

**DEPARTMENT OF STATE HOSPITALS
INITIAL STATEMENT OF REASONS
CONTRABAND DISPOSITION**

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

INTRODUCTION AND BACKGROUND

The Department of State Hospitals (Department) oversees five state hospitals (Atascadero, Coalinga, Metropolitan, Napa, and Patton). The Department is responsible for the daily care of over 7,400 patients, and in Fiscal Year 2023-24, DSH served over 14,000 patients. Each hospital is licensed by the California Department of Public Health. The Department's hospitals primarily treat forensic patients within Secure Treatment Areas, but they also provide treatment for civilly committed patients, paid for by the counties.

The Department houses civil commitments and forensic populations deemed dangerous to the public by law. Pursuant to Welfare and Institutions Code section 4132, those committed to the Department are to be considered patients rather than inmates for the purposes of public safety. Among the populations are committees who are deemed: Sexually Violent Predators, Offenders with Mental Health Disorders, Not Guilty by Reason of Insanity defendants, incarcerated persons from the California Department of Corrections and Rehabilitation under Penal Code section 2684, Incompetent to Stand Trial defendants, and Lanterman-Petris-Short conservatees. The Department requires regulations to codify the process for disposing of contraband, because current regulations do not give guidance on contraband disposal methods after seizure. These regulations will reduce the safety, health, security, and environmental risk to the patients and staff by removing contraband from hospital grounds. Without these regulations, the Department will not be able to properly dispose of contraband found on hospital grounds.

These regulations propose to categorize contraband seized at the state hospitals into three categories: Criminal Contraband, Non-Criminal Contraband, or Hazardous Contraband. The contraband will be processed according to its designated category to maximize the safety, health, and security of each facility.

These regulations propose uniform procedures on removing contraband across the five state hospitals. Criminal Contraband will be investigated for criminal activity and may be held for litigation, or per court orders as evidence. Non-Criminal Contraband may be mailed, released to a visitor, or donated to a willing recipient. Hazardous Contraband may be disposed of immediately to remove the safety risk to the patients, staff, or

environment. These disposal methods include procedures for processing electronic items and religious/spiritual items that violate the Department of State Hospitals Statewide Property Contraband List and/or hospital-specific contraband lists. These regulations include parameters on documentation requirements when processing contraband.

The Office of Administrative Law (OAL) accepted Contraband Disposition as emergency regulations on December 12, 2024. These regulations will remain temporarily active until June 11, 2025, while the Department prepares this regular rulemaking file to permanently codify Contraband Disposition into the California Code of Regulations (CCR).

THE PROBLEM(S) ADDRESSED BY THE PROPOSED REGULATION

The objective of the proposed regulations is to implement, interpret, or make specific Welfare and Institutions Code sections 4109 and 7295 under the regulatory and jurisdictional authority of Welfare and Institutions Code sections 4005.1, 4011, 4027, 4100, and 4101 by authorizing the Department to dispose of contraband to actively maintain the safety, health, and security of the facility, patients, and staff. The regulations will provide a uniform process to implement the Department's statewide authority and the authority at each hospital to dispose of contraband to ensure the welfare of the public, staff, and patients.

THE SPECIFIC PURPOSE AND NECESSITY FOR EACH REGULATION

Section 4354(a)

Purpose

The purpose of this section is to state that the definitions used in this regulation only pertain to Section 4354.1.

Necessity

It is necessary to ensure the defined terms do not conflict with other Department regulations' defined terms, as codified in the CCR.

Section 4354(b)

Purpose

The proposed regulation adopts the term "Criminal Contraband" to establish a consistent understanding of the term when used in these regulations.

Necessity

It is necessary to differentiate between Criminal Contraband and Non-Criminal Contraband because each type is handled differently by hospital staff. Criminal Contraband found at state hospitals can be utilized to open a criminal investigation.

Section 4354(c)

Purpose

The proposed regulation adopts the term “Non-Criminal Contraband” to establish a consistent understanding of the term when used in these regulations.

Necessity

It is necessary to define Non-Criminal Contraband within state hospitals because Non-Criminal Contraband may be legal to possess outside the hospitals but are prohibited inside hospital grounds as it may present an adverse effect on the treatment plans of patients or can be a danger to the safety and security of the hospital. Additionally, some items may be approved for use only under supervision but are deemed Non-Criminal Contraband if used outside of supervision, due to the risk the item may present to the hospital.

Section 4354(d)

Purpose

The proposed regulation adopts the term “Hazardous Contraband” to establish a consistent understanding of the term when used in these regulations.

Necessity

It is necessary to define Hazardous Contraband to indicate the immediate dangers of items that can potentially expose Department of State Hospitals staff, patients, and public to a risk of loss or harm to their person or property. Hazardous Contraband can include either Non-Criminal Contraband and/or Criminal Contraband depending on the use. Hazardous Contraband may have specific handling and disposal requirements that may require immediate action.

Section 4354(e)

Purpose

The proposed regulations adopt the term “Religious or Spiritual Items” to establish a consistent understanding of the term when used in these regulations.

Necessity

It is necessary to recognize Religious or Spiritual Items will vary depending on the practice and needs of the patient. Patients can place a religious or spiritual significance on an item, and it is the Department's charge to respect this significance. However, it is also the Department's responsibility to provide a safe environment for patients, staff, and the public, therefore, Religious or Spiritual Items in these regulations are subject to disposal if deemed contraband and may be disposed of in an appropriate manner by the applicable spiritual leader if warranted.

Section 4354(f)

Purpose

The proposed regulation adopts the term "Recipient" to establish a consistent understanding of the term when used in these regulations.

Necessity

The hospital defines a Recipient as a person designated by the patient to receive the items sent by the patient. The state hospitals do not have the resources available to verify that each Recipient receives mail and therefore will defer to the patient to provide a willing and accurate Recipient.

Section 4354.1(a)

Purpose

This purpose of this section is to establish that hospitals shall hold onto Non-Criminal Contraband for a minimum time period of 30-days from the date the patient receives the written notice to determine the method of disposition.

Necessity

It is necessary to hold Non-Criminal Contraband for a minimum of 30-calendar days to allow a reasonable amount of time for the hospital or patient to make necessary arrangements for disposal. The 30-calendar day holding period was chosen because this allows a full cycle of the patient's regular pay period into their Personal Patient Deposit Fund which can be used to pay for the disposal methods of Non-Criminal Contraband. Hospital staff will not dispose of the Non-Criminal Contraband prior to issuing the written notice to the patient. Patients will receive written notice prior to the disposal of Non-Criminal Contraband.

- The patient's printed name is required to identify which patient owns the contraband.
- Staff name is required to identify which staff member is issuing the written notice.
- Inventory of items is required to identify all items considered contraband and are pending disposal.

- Date of seizure is required to identify the date the contraband was seized for record keeping. The date of seizure may differ from the date the patient is given the written notice if an item is being held for an investigation and the Department is not able to release sensitive information.
- The default holding period is 30-calendar days, but the hospital may modify this holding period to accommodate requests by the patient, such as extra time to allow funds to be deposited into the Patients' Personal Deposit Fund or to allow time for a patient to petition the hospital.
- The location of the items seized is required for good documentation practices which are vital during investigations.

Section 4354.1(b)

Purpose

The purpose of this section is to establish that the Department may be required to hold onto Criminal Contraband, Non-Criminal Contraband, and/or Hazardous Contraband as evidence during investigations, litigation, and/or pursuant to court orders.

Necessity

This section is necessary to ensure the Department can hold onto items for extended periods as evidence if required by State and/or Federal Law. Upon the completion of all legal requirements, the item will be disposed of according to the proposed regulations. Criminal Contraband is considered illegal at both the federal and state levels and therefore may be used as evidence in a court case. Non-Criminal Contraband normally is not processed in criminal investigations unless the Non-Criminal Contraband is utilized in a criminal act, in which case it may be used as evidence in a court case. For example, a knife, normally considered Non-Criminal Contraband, would be processed as evidence in a court case if used in a criminal act.

Section 4354.1(c)

Purpose

The purpose of this section is to provide a process for hospital staff to dispose of Criminal Contraband and Hazardous Contraband appropriately.

Necessity

This section is necessary to provide a process for hospital staff to dispose of Criminal Contraband and Hazardous Contraband that are not being held as evidence in an investigation pursuant to Subsection (b). The hospital staff will follow manufacturer recommended disposal methods to ensure the safety of the hospital staff, patients, and environment. If there are no manufacturer recommended disposal methods, the item

shall be disposed of as hazardous waste or transferred to a waste management facility that will properly dispose of the items.

Section 4354.1(c)(1)

Purpose

The purpose of this section is to remove Hazardous Contraband from hospital grounds as soon as possible to eliminate the health and safety risks to staff, patients, or the environment.

Necessity

This section is necessary to differentiate that Hazardous Contraband is not subject to the 30-day hold and should be removed as soon as possible to eliminate health and safety risks. Storing food items could create health hazards such as mold or attract pests and must be removed immediately. Perishable goods can include medications, plants, or toiletries. Additionally, hazardous waste found on hospital grounds can potentially have unknown chemical reactions and immediate disposal may be required to maintain health and safety to staff, patients, or the environment. Examples include storing alcohol improperly which may incur fire hazards, or batteries that are kept in storage risk battery acid leaking or exploding.

Section 4354.1(d)

Purpose

The purpose of this section is to provide patients disposal options for Non-Criminal Contraband items that are not currently under investigation or litigation as evidence.

Necessity

This section is necessary because it allows the patient disposal options for items the hospital staff deems Non-Criminal Contraband. These types of items may have sentimental value to the patient (i.e. photograph) but may not be allowed on hospital grounds per the Department of State Hospitals Statewide Property Contraband List and/or items on hospital-specific contraband lists.

Section 4354.1(d)(1)

Purpose

The purpose of this section is to provide patients a mailing option as a disposal method for Non-Criminal Contraband.

Necessity

This section is necessary because it is the hospital's duty to fulfill the patients' statutory right to mail and receive mail pursuant to Section 884(b)(6) of the CCR. However, Section 884(b)(6) does not explicitly provide for the right of patients to mail out Non-Criminal Contraband. This section will provide a process for patients to mail Non-Criminal Contraband found on hospital grounds to a Recipient within the mailing parameters provided by each hospital. The item's eligibility to be mailed out is dependent on the safety or health risk of that item. These items may include, but are not limited to, family pictures or other personal mementos that the patient wishes to send to a willing Recipient.

Section 4354.1(d)(1)(A)

Purpose

The purpose of this section is to indicate that if patients choose to mail Non-Criminal Contraband to a willing Recipient, they must use funds from their Patients' Personal Deposit Fund. This section also outlines the process for a patient with insufficient funds.

Necessity

This section details how patients have the option to mail out packages that contain Non-Criminal Contraband at the patient's expense using funds from their Patients' Personal Deposit Fund. All patients must cover the cost of mailing. If a patient meets the requirements under Welfare and Institutions Code section 4136(a) and has insufficient funds, the item may be stored at the hospital beyond the minimum 30 days to allow the patient time to save funds to mail out the item. This allows patients who have insufficient funds the ability to mail out Non-Criminal Contraband in the same manner as a patient who has funds, ensuring that all patients can mail out their items. If a patient does not acquire sufficient funds during the holding period indicated on the written notice, hospital staff may continue to store the Non-Criminal Contraband or dispose of the item according to these regulations.

Section 4354.1(d)(1)(B)

Purpose

The purpose of the section is to be clear that patients are not able to send packages containing Non-Criminal Contraband to any government agency, including but not limited to patients, incarcerated persons, and staff in an official capacity.

Necessity

This section is necessary to protect the Department and other government agencies from receiving Non-Criminal Contraband-related packages. Sending out contraband of any kind to a government agency is not authorized. This section prevents patients from

specifically mailing out Non-Criminal Contraband to government agencies in an attempt to subvert the confiscation of Non-Criminal Contraband by rerouting the package. This prevents Non-Criminal Contraband from circulating within the hospitals or any other government agency.

Section 4354.1(d)(1)(C)

Purpose

The purpose of this section is to ensure any tampered packages will be subject to investigation or be disposed of according to the methods in these regulations.

Necessity

This section is necessary because patients receive and mail packages regularly. All incoming and outgoing packages are searched for contraband to ensure the safety, health, and security of patients, staff, public, and the environment. As part of the search for contraband, if packages contain items on the Department of State Hospitals Statewide Property Contraband List or hospital-specific contraband lists, the entire package may be subject to investigation and disposal. If a package contains more than one item and one of the items has been tampered with, all contents of the package may be investigated further or disposed of immediately to protect the safety and health of hospital staff from unknown hazards that may be hidden within the package. For example, a container of protein powder with a broken factory seal has been found to have illegal drugs added. Tampered items may contain concealed contraband within the original contents which may result in all contents in the package being subject to disposal to mitigate the risk of additional contraband from entering the hospital.

Section 4354.1(d)(2)

Purpose

The purpose of this section is to allow patients to donate Non-Criminal Contraband items to charitable organizations.

Necessity

This section is necessary to ensure patients have the option to donate certain Non-Criminal Contraband items. The patient may choose to donate such items to Department-designated charitable organizations. For example, if a patient is in possession of Non-Criminal Contraband, i.e. an umbrella, the patient can choose to donate the item. By providing the option to donate the item, the patient can contribute to an organization and help a good cause.

Section 4354.1(d)(3)

Purpose

The purpose of this section is to allow the patients to release Non-Criminal Contraband items to their visitors.

Necessity

This section is necessary to create a method to dispose of Non-Criminal Contraband items that are not allowed on hospital grounds but are eligible to be returned to a Recipient via visitation. Items may include, but are not limited to family pictures, Religious or Spiritual Items, and other personal mementos that the patient wishes to release to a visitor.

Section 4354.1(d)(4)

Purpose

The purpose of this section is to provide that hospital staff will dispose of Non-Criminal Contraband in any manner not included in Subsections (d)(1) through (d)(3).

Necessity

This section is necessary to delineate that Non-Criminal Contraband items may be considered waste, and the contraband will be disposed of if it cannot be otherwise claimed by a patient. Hospital staff will use safe disposal methods according to the manufacturer of the item, disposed of as hazardous waste, or sent to a waste management facility to ensure the safety of patients, staff, and the environment.

Section 4354.1(e)

Purpose

The purpose of this section is to ensure that hospitals scan Contraband Electronic Devices with Communication and Internet Capabilities for Criminal Contraband given the patient's consent.

Necessity

This section is necessary to prevent digital criminal material from entering or leaving the state hospitals. Patients are allowed to possess and mail out electronic storage devices, and it is the Department's responsibility to scan the storage device for any criminal content. Scanning the device is necessary to ensure that the Department does not distribute any illegal materials when the Department mails, transfers, or donates electronic storage devices. If the patient refuses to consent to a scan, the electronic device will be disposed of by hospital staff to avoid storing devices that cannot be investigated.

Section 4354.1(e)(1)

Purpose

The purpose of this section is to ensure a hospital staff member obtains patient written consent to scan Contraband Electronic Devices with Communication and Internet Capabilities for Criminal Contraband and is present during patient consent. The regulation provides what type of information shall be in the written documentation.

Necessity

This section is necessary to ensure the staff member obtains patient consent to scanning the contraband electronic devices for Criminal Contraband. The hospitals' need to obtain consent to search through the electronic device is needed to ensure hospital staff uphold the patient's rights. A witness is present to confirm the patient's identity, verify that the patient is freely giving consent to the best of their knowledge, and observe that the patient gives consent without coercion.

This information is necessary to establish minimum documentation requirements.

- The patient's printed name is required for hospital staff to identify which patient is consenting to the scan of the electronic device.
- Date of seizure is required because the date the item was seized may differ from the date hospital staff ask the patient for consent. This may happen if an item is being held for an investigation and the Department is not able to release sensitive information.
- List of items seized is necessary to identify items to be scanned by hospital staff.
- Signature of patient and date are required to demonstrate the patient is informed of which item hospital staff seized and that they consent to hospital staff scanning the device.
- Staff printed name is required to identify which staff member witnessed patient consent.
- Signature of the staff and date are required to demonstrate that the staff member witnessed the patient freely consent to the scan of the electronic device by signing the document.

Presence of the hospital staff member is required to ensure patients provide consent without coercion or fear of retribution.

Section 4354.1(f)

Purpose

The purpose of this section is to create a process for religious/spiritual items of its patients and to provide disposal method of the religious/spiritual contraband consistent with the appropriate religious or spiritual practices.

Necessity

This section is necessary because patients have a right to religious freedom and practices within the treatment facility. The Department will be responsible to take the appropriate action when disposing of the spiritual/religious items considered contraband for safety concerns. The Department recognizes that religious and spiritual items deemed as contraband may need to be disposed of in particular ways that may be different from the procedures put forth in these regulations. Therefore, it is necessary for the hospital to provide an appropriate religious/spiritual leader to dispose of the religious/spiritual contraband, so the Department ensures the patient's religious rights are met.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The regulations would immediately implement safety precautions and ensure the Department's ability to comply with Welfare and Institutions Code sections 4109 and 7295's mandate to protect the interests of the hospital, carry out the necessary duties of employees of the hospital, and maintain effective control of, and eliminate, contraband at the hospitals. The Department will have the authority to dispose of contraband as codified in the CCR. These regulations will provide uniform regulatory guidance on contraband disposition and transparency on the procedures to the public, patients, and staff. The Department's hospitals have a fixed amount of storage space based on each hospital's footprint. As a result, some of the hospitals are reaching storage capacity due to storing excessive contraband. These regulations will allow hospitals to properly dispose of excess contraband from the limited hospital storage space. The ability to dispose of contraband items reduces the risk of patient, staff, and public exposure to hazardous materials, expired perishable items, and unsafe overcrowded storage. These regulations propose methods of contraband disposition to ensure the safe disposition of items and to allow the patient the opportunity to choose a disposition method when appropriate.

ECONOMIC IMPACT ASSESSMENT

The Department does not anticipate any non-discretionary costs or savings imposed on any local agency due to this proposed regulation during the current fiscal year and subsequent fiscal years, nor does the Department anticipate any additional costs to the Department or any other State agency.

Creation or elimination of jobs within the State of California: None.

Creation of new businesses or the elimination of existing businesses within the State of California: None.

The expansion of businesses currently doing business within the state: None

Benefits to California residents' health and welfare, worker safety, and the State of California's environment: None.

STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT

The Department has made the initial determination that there will not be any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

DIRECTLY AFFECTING BUSINESS

The Department has made the initial determination that there will not be any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The agency is not aware of any cost impacts that a representative, private person, or business would necessarily incur in reasonable compliance with the proposed action.

STATEMENT OF ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department has determined that no reasonable alternatives have been identified or brought to its attention that will be more effective in carrying out the purpose for which this action is proposed or will be as effective and less burdensome to affect private persons than the proposed action described in this Notice.

The Department invites interested persons to submit statements or arguments with respect to alternatives to the proposed regulation during the comment period.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed action does not mandate the use of specific technologies or equipment.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS OR STATUTES

The Department does not anticipate a duplication or conflict with federal regulations to occur.

DOCUMENTS RELIED UPON

None.