

## **NOTICE OF PROPOSED EMERGENCY ACTION AND FINDING OF EMERGENCY**

### **Emergency Regulations for Enhanced Treatment Program**

#### **FINDING OF EMERGENCY REGULATORY ACTION IS NECESSARY**

The Department of State Hospitals (Department) finds that the proposed emergency adoption to California Code of Regulations, title 9, new chapter 17, new articles 1, section 4800; new article 2, sections 4900, 4901, 4902, 4903, 4904, 4905; new article 3, section 5000; new article 4, section 5100; and new article 5, section 5200, is deemed to address an emergency for purposes of Government Code sections 11346.1 and 11349.6. DSH is exempted from the requirements of Government Code section 11346.1, subdivision (b). (Welf. and Inst. Code, § 4144, subd. (m).)

Welfare & Institutions Code section 4144, subdivision (m), provides that the Department may adopt emergency regulations in order to “implement the treatment components of this section.” The procedural aspects of these proposed regulations are intricately related to the treatment components provided in the statute and are therefore being implemented as emergency regulations.

#### **NOTICE AND INTRODUCTION**

NOTICE IS HEREBY GIVEN that the Department proposes the emergency adoption of the regulations. Government Code section 11346.1, subdivision (a)(2), requires that, at least five working days prior to the 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, it shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In addition to the five-day comment period for the emergency filing indicated above, there will also be a 45-day public comment period when these proposed regulations are amended and noticed via the regular rulemaking process, to be completed within 180 days of OAL’s approval of this emergency package.

## **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed emergency action to OAL. Comments may also be submitted to OAL by facsimile at 916-323-6826. The Department plans to file the emergency rulemaking package with OAL at the end of five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed emergency regulations, the comments must be received by both the Department and OAL within five calendar days of the Department's filing of the emergency regulations with OAL.

Please check the OAL website at [www.oal.ca.gov](http://www.oal.ca.gov) to find out when the emergency regulations are filed with OAL.

Comments should be sent **simultaneously** to:

Department of State Hospitals  
Attn: Regulations Unit  
**“ETP Emergency”**  
1600 9th Street, Rm 410 Sacramento, CA 95814  
Facsimile: (916) 651-3157

and

Office of Administrative Law Reference Attorney  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
Facsimile: (916) 323-6826

## **FINDING OF EMERGENCY**

The proposed emergency regulations are deemed to address an emergency for purposes of Government Code sections 11346.1 and 11349.6. DSH is exempted from the requirements of Government Code section 11346.1, subdivision (b). (Welf. and Inst. Code, § 4144, subd. (m).)

## **A. Authority and Reference Citations**

Authority: Health and Safety Code section 1265.9; and, Welfare and Institutions Code sections 4005.1, 4027, 4101, and 4144.

References: Welfare and Institutions Code section 4144

## **B. Informative Digest and Policy Statement Overview**

### Policy Statement

It is the policy of the Department to expand the continuum of care by establishing the Enhanced Treatment Program (ETP) to provide safe treatment to patients who are at high risk of most dangerous behavior and who are able to benefit from concentrated, evidence-based clinical therapy and structured milieu therapy or treatment aimed at reducing the risk of violent behavior, with the goal of returning the patient to a standard treatment environment. DSH is committed to providing treatment in the least restrictive environment.

### Existing Law

Existing law pursuant to Assembly Bill no. 1340 (2014) authorizes DSH to establish and maintain pilot ETPs to treat patients who are at high risk of most dangerous behavior when safe treatment is not possible in a standard treatment environment. (Health & Safety Code, § 1265.9.) The statutes do not, however, provide guidance on logistics and patients' rights issues which must necessarily be clarified in these proposed regulations in order to implement the ETP.

The Department includes duplicative language provided by Welf. & Inst. Code section 4414, cited as a "reference" for these proposed regulations, to provide clarity on the enumerated aspects of these regulations. This is necessary to differentiate between the numerous procedural aspects included in the statute that are specified in the Department's regulations.

### Benefits Anticipated

These regulations clarify referral, admission and discharge to the ETP as well as other relevant treatment components necessary to establish the ETP. With these regulations, the Department will be able to implement the ETP, and better treat and serve our unique patient population.

### Incompatibility with Existing Laws and Regulations

The Department surveyed for any other regulations on this subject-matter and found none. These regulations are not inconsistent or incompatible with existing regulations.

## **C. Summary of Proposed New Regulations**

The proposed new regulations sections 4800-5200, are summarized as follows:

### **Add Section 4800**

This regulatory action would add Title 9, Division 1, Chapter 17, section 4800, to provide definitions of terminology that are used by current statutes and by the proposed regulations, to clarify how these terms are utilized for ETP. It is necessary to define the terminology utilized in the regulations to provide clarity to the statutory language and the regulation language and to provide for equal application of these terms to patients in the ETP. The Department deemed it necessary to include a designee for the medical director of the hospital as a member of the Forensic Needs Assessment Panel (FNAP) under subdivision (c), as the FNAP may not include any member that is involved in an ETP patient's treatment or diagnosis at the time of that patient's placement evaluation meeting. Therefore, the medical director would not be able to participate in the FNAP if they were so involved. The Department deemed it necessary that the panel of psychologists on the Forensic Needs Assessment Team (FNAT) under subdivision (d) not include members of the treatment team, in order for the group to remain independent of the treatment. The Department routinely distinguishes between treatment and forensic assessment in order to keep the forensic assessment independent of the treatment being provided. This allows for independent opinion and assessment of risk factors.

### **Add Section 4900**

This regulatory action would add Title 9, Division 1, Chapter 17, section 4900 to clarify current statute by providing requisite criteria and procedures for patient referral to the ETP, and by submitting the ETP Referral Form for approval by the FNAT supervising psychologist for initial evaluation. It is necessary to clarify the process for referral to the ETP in order to make sure everyone follows the same process and that each patient being considered for a referral is treated the same way. It is necessary to include the Standard Treatment Environment treatment team in the decision regarding the patient's risk for dangerous behavior, in subdivision (a)(1), because each member of the treatment team may have different information about the patient that is relevant to this decision. Due to the concentrated therapy and structured milieu of the ETP program, it is necessary to have the FNAT supervising psychologist or designee (if they are unavailable or involved in the treatment or diagnosis of the individual), in subdivision (b), to review ETP referral forms received to ensure that a clinically appropriate referral has been made. Referral initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual being considered for ETP treatment is clinically appropriate for referral.

### **Add Section 4901**

This regulatory action would add Title 9, Division 1, Chapter 17, section 4901 to clarify current statute by providing procedures for the FNAT psychologist to conduct an initial

evaluation of the referred patient to verify the need for treatment in the ETP. It is necessary to clarify the initial evaluation process for a patient being referred to the ETP in order to make sure everyone follows the same process and that each patient evaluated is treated the same way. Initial evaluation by an FNAT psychologist, who has an expertise in forensic and violence risk assessment, is necessary to ensure that each patient referred to the ETP is a clinically appropriate candidate for a referral, consistent with and implementing the requirements for a dedicated forensic evaluation pursuant to Welfare and Institutions Code section 4144, subdivision (b). Referral initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual being considered for ETP treatment is clinically appropriate for referral.

#### Add Section 4902

This regulatory action would add Title 9, Division 1, Chapter 17, section 4902 to specify that upon completion of the initial evaluation under section 4901, the FNAP shall convene a placement evaluation meeting in accordance with Welfare and Institutions Code section 4144, subdivisions (c) and (d). This section also specifies how the patient and their Patients' Rights Advocate may submit documentation to be considered by the FNAP. It is necessary to clarify the placement evaluation meeting process for a patient being referred to the ETP in order to make sure everyone follows the same process and that each patient evaluated is treated the same way. Participation by the referred patient and their patients' rights advocate is necessary to ensure that the patient is given a voice in this process. Welfare and Institutions Code section 4414, subdivision (c)(1), provides for the patient and their patients' rights advocate to be involved in the FNAP meeting. Referral initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual being considered for ETP treatment is clinically appropriate for referral and allowed an opportunity to provide their own information to be reviewed as part of the ETP treatment determination.

#### Add Section 4903

This regulatory action would add Title 9, Division 1, Chapter 17, section 4903 to clarify existing statute by providing criteria and procedures for the FNAP to accept a patient for ETP treatment. It is necessary to clarify the required criteria for the FNAP in making their determination that a patient requires ETP treatment to make sure that only those individuals that require concentrated therapy and structured milieu of the ETP are accepted into the program. Assessment of admission criteria is critical to the patient receiving ETP treatment; due to the concentrated therapy and structured milieu of the ETP program, it is important to make sure that each individual is being considered based on standard criteria.

#### Add Section 4904

This regulatory action would add Title 9, Division 1, Chapter 17, section 4904 to clarify existing statute by providing criteria and procedures for immediate admission into the ETP when a patient presents a high risk of dangerous behavior such that placement in the ETP is immediately necessary for the preservation of life or the prevention of serious bodily

harm to others. It is necessary to clarify that a patient may be placed in the ETP upon referral under Welfare & Institutions Code section 4414, subdivision (a), without first complying with sections 4901 and 4902 of the regulations, if it would be too dangerous to provide the FNAT initial evaluation and FNAP placement evaluation meeting prior to ETP admission. The Department strives to provide each patient being considered for ETP placement with review and assessment prior to admission to the ETP; however, due to the nature of the behaviors of the patients being referred, it may require the Department to immediately admit the patient upon referral by the psychologist or psychiatrist. Emergency admission to the ETP would only be in cases that require the patient to receive the concentrated therapy and structured milieu of the ETP program immediately. Admission to the ETP prior to the FNAT initial review and the FNAP meeting is contemplated in the statute by allowing the dedicated forensic evaluator specified in Welfare and Institutions Code section 4144, subdivision (b), designated as an FNAT psychologist in the regulations, to complete the initial evaluation within three days of the patient being placed in the ETP.

#### Add Section 4905

This regulatory action would add Title 9, Division 1, Chapter 17, section 4905 to clarify existing statute by indicating certification requirements for a patient in the ETP, including use of the ETP Certification Form. It is necessary to clarify how a patient referred to the ETP is certified as requiring the ETP, in order to make sure everyone follows the same process and that each patient being considered for ETP is treated the same way. Certification is how the Department initiates ETP treatment; due to the concentrated therapy and structured milieu of the ETP, it is important to make sure that the certification decision has clinically appropriate documentation.

#### Add Section 5000

This regulatory action would add Title 9, Division 1, Chapter 17, section 5000 to clarify existing statute for ensuring that each patient admitted to the ETP has an individualized treatment plan and that the treatment plan includes clinically indicated determinations regarding the least restrictive treatment environment for the patient. It is necessary to clarify the requirements of the individualized treatment plan in order to ensure that each patient's individualized treatment plan includes necessary information for the least restrictive housing determinations. Due to the concentrated therapy and structured milieu of the ETP, whether or not a patient requires their room to be locked is a critical decision that affects not only the patient's access while receiving treatment in the ETP, but also the safety and security of staff and other patients at the facility. It is necessary to include the Treatment Team along with the FNAT psychologist in developing the Individual Treatment Plan as the Treatment Team is composed of the treatment providers working with the patient and implementing the treatment plan with the individual.

#### Add Section 5100

This regulatory action would add Title 9, Division 1, Chapter 17, section 5100 to clarify existing statute by providing criteria and procedures for discharging or transitioning a

patient from the ETP, including the timeline for any transfer out of the ETP. It is necessary to clarify the process for discharge from the ETP in order to make sure everyone follows the same process and that each patient being considered for discharge is treated the same way. Discharge from the ETP and transition to the Standard Treatment Environment is a decision that affects the type of treatment the patient will receive. Aftercare planning for a patient discharging from an ETP unit is essential and provides for the patient's successful transition back to the Standard Treatment Environment, as well as successful integration amongst other patients and staff in the new treatment environment.

#### Add Section 5200

This regulatory action would add Title 9, Division 1, Chapter 17, section 5200 to define conditions under which audio and video monitoring or recording of patient rooms in the ETP may be conducted, how recordings shall be retained as private and confidential, how access is restricted to such recordings, and the DSH retention policy for such recordings. Audio and video monitoring and recording of the ETP patient rooms and common areas is necessary to ensure patient safety and security. It is necessary to clarify that due to the type of patients receiving treatment in the ETP, those at high risk for the most dangerous behavior, it is important to ensure that the concentrated therapy and structured milieu of the ETP program includes a way to monitor the patients at all times while they are in their rooms or in common areas available to the ETP patients. In addition, it is necessary to specify that audio and video recordings of the ETP may be provided to other entities for the purpose of investigating abuse or neglect and to specify the length of retention of these recordings at the hospital, so all entities are aware of the potential use and destruction of these records.

#### **D. Technical, Theoretical, and Empirical Study or Report**

1. Department of State Hospital 2010 - 2019 Violence Report  
[https://www.dsh.ca.gov/Publications/Reports\\_and\\_Data/docs/DSH\\_ViolenceReport\\_2010-2019.pdf](https://www.dsh.ca.gov/Publications/Reports_and_Data/docs/DSH_ViolenceReport_2010-2019.pdf)
2. Stephen M. Stahl, Debbi A. Morrissette, Michael Cummings, Allen Azizian, Shannon Bader, Charles Broderick, Laura Dardashti, Darci Delgado, Jonathan Meyer, Jennifer O'Day, George Proctor, Benjamin Rose, Marie Schur, Eric Schwartz, Susan Velasquez and Katherine Warburton (2014). California State Hospital Violence Assessment and Treatment (Cal-VAT) guidelines. *CNS Spectrums*, 19, pp 449-465  
doi:10.1017/S1092852914000376
3. Katherine D. Warburton (2015). A new standard of care for forensic mental health treatment: prioritizing forensic intervention. *CNS Spectrums*, 20, pp 172176  
doi:10.1017/S1092852915000140

4. Katherine Warburton (2014). The new mission of forensic mental health systems managing violence as a medical syndrome in an environment that balances treatment and safety. CNS Spectrums, 19, pp 368-373 doi:10.1017/S109285291400025X

**E. Determinations**

Substantial Difference from Existing Comparable Federal Regulations or Statute:

The Department finds that these regulations are compatible with federal regulations or statute.

Incompatibility with Existing Laws and Regulations:

The proposed regulations are neither inconsistent nor incompatible with existing state laws and regulations.

**Mandates:**

DSH has determined that the proposed regulations would not impose a mandate on any local agency or school district that requires reimbursable by the State under Government Code, division 4, part 7 (commencing with section 17500).

**Fiscal Impacts:**

Costs to any local agency or school district that requires reimbursement pursuant to part 7, commencing with Section 17500, of Division 4 of the Government Code:

DSH anticipates no fiscal impact to local agencies or school districts.

Costs or savings to any State agency:

DSH anticipates no additional costs associated with these regulations, apart from the costs associated with the implementation and operation of the statutes regarding the ETP program.

Other non-discretionary costs or savings imposed on local agencies:

DSH has determined that the proposed regulations would not create costs or savings or other nondiscretionary cost or savings to State or local agencies.

Costs or savings in federal funding to the State:



DSH has determined that the proposed regulations would not create costs or savings in federal funding to the State.

Costs or savings to individuals or businesses:

DSH is not aware of any cost impacts that an individual or business would necessarily incur in reasonable compliance with the proposed regulations.

**E. INCORPORATED BY REFERENCE**

The following documents are incorporated by reference in the regulation:

1. ETP Referral Form DSH-9220, Rev. 9/17
2. ETP Certification Form DSH-9219, Rev. 4/18

It is necessary to incorporate these two forms by reference as it would be unduly burdensome for the Department to publish these forms in the regulation text due to these forms being electronic forms utilized by the Department and the inability to print these forms as they appear in the electronic health record. These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations.

**F. CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), DSH has determined that no reasonable alternative considered 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.

DSH invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation amendment during the written comment period.

**G. AVAILABILITY OF FINDING OF EMERGENCY, TEXT OF PROPOSED EMERGENCY REGULATIONS, AND RULEMAKING FILE**

The rulemaking file is available for inspection and copying at the Department of State Hospitals, Regulations Unit, 1600 9th Street, Room 410, Sacramento, CA 95814. As of the date this Notice is published, the rulemaking file consists of a copy of the exact language of the proposed regulations and the Finding of Emergency. These documents may also be viewed and downloaded from DSH's website at [www.dsh.ca.gov](http://www.dsh.ca.gov).