

**DEPARTMENT OF STATE HOSPITALS
FINAL STATEMENT OF REASONS
CONTRABAND SEARCH AND CONFISCATION**

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health
Chapter 16. State Hospital Operations
Article 3. Safety and Security

UPDATE OF THE INFORMATION CONTAINED IN THE INITIAL STATEMENT OF REASONS

No changes or updates have been made to the information provided in the Initial Statement of Reasons noticed to the public on April 9, 2021.

LOCAL MANDATE STATEMENT

Mandate on local agencies and school districts: The Department of State Hospitals (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).

STATEMENT OF ALTERNATIVES CONSIDERED

The Department has made the determination 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.

These regulations maintain a secure facility for patients, staff, and the public by increasing the ability of each state hospital to address contraband. Section 4351 provides for non-peace officer Department of State Hospital staff to conduct searches for contraband and perform searches on patients, within the Secured Treatment Area and patient living areas. Section 4352, for the purpose of clarity, states that hospital police officers and sworn investigators are peace officers with the ability to perform various types of searches throughout hospital grounds and anywhere in the state, while performing their duties. Section 4353 provides that persons entering the Secured Treatment Area, visiting centers, and patient living areas of the state hospitals are subject to searches of their person and property for contraband. This section also provides the procedure for contractors to obtain approval for use of their tools within the facilities.

STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made the determination that the proposed regulations will have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This determination was made because these regulations clarify the authority of Department personnel to conduct searches for contraband on state hospital grounds and only affect hospital operations. Section 4351 specifically provides that select non-peace officer Department staff may perform searches for contraband in select areas of the hospital and perform searches on patients when there is a reasonable belief that a patient is in possession of contraband. Section 4352 clarifies that hospital police officers and sworn investigators are peace officers pursuant to all applicable statutes, including Penal Code section 830.3 and 830.38, and may perform searches on hospital grounds and anywhere throughout the state, in performance of their duties. Section 4353 provides that persons entering the Secured Treatment Area, visiting centers, and patient living areas of the hospital, are subject to searches of their person and property and that no contraband is permitted in the areas named within the regulations without permission from the executive director, or designee, or hospital police chief.

MODIFICATIONS TO THE ORIGINALLY PROPOSED REGULATIONS TEXT

Non-substantive Modifications:

Following the public comment period and subsequent public hearing, the Department made non-substantive amendments to Section 4351(d) by changing the beginning words of the first sentence from “patients that” to “patients who.” In the second sentence of this same section, “a patient may” is amended to read “patients may.” Additionally, though the regulatory language noticed to the public indicates that patients may be removed from an area during a search, the Department added further clarifying non-substantive language changes to Section 4351(d) to indicate that the patient may be removed from the “search area” during a search.

In Sections 4352(a)(1) and (a)(2), the Department made non-substantive changes to remove the term “exemptions” due its redundancy and for greater clarity. Applicable federal and state laws provide the exemptions under which searches may be performed as described in the regulations. As such, “and exemptions” is removed and the sentences in both paragraphs conclude with “under applicable federal laws and state laws.”

Additional non-substantive modifications made after the conclusion of the public comment period and public hearing include adding a period to the end of each section title for consistency with state regulatory standards and norms. All differences between regulatory language currently existing on an emergency basis and the proposed regulatory language to be implemented and made permanent are shown with single

underline formatting to add language and single strikethrough formatting to delete language.

SUMMARY OF COMMENTS RECEIVED

The following is a summary of comments received during the public comment period beginning April 9, 2021, through May 24, 2021, including comments received during a public hearing facilitated on Wednesday, July 14, 2021, by the Department.

The following is a summary of comments received during the 45-day comment period which ended on May 24, 2021:

No.	Commenter(s)	Date Received
1.	Allan Fletcher	04/17/2021
2.	Richard Shive	04/18/2021
3.	Victor Houx	05/11/2021

Summary Comment 1: Commenter 1, 2

Comment: Both commenters request for a public hearing to be facilitated.

Department Response: A public hearing was facilitated on Wednesday, July 14, 2021.

Summary Comment 2: Commenter 3

Comment: There is no emergency as Coalinga State Hospital is asserting. Events described by Coalinga State Hospital are both fabricated and exaggerated, and the approval of these regulations will allow Coalinga State Hospital to punish patients. There is no focus on patient rights and if patients are treated as criminals, that will create criminals. With the implementation of Section 4350, Coalinga State Hospital patients were punished for the actions of a small handful of patients.

Department Response: Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

The following is a summary of comments received during a public hearing facilitated on July 14, 2021:

No.	Commenter(s)	Date Received
1.	Janice Bellucci, Alliance for Constitutional Sex Offense Laws	7/14/2021
2	Randee E. Grassini	7/14/2021
3	George Yahn	7/14/2021
4	Thomas Hall	7/14/2021

5	Clarence Albertson	7/14/2021
6	Allan Fletcher	7/14/2021
7	Tobias Mazzei	7/14/2021
8	James Hydrick	7/14/2021
9	Joshua Forster	7/14/2021
10	Joel Oaks	7/14/2021
11	Christian W.	7/14/2021
12	Billy Redding	7/14/2021
13	Kenneth Herman	7/14/2021
14	Steve Wilson	7/14/2021

Summary Comment 1: Commenter(s) 1, 7, 9

Comment: There is no emergency, there should be no emergency regulations, and not all contraband on the contraband list poses a risk to patients or to staff. Some of the items on the contraband list are legal to possess.

Department Response: Thank you for the comment. However, this comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 2: Commenter(s) 1, 2, 9, 12

Comment: Each proposed regulation violates the Fourth Amendment of the Patients at Coalinga State Hospital and other state hospitals. There is no probable cause and no due process being given.

Department Response: Thank you for the comment. The Department has researched and reviewed relevant law and legal authority. These regulations do not interfere or conflict with current state and federal laws, including constitutional rights of patients. These regulations seek to clarify and interpret current legal authority.

Summary Comment 3: Commenter(s) 1, 3, 5, 10

Comment: A reasonable alternative is to wait for the arrival of a peace officer who is authorized to conduct the searches that are described in Section 4351. It would be easy to detain somebody briefly while a peace officer is called and until that peace officer could arrive.

Department Response: Thank you for the comment. After consideration, the Department does not accept this proposal. Depending upon the level of threat, or on a case-by-case basis, select non-peace officer staff have the authority to remove contraband from the possession of patients. Not all contraband warrants the immediate need of law enforcement to detain the patient and confiscate the contraband. At the discretion of select non-peace officer staff, and when safe, these regulations make

permanent a mechanism that allows for cases of suspected or detected contraband to be removed and confiscated. The proposed alternative from the commenter is not an alternative, but rather an objection to permit level of care staff to search and confiscate contraband that is reasonably believed to be in the possession of a patient. Law enforcement is contacted immediately in all cases where their participation is imminently needed. These regulations make permanent to ability of select non-peace officer staff to remove contraband from the possession of a patient when the immediate escalation of law enforcement is not warranted. Hospital police officers will be notified as quickly as possible when contraband is found.

Summary Comment 4: Commenter(s) 2, 3

Comment: Level of care staff are functioning as police, which contradicts their purpose, and some staff may abuse this new function. This regulation is more restrictive instead of the least restrictive state hospital environment.

Department Response: Thank you for the comment. Level of care staff receive training on the identification of contraband and how to address contraband in a patient's possession or reasonably believed to be on a patient. This training is not equivalent to the training necessary to function as a hospital peace officer. Level of care staff assist in ensuring the Secured Treatment Area, visiting centers, and patient living areas are free from contraband to provide an optimal environment in which patients and staff are safe and can focus on treatment. Allowing staff to visually monitor and search for contraband within designated areas of hospital grounds, does not contradict the role of level of care staff who ensure a safe space within these areas for all patients, thus enhancing the treatment milieu. Certain contraband, such as weapons and other items which may pose an immediate or grave danger to the health and safety of patients, staff, contractors, and visitors, will continue to necessitate immediate law enforcement involvement. These regulations standardize the ability of select, non-peace officer staff, to have the ability to identify and remove contraband from a patient and ensure a safe treatment environment. These regulations do not make the state hospital more restrictive; they clarify existing law that requires each state hospital to control and eliminate contraband and provides a transparent mechanism in which this requirement is implemented.

Summary Comment 5: Commenter(s) 3, 6, 9, 10, 13

Comment: There is a police department in place with sworn officers and a chief of police. The hospital has \$2 million worth of alarm systems and police arrive within two minutes. There has never been a lack of timely response.

Department Response: Thank you for the comment. Depending upon the level of threat posed by the contraband, on a case-by-case basis, select non-peace officer staff have the authority to search for and remove contraband from a patient and the treatment environment. This regulation is not intended to imply there is a deficiency or inadequacy in law enforcement services provided at each state hospital or in its security systems.

Not all contraband warrants the immediate need of law enforcement intervention to confiscate the contraband. At the discretion of select non-peace officer staff, and when safe, these regulations make permanent a mechanism that allows for cases of suspected or detected contraband to be removed and confiscated. These regulations make permanent the ability of select non-peace officer staff to remove contraband from the possession of a patient when the immediate escalation of law enforcement is not warranted. Level of care staff are also responsible for providing a safe environment for all patients and staff. Identifying and addressing contraband is a part of the training received by level of care staff. Law enforcement personnel will remain an important presence in each state hospital and continue to timely respond when necessary. However, these regulations clarify the ability for non-peace officer staff to safely address contraband situations without the immediate escalation of law enforcement.

Summary Comment 6: Commenter(s) 3, 4, 6, 10

Comment: Having a staff member, who is not trained in police procedure or evidentiary procedures, would create issues with the items confiscated.

Department Response: Thank you for the comment. This comment is not being considered as it is outside the scope of this rulemaking process and it does not include an objection, support, or recommendation directed toward a specific component of this regulatory action. The Department notes that these regulations do not address evidentiary or other legal matters related to the confiscation of contraband. Level of care staff at each state hospital receive training related to contraband and Sections 4351, 4352, and 4353 provide a mechanism for each state hospital to address contraband in a safe and efficient manner.

Summary Comment 7: Commenter(s) 3, 13

Comment: Department staff morale climbed after destroying patient property. This resulted in complaints and monetary awards.

Department Response: Thank you for the comment. This comment is not being considered as it is outside the scope of this rulemaking process and it does not include an objection, support, or recommendation directed toward a specific component of this regulatory action.

Summary Comment 8: Commenter(s) 4, 5, 8, 13

Comment: Commenter has witnessed professional and unprofessional treatment by level of care staff and has two diagnoses that cause instability. This regulation will instigate an episode. The commenter completes a Patient Preference Plan annually to notify level of care staff of issues, the coping skills used, and what not to do when upset, but level of care staff do not follow the plan.

Department Response: Thank you for the comment. Some of the comments provided by the commenter are outside the scope of this regulation and will not be addressed. Section 4351 seeks to clarify the existing authority of non-peace officer staff to conduct searches of areas within the Secured Treatment Area, visiting centers, and patient living areas, and conduct a search of a patient when there is a reasonable belief that the patient is in possession of contraband. The reasonable belief standard establishes the standard by which searches may be performed on a patient. Level of care staff at each state hospital receive training on how to identify and confiscate contraband from patients, when it is safe to do so. While all contraband in a state hospital is a detriment to the state hospital and its operations, not all contraband requires the immediate intervention of hospital police. These regulations efficiently address contraband by providing another mechanism by which each state hospital can control and eliminate its presence. Level of care staff are generally familiar with each patient and their individual needs. As such, based on each individual patient, there are instances when a patient may have items which are considered contraband, but that contraband can be safely confiscated without the immediate intervention of law enforcement. There may also be situations that call for the immediate confiscation of the contraband from the patient. In each example, select staff perform this search only when there is a reasonable belief that the patient has contraband and only when it is safe to perform the search.

Summary Comment 9: Commenter(s) 4, 5, 8

Comment: The state hospitals are a business, generating paychecks for the psychiatric technicians, and their incomes are often inflated. These regulations place the financial welfare of psychiatric technicians above the health and safety of all parties involved, especially the patients. Searches will only be done to further antagonize, instigate, and further distress patients who are already mentally fragile.

Department Response: Thank you for the comment. This comment is not being considered as it is outside the scope of this rulemaking process and it does not involve objections, support, or recommendations specifically directed towards this regulatory action. However, the Department notes that the provisions of Sections 4351, 4352, and 4353, are existing law. These regulations clarify the authority of select non-peace officer staff to search for contraband within the facility and on the person of a patient, when there is reasonable belief that the patient is in possession of contraband. Non-peace officer staff, such as level of care staff, are generally familiar with the patients. These regulations seek to standardize the search and confiscation of contraband by designated and trained non-peace officer staff and defines limitations for those searches to promote uniformity for the health and safety of patients. The Department does not anticipate these regulations increasing the number of contraband searches conducted at each hospital and the goal of these regulations are to facilitate and prioritize the creation and maintenance of a therapeutic environment for the patients free from all forms of identified contraband.

Summary Comment 10: Commenter(s) 6

Comment: The 4351 regulations place non-peace officer staff in an authoritarian role traditionally held by police, which transforms mental health care into mental health policing.

Department Response: Thank you for the comment. These regulations seek to standardize the process of select non-peace officer staff to search for contraband within the facility. These regulations clarify the existing authority of hospital police officers and sworn investigators, and mandate that contraband shall not enter select areas of hospital grounds without the permission of the executive director, designee, or hospital police chief. Level of care staff must remain vigilant to the presence of contraband. This is a duty already required of all Department staff, specifically level of care staff, who are in constant contact and communication with patients. It is the goal of the Department to provide a treatment environment free from contraband and these regulations provide the Department another tool in achieving this goal. These regulations do not extend the role of level of care staff beyond their role to facilitate the care and effective treatment of patients.

Summary Comment 11: Commenter(s) 6, 9, 13

Comment: Measures already exist. Level of care conduct routine room searches and there are unit wide room searches conducted by police officers.

Department Response: Thank you for the comment. In addition to the authorities already granted to level of care staff and hospital police officers, these regulations seek to make permanent the regulations currently in place. Of note, these regulations make permanent the rule that non-peace officer staff may visually monitor for contraband, conduct searches of rooms within the Secured Treatment Area, visiting centers, and patient living area and if there is a reasonable belief that a patient is in possession of contraband, perform a pat-down search of the patient. These regulations provide all state hospitals one set of rules and expectations for how select non-peace officer staff may monitor for contraband and perform searches.

Summary Comment 12: Commenter(s) 7, 9

Comment: These regulations may affect treatment efficacy, bring the hospital close to prison standards, and negatively impact treatment success.

Department Response: Thank you for the comment. However, the Department disagrees. The continued presence of contraband in each state hospital and its removal, as well as the prevention of the entry of contraband into the state hospital, is a priority and concern of the Department. Ensuring the safety and security of patients by ensuring the state hospital is free of contraband is an important factor and consideration in treatment and imperative for a patient while receiving the treatment needed to return to court or reintegrate back into the community. Making these regulations permanent

will aid in providing a safe and secure environment within the state hospitals, which allows the treatment of patients to remain the primary focus of both patients and staff. These regulations create a transparent and uniform set of expectations for select non-peace officer staff to search for and confiscate contraband, including providing a transparent set of rules by which searches will be conducted by those seeking to enter the state hospitals or state hospital grounds. These rules positively impact the ability of the Department to provide treatment to patients by preventing the entry of unauthorized and undocumented contraband into the state hospital.

Summary Comment 13: Commenter(s) 7

Comment: The most dangerous incidents that have been brought up and associated with some of the evidence submitted can and should be prevented through noninvasive treatment adjustments.

Department Response: Thank you for the comment. The goal of the Department is to provide a treatment environment for patients free from contraband. Contraband is a detriment to the treatment environment as it can pose a health, safety, and security risk based on what the contraband is and who is in possession of the contraband. Because the Department continues to see contraband in its state hospitals, it continues to employ strategies with the goal of deterring and preventing contraband from entering the facility and being in the possession of patients. This need to keep each state hospital free from contraband is also a requirement per Welfare and Institutions Code section 7295. Through these regulations and other approaches, such as continued communication with patients and staff on the dangers of contraband, the Department continues to strive to eliminate contraband from its hospitals.

Summary Comment 14: Commenter(s) 8, 14

Comment: Staff members conducting these types of searches on patients will result in evidence planting and false documents being filed to support the false evidence. Hospital staff introduce contraband into the hospitals and blame the patient population.

Department Response: Thank you for the comment. Sections 4351, 4352, and 4353 are existing laws which were enacted on an emergency basis. The Department seeks to make these regulations permanent. Select non-peace officer staff, through these emergency regulations and training as level of care staff, already perform the functions outlined in the regulations and hospital police continue to monitor to prevent the entry of contraband into the state hospitals. These regulations collectively will aid in deterring patients from possessing contraband as well as prevent their entry into the state hospital. Further, the Department is not aware of any correlation between the statements made by the patient and these regulations. The remainder of this comment, as originated from these commenters, is not being considered as it is outside the scope of this rulemaking process and it does not include an objection, support, or recommendation directed toward a specific component of this regulatory action.

Summary Comment 15: Commenter(s) 9

Comment: Searches conducted by staff would be used for punitive reasons.

Department Response: Thank you for the comment. Sections 4351, 4352, and 4353 are existing regulations enacted on an emergency basis. The Department seeks to make these regulations permanent. Select non-peace officer staff, through these emergency regulations, already perform the functions outlined in the regulations and hospital police continue to monitor to prevent the entry of contraband into the state hospitals. These regulations collectively will aid in deterring patients from possessing contraband and will aid in preventing their entry into the hospitals. The intent of these regulations is to ensure the safety and security of those on state hospital grounds and the rationale for the adoption of each section is provided in the Initial Statement of Reasons and Notice of Proposed Action noticed to the public on Friday, April 9, 2021.

Summary Comment 16: Commenter(s) 10

Comment: The law states all peace officers must go through a certain amount of training. That would not be required when DSH is stating that any staff can perform the requirements of Section 4351.

Department Response: Thank you for the comment. Level of care staff currently receive training on the identification of contraband from the Department. Each hospital will remain responsible for providing adequate levels of training needed for staff to ensure contraband is identified and confiscated as soon as detected. This regulation does not substitute actions necessary to be performed by law enforcement personnel. It is an extension of existing requirements of level of care staff to remain vigilant to the presence of contraband and provided authorization for staff to search for contraband on a patient when there is reasonable belief that the patient is in possession of contraband. The Department, through the implementation of these regulations, and specifically Section 4351, note that not all contraband rises to the level of imminent danger and threat necessary to mobilize and utilize law enforcement. In these instances, because contraband is prohibited and may become disruptive to the treatment environment, the Department seeks to make permanent the existing regulations providing for select non-peace officer staff to remove the contraband from possession of the patient.

Summary Comment 17: Commenter(s) 11

Comment: Commenter provided the psychiatric technician pledge from the California Association of Psychiatric Technicians.

Department Response: Thank you for the comment. This comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations specifically directed towards this regulatory action.

Summary Comment 18: Commenter(s) 12

Comment: The hospital has had problems with not having enough resources and personnel cannot perform their current duties.

Department Response: Thank you for the comment. This comment is not being considered as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations specifically directed towards this regulatory action. However, the Department notes that Sections 4351, 4352, and 4353 are existing law, and the Department seeks to make permanent these laws. In addition, level of care staff are required to remain vigilant for the presence of contraband in state hospitals. These laws provide authority for select non-peace officer staff to search for contraband within certain areas of the state hospital and on a patient, when there is reasonable belief that the patient is in possession of contraband, and to confiscate the contraband item. These rules create transparent and uniform expectations for select non-peace officer staff to address the presence of contraband within the state hospitals. It also removes the need for each instance of suspected contraband to be one involving immediate police action. These regulations are not anticipated to impact the existing workload of level of care staff or other Department employees.

Summary Comment 19: Commenter(s) 13

Comment: The Department reported an increased number of pruno drug cases. There may have been more confiscations of pruno and drugs, but there were not more people being caught. It was the same people repeatedly. Subjecting the entire population because of a small minority of the population just doesn't seem right.

Department Response: Thank you for the comment. Each state hospital must adhere to uniform rules and regulations. Section 4351(b) and (c) establishes searches to be performed by select non-peace officer staff when there is "reasonable belief" of contraband on a patient. As such, these regulations do not mandate searches on the entire patient population; they authorize select non-peace officer staff to perform searches on patients who are believed to be in possession of contraband. In addition, when also considering the regulations provided per Sections 4352 and 4353, the Department believes these measures will assist in reducing the number of contraband items within the state hospitals. Further, staff are already asked to remain vigilant to the presence of contraband. These regulations create a uniform process for staff who have a reasonable belief that a patient is in possession of contraband.