

**DEPARTMENT OF STATE HOSPITALS
FINAL STATEMENT OF REASONS
ENTRY INTO PATIENT ROOMS AND OBSERVATION ROUNDS REGULATIONS**

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

STATEMENT OF NOTICES PROVIDED TO THE PUBLIC AND ACTIONS TAKEN

The Department of State Hospitals (Department) released the Initial Statement of Reasons for the proposed Entry Into Patient Rooms and Observation Rounds regulations on December 13, 2024. All documents associated with this rulemaking were made available to the public and continue to be available on the Department website at <https://www.dsh.ca.gov/Publications/Regulations.html>.

The 45-day comment period to consider the proposed rulemaking closed on January 27, 2025. After the closing of the 45-day comment period, the Department considered all timely and relevant comments received.

The Notice of Proposed Action, published on December 13, 2024, outlined the details regarding a scheduled public hearing and was held on February 4, 2025.

After the February 4, 2025, public hearing, the Department proposed modifications to the originally proposed regulations. The Department made modifications to the text which was noticed to the public from April 1, 2025, to April 22, 2025. No additional comments were submitted.

The Department made additional modifications to the text which was noticed to the public from September 9, 2025, to September 24, 2025, the Department considered all timely and relevant comments received.

LOCAL MANDATE STATEMENT

Mandate on local agencies or school districts: The Department has determined that the proposed regulations would not impose a mandate on any local agency or school district.

STATEMENT OF ALTERNATIVES CONSIDERED

The Department has determined that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed; would be as effective and less burdensome to affected private persons than the proposed regulations; would lessen any adverse impact on small businesses; or would be more cost-effective to

affected private persons and equally effective in implementing the statutory policy or other provision of law. The proposed regulations establish restrictions and exceptions for patients entering rooms of other patients at each state hospital of the Department. These regulations also establish minimum numbers of observation rounds to be performed by Department staff and actions staff are permitted to take during these observation rounds to ensure the health, safety, or security of the patients, hospital staff, and the hospital grounds.

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

STATEMENT OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made the determination that the proposed regulations will have no significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

This determination was made because the regulations establish restrictions and exceptions for patients entering rooms of other patients at each state hospital of the Department. These regulations also establish minimum numbers of observation rounds to be performed by Department staff and actions staff are permitted to take during these observation rounds to ensure the health, safety, or security of the patients, hospital staff, and the hospital grounds.

GOOD CAUSE STATEMENT

To keep consistency and ongoing safety and security of Department facilities, these updated regulations should be made effective at the time of filing to ensure safety and security to the Department's facilities. Furthermore, this rulemaking file was noticed to the public on December 13, 2024, to allow ample time for public comment and awareness.

MODIFICATIONS TO THE ORIGINALLY PROPOSED REGULATIONS TEXT

First 15-Day Notice Modifications:

Section 4335(a):

Text: "overnights"

Rationale: The text was adjusted to fix a grammatical error; this is a non-substantive change.

Section 4335(b)(1):

Text: "~~All~~ No patients residing in the room has ~~approve~~ objected to the visit."

Rationale: The text was changed to clarify that a patient must object to the visiting patient rather than requiring the approval of all patients residing in the room.

Section 4340(a)(1):

Text: “and or”

Rationale: The text was changed from “and” to “or” to clarify that a threat to the safety and security can happen to either the hospital, patients, or employees, and does not have to pose a threat to all three entities.

Second 15-Day Notice Modifications:

Section 4335(a):

Text: “Patients shall not enter any single bedroom or dormitory bedroom (hereinafter referred to collectively as “room”) which the patient does not reside except under the conditions of subdivision (b) of this section. Patients cannot enter or remain in any room in which the patient does not reside between 22:45 and 07:00 and overnights stays will not be permitted.”

Rationale: The word “bed” was added to “room” to clarify the type of room the Department is referring to. Language was adjusted to clarify the specific times patients cannot visit other patients’ rooms. The specific times were added to ensure the readers of these regulations are clear on the exact times patients cannot enter or remain in other patients’ rooms. The times 22:45 and 07:00 were chosen based on hospital operations and staffing. Overnight shifts have lower staffing ratios, as dictated by the California Department of Public Health, who is the licensing authority for all Department facilities.

Section 4335(b):

Text: “~~At the discretion of each state hospital, P~~patients”

Rationale: The text was adjusted to remove the language, “At the discretion of each state hospital.” This language was removed as the Department added language to section 4335(c) making this statement unnecessary.

Section 4335(b)(3):

Text: “~~(3) Upon observation by staff of any visits between patients that have known issues, staff are permitted to end the visit to ensure the health, safety, or security of all patients, staff, and public.~~”

Rationale: Section 4335(b)(3) has been removed as it is not a condition of entry into a patient room. This section is also repetitive as it is already covered in section 4335(c).

Section 4335(c) and (c)(1):

Text: “~~If staff observes any patient residing in a the room that has objected to the patient does not reside in, staff shall ascertain whether the occupants of that room approved the~~

visit.

- (1) ~~If a patient does not have the approval of all residing patients to be in the room,~~ or staff reasonably believes there may be a health, safety, or security concern to any patients, staff, or the public, staff shall escort the visiting patient out of the room or contact hospital police for assistance escorting the visiting patient out of the room, if necessary."

Rationale: The language was changed to clarify the intent by rephrasing and reorganizing the text. Section 4335(c)(1) was removed and combined with section 4335(c). Wording was changed from "does not have the approval" to "has objected to" to be consistent with wording in section 4335(b)(1).

Section 4340(a)(1):

Text: ~~"(1) When there is a reasonable belief that a condition exists that poses a threat to the safety and security of the hospital, patients, and or employees, staff may investigate the condition pursuant to California Code of Regulations Title 9 Section 4351 et seq."~~

Rationale: Section (a)(1) was removed as it was repetitive and a restatement of the Department's authority pursuant to California Code of Regulations Title 9, section 4351 et seq.

Section 4340(b):

Text: "Staff ~~will~~ shall conduct observation rounds of all areas that are occupied by patients, or may be occupied by patients, at least once every two hours except under emergency situations, as that term is defined in section 4335(d)(1)."

Rationale: The word "will" was changed to "shall" as a non-substantive change. The phrase "as that term is defined in section 4335(d)(1)" was added to clarify that the Department intends to use the term "emergency situations" as defined in section 4335(d)(1).

Section 4340(b)(1):

Text: ~~"(1) When the entrance door to the unit is locked for the night, staff may inspect any area of the hospital to account for the location of patients."~~

Rationale: Section 4340(b)(1) was removed as it was repetitive and is already covered by section 4335(b).

Section 4340(c):

Text: ~~"(c) Staff may perform observation rounds more frequently based upon the safety or security needs of the hospital."~~

Rationale: Section 4340(c) was removed as it was repetitive and is already covered by section 4335(b).

Section 4340(d):

Text: “(d~~c~~)”

Rationale: Section 4340(d) was changed to 4340(c) as a non-substantive re-numbering change.

Section 4340(e):

Text: “(e~~d~~) Staff performing observation rounds shall be accompanied by a second staff member when entering patient rooms as that term is defined in section 4335(a).”

Rationale: Section 4340(e) was changed to 4340(d) as a non-substantive re-numbering change. The phrase “as that term is defined in section 4335(a)” was added to clarify that the Department intends to use the term “room” as defined in section 4335(a).

SUMMARY OF COMMENTS RECEIVED

The following is a summary of comments received during the 45-day public comment period beginning on December 13, 2024, through January 27, 2025, comments received during a public hearing facilitated on February 4, 2025, by the Department, and comments received during the second 15-day public comment period beginning on September 9, 2025, through September 24, 2025.

Listed below are those that provided comments during the 45-day comment period which ended on January 27, 2025:

No.	Commenter (Comment Number)	Affiliation	Date Received
1.	Cory Hoch (1-24)	Patient	12/30/24
2.	Dale Atherton (21-22, and 25-33)	Attorney	1/3/25
3.	Kevin Cunningham (34-39)	Patient	1/7/25
4.	Christian Williams (1,35, and 40-45)	Patient	1/14/25
5.	Timothy Seeboth (13, 20-21, 35, and 46-55)	Patient	1/14/25

Department Response: Comments

Summary Comment 1: Commenter 1 and 4

Comment: In Section 4335(a) “overnights” should be changed to “overnight” for grammatical

purposes.

Department Response: Thank you for the comment. The text has been updated from “overnights” to “overnight” to ensure correct grammar.

Summary Comment 2: Commenter 1

Comment: Implementing these regulations against a patient population, such as civil detainees, denies the ability of domestic partners and/or married couples who reside at the facility together to be able to be in a room overnight to sleep together or to be intimate, as long as it is approved by all patients in that room for the person to be there generally, as there is no specific language indicating that these couples must first obtain approval for their intimate contacts with those in that room first.

Summary Comment 3: Commenter 1

Comment: Denying couples in this facility the capacity, means and methods to be intimate with one another creates a conflict with the California Code of Regulations (CCR) Title 22, section 73523(a)(17) and may be considered a deliberate attempt by the state agency to keep them separated from one another, i.e., not residing in or being able to enter the same room together whether or not being intimate. This could be considered discrimination against these couples due to sexual orientation and/or their domestic partner/marriage status.

Department Response to Comments 2 and 3: Thank you for the comment. The proposed regulations do not prohibit a patient from having privacy with their domestic partner as these regulations only provide the process for patients visiting other patients’ rooms.

Summary Comment 4: Commenter 1

Comment: These regulations would contradict Constitutional, statutory, regulatory, personal, and civil rights of those that would be affected and would be grounds for a potential lawsuit against the agency for their blatant and apparent intentional disregard for their rights.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 5: Commenter 1

Comment: Section 4340(d)(1) does not specify how the “additional illumination” method will be used to provide for the “proper visualization” necessary to determine the health and general welfare of a sleeping patient, i.e., pointing the flashlight up to the ceiling. More specific language is necessary because there are patients that have seizure disorders that could be triggered by the flashing of light upon their eyes even when they are closed. It is also necessary because there are patients who may become disoriented or even aggressive by the shining of a light into their eyes. Patients who suffer from Post Traumatic Stress

Disorder for various reasons, may also be triggered by the “additional illumination.”

Summary Comment 6: Commenter 1

Comment: Suggests amending Section 4340(d)(1) to read, “Additional illumination, such as a flashlight, may be used when necessary and to the extent necessary for proper visualization of the patient to ascertain movement and that the patient is breathing. This shall be done only by shining the light upward toward the ceiling, so as to not have it shine in the patient’s eyes.”

Department Response to Comments 5 and 6: Thank you for the comment. Staff are trained on how to utilize flashlights when entering patient rooms to properly complete a check while minimizing effects on patients with medical needs.

Summary Comment 7: Commenter 1

Comment: Statutory authority for this regulatory action is invalid and therefore void. These regulations cite Welfare and Institutions section 4027, I contend that neither the Department or the Department of State Hospitals – Coalinga (DSH-C) has authority to create or limit the rights of individuals confined under the provisions of Welfare and Institutions Code section 6600 et seq.

Department Response: Thank you for your comment. The Department has the authority to promulgate regulations pursuant to Welfare and Institutions Code section 4005.1, including all the hospitals under its jurisdiction, as outlined in Welfare and Institutions Code section 4100. The Department has jurisdiction over Coalinga State Hospital, pursuant to Welfare and Institutions Code section 4100, subdivision (b). Further, Welfare and Institutions Code section 6600.05 states that the “Coalinga State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment,” and that the Department shall be responsible for operation of the facility, including the provision of treatment.

Summary Comment 8: Commenter 1

Comment: The Department claims to have the legal authority to adopt regulations pertaining to patient’s rights for all Non-Lanterman-Petris-Short (LPS) patients under Welfare and Institutions Code sections 4005.1, and 4027. Section 4027 only grants the Department the authority to adopt regulations, like the one being proposed, that affect the rights of a specified group of mentally ill offenders receiving treatment. This only includes those “persons receiving treatment as mentally disordered sex offenders” held pursuant to the repealed Mentally Disordered Sex Offender Laws, not those held under Welfare and Institutions Code section 6600 et seq. Individuals committed pursuant to Welfare and Institutions Code section 6600 et seq. are not included in this list. For an administrative regulation to be valid, it must be within the scope of the authority conferred by the enabling statute.

Department Response: Thank you for your comment. The Department has the authority to promulgate regulations pursuant to Welfare and Institutions Code section 4005.1, including all the hospitals under its jurisdiction, as outlined in Welfare and Institutions Code section 4100.

The Department shall be responsible for operation of the facility, including the provision of treatment.

Summary Comment 9: Commenter 1

Comment: While Welfare and Institutions Code section 4005.1 grants the Department the authority to “adopt and enforce rules and regulations necessary to carry out its duties under this division,” there are no provisions in Division 4 granting the Department or Coalinga State Hospital the legal authority to create or limit the due process rights of individuals committed under Welfare and Institutions Code section 6600 et seq. Welfare and Institutions Code section 6600 et seq. is only included in Division 6 of the Welfare and Institutions Code.

Department Response: Thank you for your comment. The Department has the authority to promulgate regulations pursuant to Welfare and Institutions Code section 4005.1, including all the hospitals under its jurisdiction, as outlined in Welfare and Institutions Code section 4100. The Department has jurisdiction over Coalinga State Hospital, pursuant to Welfare and Institutions Code section 4100, subdivision (b). Further, Welfare and Institutions Code section 6600.05 states that the “Coalinga State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment,” and that the Department shall be responsible for operation of the facility, including the provision of treatment.

Summary Comment 10: Commenter 1

Comment: The terms “safety” and “security” are overly broad, vague, and ambiguous to be applied reasonably. “Safety” and “Security” are defined in the California Code of Regulations Title 9, section 881(w) and 881(x), respectively. “Safety” includes protection from “potential danger, risk, injury, harm or damage.” This means that some level of risk of harm must be established to properly assess these items; otherwise, it is too vague or overly broad and could lead to abuse. The “potential” level of risk necessary to meet the criteria sufficiently is not defined in regulation or statute. An agency cannot allow “vague safety concerns” to foreclose the patient’s rights. The claimed potential threat to safety and security does not exhibit “substantial evidence,” as is required by law as evidence by the previous arguments, nor does it purport to provide legitimate justification for denial of patients’ rights.

Department Response: Thank you for the comment. The Department is utilizing the dictionary definitions of “safety” and “security” and believe this is consistent and compatible with existing laws.

Summary Comment 11: Commenter 1

Comment: The level of risk is undefined which could lead to staff and patients finding it difficult to determine what level of risk applies, so to be properly trained and have an understanding prior to making the determination that such and such items are contraband within the facility. The risk must be substantial as a practical manner. The term “substantial” is defined as “considerable in quality” per *Pierce v. Underwood*.

Department Response: Thank you for the comment. Your comment is related to defining a substantial risk assessment, however this regulation does not contain a substantial risk assessment. Further, the regulation text utilizes the dictionary definitions of “safety” and “security.”

Summary Comment 12: Commenter 1

Comment: These regulations provide a limitless ground for denying the rights to associate with others of their own choice and to have the ability to be intimate and socialize with whomever they choose, because it has been determined to be a risk to safety and security for a denial of rights. There must be a standard for measuring or specifically defining what constitutes a “compromise” of safety and/or security in order to prevent unnecessary denial of rights.

Department Response: Thank you for the comment. The proposed regulations do not prohibit a patient from associating with others as these regulations only delineate the process for patients visiting other patients’ rooms, and not other common areas of the facilities.

Summary Comment 13: Commenter 1 and 5

Comment: The First Amendment guarantees freedom of association. The Supreme Court has described freedom of association as follows: “Our decisions have referred to constitutionally protected ‘freedom of association’ in two distinct senses.” In one line of decisions, the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In some respect, freedom of association receives protection as a fundamental element of personal liberty. In another set of decisions, the courts have recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment - speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.

Department Response: Thank you for the comment. The proposed regulations do not prohibit a patient from associating with others as these regulations only delineate the process for patients visiting other patients’ rooms, and not common areas of the facilities.

Summary Comment 14: Commenter 1

Comment: The First Amendment right is protected by the Fourteenth Amendment from state interference of citizens to freedom of association. Freedom of association is a fundamental right, which grants ordered liberty. The right includes freedom from state coerced association. Even an indirect infringement on associational rights is impermissible and subject to the closest scrutiny. The constitutional guarantee not only protects an individual’s associations with others for the purpose of advancing shared political and religious beliefs but also encompasses the right to meet with others and applies to social and personal associations. Every person in a

democratic society has the right to select who his/her associates will be in order to express his/her distinct preferences. Any state action that directly interferes with this right is proscribed by the Constitution.

Department Response: Thank you for the comment. The proposed regulations do not prohibit a patient from associating with others as these regulations only delineate the process for patients visiting other patients' rooms, and not common areas of the facilities.

Summary Comment 15: Commenter 1

Comment: The state cannot compel an individual to choose between exercising his or her First Amendment rights and participating in an otherwise available program. The right to freedom of association requires the state provide reasonable opportunities for communication with others, both inside and outside the institutional walls, to all residents who are capable of communicating.

Department Response: Thank you for the comment. The proposed regulations do not prohibit a patient from associating with others as these regulations only delineate the process for patients visiting other patients' rooms, and not common areas of the facilities.

Summary Comment 16: Commenter 1

Comment: Patients are forced to associate almost exclusively with institutionalized, mentally disabled people and institution staff. In some cases, an acute episode of frustration, not attributable to his or her mental illness is claimed to justify the temporary restriction on a person's associational rights. However, in probably most cases, the evidence demonstrates that such a justification often does not exist, or that constraint on association persists long after the justification has subsided. Because of the lack of services in the community, civilly committed persons are essentially compelled to choose between the exercise of their First Amendment right to freedom of association and participation in a state program of care and rehabilitation. This pattern of segregation and congregation prohibits free association and leads to further denial of free association because it is self-perpetuating.

Department Response: Thank you for the comment. The proposed regulations do not prohibit a patient from associating with others as these regulations only delineate the process for patients visiting other patients' rooms, and not other common areas of the facilities.

Summary Comment 17: Commenter 1

Comment: Policies must be supported by fair and substantial reason and that the government bears the responsibility for compiling evidence to support its actions. The public has a right to expect its officers to make adjudications based on merit. The first step towards ensuring that these expectations are realized to require adherence to the standards of due process as absolute and uncontrolled discretion invites abuse. Deprivations are not justified if there is no evidence that the claimed risk "is more than miniscule" or if there is no individualized evidence of past security problems related to the risk. Prison officials may not "pile conjecture upon

conjecture” to justify their policies. Inadequately formulated facility regulations and policies grounded on mere speculation, exaggerated fears, or post-hoc rationalizations will not suffice to meet Constitutional requirements.

Department Response: Thank you for the comment. The Department has the authority to promulgate regulations pursuant to Welfare and Institutions Code section 4005.1, including all the hospitals under its jurisdiction, as outlined in Welfare and Institutions Code section 4100. The Department shall be responsible for operation of the facility, including the provision of treatment and the health, safety and security of the facility.

Summary Comment 18: Commenter 1

Comment: It is crucial at this juncture to state that officials will be held liable if they set “in motion a series of acts by others, or knowingly refused to terminate [such acts], which he knew or reasonably should have known would cause others to inflict the constitutional injury.” Officials are or could be the ones directly responsible for the enactment of such regulations that would authorize such constitutional violations, if not directly addressed prior to its implementation.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 19: Commenter 1

Comment: Conditions at the facility are to be in the least restrictive based on their confinement and the needs of the facility, but at the same time promote independence and personal liberty interests. The law is well-established that mental health patients confined in state hospitals are to be afforded and entitled to “more considerate treatment and conditions of confinement than that of their criminal counterparts whose conditions of confinement are designed to punish. Conditions of confinement generally shall be equal across the board for all involuntary civil commitment schemes.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 20: Commenter 1 and 5

Comment: The standard applicable to those involuntarily committed or detained is that which is “at least as great” as the Eighth Amendment protections afforded to pre-trial detainees. However, the exact details of any additional safeguards provided by the Fourteenth Amendment remain undefined.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve

objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 21: Commenter 1, 2, and 5

Comment: Patients currently held at DSH-C are to be held in a non-punitive environment that does not lead to elements of punishment. When a civil detainee is confined in conditions identical to, similar to, or more restrictive than those that his criminal counterparts are held, courts will presume that the detainee is being subjected to punishment in violation of the Fourteenth Amendment. Under the Due Process Clause of the Fourteenth Amendment, “an individual detained under civil process...cannot be subjected to conditions that ‘amount to punishment.’” The court held in *Jones v. Blanas* that individuals who are civilly detained pending commitment proceedings under the Sexually Violent Predator Act (SVPA) are “entitled to protections at least as great as those afforded to a civilly committed individual.” *Jones v. Blanas* established two presumptions: First, conditions of confinement are presumptively punitive if they are “identical to, similar to, or more restrictive than, those in which [a civil pre-trial detainee’s] criminal counterparts are held.” Second, conditions of confinement are presumptively punitive if “an individual awaiting SVPA adjudication is detained under conditions more restrictive than those the individual would face following SVPA commitment.” If either presumption applies, the burden shifts to the defendant to show (1) “legitimate, non-punitive interests justifying their conditions of [the detainee’s] confinement” and (2) “that the restrictions imposed...[are] not ‘excessive’ in relation to these interests.” The *Jones v. Blanas* presumptions can be rebutted by showing “legitimate, non-punitive government interests,” and by showing that restrictions are not “excessive in relation to those interests.” Such interests “include ensuring a detainee’s presence at trial, maintaining jail security, and effective management of a detention facility.” A defendant must “identify the specific penological interests involved and then demonstrate both that those specific interests are the actual bases for their policies and that the policies are reasonably related to the furtherance of the identified interests.” Even if legitimate, non-punitive interests are identified, conditions of confinement may still be “excessive” if they are “employed to achieve objectives that could be accomplished in so many alternative and less harsh methods.”

Department Response: Thank you for the comment. The Department has the authority to promulgate regulations pursuant to Welfare and Institutions Code section 4005.1, including all the hospitals under its jurisdiction, as outlined in Welfare and Institutions Code section 4100. The Department has jurisdiction over Coalinga State Hospital, pursuant to Welfare and Institutions Code section 4100, subdivision (b). Further, Welfare and Institutions Code section 6600.05 states that the “Coalinga State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment,” and that the Department shall be responsible for operation of the facility, including the provision of treatment and the health, safety and security of the facility.

Summary Comment 22: Commenter 1 and 2

Comment: In evaluating any rebuttal to the *Jones v. Blanas* presumptions, the court should consider the conditions in the California state hospitals to determine whether, given those conditions and the realities facing the other state hospitals, it is possible to rebut the *Jones v.*

Blanas presumptions for other civil detainees held in those facilities. The court should also take into consideration the extended period during which he is being held in his facility. The Fourteenth Amendment requires the government to do more than provide the minimal civilized measure of life's necessities for non-convicted detainees; rather, due process requires that the nature and duration of the commitment bear some reasonable relation to the purpose for which the individual is committed.

Where there is a clearly established body of law that applies to all civilly committed persons, there is no reason that the law should not apply to Sexually Violent Predators as well.

Department Response: Thank you for the comment. The Department disagrees with your comment. The Department believes the proposed regulations are consistent with all applicable state and federal laws and regulations.

Summary Comment 23: Commenter 1

Comment: Any laws or regulations that are not specifically delineated herein but those that are specifically related to the issue being addressed shall be statutorily provided by way of 42 U.S. Code (USC) Section 9501(2)(A) (rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights); 42 USC Section 10841 (2)(A) (same); Welfare and Institutions Code Sections 5325, 5325(i), 5325.1; 22 CCR Sections 71507(a)(10) and 73523(a)(25)-(27)).

Department Response: Thank you for the comment. The Department disagrees with your comment. The Department believes the proposed regulations are consistent with all applicable state and federal laws and regulations.

Summary Comment 24: Commenter 1

Comment: Numerous federal statutes and state regulations may be violated with the current version of this particular regulatory action. In the 45-Day Notice, DSH incorrectly states that the proposed regulations are consistent and compatible with existing laws.

Department Response: Thank you for the comment. The Department disagrees with your comment. The proposed regulations are consistent with all applicable state and federal laws and regulations.

Summary Comment 25: Commenter 2

Comment: Two provisions from the California Code of Regulations (CCR) are omitted from discussion. These include: "A right to receive treatment for a diagnosed mental disorder that is provided in a method least restrictive of individual liberty and promotes personal independence." (CCR Title 9, section 883(b)(2)), and "A right to medical care and treatment for physical ailments and conditions according to accepted clinical standards and practices." (CCR Title 9, section 883(b)(3)).

Department Response: Thank you for the comment. These regulations do not alter or conflict

with the existing regulations and the Department does not believe that existing regulations need to be included in this regulation package.

Summary Comment 26: Commenter 2

Comment: The “Policy Statement Overview/Broad Objectives” section fails to specify how the Department categorizes its patients into groups based on their respective “needs and functional abilities.” This omission undermines the integrity of the “policy statement,” rendering it “excessive in relation to its non-punitive purpose” for those individuals whose “needs and functional abilities” do not necessitate the conditions described therein.

Department Response: Thank you for the comment. The Department believes the Initial Statement of Reasons is clear as written. The proposed regulations do not identify categories of patients based on their respective needs and functional abilities. The proposed regulations seek to delineate the process for entry into patient rooms.

Summary Comment 27: Commenter 2

Comment: The proposed regulations are appropriate for individuals who exhibit maladaptive behaviors that indicate a risk of harm to themselves or others, and/or they possess significantly below-average functional abilities or serious medical conditions, but are wholly inappropriate, cruel and inhumane for those individuals that do not exhibit these behaviors.

Summary Comment 28: Commenter 2

Comment: Disallowing stable, high-functioning patients from entering the rooms of other patients, despite their lack of current behaviors suggesting a likelihood of causing harm, is unjustified.

Summary Comment 29: Commenter 2

Comment: Conducting observation rounds in areas occupied by stable, high-functioning patients at least once every two hours, despite no evidence of behaviors that could endanger themselves, staff, or others, is unwarranted.

Summary Comment 30: Commenter 2

Comment: Prohibiting stable, high-functioning patients from having overnight visits with one another, despite their exhibiting no behaviors indicating potential harm, is excessive.

Summary Comment 31: Commenter 2

Comment: Performing checks for movement and breathing on stable, high-functioning patients while they sleep, in the absence of any indication of suicidal intent or serious medical conditions, is inappropriate.

Department Response to Comments 27-31: Thank you for the comment. The Department has

the authority to promulgate regulations pursuant to Welfare and Institutions Code section 4005.1, including all the hospitals under its jurisdiction, as outlined in Welfare and Institutions Code section 4100. The Department shall be responsible for operation of the facility, including the provision of treatment and the health, safety and security of the facility.

Summary Comment 32: Commenter 2

Comment: The Department has assessment protocols available to determine the risk of violence by a patient in a hospital setting which includes the Short Term Assessment of Risk and Treatability assessment. The Department has trained staff who look for signs of potential risk of institutional violence. The Department also has the HCR-20v3 which estimates future violence, imminent violence, and serious physical harm for those involuntarily detained in a hospital setting.

Department Response: Thank you for the comment. The proposed regulations do not outline the risk assessment process, these regulations only delineate the process for patients visiting other patients' rooms.

Summary Comment 33: Commenter 2

Comment: The Department should create distinct categories of patients based on their individualized "needs and functional abilities," to avoid overly restrictive conditions on all patients. The Department's proposal rightly acknowledges, its clients are not a homogeneous group, therefore, the proposal must specifically address which "needs and functional abilities" justify the proposed conditions and which do not.

Department Response: Thank you for the comment. The Department does not believe we need to designate these categories.

Summary Comment 34: Commenter 3

Comment: Section 4335(d)(1) can lead to a situation in which the therapeutic environment of patients can be damaged or destroyed by sleep deprivation and the resulting brain and/or cognitive damage may lead to psychosis and the patient's inability to read or understand the treatment text. Therefore, Section 4340 itself, causes an "emergency situation" of sleep deprivation.

Department Response: Thank you for the comment. The Department believes the regulations are sufficient for the treatment and care for the patients committed to the Department.

Summary Comment 35: Commenter 3, 4, and 5

Comment: Section 4340 would increase the "shining of flashlights into patients' eyes, and loud pulling aside of privacy curtains" to as much as every two hours all day long which can cause sleep deprivation.

Department Response: Thank you for the comment. The Department believes the regulations are sufficient for the treatment and care for the patients committed to the Department.

Summary Comment 38: Commenter 3

Comment: The punishment of decades of sleep deprivation and denying patients necessary reading skills reveals hateful intent and a purposeful negative therapeutic environment.

Department Response: Thank you for the comment. The Department believes the regulations are sufficient for the treatment and care for the patients committed to the Department.

Summary Comment 39: Commenter 3

Comment: Section 4340 should be postponed until cognitive testing and evaluation of reading levels of patients is completed.

Department Response: Thank you for the comment. The Department disagrees with your comment as the proposed regulation does not address cognitive testing and evaluation of reading levels of patients. This regulation only delineates the process for patients visiting other patients' rooms.

Summary Comment 40: Commenter 4

Comment: Section 4335(b)(1) gives an unfair advantage to patients allotted single rooms: they will be exempt from this restriction and permitted to entertain visitors at all hours without the approval of another patient. It is already a huge point of contention that some patients secure single rooms and keep them for many years. Adding the peer-control factor of first gaining roommate approval for a resident to have a visitor enter their room, but not into single rooms, only serves to antagonize an already extremely contentious situation. Legally, this is also discriminatory.

Department Response: Thank you for the comment. The proposed regulation does not regulate which patients shall be roommates in the facility or which patients receive single rooms. The proposed regulation regulates the conduct of other patient visitors to rooms.

Summary Comment 41: Commenter 4

Comment: Section 4335(c)(1) introduces a facility-approved control factor not previously in place. This would allow any resident who holds biased, bigoted or prejudiced attitudes against their roommate (or against a visitor) will now be able to have staff terminate these visits. This regulation invites facility-endorsed peer-to-peer intolerance and will not legally stand. Such a regulation will cause unnecessary stress-inducing conditions and a greater potential for aggressive or even violent retaliatory behaviors.

Department Response: Thank you for the comment. The Department disagrees with your comment and assertion that these regulations "cause unnecessary stress-inducing conditions

and a greater potential for aggressive or even violent retaliatory behaviors.” The regulation delineates the process of patients visiting other patients’ rooms.

Summary Comment 42: Commenter 4

Comment: The language in Section 4335(d) appears to present safety and security issues for staff who enter rooms without any warning. The potential for patients to mistake staff (especially at night) as other patients entering a darkened room unannounced could pose serious risks for defensive reactions when patients are abruptly awakened. Staff unexpectedly entering a resident’s sleeping area where they may be mentally, emotionally, and physically exposed isn’t much different from staff not announcing themselves when entering their showering area. These regulations violate privacy rights by restricting the ability of patients to socialize.

Department Response: Thank you for the comment. The Department disagrees with your comment and assertion that these regulations violate privacy rights. The proposed regulations do not prohibit a patient from associating with others as these regulations only delineate the process for patients visiting other patients’ rooms, and not common areas of the facilities. The Department further disagrees that the proposed regulation poses a safety and security issue for staff. Department staff are trained in emergency response scenarios to ensure their own safety as well as the patients and properly entering patient rooms.

Summary Comment 43: Commenter 4

Comment: Section 4335 states “...staff will either knock on the door or announce their presence...”, this is contradictory to long-standing general practice, as staff have always both knocked and announced their presence. Staff should have to state the purpose of their entry into the resident’s room.

Department Response: Thank you for the comment. The “or” language in the regulation text includes the option for staff to both knock *and* announce their presence.

Summary Comment 44: Commenter 4

Comment: Section 4340(a)(1) states “...poses a threat to the safety and security of the hospital, patients, and employees...”, which is vague language. I suggest that for language clarity it should state “hospital, patients, or employees”, because to state otherwise implies that the threat must affect all three entities, not any one of them, before action can be taken.

Department Response: Thank you for the comment. This section has been deleted.

Summary Comment 45: Commenter 4

Comment: Section 4340(d)(1) is another example of protective overreach and goes beyond the Department’s scope of care and treatment mandate. The nightly distress and anxiety such a practice would bring about is not worth the perceived concern for patient fatalities (the death

rate among patients in California's five state hospitals has not gone beyond community averages). The two-hour time frame is overkill. I would like to suggest as an alternative method that staff check to verify the physical presence of the patient instead of breathing. This would reflect the practices within prison and jail settings where observation rounds entail nothing more than verifying physical presence.

Under 4335 subsection (a) where it states "Patients shall not ... in which the patient does not reside ... " I suggest making these underlined words either singular or plural in both instances; and, the word "overnights" should of course be corrected to the singular "overnight."

Department Response: Thank you for the comment. The Department is responsible for the care and treatment of individuals committed to the Department. These individuals have varying levels of functioning and ability. As such, some patients require more observation due to their level of functioning. Further, the Department's hospitals are not a prison or jail setting, but are therapeutic facilities designed to provide mental health treatment to its patients. However, after considering these edits, the Department believes the language is clear as written.

Summary Comment 46: Commenter 5

Comment: Per the Webster's Dictionary definition, section (b) of the proposed regulations: "At the discretion of each state hospital, patients may be permitted to enter the room of other patients to visit..." is arbitrary.

Department Response: Thank you for the comment. This text has been deleted.

Summary Comment 47: Commenter 5

Comment: The new regulations are not necessary and do not provide evidence that a problem exists, that the proposed regulations are within the scope of the Department's power, and that there is no other reasonable way to achieve the Department's goals.

Department Response: Thank you for the comment. The Department has the authority to promulgate regulations pursuant to Welfare and Institutions Code section 4005.1, including all the hospitals under its jurisdiction, as outlined in Welfare and Institutions Code section 4100. The Department shall be responsible for operation of the facility, including the provision of treatment and the health, safety and security of the facility.

Summary Comment 48: Commenter 5

Comment: Who makes the determination and when is it determined that all persons in a sleeping area have agreed to another patient entering their room? This new rule lacks clarity and is far too vague. Who makes the decision to permit/forbid entry into a room? Would each dorm have its own rule, and who notifies the people involved?

Department Response: Thank you for the comment. The text has been updated from "All

patients residing in the room approve to the visit” to “No patient residing in the room has objected to the visit.”

Summary Comment 49: Commenter 5

Comment: If the Department has extra staff to perform these observation rounds, then patients should be offered more than two hours of core therapy a week.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 50: Commenter 5

Comment: What is the definition of an emergency as used in this regulation?

Department Response: Thank you for the comment. Please reference California Code of Regulations, Title 9, section 4335, subdivision (d)(1) for the definition of emergency situations.

Summary Comment 51: Commenter 5

Comment: Who determines that an emergency exists, any staff member or just administration?

Department Response: Thank you for the comment. The Department believes the regulations were clearly written to allow for staff members to determine if an emergency exists.

Summary Comment 52: Commenter 5

Comment: Are the flashlights to be used pen size (fit in the chest pocket) or a high-intensity beam?

Department Response: Thank you for the comment. The Department believes the regulations are sufficient for the treatment and care for the patients committed to the Department.

Summary Comment 53: Commenter 5

Comment: If staff cannot see over the privacy curtains, and need to pull them back, will they close them upon leaving?

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 54: Commenter 5

Comment: Since the Department included the regulation on “Contraband Searches within secured treatment areas and patient living areas by state hospital non-peace office staff,” they have inferred that searches for contraband may be done twelve times a day, anytime they do an observation round, without any probable cause.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 55: Commenter 5

Comment: These regulations would bring the total permissible searches to 85 per week without any probable cause needed, this would be considered harassment.

Department Response: Thank you for the comment. These regulations regulate staff observation of patients and patients entering other patients’ rooms. They do not regulate searches of patients’ rooms. See California Code of Regulations Title 9, sections 4351, 4352, and 4353 for the Department’s regulations regarding search of patients’ rooms.

Listed below are those that provided comments during the public hearing facilitated on February 4, 2025:

No.	Commenter (Comment Number)	Affiliation	Date Received
1.	Dale Atherton (1)	Attorney	2/4/25
2.	Mark Hurrell (1-4)	Expert Witness	2/4/25

Summary Comment 1: Commenter 1 and 2

Comment: The regulations apply to every single patient regardless of need. To enter a patient’s room every two hours during the night, irrespective of a patient exhibiting any behavior or having any medical conditions warranting such intrusions is considered arbitrary, continuous, intense, and intrusive. There is a small portion of the Department’s patients that these restrictions would be appropriate for.

Department Response: Thank you for the comment. The Department is responsible for the care and treatment of all individuals committed to the Department and the department is promulgating regulations to provide direction as how staff will observe patients for the safety of all patients, staff, and the public.

Summary Comment 2: Commenter 2

Comment: The regulations could be accomplished in alternative and less harsh methods, particularly by limiting such measures to those who exhibit behaviors

functional challenges or medical issues that warrant them.

Department Response: Thank you for the comment. The Department has considered alternatives, and we are not accepting your comment.

Summary Comment 3: Commenter 2

Comment: For those who do not require such conditions but are nonetheless subjected to them, these patients are not receiving treatment that is provided in a method least restrictive of individual liberty and promotes personal independence. According to the California Code of Regulations Title 9, section 883(b)(2), for those who do not require such conditions but are nonetheless subjected to them, these patients are not afforded medical care for physical ailments and conditions.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Summary Comment 4: Commenter 2

Comment: The inability to advance to units that do not have the above-noted restrictions, irrespective of whether there is no clinical need whatsoever for such restrictions, results in it being very difficult for patients to function or live in a healthy manner, and thus results in the perpetual suffering, both physically and emotionally.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not involve objections, support, or recommendations directed towards a specific regulatory action.

Listed below are those that provided comments during the second 15-day comment period which ended on September 24, 2025:

No.	Commenter (Comment Number)	Affiliation	Date Received
1.	Christian Williams (1-4)	Patient	09/25/25

Summary Comment 1: Commenter 1

Comment: In Section 4335(a) suggests grammar revision by adding the word “in” before “which”.

Department Response: Thank you for the comment. The Department has made this grammatical, non-substantive change in the final regulation text.

Summary Comment 2: Commenter 1

Comment: The process in Section 4335(b)(1) is unclear in three areas; (1) does not state the process in which the patient may object to another's visitor. (2) potential violation of the rights of patients in domestic partnerships or legally married. (3) raises equity issues between patients assigned a dorm versus a single room.

Department Response: Thank you for the comment. However, this comment is not being considered, as it is outside the scope of this rulemaking process and does not address changes made in the most recent notice period.

Summary Comment 3: Commenter 1

Comment: In Section 4335(c) is unclear in three areas; (1) does not state the process in which the patient may object to another's visitor. (2) potential violation of the rights of patients in domestic partnerships or legally married. (3) raises equity issues between patients assigned a dorm versus a single room.

Department Response: Thank you for your comment. For (1), the department intends to use the dictionary definition for the word "object;" For (2) and (3), the proposed regulations do not regulate domestic partnerships or assignments of rooms and only provide the process for patients visiting other patients' rooms.

Summary Comment 4: Commenter 1

Comment: In Section 4335(d) suggests revision by removing the word "either" and replace "or" with "and" and also to revise "a patient's" to read "patients."

Department Response: Thank you for the comment. However, the department disagrees with your comment as the current regulation text is grammatically correct.