

**DEPARTMENT OF STATE HOSPITALS
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 15-day comment period in which the public may comment on the modifications to the originally proposed text for the Contraband Search and Confiscation regulation. This notice is issued pursuant to Government Code sections 11346.8(c), 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 Initial Statement of Reasons provided with the originally proposed regulation which can be found on the website of the [Department of State Hospitals](https://www.dsh.ca.gov/Publications/Regulations.html) (Department) at <https://www.dsh.ca.gov/Publications/Regulations.html>.

The modified regulations, called the "15-Day Modified Regulations Text," as well as this 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 March 30, 2022, through April 14, 2022, or by request to the contact person indicated below.

SUMMARY OF MODIFICATIONS TO THE PROPOSED REGULATIONS

15-day Notice of Proposed Modifications:

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

Section 893 Header:

Text: Section 893, Property Transfer Between Patients.

Rationale: This section header is bolded, and periods added after both the section number and name for consistency with regulatory formatting conventions.

Section 893(a):

Text: ~~Patients shall not buy, sell, trade, or gift any property or items on the contraband list of the Department of State Hospitals (Department), or the contraband list of the facility in which the patient is committed.~~

Rationale: This text in its entirety is repealed for clarity and conciseness. This rule is addressed in Sections 893(c)(1) and (c)(2), which becomes Section 893(a)(1) and (a)(2) with the repeal of this section and the subsequent section.

Section 893(b):

Text: ~~Prior to any transfer of property, patients must first obtain an approval from their treatment team.~~

Rationale: This text in its entirety is repealed for clarity and conciseness. This rule is addressed in Sections 893(c)(2)(A), which becomes Section 893(a)(2)(A) with the repeal of this section and the previous section.

Section 893(c):

Text: “of State Hospitals,” and “or each state hospital” is added to the regulation.

Rationale: This change is made to accommodate the removal of the originally proposed Sections 893(a) and 893(b). Because of the removal of these regulations, this necessitates what was formerly Section 893(c) to become the new Section 893(a). In addition, “or each state hospital” is added to clarify that each state hospital may prohibit the buying, trading, selling, and gifting of property between patients. While each hospital also represents the Department and the terminology can be used interchangeably in this regulation, each state hospital has a unique need to prohibit patients from this conduct. For example, there is a contraband list for all of the Department of State Hospitals that is applied to all state hospitals and each state hospital also has its own contraband list; these lists provide the prohibited items for the state hospitals and differ from hospital to hospital. Where one hospital may be able to allow the buying, selling, trading, or gifting of particular property, that particular property may be on the site-specific contraband list at another hospital and be prohibited from this process. This additional language is added to make clear that the Department of State Hospital, the agency with oversight of each state hospital, as well as each individual state hospital, may act on the authority described in this Section 893(c), which is renumbered to

893(a). Finally, because of the repeal of Section 893(a), “the Department” is changed to “the Department of State Hospitals” because this is the first instance of the use of the name of the department in these regulations.

Section 893(c)(1):

Text: The phrase “at the state hospital, state hospital staff will confiscate any” are added, and “personal property” is changed to “property.”

Rationale: The phrase “at the state hospital, state hospital staff will confiscate any” is a nonsubstantive addition made to clarify and emphasize that if the buying, trading, selling, and gifting of property is prohibited, then the regulations of this Section 893(c), renumbered to 893(a), and its subparagraphs shall apply. This additional clarity will ensure patients and staff are aware that the regulations are specific to the determinations made by each state hospital. If property is confiscated as a result of that property being in the possession of another patient, that confiscation shall be performed by state hospital staff. While it may be apparent that the confiscation would be done by state hospital staff, clarifying this in regulations removes any potential confusion or misunderstandings of who may confiscate property found on a patient which does not belong to that patient. The word “personal” has been removed from the phrase “personal property” because the regulations address all property transfer between patients and is not specific to personal property. This amendment aligns the language in the remainder of the regulations and provides additional clarity of the intent of the regulation. This paragraph is also renumbered to (a)(1) because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(1)(A):

Text: “May” is replaced by “will,” “confiscated” is added before the word property, and the phrase “illegal, or otherwise prohibited on state hospital grounds” is added to the end of the paragraph.”

Rationale: “Will” replaces the word “may” to establish that the treatment team will return the property to the original owner, if identified and the property is not prohibited from the possession of patients. The use of “may” as previously proposed indicated that it is at the discretion of the state hospital whether it returns the property to the patient. The state hospital intends to only prevent the return of the item to the original owner if the property is not permitted to be in the possession of the patient. The word “confiscated” is added to clarify the property being discussed; this is consistent with how the property is referred to in other sections of the regulation. The phrase “illegal, or otherwise prohibited on state hospital grounds” is added to this paragraph to further establish the conditions under which property will not be returned. In addition to the item being contraband, other items that are generally illegal or otherwise identified as not being permitted on state hospital grounds will not be returned to the original owner of the property. This paragraph is also renumbered to (a)(1)(A) because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(1)(B):

Text: “Is not” is replaced with “cannot be.”

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation.

Section 893(c)(1)(C):

Text: “Ten” is replaced with “10,” and the reference to subdivision (b)(1) is replaced with subdivision (c)(1).

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation. For consistency and general grammatical standards, numbers 10 or higher will be written numerically. In addition, subdivision (b)(1) is replaced with subdivision (c)(1) to correct an erroneous reference.

Section 893(c)(1)(C)1.:

Text: “Thirty” is replaced with “30.”

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation. For consistency and general grammatical standards, numbers 10 or higher will be written numerically.

Section 893(c)(1)(C)(2):

Text: The term “Department” is changed to “state hospital.” This section is also renumbered to (a)(1)(C)(2).

Rationale: This change is nonsubstantive and made so there is no confusion between the Department as an overall entity, and each state hospital under the jurisdiction of the Department of State Hospitals. This paragraph is also renumbered because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(C):

Text: The reference to subdivision (b)(2)(B) is replaced with (c)(2)(B).

Rationale: This proposed modification is made to correct an erroneous reference. Subdivision (b)(2)(B) does not exist in these proposed regulations and is corrected to the correct reference of subdivision (c)(2)(B).

Section 893(c)(2)(C)1.:

Text: “And/” is removed from the regulation.

Rationale: This proposed modification is a nonsubstantive change made to improve the overall readability of the regulation. For consistency with regulations writing standards, the Department is replacing “and/or” with “or.” “Or,” as used in this section, establishes that hospital staff may consider any safety risks or security risks that may be associated with the potential property transfer. This paragraph is also renumbered to (a)(2)(C)1. because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(C)3.:

Text: “Gifting of high-value items” is replaced with “The fair market value of the item(s).”

Rationale: This change is necessary because the language originally proposed was determined to be ambiguous. “Gifting of high-value items” is not clear because “high value” is a subjective term which can change from person to person. To eliminate some of this ambiguity, transfers of value will be reviewed by Department staff based on the fair market value of the items. Using the fair market value of an item to aid in the determination of the appropriateness of a transfer ensures that the value of items is not subjectively determined by hospital staff or the patients, but rather compared to the value of the same or like items on the open market. This paragraph is also renumbered to (a)(2)(C)3. because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(C)4.:

Text: “An unreasonably high” number of items in one transfer is replaced with “the” number of items in one transfer. This section is also renumbered to (a)(2)(C)4..

Rationale: This change is necessary because the language originally proposed was determined to be ambiguous. An unreasonably high number of items in one transfer is not clear because “unreasonably high” is a subjective term which can change from person to person. To eliminate some of this ambiguity, hospital staff may review the transfer request by considering the number of items in the trade. This change in language permits hospital staff to make an assessment of the appropriateness of the number of items in a transfer without mandating that staff reach a determination of whether the number of items in the transfer is unreasonably high. Some level of flexibility is necessary in this regulation as a high number of low-value items may be permissible whereas one high-value item that is potentially not being traded at equal value or with a full understanding of the transaction by the patient may be inappropriate and therefore not permitted. This paragraph is also renumbered to (a)(2)(C)4. because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(2)(D):

Text: Language specifying that the treatment team review and program director approval of the request to buy, sell, trade or gift property will occur within 30 calendar days is added. This section is also renumbered to (a)(2)(D).

Rationale: This proposed modification adds a time frame of 30 calendar days to the amount of time state hospital staff will review the property transfer request of this section. Providing a 30-day time frame ensures property transfer requests are reviewed timely and a decision made so patients can complete the requested transaction or be informed of the denial of the transaction. This time frame aligns with the time frame already provided in the regulation text for the program director, or designee, to respond to the patient's written request to contest property confiscation and is considered a reasonable amount of time for the program director to review these types of requests. Thirty calendar days is reasonably short such as to not unduly delay patient's ability to transfer property but provides state hospital staff enough time to review the proposed transfer. This paragraph is also renumbered to (a)(2)(D). because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(c)(3):

Text: "Store, or other similar establishment for the purchase of food or other goods" is added to the paragraph and "defined in these regulations as a location for the sale to or for the benefit of patients of the institution of candies, sundries, and other articles" is deleted. This section is also renumbered to (a)(3).

Rationale: This proposed modification is done as a nonsubstantive change and for clarity. "Defined in these regulations as a location for the sale to or for the benefit of patients of the institution of candies, sundries, and other articles" is removed because this phrase is copied directly from Welfare and Institutions Code section 4314. Because this definition already exists in statute, its defining in this section is redundant and unnecessary. "Store, or other establishment for the purchase of food or other goods" is added because each state hospital may or may not have the listed establishments. Adding these terms makes it clear for the reader of the regulation that whatever the name of the location where the patients purchase food or other goods for other patients, the requirements of Section 893(a)(3)(A) through (a)(3)(E) apply. This paragraph is also renumbered to (a)(3). because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Section 893(C)(3)(B):

Text: "Approvals for the purchase of food items will be approved immediately by the treatment team, unless the treatment team is aware of any health, safety, or security concerns that may result from an approval of this request" is added. This section is also renumbered to (a)(3)(B).

Rationale: This regulation is proposed for addition to Section (C)(3)(B) to describe that property transfer requests for items which are purchased from the canteen, store, or other similar establishment at the state hospital will be approved immediately by the treatment team, unless health, safety, or security concerns require either the rejection of the request or further consideration. This requirement is added so items such as food may be purchased and gifted or transferred to other patients without an unreasonable delay from the state hospital. Health, safety, and security concerns are added as rationales to clarify the factors which may be considered by state hospital staff in the denial of these requests or when additional considerations are needed. These factors are consistent with the factors identified in Sections 893(c)(2)(B)3. and (c)(2)(B)4.. The health, safety, and security for the approval of purchases is necessary to consider because these factors provide guides for the uniform review of requests for the purchase of food items. Because patients within each state hospital have varying levels of need and cognitive functioning, state hospital staff may consider if an item which may be safe to consume for one patient may not be safe for another patient. In addition, approval for the food purchase is necessary to provide state hospital staff the opportunity to ensure the purchase is done mutually, under no duress, and will not cause problems which could threaten the health, safety, or security of patients or state hospital staff.

Section 893(c)(3)(D):

Text: The term “Department” is changed to “state hospital.” This section is also renumbered to (a)(c)(3)(D).

Rationale: This change is nonsubstantive and made so there is no confusion between the Department as an overall entity, and each state hospital under the jurisdiction of the Department of State Hospitals. This paragraph is also renumbered because of the repeal of the formerly proposed Sections 893(a) and 893(b).

Authority and Reference Section:

Text: Welfare and Institutions Code section 4109 is added as the law implemented, interpreted, or made more specific, and other statutory references are reordered.

Rationale: This citation is added to further clarify that in addition to the authorities granted in law for the creation of this regulation, the Department generally seeks to implement, interpret, or make more specific Welfare and Institutions Code section 4109, which grants the Department general control and direction of the property and concerns of each state hospital. The reordering of the referenced statutes in the regulation is nonsubstantive and amended to reflect ascending numeric order.

WRITTEN COMMENTS

The Department invites all interested persons to provide comments relevant to the specific changes made in the 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 (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 April 14, 2022, which pertain to the changes proposed in the 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 Sylvester Okeke, and the backup contact is Dennalee Folks. They can be reached by contacting the Regulations and Policy Unit phone number at (916) 654-2478.