

**State of California  
Office of Administrative Law**

**In re:**  
**Department of State Hospitals**

**Regulatory Action:**

**Title 09, California Code of Regulations**

**Adopt sections:** 4351, 4352, 4353

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2022-0324-01**


**OAL Matter Type: Certificate of Compliance  
(C)**

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This timely certificate of compliance (2020-0413-02E, 2021-0609-01EE, 2022-1231-02EE) rulemaking action by the Department of State Hospitals would make permanent procedures for safety and security searches of patients and living areas, common areas, staff areas, and grounds.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

**Date:** May 6, 2022

  
Peggy J. Gibson  
Senior Attorney

**For:** Kenneth J. Pogue  
Director

**Original:** Stephanie Clendenin, Director  
**Copy:** Sylvester Okeke

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

STD. 400 (REV. 10/2019)

# CERT

For use by Secretary of State only

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2022-0324-01</b>	EMERGENCY NUMBER <b>C</b>
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For use by Office of Administrative Law (OAL) only

<p>NOTICE</p>	<p>REGULATIONS</p>
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OFFICE OF ADMIN. LAW  
2022 MAR 24 AM 9:40

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

MAY 06 2022

1:55PM

AGENCY WITH RULEMAKING AUTHORITY  
Department of State Hospitals

AGENCY FILE NUMBER (If any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) <b>Contraband Search and Confiscation</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0413-02E, 2021-0609-01EE, 2021-1231-02EE
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	

<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT <b>4351, 4352, 4353</b>
	AMEND
TITLE(S) <b>9</b>	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  §100 Changes Without Regulatory Effect  Effective other (Specify) \_\_\_\_\_

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify) \_\_\_\_\_

7. CONTACT PERSON Sylvester Okeke	TELEPHONE NUMBER (916) 654-2478	FAX NUMBER (Optional) (916) 651-3090	E-MAIL ADDRESS (Optional) DSH.Regulations@dsh.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <b>Stephanie Clendenin</b> <small>Digitally signed by Stephanie Clendenin Date: 2022.03.23 15:43:44 -07'00'</small>	DATE
TYPED NAME AND TITLE OF SIGNATORY <b>Stephanie Clendenin, Director</b>	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

MAY 06 2022

Office of Administrative Law

**DEPARTMENT OF STATE HOSPITALS  
REGULATION TEXT  
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

Adopt sections 4351, 4352, and 4353 to read as follows:

**§ 4351. Contraband Searches and Confiscation within the Secured Treatment Area and Patient Living Areas by Department of State Hospitals Non-Peace Officer Staff.**

- (a) ~~Non-peace officer Department of State Hospital staff may conduct searches as appropriate to locate and confiscate contraband and otherwise ensure the safety and security of the facility, patients, staff, contractors, and public.~~ Non-peace officer staff must visually monitor for contraband at all times within the Secured Treatment Area and patient living areas, and may conduct searches of any room, common area, or bathroom at any time, either announced or unannounced, to locate and secure contraband. Non-peace officer staff must alert hospital police as soon as possible when contraband is discovered. Secured Treatment Area, as applied to sections 4351, 4352, and 4353, are secured areas of the facility located behind the outermost doors of any sally port, all fenced areas, courtyards, visiting rooms, and the sally port interiors.
- (b) ~~Non-peace officer Department of State Hospital staff shall visually monitor for contraband at all times while within the secured treatment area and patient living areas and shall take custody of contraband or alert Hospital Police Officers when discovered. If a non-peace officer Department of State Hospital staff member observes contraband outside of the secured treatment area and patient living areas, Hospital Police Officers must be contacted. If there is a reasonable belief that a patient possesses contraband or a condition exists that poses a threat to the safety and security of the hospital, patients, and employees, non-peace officer staff may conduct a pat-down search on the patient. A "pat-down search", as applied to sections 4351, 4352, and 4353, is a process in which a hand search of a patient's body over clothing is conducted.~~
- (c) ~~Non-peace officer Department of State Hospital staff may conduct searches of any room, common area, and/or bathroom within the secured treatment area or patient living areas, at any time, announced or unannounced. Each facility may identify, or limit position classifications of employees authorized to conduct these searches by policy, as needed for the facility. Patients that become intrusive or aggressive during a search may be removed from the area during the search by~~

~~non-peace officer Department of State Hospital staff, Hospital Police Officers or sworn Investigators. Each hospital executive director, or designee, may identify or limit position classifications of hospital employees authorized to monitor and conduct searches for contraband.~~

- (d) ~~If there is a reasonable belief that a patient possesses contraband, non-peace officer Department of State Hospital staff may conduct a pat-down search of the patient, in which a hand search of a patient's body over clothing is conducted. Non-peace officer Department of State Hospital staff may also contact Hospital Police Officers to conduct the pat-down search. Patients that who become intrusive, aggressive, or noncompliant during a search may be removed from the search area during the search. A patient Patients may also be removed from the search area due to the nature of the search to be performed.~~

Note: Authority cited: Sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 4011, 4109 and 7295, Welfare and Institutions Code.

#### **§ 4352. Contraband Searches by Department of State Hospitals Peace Officers.**

- (a) ~~Hospital Police Officers and sworn Investigators of the Office of Special Investigations are peace officers pursuant to Penal Code section 830.3. Hospital police officers and sworn investigators are peace officers pursuant to Sections 830.3 and 830.38 of the Penal Code. Peace officers may conduct person and property searches throughout the hospital grounds and in any location throughout the state while conducting the primary functions of their duties.~~
- (1) ~~Peace officers may conduct person and property searches throughout the facility and in any location throughout the state while conducting the primary functions of their duties as guided by the laws within Welfare and Institutions Code sections 4138 and 4139 and Penal Code sections 830.3(v) and 830.33. Permitted searches include, but are not limited to, visual searches of all areas on the grounds of a Department of State Hospitals' facility or while conducting peace officer duties. Vehicle searches, inventory searches, pat-down searches, use of canine-sniff searches, and physical examination searches of all persons and property on the facility grounds, may be conducted under applicable federal laws, and state laws, and exemptions.~~
- (2) ~~Permitted searches include but are not limited to: visual searches of all areas of the facility, vehicle searches, pat down and physical examination searches of all persons and property on the facility, K-9 searches, strip searches and body cavity searches of patients with probable cause or a warrant as appropriate. Permitted searches, as listed in subdivision (a)(1), for patients and property on facility grounds, may be conducted at random~~

or with reasonable suspicion, based upon information obtained from investigation and observation under applicable federal laws, and state laws, and exemptions.

- (3) Nothing in these regulations is intended to limit or expand peace officer authority to conduct searches and/or confiscation. A strip search (removal of clothing for a visual inspection) or visual body cavity search (visual inspection of body cavity) must be based upon reasonable suspicion and information obtained from investigation and observation that the item sought is small enough to be hidden under clothing or within a person based upon reasonable suspicion.
- (4) A body cavity search (inspection of body cavity) will only be justified upon execution of a duly authorized search warrant.

Note: Authority cited: Sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 4011, 4101, 4109, 4139 and 7295, Welfare and Institutions Code; and Sections 830.3, 830.5 and 830.38, Penal Code.

### **§ 4353. Contraband Searches and Confiscation of those Entering the Secured Treatment Area, Visiting Centers, and Patient Living Areas.**

- (a) Contraband shall not enter the secured treatment area or patient living areas without written authority from the Executive Director or designee. Contractors with authority to utilize a contraband item, including but not limited to tools, metal items, or electronic devices necessary to perform the contracted work, shall log the item(s) upon entering and confirm their removal upon exiting the secured treatment area, visiting centers, or patient living area. Contraband must not enter the Secured Treatment Area, or patient living areas, without written authority from the executive director, or designee, or hospital police chief.
  - (1) Contractors with authority to utilize a contraband item, including but not limited to tools, metal items, or electronic devices necessary to perform the contracted work, must log the item(s) with the designated officer upon entering and confirm their removal upon exiting the Secured Treatment Area or patient living area.
- (b) All persons entering the secured treatment area, visiting centers, or patient living areas are subject to searches of their person, by means including but not limited to the use of metal detectors, wand searches, K-9, X-ray, cell phone detecting devices, devices to detect controlled substances, and pat-down searches. All persons entering the Secured Treatment Area, visiting centers, and patient living areas are subject to searches of their person using tools and methods including, but not limited to, metal detectors or metal detector wands, canine-sniffs, x-ray

devices, cell phone detecting devices, devices to detect controlled substances, and pat-down searches.

- (c) ~~All persons entering the secured treatment area, visiting centers, or patient living areas are subject to property searches both visually and physically. This includes, but is not limited to, the removal of items such as hats, shoes, jewelry, jackets or coats for inspection and the search of items such as purses, bags, lunch boxes, and containers. Searches of these items may be conducted using K-9, X-ray, cell phone detecting devices, devices to detect controlled substances, and metal detector or wand searches. The property of all persons entering the Secured Treatment Area, visiting centers, and patient living areas are subject to searches, both visually and physically, using tools and methods including, but not limited to, the removal of hats, shoes, jewelry, jackets or coats for inspection; inspection of purses, bags, lunch boxes, and containers; the use of canine-sniffs, x-ray devices, cell phone detecting devices, devices to detect controlled substances, and metal detectors or metal detector wands.~~
- (d) ~~Contraband considered illegal under state and federal law shall be confiscated. Persons with contraband specific to the Department of State Hospital or the facility shall be instructed to return the contraband to their vehicle, if the person arrived in a vehicle, or remove the contraband from the facility, or a peace officers may agree to hold the item for the person to retrieve when exiting the secured treatment area or patient living area. Persons found with contraband listed on the Department of State Hospitals' statewide contraband list, or the specific state hospital's contraband list, must be instructed to return the contraband to their vehicle, if the person arrived in a vehicle, or to remove the contraband from the hospital grounds. Failure to comply may result in a confiscation of the item or the person may be removed from the hospital grounds for failure to comply.~~
- (1) Possession of any illegal contraband item(s), in violation of state or federal law, must be confiscated and violators may be subject to criminal prosecution under the full extent of the law.
- (e) ~~Persons refusing to comply with this section are not permitted within the secured treatment area and patient living areas. Persons refusing searches are not permitted within the Secured Treatment Area and patient living areas, and may be subject to removal from facility grounds.~~

Note: Authority cited: Sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 4011, 4109, 4139 and 7295, Welfare and Institutions Code.