss of life.

SUBSTANTIAL PROGRESS TO ADOPT THE REGULATIONS THROUGH THE REGULAR REGULATIONS PROCESS

As required per the Administrative Procedure Act, to request a readoption of the emergency regulations, the Department has made substantial progress in the completion of the rulemaking process. Since the adoption of emergency regulations on April 23, 2020, and the readoption of the emergency regulations on June 9, 2021, the Department has worked towards the development of these regulations and made significant progress. The following has been completed as of December 24, 2021:

- The regulations, initial statement of reasons, and notice documents were provided to the public for 45 calendar days beginning April 9, 2021 through May 24, 2021.
- At the request of members of the public, a public hearing was facilitated. This public hearing was held on July 14, 2021.
- On September 17, 2021, the Department received certified transcripts of testimony received at the public hearing, as required per statute.
- Around October 28, 2021, the Department concluded its initial review and response to comments received from the public.
 - The Department has made no substantive changes to the regulations requiring a notice to the public for 15 calendar days.
- The Department has completed its legal review of both the comments received and responses and the regulations will be routing for the review of the Department of Finance (DOF).
 - DOF originally signed the Economic and Fiscal Impact Statement for this regulation in January 2020. As such, because there has been no substantive changes to the intent of the regulations, the Department will request an expedited review and signature on a new Economic and Fiscal Impact Statement document.

Because the Department is in the last phases of the regulations development process as needed to submit a "Certificate of Compliance" to the OAL, it requests an approval of its request for the readoption of these regulations for an additional 90 calendar days. These additional 90 days will be critical to ensure that all remaining processes are completed and the regulations submitted to OAL with enough time for their review prior to the expiration of the emergency.

Due to several factors, the adoption of the emergency through regular development process has progressed slower than anticipated. As the state, country, and world continue to take precautions to ensure the safety and security of its populations with measures directed to prevent the spread of COVID-19, these measures have significantly impacted the work culture of the Department and fundamentally changed

(and continues to change) how business is operated. These business changes as a result of the pandemic continue to be the main reason for slower than normal business operations.

As noticed in the original readoption, in March of 2020, the manager responsible for oversight of the development of regulations for the Department vacated the position, creating a void in regulatory leadership and oversight for the facilitation and coordination of regulations development. In June of 2020, the Regulations Coordinator, a central personnel pivotal in the day-to-day development activities for regulations, officially retired from the Department. This position was filled in February 2020, but the management position was not filled until July of 2020. This transition period created both a knowledge vacuum and a break in the flow of the development process. This transition was further complicated by COVID-19 as the Department, specifically the Sacramento office, shifted to a remote-centered environment. This combination of the pandemic necessitating a shift in business operations, plus new staff to the regulations development process, created a slower than normal process.

Since the readoption of the emergency, while meaningful and significant regulatory progress has been made, the regulations have not yet been completed as a result of a number of factors. Though the regulations were noticed for 45 calendar day as required by the Administrative Procedure Act, a public hearing was not able to be facilitated around that time, as a result of the Department relocating to a new building. The Department was formerly located at 1600 9th Street, but because the useful life of the building has passed, it relocated to a new building on 1215 O Street. This building was scheduled to be completed in 2020, but as a result of the pandemic and other factors, its completion was delayed until 2021. Department personnel did not begin relocating to this new building until June of 2021. Because the Department had not conducted a remote-only public hearing, after consulting with other departments, it was decided to provide an option for both remote participation of the public hearing as well as the option for the public to attend the hearing in person. As such, July was set as the public hearing date by the Department as necessary components for a hearing such as conference room equipment and other considerations were without resolution.

After the completion of the public hearing on July 14, 2021, the Department requested the completion of a certified transcript within 15 days of the public hearing. However, despite the contractual obligation, the vendor was not able to produce and provide the final version of the certified transcripts to the Department until September 17, 2021. While the Department communicated and requested this transcript several times between July and September, it did not receive communication as to why there was such a significant delay in processing time. This delay was unforeseeable and caused the delay in the ability of the Department to respond to comments, as shown in the timeline provided near the beginning of this section. In August of 2021, the Regulations Coordinator for the Department vacated the position, and the Department is actively recruiting to fill this position. The position is anticipated to be filled around February or March of 2022.

However, despite the issues described above, the Department has completed primary development of the regulations because no significant changes were made to the regulations noticed to the public. The Department will seek to expedite final reviews and obtain all final approvals and signatures necessary to submit the regulations to OAL. This is estimated to be completed in January of 2022 or very early February of 2022, but because the emergency regulations are set to expire on January 12, 2022, a readoption is needed to ensure there is no lapse in the ability of the state hospitals of the Department to perform searches for contraband.

CONSEQUENCES OF FAILURE TO ADDRESS THE SITUATION THROUGH EMERGENCY REGULATIONS

If non-peace officer staff are unable to conduct searches per these regulations in order to remove dangerous contraband from the facilities, removal of contraband from the facility is delayed. Peace officer staff is not always available and present where contraband is suspected. Non-peace officer staff are constantly in contact with the patient population and have the ability to immediately search and remove contraband from patients and their living spaces. Any delay in removal of contraband within the facility poses a risk of serious harm to the patient population and staff. In addition, non-peace officer staff have established congenial relationships with the patient population that they work with, and their relationship with the patient may be a calming factor to assist in patient cooperation during non-peace officer staff searches. Patients can become hostile toward peace officer staff. If peace officers are the only staff members allowed to search for contraband within the facility, patients may become defensive and aggressive, causing a safety concern for the patient being searched, other patients, and staff.

Finally, if the Department fails to adopt these regulations, the ineffective control of contraband will adversely impact the treatment milieu. In addition, contraband in isolation or quarantine units will remain largely uncontrolled, due to the absence of non-peace officer staff with the ability to search and secure contraband, which creates a higher risk of danger to the patients, staff, and the public.

SUMMARY OF PROPOSED AMENDMENTS

The proposed adoptions to California Code of Regulations, title 9, sections 4351, 4352, and 4353, are summarized as follows:

Section 4351 would implement, clarify, and make more specific WIC section 4109 by specifying that non-peace officer Department staff have the authority to conduct searches to ensure the safety and security of the facility and its patients, staff, and others within the facility. This regulation would also ensure the provision of WIC section 7295, which permits the Department to control and eliminate contraband, are enforced optimally by developing standards which allows for contraband to be confiscated as soon as detected, when safe to do so, by the non-peace officer staff who primarily monitor the patients and have been identified by the Department as able to do so. This

section of the regulation would specify that Department staff may search all areas within the facility at any time to locate and confiscate contraband. Types of searches include, but are not limited to, visual searches, room searches, common area searches, bathroom searches, and pat-down searches if the non-peace officer staff has a reasonable suspicion that contraband is in the area or in the possession of a patient. This regulation would codify that patients that become intrusive or aggressive during the search may be removed from the area during the search for the safety of the staff and other patients in the area. This regulation would implement, clarify, and make more specific WIC sections 4109 and 7295 by providing that when non-peace officer Department staff have a reasonable belief that a patient possesses contraband on their person, they may perform a physical pat-down search of the patient. The regulations in this section are necessary to not only enforce the identification and removal of contraband from the facility, but to ensure the safety of the patients, staff, vendors, contractors, and the public. Contraband, especially contraband that is hidden, poses a risk to the health and safety of those in the facility.

While it is the function of Hospital Police Officers to maintain safety and security, non-peace officers are the first line of defense and the personnel most likely to initially identify contraband either in the possession of a patient or within a specific area in the facility.

It is necessary to allow for non-peace officer staff, as identified by the Department, to conduct contraband searches, as each facility operated by the Department is uniquely situated and requires different staff classifications to conduct these searches.

Section 4352 is in place for clarity in the regulations. Section 4352, subd. (a), notifies readers that all Hospital Police Officers and sworn investigators are peace officers pursuant to the law specified in Penal Code section 830.3. Using this broad authority for Hospital Police and sworn investigator to conduct peace officer activities, the regulations identifies the specific duties of these peace officers within the context of the regulations, which is the effective control and elimination of contraband. This regulation clarifies that the role of the peace officer, specifically a Hospital Police Officer or sworn investigator, is not expanded, diminished, or modified while serving the capacity identified in these regulations.

Section 4353 specifies that contraband, unless authorized by the Department, shall not enter the premise unless identified as a tool for use in completing work authorized by the Department and defines the authority of each facility to search those entering the facility. As there are times contractors must bring in items considered to be contraband to perform their contracted duties, this regulation would require such items be logged. This regulation would also permit the Department to perform thorough person and property searches, and that the Department may confiscate contraband if illegal or instruct the owner to remove the contraband. Hospital Police Officers or officers from the CDCR, who may be present at the facility performing security duties, may agree to hold the item for return upon the exit of the person from the facility. This section is necessary because the control of contraband entering the facility is of the utmost importance.

Given the population served by the Department, items which may not otherwise be dangerous can be used in ways that may jeopardize the safety and security of others. The Department recognizes that some items determined to be contraband are tools used by vendors and contractors in the execution of approved work. As such, all contraband within the facility are to be logged and monitored by the Department. Any such contraband not logged is deemed to be a health and safety risk which must be removed from the facility. To prevent the entry of contraband, all persons entering the facility must submit to a search for contraband. This search is performed using various tools such as K-9, x-ray, cell phone detecting devices, controlled substance detecting devices, metal detectors, and wands.

Not all contraband identified must be confiscated. Some contraband, while prohibited from the facility, may not be illegal. This regulation specifies that each facility, upon detecting contraband, may instruct the person in possession of the contraband to remove it from the facility. If the contraband is illegal, pursuant to any provision of the Penal Code or other applicable law, that contraband shall be confiscated. This section ensures that dangerous contraband, which would be unsafe whether inside the facility or in the general public, are confiscated. This protects the safety of all Californians by confiscating an illegal item which may otherwise be able to harm a member of the public.

AUTHORITY AND REFERENCE

WIC section 4005.1 provides that the Department may adopt and enforce rules and regulations necessary to carry out their respective duties.

WIC section 4011 provides that the Department has jurisdiction over the execution of laws relating to care and treatment of persons with mental health disorders under the custody of the Department. WIC section 4027 provides that the Department may adopt regulations concerning patients' rights and related procedures applicable to the inpatient treatment of mentally ill offenders and mentally disordered sex offenders.

WIC section 4100 lists the facilities under the jurisdictions of the Department.

WIC 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.

WIC section 4109 provides that the Department has general control and direction of the property and concerns of each state hospital; shall take care of the interests of the hospital; shall establish rules and regulations to regulate the duties of officers and employees of the hospital for internal government, discipline, and management; and, shall maintain an effective inspection of the hospital.

WIC section 4139 states a search for contraband of those entering the secured area is expected and imposes a misdemeanor charge on those found in possession of

contraband with an intent to deliver contraband to patients.

WIC section 7295 provides that the Department may develop a list of items considered to be contraband and prohibited on hospital grounds and to control and eliminate contraband to ensure facility safety and security.

Penal Code section 830.3 states that the Office of Protective Services and investigators with the primary duty of enforcement of the law relating to the duties of the Department are peace officers, whose authority extends to any place in the state for the purpose of performing their primary duty.

Penal Code section 830.38 provides that the officers of a state hospital under the jurisdiction of the Department are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty.

Penal code 830.5 provides that CDCR correctional officers assigned to the Department are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty and may carry firearms while on duty.

EFFECT OF THE PROPOSED EMERGENCY REGULATIONS

The objective of the proposed amendments is to implement, interpret, or make specific WIC sections 4109 and 7295 under the regulatory and jurisdictional authority of 4005.1, 4011, 4027, 4100, and 4101 by clarifying the ability of all Department staff within the secured patient areas to remain vigilant and actively maintain the safety of the facility through the search for and confiscation of contraband.

The regulation will provide for uniform clarification of authority statewide, at each Department hospital, for the welfare of the public, staff, and patient committed to the care of the Department.

BENEFIT OF THE PROPOSED EMERGENCY REGULATIONS

The emergency regulations would immediately clarify and implement safety precautions and ensure the ability of the Department to comply with WIC section 4109 to take care of the interests of the hospital, carry out the necessary duties of employees of the hospital, and maintain effective inspection of the hospital. Further, the emergency regulations are necessary to clarify and implement the ability to comply with WIC section 7295 to control and eliminate contraband.

SUMMARY OF PROPOSED EMERGENCY REGULATIONS

Existing Law

Existing law mandates the Department maintain management and effective inspection of Department hospitals and provides the Department may control and eliminate items it

deems to be contraband. Existing law also provides that the Department shall regulate the duties of employees of the hospital to provide for internal government, discipline, and management. Existing law provides peace officers search and confiscation authority.

DETERMINATIONS

Compatibility with Existing Regulations: The Department finds that these regulations are compatible with existing regulations listing contraband and the need to discover and control contraband throughout the hospitals.

Compatibility with Federal Law: The Department finds that these regulations are compatible with federal law.

Technical, Theoretical, and Empirical Studies or Reports: None.

Mandates on Local Agencies or School Districts: The Department anticipates there will be no fiscal impact to Local Agencies. This proposed regulation would only affect the state hospitals and the patients. The local government would not have a role in the enforcement of the regulation.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

Costs to Any Local Agency or School District that Requires Reimbursement Pursuant to Part 7, commencing with Section 17500, of Division 4 of the Government Code: The Department anticipates there will be no fiscal impact to Local Agencies or School Districts.

Non-discretionary Costs or Savings Imposed on Local Agencies: The Department anticipates there will be no fiscal impact to Local Agencies. This proposed regulation would only affect the state hospitals and the patients. The local government would not have a role in the enforcement of the regulation.

Costs or Savings to Any State Agency: The Department anticipates no costs or savings to any state agency.

Costs or Savings in Federal Funding to the State: None.

Costs or Savings to Individuals or Businesses: The Department is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed action.

MATERIALS INCORPORATED BY REFERENCE

None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subd. (a)(13), 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. No known alternatives or previously identified reasonable alternatives brought to the attention of the Department has been determined to 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

AVAILABILITY OF FINDING OF EMERGENCY, TEXT OF PROPOSED EMERGENCY REGULATIONS, AND RULEMAKING FILE

The rulemaking file is available for inspection and copying at the Department of State Hospitals, Regulations and Policy Unit, 1215 O Street, MS-20, Sacramento, CA 95814. As of the date this notice is published, the rulemaking file consists of a copy of the exact language of the proposed regulations and the Finding of Emergency. These documents are also available online at the [Department's website](http://www.dsh.ca.gov/Publications/Regulations.html) at www.dsh.ca.gov/Publications/Regulations.html.