

**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 EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2021-0609-01

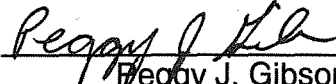
**OAL Matter Type: Emergency Resubmittal
(ER)**

This proposed emergency readoption (2020-0413-02E) rulemaking action by the Department of State Hospitals seeks to establish procedures for safety and security searches of patients and living areas, common areas, staff areas, and grounds.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/15/2021 and will expire on 9/14/2021. The Certificate of Compliance for this action is due no later than 9/13/2021.

Date: June 15, 2021



Peggy J. Gibson
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Stephanie Clendenin, Director
Copy: Sylvester Okeke

EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW NOTICE PUBLICATION/REGULATIONS SUBMISSION

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2021-0609-01ER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of State Hospitals		AGENCY FILE NUMBER (If any)	

OFFICE OF ADMIN. LAW
2021 JUN 9 AM 10:13

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

JUN 15 2021

1:15 PM

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)
OAL USE ONLY <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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE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) Contraband Search and Confiscation	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0413-02E, 2021-0322-01E, 2021-0528-01EE
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 4351, 4352, 4353 (Section numbers 4360, 4361, and 4362 have been renumbered)
TITLE(S) 9	AMEND
	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input 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 checked="" 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)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> 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 Melanie Scott Digitally signed by Melanie Scott Date: 2021.06.09 09:27:27 -07'00'	DATE 6/9/2021
TYPED NAME AND TITLE OF SIGNATORY Melanie Scott, HSPI Deputy Director (A)	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 15 2021

Office of Administrative Law

**DEPARTMENT OF STATE HOSPITALS
PROPOSED EMERGENCY 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

§ 4351. Contraband Searches and Confiscation within the Secured Treatment Area and Patient Living Areas by 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.
- (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.
- (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.
- (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.

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 Search 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.

(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.

(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.

(3) Nothing in these regulations is intended to limit or expand peace officer authority to conduct searches and/or confiscation.

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; Sections 830.3, 830.38 and 830.5, 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 .
- (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.
- (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.
- (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.
- (e) Persons refusing to comply with this section are not permitted within the secured treatment area and patient living areas.

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