

**State of California
Office of Administrative Law**

In re:
Department of State Hospitals

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections: 4800, 4900, 4901, 4902,
4903, 4904, 4905, 5000,
5100, 5200, 5300

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF CERTIFICATE OF
COMPLIANCE**

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

OAL Matter Number: 2021-1230-01

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

This Certificate of Compliance makes permanent emergency regulations regarding patients who are at high risk of most dangerous behavior in a pilot enhanced treatment program when safe treatment in a standard environment is not possible. The regulations establish criteria and related procedures implementing Welfare and Institutions Code section 4144.

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

Date: February 11, 2022



**Mark Storm
Senior Attorney**

For: Kenneth J. Pogue
Director

Original: Stephanie Clendenin, Director
Copy: Sylvester Okeke

NOTICE PUBLICATION/REGULATIONS SUBMISSION

CERT

STD. 400 (REV. 10/2019)

For use by Secretary of State only

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

FEB 11 2022

2:33

OAL FILE NUMBERS Z- NOTICE FILE NUMBER REGULATORY ACTION NUMBER 2021-1230-01C EMERGENCY NUMBER

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OFFICE OF ADMIN. LAW 2021 DEC 30 AM 8:17

NOTICE

REGULATIONS

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 4. AGENCY CONTACT PERSON TELEPHONE NUMBER FAX NUMBER (Optional) ACTION ON PROPOSED NOTICE NOTICE REGISTER NUMBER PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Enhanced Treatment Program 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0413-03E, 2021-0317-01EE, 2021-1015-01EE 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) ADAPT 4800, 4900, 4901, 4902, 4903, 4904, 4905, 5000, 5100, 5200, 5300 AMEND REPEAL 9

3. TYPE OF FILING Regular Rulemaking (Gov. Code §11346) 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. Emergency Readopt (Gov. Code, §11346.1(h)) Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) File & Print Print Only Emergency (Gov. Code, §11346.1(b)) Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) 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) 651-3247 FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) DSH.Regulations@dsh.ca.gov

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 Stephanie Clendenin Digitally signed by Stephanie Clendenin Date: 2021.12.28 10:32:23 -08'00' DATE 12/28/2021 TYPED NAME AND TITLE OF SIGNATORY

For use by Office of Administrative Law (OAL) only ENDORSED APPROVED FEB 10 2022 Office of Administrative Law

**DEPARTMENT OF STATE HOSPITALS
REGULATIONS TEXT
ENHANCED TREATMENT PROGRAM**

California Code of Regulations
Title 9. Rehabilitative and Developmental Services
Division 1. Department of Mental Health

Adopt new Chapter 17, Article 1, section 4800; Article 2, sections 4900, 4901, 4902, 4903, 4904, 4905; Article 3, section 5000; Article 4, section 5100; ~~and Article 5, section 5200; and Article 6, section 5300,~~ to Title 9, California Code of Regulations to read as follows:

Chapter 17. Enhanced Treatment Program

Article 1. General Provisions

§ 4800. Definitions.

- (a) ~~“DSH”~~ “Department” shall mean the Department of State Hospitals.
- (b) “Enhanced Treatment Program” or “ETP,” as used in this chapter, as defined in authorized under Health and Safety Code section 1265.9, is a pilot program aimed at treating Patients a Patient at High Risk of Most Dangerous Behavior who may benefit from concentrated, evidence-based clinical therapy and structured milieu or treatment with the goal of reducing the risk of violent behavior in a standard hospital setting Standard Treatment Environment.
- (c) “Forensic Needs Assessment Panel” or “FNAP,” as used in this chapter, is a panel that consists of one psychiatrist, one psychologist, and the a medical director of the hospital or their designee. The FNAP convenes a placement evaluation meeting for each ETP patient in accordance with Welfare and Institutions Code section 4144, subdivisions (c) and (d). None of the FNAP members shall be involved in an ETP patient’s treatment or diagnosis at the time of that patient’s placement evaluation meeting. The Department shall utilize the panel to determine if the patient clinically requires ETP treatment and to certify ETP placement.
- (d) “Forensic Needs Assessment Team” or “FNAT,” as used in this chapter, is a panel of psychologists, not part of the ETP Treatment Team, with expertise in forensic assessment or violence risk assessment. Each FNAT shall have a supervising psychologist, who shall assign an ETP case or group of cases to each FNAT psychologist.
- (e) “Individualized Treatment Interventions,” as used in this chapter, means interventions provided to a patient to address patient-specific risk factors for highest risk of violence.

- (f) "Most Dangerous Behavior," as used in this chapter, means aggressive acts that may cause substantial physical harm upon others in an inpatient setting.
- (g) "Standard Treatment Environment," as used in this chapter, means any non-ETP setting at a DSH Department state hospital.
- (h) "Standardized Violence Risk Assessment," as used in this chapter, is a violence risk assessment of an ETP patient using the Standardized Violence Risk Assessment Methodologies defined in subdivision (i) of this section.
- (i) "Standardized Violence Risk Assessment Methodologies," as used in this chapter, are reliable and valid methods used in violence risk assessment, which may include, but are not limited to, an analysis of the severity, frequency, and intensity of a patient's past violent behavior, and an evaluation of the static and dynamic violence risk factors.
- (j) "Treatment Team," as used in this chapter, is a group of ETP treatment providers assigned to an ETP patient and generally includes a primary psychiatrist, a psychologist, a clinical social worker, a rehabilitation therapist, a registered nurse, and a psychiatric technician.
- (k) "Patient at High Risk of Most Dangerous Behavior," as used in this chapter, means a patient has a history of physical violence and currently poses a demonstrated danger of inflicting substantial physical harm upon others in an inpatient setting, as determined by an ~~evidence-based, in-depth violence risk assessment~~ Standardized Violence Risk Assessment conducted by ~~DSH~~ the Department.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 2. Admissions

§ 4900. Referral Process.

- (a) A Standard Treatment Environment psychiatrist or psychologist may refer a patient to the Enhanced Treatment Program when all the following conditions are met:
- (1) A Standard Treatment Environment Treatment Team has determined that a patient may be at high risk for Most Dangerous Behavior in a ~~standard treatment setting~~ Standard Treatment Environment.
 - (2) A Standard Treatment Environment Treatment Team has attempted, without success, to provide Individualized Treatment Interventions or a Standard Treatment Environment Treatment Team has determined that a patient's high risk for Most Dangerous Behavior precludes safely providing Individualized Treatment Interventions in a Standard Treatment Environment.
 - (3) There is no existing contract or memorandum of understanding that provides alternative and clinically appropriate treatment outside of ~~DSH~~ the Department.
 - (4) A Standard Treatment Environment Treatment Team has concluded that a patient has no medical issues that would contraindicate treatment in the ETP.
 - (5) A Standard Treatment Environment Treatment Team has completed the ETP Referral Form, DSH-9220 (Rev. 9/17), hereby incorporated by reference.
 - (6) A Standard Treatment Environment Treatment Team or designee has forwarded the completed ETP Referral Form to the FNAT supervising psychologist.
- (b) Upon receipt of a completed ETP Referral Form, the FNAT supervising psychologist or designee shall review and determine whether it includes all requisite conditions pursuant to subdivision (a) of this section and whether to approve the referral for initial evaluation pursuant to ~~section~~ Section 4901.
- (c) The FNAT ~~Supervising Psychologist~~ supervising psychologist or designee ~~will~~ shall verify that the referring hospital has notified the patients' rights advocate and conservator, if applicable, of the ETP referral.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4901. Initial Evaluation.

- (a) Once the FNAT supervising psychologist or designee approves a patient referral pursuant to ~~section~~ Section 4900, they shall assign that referred patient to an FNAT psychologist. The assigned FNAT psychologist shall conduct an initial evaluation to verify a referred patient's need for treatment in the ETP. The initial evaluation shall follow ~~the timelines set forth in~~ Welfare and Institutions Code section 4144, subdivision (b), and shall include, but not be limited to, the following:
- (1) An interview of a referred patient's Standard Treatment Environment Treatment Team.
 - (2) A review of a referred patient's medical record.
 - (3) A review of a referred patient's history of violence.
 - (4) A review of a referred patient's violence risk level.
 - (5) A review of a referred patient's need for treatment in the ETP.
- (b) Upon completion of the initial evaluation, the FNAT shall provide the initial evaluation to the FNAP for a ~~Placement Evaluation Meeting~~ placement evaluation meeting pursuant to ~~section~~ Section 4902.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4902. Placement Evaluation Meeting.

- (a) Upon receipt of the initial evaluation from the FNAT psychologist, the FNAP shall convene a placement evaluation meeting in accordance with Welfare and Institutions Code section 4144, subdivisions (c) and (d), including the 72-hour notice to the patient and ~~patient~~ patients' rights advocate of this meeting. A patient and their patients' rights advocate shall be provided instructions as to how a patient may submit documents to the FNAP to consider in making its placement evaluation decision. If a patient is unable to safely participate in the placement evaluation meeting in person, alternate modalities for participation, such as teleconference, shall be considered.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4903. Admission Criteria.

- (a) A patient shall be accepted for ETP treatment if the FNAP determines all of the following:
- (1) A referred patient is determined to be a Patient at High Risk of Most Dangerous Behavior.
 - (2) Individualized Treatment Interventions provided to a referred patient have not been successful or that a patient's high risk for Most Dangerous Behavior precludes safely providing Individualized Treatment Interventions in a Standard Treatment Environment.
 - (3) A referred patient has no medical issues that would preclude safe treatment in the ETP.
 - (4) A referred patient is appropriate for ETP treatment, in consideration of the number of ETP referrals across DSH Department facilities and the number of available ETP beds.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4904. Emergency Placement.

- (a) A referred patient may be placed in the ETP prior to completion of the initial evaluation by the FNAT psychologist, pursuant to ~~section~~ Section 4901, if they present a high risk of Most 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. Within three days of placement in the ETP, the FNAT psychologist shall complete the initial evaluation of a patient placed in the ETP pursuant to this section in accordance with ~~section~~ Section 4901 and the requirements set forth in Welfare and Institutions Code section 4144, subdivision (b).
- (1) The FNAT ~~Supervising Psychologist~~ supervising psychologist or designee ~~will~~ shall verify that the referring hospital has notified the patients' rights advocate and conservator, if applicable, of the ETP placement.
- (2) Within seven business days of placement in an ETP and with 72-hour notice to the patient and patients' rights advocate, the FNAP shall conduct a placement evaluation meeting with the referring psychiatrist or psychologist, the patient, ~~and patients' right advocate,~~ conservator, if applicable, and the FNAT psychologist who performed the initial evaluation. The FNAP shall make a determination as to whether the patient clinically requires ETP treatment pursuant to Welfare and Institutions Code section 4144, subdivision (c)(1).
- (3) If a patient has shown improvement during ~~his or her~~ their placement in an ETP, the FNAP may delay its certification decision for another seven business days.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

§ 4905. Certification Requirement.

- (a) Each ETP patient shall be certified in accordance with the requirements set forth in Welfare and Institutions Code section 4144, subdivisions (c), (d), (f), (g), (h), and (i).
- (b) An ETP Certification Form, DSH-9219 (Rev. 4/18), hereby incorporated by reference, shall be completed for each patient referred to the ETP, documenting the final decision of the FNAP ~~is completed~~ by the FNAT supervising psychologist or designee after each certification meeting or hearing. An ETP Certification Form shall be completed at the initial certification, after 90 days, and at each subsequent meeting or hearing concerning the patient's ETP treatment. The ETP Certification Form shall be completed after each meeting or hearing regardless of whether the patient was certified or de-certified for ETP treatment.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 3. Services

§ 5000. Individualized Treatment Plan.

- (a) For each ETP patient, after the FNAT psychologist consults with the Treatment Team and in collaboration with the patient, if possible, the FNAT psychologist shall develop an Individualized Treatment Plan, which shall comply with the requirements set forth in Welfare and Institutions Code section 4144, subdivision (e).
- (b) The Individualized Treatment Plan shall include a determination of whether it is clinically indicated to be the least restrictive treatment for a patient to have their room locked at a certain time, as determined in consultation with the Treatment Team.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 1265.9, Health and Safety Code; and Section 4144, Welfare and Institutions Code.

Article 4. Discharge

§ 5100. Discharge and Transition.

- (a) Subsequent to certification for ETP treatment, pursuant to Section 4905, prior to expiration of the 90-day certification, and at least every 90 days, and prior to expiration of the one-year certification, the FNAP shall review each certified ETP patient to determine whether they no longer clinically require treatment in the ETP, pursuant to Welfare and Institutions Code section 4144, subdivisions (g) and (h).
- (b) If the FNAP determines that a certified patient no longer clinically requires treatment in the ETP, an ETP patient shall be discharged in accordance with their aftercare plan pursuant to Welfare and Institutions Code section 4144, subdivisions (e)(2)(l) and (e)(7), This determination shall be based on clinical progress reports, along with any other relevant information, and shall be accompanied by a determination that a patient should be transferred to a Standard Treatment Environment, or any other appropriate placement, or referred to a more secure treatment environment pursuant to Welfare and Institutions Code section 7301. The FNAP shall transfer an ETP patient shall be transferred within thirty 30 days of its the FNAP determination.
- (c) If the FNAP determines that a certified patient continues to clinically require treatment in the ETP, an ETP patient shall remain in the ETP, pursuant to provisions set forth in Welfare and Institutions Code section 4144, subdivisions (i) and (k).
- (d) At any point during the ETP placement, if a patient's Treatment Team determines that the patient no longer clinically requires ETP treatment, a recommendation to transfer the patient out of the ETP shall be made to the FNAT or FNAP, pursuant to Welfare and Institutions Code section 4144, subdivision (j).

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 5. Audio and Visual Monitoring/Recording

§ 5200. Audio and Visual Monitoring/Recording

- (a) ~~DSH~~ The Department may monitor or record via video or audio the ETP patient rooms and common areas.
- (b) ~~DSH~~ The Department shall retain as private and confidential, with restricted access, any audio or video recordings of ETP patient rooms and common areas.
- (c) With the written permission of the executive director or designee of the hospital where the ETP is located, ~~DSH~~ the Department shall grant access to the audio or video recordings of patient rooms and common areas to the hospital police to investigate an allegation of patient abuse or neglect or an incident involving the safety and security of ETP patients or staff.
- (d) In accordance with Welfare and Institutions Code sections 4902, subdivision (b)(1), and 4903, ~~DSH~~ the Department shall grant access to the audio or video recordings of ETP patient rooms and common areas to a protection and advocacy agency investigating incidents of abuse, neglect, injury, or death.
- (e) ~~DSH~~ The Department shall destroy all audio or visual recordings after 45 calendar days, unless the executive director or designee of the hospital where the ETP is located has provided authorization to retain the audio or video recordings beyond the 45 calendar days for a purpose noted in either subdivision (c) or subdivision (d) of this section.

Note: Authority cited: Sections 4005.1, 4027, 4101, 4143 and 4144, Welfare and Institutions Code. Reference: Section 4144, Welfare and Institutions Code.

Article 6. Patient Property

§ 5300. Patient Property

- (a) ETP patients shall have assigned secure storage space for their personal property while residing on an ETP unit.
- (b) Personal property that does not fit in the assigned secure storage space on the ETP unit, is contraindicated to the ETP patient's treatment, or is deemed contraband in the ETP, shall be stored at that patient's referring state hospital. ETP patients may request specific property items stored at their referring state hospital, except those items that are treatment-contraindicated or deemed contraband in the ETP. The Department shall process such a request through the ETP unit staff and program management.

Note: Authority cited: Sections 4005.1, 4027, 4101 and 4144, Welfare and Institutions Code. Reference: Section 1265.9; Health and Safety Code; Sections 4027, 4101, 4143, 4144 and 4145, Welfare and Institutions Code.

Form DSH-9220 - ETP Referral Form

Identifying Information

Patient First Name:		Patient Last Name:		Patient Middle Name:	First Hospital Case #:
Patient Case #:	Referring Hospital Name:	DSH Admission Date:	Committing county:	Primary Legal Class:	
Date Of Birth:	Age:	Gender:	Sex at Birth:	Ethnicity:	Religion:
Primary Language:					

Referring hospital

Staff Contact:	Staff Phone #:	Staff Email:	Staff Job Title:
Alternate Staff Contact:	Alternate Staff Phone #:	Alternate Staff email:	Alternate Staff Title:
Conservator name:	Phone# :	Address:	
Family contact name:	Phone# :	Address:	

Risk & Aggression

Current violence risk formulation (risk factors, triggers, cause of aggression, protective factors, etc):

**Recent physical aggression history - (within 6 months)
General information about recent aggression**

Describe all selected recent aggression

Describe type(s) of aggression (i.e., organized, impulsive, psychotic)

Describe type(s) of aggression

Criminal History

Describe instant offense

Summary of criminal history

List any identified enemies or gang affiliations

Diagnoses, conditions & adaptive equipment

**ETP Referral Form
DSH-9220 (Rev 9/17)**

Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508

**Case Number:
Patient Name:**

DO NOT PURGE FROM CLINICAL RECORD

Form DSH-9220 - ETP Referral Form

Current Mental Health Diagnosis of Record

Diagnoses

Significant medical conditions

Current Medical Diagnosis of Record

Medical Conditions

Describe effectiveness of treatment

Adaptive equipment

List any adaptive equipment needed

Describe potential impact on risk

Medications

Involuntary medication order:

Currently prescribed medication

Medication Name	Dose	Route	Frequency	Last Dose Date

Medication Allergies:

Has the patient received a psychopharmacology resource network (PRN) consultation:

Date:

Outcome:

Other relevant information:

Has Patient been compliant with medications:

Has Patient been tried on Clozapine?

Has Patient been tried on a long acting injectable antipsychotic?:

Cognitive Functioning

Cognitive screening administered

**Neuropsychological assessment completed
Yes/No**

**ETP Referral Form
DSH-9220 (Rev 9/17)**

Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508

**Case Number:
Patient Name:**

DO NOT PURGE FROM CLINICAL RECORD

Form DSH-9220 - ETP Referral Form

Other relevant information regarding cognitive functioning

History of treatment for violence reduction

List all psychosocial treatment interventions, outcomes, and barriers to treatment that have been attempted:

Psychosocial Treatment Intervention:

Barriers:

Legal Documentation

Other Information

Any relevant patient information not captured elsewhere on this form:

Rationale for ETP placement:

Signature

Employee Number

Team members name:

Job Title:

Signature: _____

Date: _____

**ETP Referral Form
DSH-9220 (Rev 9/17)**

Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508

**Case Number:
Patient Name:**

DO NOT PURGE FROM CLINICAL RECORD

Form DSH9219 - ETP Certification

Identifying Information

						Date Of ETP Referral:	ETP Case #:
Patient First Name:			Patient Last Name:			Patient Middle Name:	First Hospital Case #:
Patient Case #:	Referring Hospital Name:	DSH Admission Date:	Committing County:	Commitment Code:			
Date of birth:	Age:	Sex:	Sex at Birth:	Ethnicity:	Religion:	Primary Language:	

Referring hospital

Staff Contact:	Staff Phone #:	Staff Email:	Staff Job Title:
Alternate Staff Contact:	Alternate Staff Phone #:	Alternate Staff Email:	Alternate Staff Job Title:
Conservator name:	Phone# :	Address:	
Family contact name:	Phone# :	Address:	

Certification Decision

**ETP Certification Form
DSH-9219 (Rev. 4/18)**

Confidential Patient Information
See W&I Code Section 5328 and
HIPAA Privacy Rule CFR Section 164.508
Filing Guidelines Assessment

Case Number:
Patient Name:
Date of Birth:

DO NOT PURGE FROM CLINICAL RECORD