

**State of California
Office of Administrative Law**

In re:

**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:

**Amend sections: 3352.2, 3352.3, 3354,
3355.1**

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2018-0913-02

OAL Matter Type: Regular Resubmittal (SR)

The California Department of Corrections and Rehabilitation (Department) proposed this action to amend regulations that address dental care for patients within Department institutions.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/8/2018.

Date: October 8, 2018



Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Scott Kernan, Secretary
Copy: Julie Inderkum

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

RESUBMITTAL

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2017-0919-11	REGULATORY ACTION NUMBER 2018-0913-02SR	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

2018 SEP 13 P 4:45
OFFICE OF ADMINISTRATIVE LAW

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

OCT. 08 2018
3:39 PM

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2017, 39-2	PUBLICATION DATE 9/29/2017

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Dental Care for Patients in CDCR Institutions	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-0323-02S
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 3352.2; 3352.3; 3354; 3355.1
REPEAL
TITLE(S) 15

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

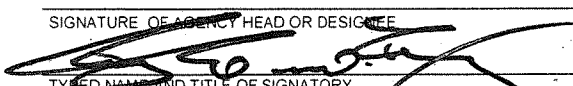
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
July 23, 2018 - August 7, 2018

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)

7. CONTACT PERSON Julie Inderkum	TELEPHONE NUMBER (916) 691-0697	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) julie.inderkum@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 9.10.18
TYPED NAME AND TITLE OF SIGNATORY Ralph Diaz, Secretary (A), California Department of Corrections and Rehabilitation	

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ENDORSED APPROVED

OCT 08 2018

Office of Administrative Law

FINAL TEXT OF REGULATIONS

In the following, ~~strikethrough~~ indicates deleted text; underline indicates added or amended text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

Section 3352.2 is amended to read:

3352.2. Dental Authorization Review Committee.

(a) For the purposes of this section and sections 3352.3 and 3355.1, the following definitions apply:

(1) Clinically necessary means health care services or supplies that are determined by health care staff to be needed to diagnose or treat an illness, injury, condition, disease, or its symptoms.

(2) Health care services means medical, mental health, dental, pharmaceutical, diagnostic, and ancillary services to identify, diagnose, evaluate, and treat a medical, psychiatric, or dental condition.

(3) Health care staff means persons employed or contracted by California Department of Corrections and Rehabilitation, who are credentialed, licensed, certified, and legally able to provide care to patients.

(4) Health record(s) means paper-based records, electronic records, and other media that document the patient's health care and provide a chronological account of a patient's examinations and treatments. Health care records shall be maintained in a manner that supports continuity of care.

(5) Patient means an inmate who is seeking or receiving health care services or who is assigned to a care team.

(a) ~~b~~ Each departmental institution shall ~~establish~~ maintain a Dental Authorization Review (DAR) ~~e~~Committee. The DAR Committee shall ~~be established for the purpose of~~ approve or disapprove requests for:

(1) ~~Approving or disapproving requests for:~~

(A) ~~1~~ Otherwise excluded dental services.

(B) ~~2~~ Deviations from treatment policy.

(C) ~~3~~ Medically Clinically necessary treatment, as determined by health care staff, that requires a contracted specialist to provide treatment at the local institution.

(D) ~~4~~ Medically Clinically necessary treatments, diagnostic studies, or consultations, as determined by health care staff, that cannot be accomplished at the local institution.

(E) ~~5~~ Reviewing Ttreatment recommendations for special dental care needs.

(b) ~~DAR committee membership shall consist of:~~

(1) ~~A staff dentist as Chairperson.~~

(2) ~~A staff dentist as Vice Chairperson.~~

(3) ~~Any institutional dentist(s) providing dental services to inmates.~~

~~(4) Representatives from other institution services or divisions shall be invited, when appropriate, to committee meetings.~~

~~(c) DAR Ceommittee decisions requests at the institution level shall be reviewed and either approved or disapproved within 15 business days of receipt by the DAR Committee and shall be based on criteria established in section 3350.1(d) 3999.200(c). DAR Committee decisions shall be documented in the inmate's unit patient's health record. Cases that receive DAR Ceommittee approval and that require Dental Program Health Care Review Committee (DPHCRC) approval pursuant to section 3352.3(a), shall be forwarded, along with all supporting documentation, to the Dental Program Health Care Review Committee (DPHCRC). The treating dentist shall notify the inmate patient of the DAR Ceommittee's decision.~~

~~(d) The DAR Committee and/or DPHCRC approval process may be bypassed if the Supervising Dentist determines that the specialty services or consultation are required because of an Emergency dental condition, as defined in section 3355.1(g)(1), or an Urgent dental condition requiring that treatment be initiated within one calendar day, as defined in section 3355.1(g)(2).~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al. v. Cate, et al.*, USDC no. 3:05-cv-05241-JSW (No. Cal.).

Section 3352.3 is amended to read:

3352.3. Dental Program Health Care Review Committee.

(a) The Dental Program Health Care Review Committee (DPHCRC) shall meet as often as necessary to review cases approved by the Dental Authorization Review (DAR) Ceommittee for ~~otherwise excluded~~ those dental services listed in sections 3352.2(b)(1), (2), (4) and (5). DPHCRC decisions shall be completed within 15 business days of receipt and shall be based on criteria established in ~~Section 3350.1(d) 3999.200(c).~~

~~(b) The DPHCRC shall consist of, but not be limited to, the following:~~

~~(1) Chief Dentist, DAR, Inmate Dental Services Program (IDSP), DCHCS.~~

~~(2) Chief Dentist, Policy and Risk Management, IDSP, DCHCS.~~

~~(3) Chief Dentist, Training, IDSP, DCHCS~~

~~(4) A minimum of two (2) dentists, IDSP, DCHCS.~~

~~(c) Decisions to approve or deny requests for dental services which have been referred by the DAR committee shall require the attendance of a minimum of three (3) dentists, IDSP, DCHCS, at the applicable review committee, at least one of which must be a Chief Dentist or their designee, and shall be based upon the decision adopted by a majority of the DPHCRC members present.~~

~~(db) The treating dentist shall notify the inmate patient of the DPHCRC's eommittee's decision regarding dental services. All decisions shall be documented and document the decision in the inmate's patient's health record.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al. v. Cate, et al.*, USDC no. 3:05-cv-05241-JSW (No. Cal.).

Section 3354 is amended to read:

Section 3354. Health Care Responsibilities and Limitations.

(a) Authorized staff. Only facility-employed health care staff, contractors paid to perform health services for the facility, or persons employed as health care consultants shall be permitted, within the scope of their licensure, to diagnose illness or, prescribe medication and health care treatment for inmates patients. No other personnel or inmates may do so.

(b) Inmate Workers. Only trained or certified inmates shall operate health care equipment. Inmates shall not be permitted to:

(1) Schedule appointments.

(2) Determine another inmate's access to health care services.

(3) Obtain blood samples.

(4) Administer blood.

(5) Introduce or discontinue intravenous infusions.

(6) Have access to surgical instruments, syringes, needles, medications, or health records except as otherwise specified in these regulations.

(7) Perform any task identified as a health care responsibility.

(c) Private Consultants. Health care personnel not employed by the Ddepartment are not authorized to order treatment for an inmate patient. Such persons may offer opinions and recommendations for consideration by Ddepartment health care staff as follows: An inmate patient or an inmate's patient's responsible guardian or relative, or an attorney or other interested person wanting the inmate patient examined by a private physician, shall submit a written request to the institution head. The institution head shall, after consulting with the facility's ~~chief medical officer~~ Chief Medical Executive, grant the request unless convinced that specific case factors warrant denial. The fact of and reasons for such denial, and notice of the right to appeal the decision in writing to the Ddirector, shall be documented and given to the inmate patient or the person requesting the outside health care service. Costs of such private consultations or examinations shall be paid by the inmate patient or the person requesting the service.

(d) Emergency Health Care Attention. If an inmate is away from a facility for authorized reasons, such as assignment to a camp or transportation between institutions, becomes seriously ill or injured, emergency health care attention by available resources shall be obtained by the official in charge. Community physicians and hospitals shall be used if the inmate's condition does not permit prompt return to a Ddepartment medical facility.

(e) Medical Sick Call. Each Ddepartment facility confining inmates shall provide scheduled times and locations for general population inmates. A medical doctor, registered nurse, or medical technical assistant shall make daily visits to each nongeneral population housing unit to provide medical attention to inmates patients unable to use the sick call services provided for general population. Staff conducting sick call shall screen medical problems appearing to require further medical attention and shall evaluate requests for appointments with other medical staff. A facility physician shall personally visit each specialized housing unit at least once each week.

~~(f) Dental Priority Classification (DPC) codes: Inmates requesting dental treatment shall be evaluated and scheduled into one of the following categories:~~

~~(1) Emergency care category: A dental emergency, as determined by health care staff, includes any medical or dental condition for which evaluation and treatment are necessary to prevent death, severe or permanent disability, or to alleviate disabling pain. Immediate treatment shall be provided and will be available to such inmates 24 hours a day, 7 days a week.~~

- ~~(2) Urgent care category: Treatment of a dental condition of sudden onset or severe pain which prevents the inmate from carrying out essential activities of daily living; or sub-acute or unusual hard or soft tissue condition or pathology requiring early intervention. This category includes:~~
- ~~(A) DPC 1A: Such inmates shall receive treatment within one calendar day of diagnosis.~~
 - ~~(B) DPC 1B: Such inmates shall receive treatment within 30 calendar days of diagnosis.~~
 - ~~(C) DPC 1C: Such inmates shall receive treatment within 60 calendar days of diagnosis.~~
- ~~(3) DPC 2 Intereceptive care category: Treatment of advanced caries, moderate or advanced periodontal pathology, or the provision of dentures. This category requires that inmates have over 6 months remaining to serve on their sentence within the department at the time DPC 2 care is initiated, and provides eligibility for DPC 2 care regardless of oral hygiene status. Such inmates shall receive treatment within 120 calendar days of diagnosis.~~
- ~~(4) DPC 3 Routine Rehabilitative care category: Treatment of caries not likely to become advanced within one year, mild periodontal pathology, or the provision of removable partial dentures. This category requires that inmates have over 12 months remaining to serve on their sentence within the department at the time DPC 3 care is initiated, and meet oral hygiene requirements. Such inmates shall receive treatment within one year of diagnosis.~~
- ~~(5) DPC 4 No dental care needed: Inmates not appropriate for inclusion in DPC 1, 2, 3 or 5.~~
- ~~(6) DPC 5 Special needs care: Inmates with special needs. These include inmates requiring dental care that is a deviation from treatment policy as well as treatments that may require a contract specialist or that cannot be accomplished at the institution.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Perez, et al. v. Cate, et al.*, USDC no. 3:05-cv-05241-JSW (No. Cal.).

Section 3355.1 is amended to read:

§ 3355.1. Dental Care.

(a) For the purposes of this section, the definitions pursuant to sections 3352.2(a)(1)-(5) and the following definitions apply:

(1) Dental Priority Classification means a numerical or alphanumeric code associated with a dental diagnosis and assigned by a dentist. It is the objective expression of the degree of urgency of a patient's dental needs, providing the timeframe within which treatment must be initiated subsequent to the date of diagnosis.

(2) Face-to-face triage encounter means a planned visit to assess and diagnose a patient's chief complaint and to provide necessary treatment following submittal of a CDC 7362 (Rev. 03/04), Health Care Services Request Form, hereby incorporated by reference, by a patient or when dental staff issues a ducat to a patient after performing a health record review.

(3) Limited problem focused exam encounter means an unplanned visit to assess and diagnose a patient's chief complaint and to provide treatment if necessary for a patient with a dental emergency who arrives at the dental clinic unannounced without an appointment or who is referred to the dental clinic by health care or custody staff and dental staff has not issued a ducat to the patient and there is also no record of recently receiving a CDC 7362 from the patient addressing the emergent condition.

(4) Mainline facility means a CDCR facility where a patient is housed and assigned after completing the reception center initial intake process.

(5) Plaque index score means a measurement used to determine a patient's level of oral hygiene.
(6) Root canal therapy means a dental procedure in which the pulp chamber and canal(s) of a tooth are cleaned, shaped and filled.

(b) Access to Dental Care.

(1) Patients shall have equal access to dental services by:

(A) Submitting a CDC 7362 requesting dental care for which ducated face-to-face triage encounters shall be scheduled to have specific complaints addressed.

(B) Unscheduled dental encounters for emergency and urgent dental services.

(C) Referral from other health care providers, ancillary, and custodial staff.

(D) Receiving a Dental Priority Classification (DPC) based on clinical findings and radiographs.

(2) During a facility lockdown or modified program, dental staff shall coordinate with the clinic Registered Nurse, patient appointment schedulers, and custody staff to facilitate continuity of care.

(A) A lockdown or modified program shall not prevent the completion of scheduled dental encounters, and custody personnel shall escort the patient to the dental clinic, subject to security concerns.

(B) In facilities or housing units on modified program or lockdown status, a system shall be maintained to provide patients access to health care services.

(3) If a patient's scheduled appointment for Urgent Care, as defined in subsection (g)(2)(A), is cancelled or rescheduled by dental staff or if a patient unintentionally fails a dental appointment for Urgent Care as defined in subsection (g)(2)(A), the dentist shall see the patient within one calendar day. For all other dental care needs, the dentist shall see the patient within 35 calendar days of the cancelled appointment or unintentional failure, or consistent with the timeframe associated with the original DPC assigned at the date of diagnosis, whichever is shorter.

(4) If a patient's appointment for a face-to-face triage or limited problem focused exam encounter is cancelled or rescheduled by the dental clinic, or if a patient unintentionally fails a face-to-face triage or limited problem focused exam encounter, then the patient shall be seen by a dentist for a face-to-face triage or limited problem focused exam within three business days.

(c) Continuity of Care. Patients shall be provided ongoing dental care in accordance with their DPC as described in subsection (g). Dentists shall review internal consultation reports, medical and oral pathology lab reports, and reports from outside the facility that are the outcome of a Department or contracted dentist ordering the analysis within seven business days of receipt of the report(s) from the dental clinic and inform patients of the result(s) within three business days of reviewing the report(s).

(d) The Department shall operate in accordance with the California Dental Practice Act, division 2, chapter 4 of the Business and Professions Code (commencing with section 1600), and ensure that all patient protection provisions of the Act are in force.

(e) Dental Program Organizational Structure. The dental program shall maintain a regional administrative structure organized into four regions which shall include a Regional Dental Director and program compliance staff consisting of clinical and non-clinical reviewers. Each Region shall monitor quality of care and dental program policy compliance at the institutions.

(f) Examination and treatment rooms for dental care shall be large enough to accommodate the equipment and fixtures needed to deliver adequate dental services.

(g) Dental Priority Classification. Patients shall be assigned a DPC at the Reception Center Screening, at the time of their comprehensive dental examination at a Mainline Facility, and after each face-to-face triage, limited problem focused exam, or treatment encounter. This DPC shall be reviewed and appropriately modified after each dental encounter. Patients shall be provided equal access