



California Department of
State Hospitals

NOTICE OF PROPOSED EMERGENCY ACTION
AND FINDING OF EMERGENCY

CONTRABAND DISPOSITION

FINDING OF EMERGENCY REGULATORY ACTION

The California Department of State Hospitals (Department or DSH) finds that the proposed addition to California Code of Regulations (CCR) Title 9, Sections 4354 and 4354.1, is necessary on an emergency basis for the immediate preservation of public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1. Assembly Bill 177 (AB 177), signed into law on September 30, 2024, amends Section 7295 of the Welfare and Institutions Code to authorize the Department to adopt emergency regulations related to the management, inspection, and disposition of contraband items identified by the Department until June 30, 2026.

NOTICE TO PUBLIC

NOTICE IS HEREBY GIVEN that the Department proposes to adopt the regulations on an emergency basis as described below. Government Code Section 11346.1, Subsection (a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

WRITTEN COMMENT PERIOD

Any interested person, or their duly authorized representative, may submit written comments relevant to the proposed emergency action, simultaneously to OAL and the Department via postage mail or email. The Department plans to file the emergency rulemaking package with OAL on December 2, 2024. The comments must be received by December 7, 2024, by both the Department and OAL to be considered. Please check the OAL website at www.oal.ca.gov to find out when the emergency regulation is filed with OAL.

Comments should be sent *simultaneously* to:

Department of State Hospitals

Attn: Regulations
“Contraband Disposition”
1215 O St, Sacramento, CA 95814
MS-20 Regulations
Voicemail: (916)-654-2478
DSH.Regulations@dsh.ca.gov

and

Office of Administrative Law

Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Phone: (916) 232-6225
Voicemail: (916) 323-6815
Facsimile: (916) 323-6826
staff@oal.ca.gov
www.oal.ca.gov

DEPARTMENT OF STATE HOSPITALS FACTS

The Department of State Hospitals is comprised of five hospitals, seven divisions, four offices, and the Director’s Office. The hospitals provide inpatient care for nearly 7,000 patients daily. The Department employs classifications ranging from doctors, nurses, and other mental health and health care professionals, to law enforcement personnel, lawyers, food service and maintenance teams, and other administrative support professionals. 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.

EFFECT OF THE PROPOSED EMERGENCY REGULATIONS

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 implementing the ability of the Department to dispose of contraband to actively maintain the safety, health, and security of the facility, patients, and staff. The regulations will provide for a uniform process on the Department's statewide authority and the authority at each hospital to ensure the welfare of the public, staff, and patients.

SUMMARY OF PROPOSED EMERGENCY REGULATIONS

The Department requires regulations to authorize the disposition of contraband. Disposition of contraband items can include mailing Non-Criminal Contraband back to a Recipient provided by the patient, giving Non-Criminal Contraband to visitors, donating Non-Criminal Contraband, storing the Criminal Contraband and Non-Criminal Contraband, or destroying Criminal, Non-Criminal, or Hazardous Contraband. Under Welfare and Institutions Code Section 7295, the Department may develop a list of items deemed contraband which are prohibited on hospital grounds. The Department has developed a Statewide Contraband List as well as hospital-specific contraband lists. There are no current statutes or regulations authorizing the disposition of contraband after contraband items have been seized, so Department staff need guidance on the disposition of such contraband items. These regulations will also address the concerns put forth in the Thompson Matter regarding the disposition of contraband packages.

BENEFIT OF THE PROPOSED EMERGENCY REGULATIONS

The emergency regulations would immediately implement safety precautions and ensure the Department's ability to comply with Welfare and Institutions Code section 4109 and Welfare and Institutions Code section 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 aging and historic 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 safe disposition of

items and to allow the patient the opportunity to choose a disposition method when appropriate.

AUTHORITY AND REFERENCE CITATIONS

The Department adopts these regulations under the authority granted in Sections 4005.1, 4101, and 7295(k) of the Welfare and Institutions Code. These regulations implement and make specific Welfare and Institutions Code Sections 4109, 4136, 7281, and 7295.

PURPOSE AND NECESSITY STATEMENTS

Section 4354(a)

Purpose

The purpose of this section is to state 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 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 each Recipient that receives mail and therefore will defer to the patient to provide a willing and accurate Recipient.

Section 4354.1(a)

Purpose

This section is to establish that hospitals shall hold onto Non-Criminal Contraband for a minimum time period to allow a reasonable amount of time 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. The patient can use this fund to pay for the disposal methods of Non-Criminal Contraband. Patients will receive written notice prior to 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 notice is required to identify the date the patient receives their written notice of the seizure. The date the item was seized may differ from the date hospital staff issue the written notice. This may happen if an item is being held for an investigation and the Department is not able to release sensitive information.

Section 4354.1(a)(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(a)(2)

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 federally and/or statewide, 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.

Section 4354.1(b)

Purpose

The purpose of this section is to authorize the Department to appropriately dispose of Criminal Contraband and Hazardous Contraband that are not subject to Subsection (a)(2).

Necessity

This section is necessary to authorize hospital staff to dispose of Criminal Contraband and Hazardous Contraband that are not being held as evidence in an investigation pursuant to Subsection (a)(2). 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.

Section 4354.1(c)

Purpose

The purpose of this section is to provide disposal options for Non-Criminal Contraband that is not being held for investigation pursuant to Subsection (a)(2).

Necessity

This section is necessary because it sets the standard that Non-Criminal Contraband is not allowed on hospital grounds and gives options to hospital staff and patients to dispose of Non-Criminal Contraband.

Section 4354.1(c)(1)**Purpose**

The purpose of this section is to provide 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). However, Section 884(b)(6) does not explicitly provide for the right of patients to mail out Non-Criminal Contraband. This section will authorize 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(c)(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.

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 will 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.

Section 4354.1(c)(1)(B)**Purpose**

The purpose of the section is to prevent patients from sending 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(c)(1)(C)

Purpose

The purpose of this section is to indicate that for packages containing Criminal Contraband, concealed Non-Criminal Contraband, Hazardous Contraband, or items that have been tampered with, the entire package is subject to investigation.

Necessity

This section is necessary because patients receive and mail packages regularly. All incoming and outgoing packages are searched for Criminal Contraband, Non-Criminal Contraband, and/or Hazardous 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 (i.e. broken factory seal), all contents of the package may be disposed of immediately to protect the safety and health of hospital staff from unknown hazards that may be hidden within the package. Tampered items may contain concealed contraband with the original contents which may result in all contents in the package being subject to disposal to mitigate the risk of additional Criminal Contraband, Non-Criminal Contraband, or Hazardous Contraband from entering the hospital. For example, a container of protein powder with a broken factory seal has been found to have illegal drugs added.

Section 4354.1(c)(2)

Purpose

This section allows 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(c)(3)

Purpose

This purpose of this section is to allow the release of Non-Criminal Contraband items to visitors as a means of contraband disposition.

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 items, and other personal mementos that the patient wishes to release to a visitor.

Section 4354.1(c)(4)

Purpose

The purpose of this section is to authorize hospital staff to dispose of Non-Criminal Contraband in any manner not included in Subsections (c)(1) through (c)(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 or disposed of as hazardous waste to ensure the safety of patients, staff, and the environment.

Section 4354.1(d)

Purpose

The purpose of this section is to ensure that hospitals scan Contraband Electronic Devices with Communication and Internet Capabilities for Criminal Contraband. The hospital will need to obtain written consent from the patient to scan the device. If the patient refuses to consent to a scan, the electronic device will be disposed of by hospital staff.

Necessity

This section is necessary to prevent criminal material from entering or leaving the state hospitals. Patients are allowed to mail out electronic storage devices and it is the Department's responsibility to scan the storage device for any criminal content before releasing the item. The content in electronic storage devices may contain evidence in a criminal investigation requiring the hospital to store the item during the investigation. Additionally, this scanning is necessary to ensure that the Department does not distribute any illegal materials when the Department mails, transfers, or donates electronic storage devices.

Section 4354.1(d)(1)

Purpose

The purpose of this section is to ensure a hospital staff member obtains patient consent to scan Contraband Electronic Devices with Communication and Internet Capabilities for Criminal Contraband and is present during patient consent.

Necessity

This section is necessary to ensure the staff member obtains consent to scanning the devices for Criminal Contraband. Since the hospital is investigating beyond the initial seizure of the a patient's personal property, consent is needed to ensure hospital staff uphold the patient's rights. A witness is present to observe that the patients give

consent without coercion, to verify that the patient is freely giving consent to the best of their knowledge, and to confirm the patient's identity.

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 name is required to identify which staff member witnessed patient consent.
- Signature of the staff and date are required to demonstrate the staff member witnessed the patient freely consent to the scan of the electronic device by signing the document.

LIST OF DOCUMENTS RELIED UPON

None.

LIST OF DOCUMENTS INCORPORATED BY REFERENCE

None.

CONSIDERATION OF ALTERNATIVES

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 present statements or arguments with respect to alternatives to the proposed regulation action during the written comment period.

AVAILABILITY OF DOCUMENTS

The rulemaking documents are available for inspection and copying at the Department of State Hospitals, Regulations Unit MS-20, 1215 O St, Sacramento, CA 95814 or online at <https://www.dsh.ca.gov/Publications/Regulations.html>. As of the date this Notice is published, the rulemaking documents consist of a copy of the exact language of the regulation text, Notice of Proposed Emergency Action and the Finding of Emergency.

INFORMATIVE DIGEST

Compatibility with Existing State Law and Regulations: The Department finds that these regulations are compatible with existing state laws and regulations regarding contraband and the need to control contraband throughout the hospitals.

Compatibility with Federal Law and Regulations: The Department finds that these regulations are compatible with federal law and regulations.

Technical, Theoretical, and Empirical Studies or Reports: None.

Policy Statement: The Department is required by law to effectively manage contraband in the hospitals. Welfare and Institutions Code Section 4011 states that the Department, “shall have jurisdiction over the execution of the laws relating to care and treatment of persons with mental health disorders under the custody of the State Department of State Hospitals.” Further, Welfare and Institutions Code Section 4109 provides that the “State Department of State Hospitals has general control and direction of the property and concerns of each state hospital” and shall “take care of the interests of the hospital, and see that its purpose and its bylaws, rules, and regulations are carried into effect, according to law”.

Proposed Regulation Consistency and Compatibility with Existing State Regulations: As required by Gov. Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of these emergency regulations and has determined that they are not inconsistent or incompatible with existing state regulations.

Other Matters Prescribed by Statute: None.

Mandates on Local Agencies or School Districts: The Department anticipates there will be no fiscal impact to Local Agencies. This proposed regulation would only affect the hospitals and the patients. The local government would not have an additional role in the enforcement of the regulation.

Costs to any local agency or school district that requires State Reimbursement Pursuant to Part 7 of Section 17500 of Division 4 of the Government Code: None.

Non-discretionary costs or savings imposed on local agencies: The Department anticipates there will be no fiscal impact to Local Agencies. The proposed regulation would only affect the hospitals and the patients. The local government would not have an additional role in the enforcement of the regulation.

Costs or savings to any state agency: None.

Costs or Savings in Federal Funding to the State: None.

Costs or Savings to Individuals or Businesses: None.