

**DEPARTMENT OF STATE HOSPITALS
SECOND 15-DAY NOTICE OF PUBLIC AVAILABILITY OF MODIFIED TEXT
PROPERTY TRANSFER BETWEEN PATIENTS**

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

PUBLIC NOTICE

This notice announces a second 15-day comment period in which the public may comment on the modifications to the originally proposed text for the Property Transfer Between Patients regulation. This notice is issued pursuant to Government Code sections 11346.8, sub. (c) and 11347.1, and California Code of Regulations, title 1, section 44.

This regulatory action was originally noticed on May 7, 2021, published in the California Regulatory Notice Register, and mailed to all interested parties. The originally proposed regulatory action is described in the Initial Statement of Reasons provided with the originally proposed regulation which can be found on the website of the Department of State Hospitals (Department) at <https://www.dsh.ca.gov/Publications/Regulations.html>. The original modified regulations were noticed during the initial 15-day comment period (March 30, 2022, through April 14, 2022) and all documents can be found on the website at <https://www.dsh.ca.gov/Publications/Regulations.html>.

The modified regulations, called the "Second 15-Day Modified Regulations Text," as well as this Second 15-day notice, are also available on the Department's website as provided in the above paragraph.

No action by the public is necessary unless persons wish to comment specifically on the proposed modified text.

This rulemaking and all documents relevant to the rulemaking shall be available at the address provided below under section named "Written Comments," between 8:00 AM and 5:00 PM beginning August 4, 2022, through August 19, 2022, or by request to the contact person indicated below.

SUMMARY OF MODIFICATIONS TO THE PROPOSED REGULATIONS

Second 15-day Notice of Proposed Modifications:

The originally proposed regulatory language and its proposed modifications are shown in the document named "Second 15-Day Modified Regulations Text." The original

regulatory language is shown in plain text. Proposed modifications from the initial 15-day Notice are shown with single underline (e.g., single underline) to indicate addition to the regulatory language, and single strikethrough (e.g., ~~single strikethrough~~) to show deletion to the regulatory language. Proposed modifications from the second 15-day Notice are shown with double underline (e.g., double underline) to indicate addition to the regulatory language, and double strikethrough (e.g., ~~~~double strikethrough~~~~) to show deletion to the regulatory language.

Section 893(a):

Text Change: The text “The Department of” and “s, or each state hospital,” has been removed. The word “Each” was added to the beginning of the sentence.

Purpose/Rationale: This change was made to clarify that the Department as a whole will not be prohibiting patients from buying, selling, trading, or gifting property between patients. Rather, the state hospital themselves may do this. Allowing the Department to prohibit this type of transfer defeats the purpose of the regulation, and was removed for consistency among the regulation text.

Section 893(a)(1)(A):

Text Change: The text “In order to determine whether property found in the possession of a patient has been bought, traded, or gifted, the patient will be asked to verify property ownership, by means of property receipts, Property Transfer Forms referenced in subsection (a)(2)(A), or any other means available.” is added as a new subsection, to clarify how property ownership is verified.

Purpose/Rationale: This section was added to clarify how property ownership is verified. This subsection ensures that the patient can verify that they are the proper owner of the property in question. This will help staff confirm that the item was not traded, gifted or stolen, and assist staff in determining whether the property must be confiscated. This is necessary because the patient is the proper entity to confirm that the property in fact belongs to them. Patients are not limited to a specific type of information they must use to show property ownership. The Department does not want to limit the ability of patients to prove property ownership, and cannot list every possible way available, without inherently missing some. Property receipts and Property Transfer Forms are two identified documents in the regulation text to help guide patients in how they may be able to show property ownership; however, this is not an exclusive list.

Section 893(a)(1)(A)-893 (a)(1)(C):

Text Change: These subsections were re-numbered from 893(a)(1)(A) through 893(a)(1)(C) to 893(a)(1)(B) through 893(a)(1)(D)

Purpose/Rationale: These sections were re-numbered to accommodate the new section 893(a)(1)(A).

Section 893(a)(1)(C), renumbered to (a)(1)(D):

Text Change: The phrase “stating what property was confiscated, and that they are requesting “a” is added to the paragraph, and “for” has been removed. The phrase “or designee” has also been added.

Purpose/Rationale: The phrase, “stating what property was confiscated, and that they are requesting “a” was added to clarify what is included in a written request by the patient requesting a review of the confiscated property be conducted. The patient must state what property was confiscated so the program director or designee can properly evaluate the specific confiscation. The patient must also state the fact that they are requesting a review, so that the program director or designee knows what the written request is for. The phrase “or designee” was added because the program director may not always be available to review the request to transfer and may designate someone to do so in their absence. The word “for” has been removed; this proposed modification is a non-substantive change made to improve the overall readability of the regulation.

Section 893(a)(1)(C)2., renumbered (a)(1)(D)2.:

Text Change The text “including destruction” was added to the last sentence.

Purpose/Rationale: The text “including destruction” was added to clarify that the state hospital may destroy the patient’s property if the request contesting the confiscation is denied. This is necessary to ensure that the patient population is aware that an alternate disposition of property in situations where no patient is identified as the true owner of the property may include destruction of the property. This is necessary to ensure the hospital is not storing property that has no identified owner, and that the hospital can destroy this property in order to free-up storage space for other items, if necessary.

Section 893(a)(2)(A):

Text Change: The text “Written Requests to transfer property will be submitted on the Property Transfer Form (Rev 8/22), hereby incorporated by reference, to each patient’s treatment team or unit supervisor. The treatment team or unit supervisor will obtain written confirmation of the patient’s agreement to transfer from both the donating and the receiving patient.” is added to this section.

Purpose/Rationale:

This text was added to clarify how a patient can submit a request to transfer property. A written request must be sent to each patient’s treatment team or unit supervisor. The treatment team and unit supervisor include staff that are constantly on the unit interacting with patients and available to receive the patients’ requests for transfer; in addition, these regulations require the review of whether the transfer of property is

appropriate to be conducted by the treatment team or unit supervisor. This is necessary so that both patient's treatment teams or unit supervisors are aware of the transfer and review the request to give or receive based on the criteria included in the regulation. A written confirmation of the patient's agreement to transfer from both the giving and receiving patient is necessary to ensure both patients agree to the transfer of property and to document the request for transfer.

Section 893(a)(2)(A) Form:

Text Change: A form is added for use by patients requesting to transfer property to one another, as well as by the treatment team or unit supervisor and program director to document the approval or denial of the request to transfer property.

Purpose/Rationale: This form is included to clarify the process for requesting transfer of property between patients and for use by the staff designated in this regulation to approve or deny the request to document their approval or denial. This form is being incorporated by reference into the regulation text, as it would be cumbersome and impractical to publish the actual document in the Code of Regulations. Use of this form will create a document for the receiving patient to document ownership of any property transferred to them. One form is being used for both the giver and receiver of property, in order to simplify the process; both the giver and receiver will need approvals from their treatment team or unit supervisor and program director before the transfer of property can occur.

The date is included at the top of the form to ensure a timely response to the request, which is already included in the regulation text. The statement at the top of the form by the patient giving property ensures they are aware that they are giving property away to a particular individual without reimbursement and that they are giving up any property right to the item(s). The statement at the top of the form by the patient receiving property ensures they are receiving property from a particular individual without providing compensation in exchange. The description of the property being transferred is necessary to ensure the exact property being transferred; the more descriptive the better. This form is considered a receipt for the transfer of property and may be used at a later date to confirm ownership; a detailed description of the property is necessary to ensure ownership transfer of the specified property. The donating and receiving patient must sign the form to ensure they are aware of the property transfer and consent to the transfer, which is required by this regulation text. The reviewing treatment team member or unit supervisor must identify themselves on the form and sign the form indicating if they approve or deny the transfer and on what date. Per these regulations, the treatment team or unit supervisor is responsible for reviewing whether property transfer for the patient is appropriate and by signing, they are memorializing their position. The program director must identify themselves and whether they approve or deny the treatment team or unit supervisor approval, and sign the form to memorialize their position. The dates are included to ensure timely response/approval. The final date on the form is required to document when the property transfer occurs; this closes out the request as approved. The addressograph space at the bottom of the form is standard in

all patient forms at the Department and will be used to include patient identifying information for filing this form in their records.

Section 893(a)(2)(C):

Text Change: The text “money or other” was removed from this section.

Purpose/Rationale: the text “money or other” was removed because the hospitals do not allow patients to transfer money to other patients. Transfer of money at an in-patient psychiatric facility carries a high risk of abuse potential. By removing the ability to transfer money between patients, the Department is hoping to avoid situations that may cause more vulnerable patients to be taken advantage of by their higher-functioning peers.

Section 893(a)(2)(D):

Text Change: The text “or unit supervisor” was added.

Purpose/Rationale: “Unit supervisor” was added here to coincide with adding in “unit supervisor” as the first level of review for the request to exchange property between patients to subsection (a)(2)(A).

Section 893(a)(2)(E):

Text Change: The text “or unit supervisor” was added. The text “the date of property transfer” was added.

Purpose/Rationale: “Unit supervisor” was added here to coincide with adding in “unit supervisor” as the first level of review for the request to exchange property between patients to subsection (a)(2)(A) and (a)(2)(D). As the first level of review, the unit supervisor would have the same role as the treatment team in the original regulation text to document the approval. The date of property transfer is the final portion of the request/approval form for property transfer between patients; as the responsible party for documenting approval of the transfer, the treatment team or unit supervisor must also document the date of transfer of property to close out the request.

Section 893(a)(3):

Text Change: All of the original proposed text from Section 893(a)(3) has been repealed and the text “Patients are not allowed to buy, sell, trade, or gift food items to other patients” has been added to the regulation.

Purpose/Rationale: The Department amended the originally proposed regulation text that allowed for patients to purchase food and other canteen items for other patients due to concerns associated with allowing patients to purchase food items for other patients. Patients will not be allowed to buy, sell, trade, or gift food items to other patients for health and safety reasons such as food allergies, dietary restrictions, and

unknown potential health issues. Many patients at the Department have strict dietary needs and allowing patients to purchase food items for each other creates a risk that these individuals may receive items they are not clinically allowed to consume. This causes a safety concern for the patient population.

WRITTEN COMMENTS

The Department invites all interested persons to provide comments relevant to the specific changes made in the Second 15-Day Modified Regulations Text. The public may provide comment only in writing, submitted by postal mail, fax, or electronically using the contact information below:

California Department of State Hospitals
Regulations and Policy Unit
RE: Property Transfer Between Patients (2nd 15-Day)
1215 O Street, MS-20
Sacramento, CA 95814
Fax: (916) 651-3090
Email: DSH.Regulations@dsh.ca.gov

All written comments received by August 20, 2022, which pertain to the changes proposed in the Second 15-Day Modified Regulations Text will be considered and responded to by the Department in a document prepared by the Department named the Final Statement of Reasons.

CONTACT PERSONS

The primary contact for this regulatory action is Anna Libonati, and the backup contact is Janna Lowder. They can be reached by contacting the Regulations and Policy Unit phone number at (916) 654-2478.