ADVANCE NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

This notice is sent in accordance with Government Code Section 11346.1(a)(2), which requires that State of California agencies give a five working day advance notice of intent to file emergency regulations with the Office of Administrative Law (OAL). The California Department of Corrections and Rehabilitation (CDCR) intends to file a request for adoption of the Emergency Rulemaking package with OAL to continue utilizing a modified regulatory process for addressing allegations of misconduct against health care staff. The Department proposes to implement regulations in furtherance of Penal Code section 5058.4 by establishing specific requirements for: (1) examining allegations of health care staff misconduct toward an incarcerated or supervised person; (2) appropriately referring allegations of misconduct against health care staff that could result in adverse personnel action or corrective action, that do not involve an incarcerated person, or allegations of substandard clinical performance. As required by subdivisions (a)(2) and (b)(2) of Government Code Section 11346.1, this notice includes the following: (1) the specific language of the proposed regulation to adopt Sections 3999.231 and 3999.239 of the California Code of Regulations, Title 15, Division 3, Chapter 2; and (2) the Finding of Emergency, including specific facts demonstrating the need for immediate action, the authority and reference citations, the informative digest and policy statement overview, attached reports, and required determinations.

The Department plans to file the request for adoption of the Emergency Rulemaking package with OAL at least five working days from the date of this notice. If you would like to make comments on the Finding of Emergency or the proposed regulation, they must be received by both the Department and OAL within five calendar days of the Department's filing at OAL.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Comments should be sent simultaneously to:

California Correctional Health Care Services (CCHCS)
Health Care Regulations and Policy Section
P.O. Box 588500, Elk Grove, CA, 95758

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Comments may also be submitted by email to:
CDCRHealthCareRegulationsandPolicySection@cdcr.ca.gov or staff@oal.ca.gov

September 8, 2025

Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulation with the Secretary of State, and the emergency regulation will become effective on the day of filing. This regulation will remain in effect until December 21, 2025. Please note that this advance notice and comment period is not intended to replace the public's ability to comment during the subsequent certification period of the permanent rulemaking process. The Department will hold a public hearing and 45-day comment period after it has published notice to make this regulation permanent.

You may also review the proposed regulatory language and Finding of Emergency on the Department's website at: https://cchcs.ca.gov.

If you have any questions concerning this advance notice, please contact R. Hart at (916) 691-2922. In the event the contact person is unavailable, inquiries should be directed to A. Burrell, at (916) 691-2922.

Finding of Emergency

(As required by Government Code (GC) section 11346.1 (b)(2))

Informative Digest (per GC 11346.5 (a)(3))

GC section 12838.5 provides that commencing July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of CDCR.

PC section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action provides the following:

- Defines commonly used terms related to proposed new Article 5.1 Allegations of Misconduct Against Health Care Staff.
- Outlines the right of any person to report an allegation of misconduct against health care staff and contract or registry health care personnel.
- Instructs the public on how to prepare and submit or report allegations of misconduct against health care staff.
- Instructs CDCR staff on how to process allegations of misconduct against health care staff and contract or registry health care personnel.

Problem Statement

Penal Code section 5058.4(d) requires the Secretary to provide instructions on how to report misconduct, of the duty to fully cooperate during investigations, and to provide assurances against retaliation.

There is a need for significant improvement in the Department's handling of misconduct allegations against health care staff involving incarcerated and supervised persons, which includes improvement of departmental transparency, integrity, and staff accountability. Additionally, CDCR must comply with expanded Armstrong Court Orders (Armstrong et al. v. Newsom et al., United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020) that call for reforms to the Department's staff complaint,

investigation, and discipline processes to ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct for class members under the Armstrong Remedial Plan and the Americans with Disabilities Act (ADA).

Objective

The emergency regulations are necessary to continue utilizing a modified regulatory process for addressing allegations of misconduct against health care staff.

The Department proposes to implement regulations in furtherance of Penal Code section 5058.4 by establishing specific requirements for: (1) examining allegations of health care staff misconduct toward an incarcerated or supervised person; (2) appropriately referring allegations of misconduct against health care staff that could result in adverse personnel action or corrective action, that do not involve an incarcerated person, or allegations of substandard clinical performance.

Statement of Need for Immediate Action

There is a need to implement a different regulatory process than the process proposed in OAL file 023-0323-03S; this new process was developed and agreed upon with plaintiffs through ongoing negotiations with an immediate need for implementation and monitoring of progress in the Department's handling of health care staff misconduct allegations involving incarcerated and supervised persons, which includes improvement of departmental transparency, integrity, and staff accountability. Additionally, CDCR needs to continue the provisions of these emergency regulations to be in compliance with expanded Armstrong Court Orders (*Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020) that call for reforms to the Department's staff complaint, investigation, and discipline processes to ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct for class members under the Armstrong Remedial Plan and the Americans with Disabilities Act (ADA).

The immediate need for written exchanges:

Pursuant to CCR, Title 15, Section 3999.226, the health care grievance process provides an administrative remedy to patients under health care's jurisdiction for review of complaints of applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health or welfare. An incarcerated person shall submit their written complaints, via the CDCR 602 HC, Health Care Grievance. If a member of the public such as an advocate, family, or friend has complaints relating to an incarcerated person's health care, including the conduct of health care staff towards the patient, they are to submit a written correspondence submitted via postal mail or email. These written items serve as the source document between different reviewing entities to determine if any elements are to be addressed as an allegation of staff misconduct or proceed with being evaluated under the health care grievance process. The reviewing entities include, the Health Care Grievance Office, Health Care Correspondence and Appeals (when applicable), the Centralized Screening Team (CST), the Health Care Allegations of Staff Misconduct (ASM), Hiring Authority (when applicable), and Allegation Investigation Unit (when applicable). It is critical that the information is transmitted and displayed (as the reporting party as intended) to maintain the integrity of the format of the

source document, and ensure all reviewing entities are applying consistent approaches to the source document.

The immediate need for specified timeframes:

The timeframes included in the emergency regulation are intended to uphold accountability of those involved in the health care ASM process and provide due diligence to the reported allegations. Some of these timeframes are already made in agreement with the reviewing entities in an informal capacity. In the current staff complaint regulations, there are no timeframes outlined, which resulted in cases being completed in a manner that could appear untimely. The goal is to ensure allegations, if present, are timely addressed and routed to either the investigatory process with the Allegation Investigation Unit, or examination process with ASM.

- Three (3) days in subsection (d): An agreed timeframe between the Health Care Correspondence and Appeals Branch (HCCAB) (oversight authority of the health care grievance process), CST, and Health Care ASM.
- Two (2) days in subsection (e): Ensure timely evaluation by the ASM Screening Team, as to not delay the health care grievance process.
- Five (5) days in subsection (e)(3): Due to the hybrid environment, account for state holidays, and mindfulness of the 2 day screening timeframe in the previous subsection, this ensures the timely issuance of the acknowledgment to the reporting party.
- 14 day determination in subsection (g)(1)(B)(1): Ensures timely determination by the hiring authority if they agree with ASM's conclusion in the Confidential Allegation Report (CAR). The hiring authority is not required at this time to determine the type of corrective action needed. Only, if corrective action is/is not warranted based on the facts outlined in the CAR.
- 90 day case closed (g)(1)(C): Target date to ensure the timely completion of a case processed with ASM.

The immediate need for examination and report confidentiality:

The end product of an examination is a CAR, which includes all evidence collected, interview statements, and outcome. The outcome of a CAR does not always necessitate a conclusion for corrective action; however, as this process could result in personnel action, such must remain confidential to protect the integrity of the disciplinary process and protect the Department from risks associated with violating staff rights. In order to protect the involved patient from potential retaliation from submission and staff reputation from receiving allegations, it is critical for the examination process and the CAR to be confidential unless otherwise determined by the courts. The confidentiality aspect is intended to meet the plaintiff's requirement for an unbiased evaluation of an ASM. Centering the examination process at CCHCS headquarters, far removed from the institutions, provides safeguard in conflict/bias from the Health Care Allegation Examiner staff completing the examination.

Anticipated Benefits of the Proposed Regulation

The Department anticipates the emergency regulations will benefit the Department and incarcerated persons by improving the department's handling of health care staff misconduct allegations involving incarcerated persons, which includes improvement of departmental transparency, integrity, and staff accountability.

Forms Incorporated by Reference (per 1 CCR 20(c)(3))

Not applicable

Authority and Reference Citations (per GC 11346.5 (a)(2))

The Secretary of the CDCR, pursuant to the authority granted by GC section 12838.5 and PC section 5055, and the rulemaking authority granted by PC section 5058, proposes to adopt section 3999.239 into the California Code of Regulations (CCR), Title 15, Division 3, concerning Allegations of Misconduct Against Health Care Staff.

References cited pursuant to this regulatory action are as follows: Section 5054, Penal Code; Armstrong et al. v. Newsom et al., United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; Madrid v. Woodford, Special Masters Final

Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; Madrid v. Woodford, Order; and Case No. C90-3094-T.E.H. Class Action.

Evaluation of Consistency / Compatibility with Existing Regulations

The Department has researched existing regulations and has determined that these emergency regulations are consistent and compatible with existing State laws and regulations.

Specific Agency Statutory Requirements

Penal Code section 5058.4(d) requires the Secretary to provide instructions on how to report misconduct, of the duty to fully cooperate during investigations, and to provide assurances against retaliation.

Local Mandate Determination

The emergency regulations imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to GC sections 17500 – 17630.

Fiscal Impact Statements (per GC 1346.5(a)(6))

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any State agency: *None*
- Cost or savings in federal funding to the state: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*

Technical, Theoretical or Empirical Studies, Reports, or Documents Relied Upon

- *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW
- *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H
- *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action
- California Code of Regulations, Title 15, Section 3486. Allegations of Staff Misconduct Toward an Incarcerated or Supervised Person
- California Code of Regulations, Title 15, Section 3999.231. Health Care Staff Complaints

TEXT OF EMERGENCY REGULATIONS

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

Chapter 2. Rules and Regulations of Health Care Services

Subchapter 2. Patient's Entitlements and Responsibilities

Article 5. Health Care Grievances

3999.231 Health Care Staff complaints

(a) Health care grievances determined to be health care staff complaints after receiving a clinical triage shall be processed pursuant to Subchapter 2, Article 5.1 and not as a citizen's complaint.

(b) The HCGO shall present health care grievances alleging health care staff misconduct to the reviewing authority within five business days of receipt. The reviewing authority shall review the complaint and determine if:

(1) The allegation will be addressed as a health care grievance or as a health care staff complaint.

(2) The allegation will be processed as a health care staff complaint but does not warrant referral for an allegation inquiry or investigation, or the request for an investigation has been declined, in which case a confidential inquiry report shall be completed pursuant to section 3999.231(f).

(3) The allegation will be processed as a health care staff complaint and warrants referral to the applicable authority for an allegation inquiry or investigation.

(c) A health care staff complaint alleging excessive or inappropriate use of force shall be addressed pursuant to the procedures described in sections 3268 through 3268.2.

(d) A health care staff complaint alleging staff sexual misconduct shall be processed pursuant to the procedures described in section 3084.9.

(e) If the health care staff complaint alleges health care or other issues unrelated to the allegation of health care staff misconduct, the HCGO shall notify the grievant that those unrelated issues shall be grieved separately and within 30 calendar days plus five calendar days for mailing from the date noted on the written notification.

(f) Confidential Inquiry Report. Health care staff with supervisory authority over the subject of the health care staff complaint shall:

(1) Conduct an inquiry to determine if health care staff behavior or activity violated a law, regulation, policy, or procedure, or was contrary to an ethical or professional standard, even if the grievant has paroled, discharged, or is deceased.

(2) Interview the following to reach a determination concerning the allegation(s):

(A) The patient.

(B) All necessary witnesses.

(C) The subject of the health care staff complaint, unless no longer employed by CDCR or on a leave of absence.

1. The subject of the health care staff complaint will be given notice of the interview at least 24 hours prior to the interview. If the subject chooses to waive the 24-hour requirement, he or she must indicate this at the time they are given notice. If waived, the subject may be interviewed immediately.

(3) Prepare a confidential inquiry report and include evidence to support a determination of the findings concerning the allegation(s).

(4) The HCGO shall maintain the original and any redacted versions of the confidential inquiry report.

(A) The confidential inquiry report shall not be released to incarcerated persons under any circumstances.

(B) The subject of the health care staff complaint is entitled to know whether or not he or she violated policy and may view the confidential inquiry report in the HCGO under the following conditions:

1. With approval from the institutional litigation coordinator.

2. With redaction of other staffs' information including, but not limited to, identity, interview content, potential discipline, or inquiry findings.

(C) Requests for release of a confidential inquiry report relating to litigation shall be forwarded to the headquarters' health care Litigation Coordinator for review and approval to release.

(g) The institutional level response to a health care staff complaint shall inform the patient of either:

(1) The decision to conduct a confidential inquiry and the outcome.

(2) The decision to refer the matter to the applicable investigating authority.

(h) Time limits for processing health care staff complaints shall be completed and returned to the patient pursuant to sections 3999.228(i) or 3999.230(f).

(i) Institutional level health care staff complaint responses shall be approved and signed pursuant to section 3999.225(x).

(j) The headquarters' level is for administrative review of the institutional level response of a health care staff complaint for which the patient is dissatisfied with the institutional level disposition or if the patient alleges headquarters' health care staff misconduct.

(k) Headquarters' level health care staff complaint responses shall be approved and signed pursuant to section 3999.225(x).

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court,

Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Article 5.1 Allegations of Misconduct Against Health Care Staff

3999.239 Allegations of Misconduct Against Health Care Staff

(a) Definitions. For the purpose of Subchapter 2, Article 5.1, the following definitions apply:

(1) Adverse Action means a punitive action taken by a hiring authority to discipline an employee as set forth in section 3392.3.

(2) Allegations of Staff Misconduct (ASM) Screening Team means the departmental staff that identify allegations of staff misconduct (ASM) related to health care, excluding ASM referred to the Office of Internal Affairs (OIA) by the Centralized Screening Team (CST).

(3) Centralized Screening Team (CST) means the team responsible for screening all grievances, reasonable accommodation requests, and allegations of staff misconduct, and then routing the claim.

(4) Corrective Action means a non-punitive action taken by a supervisor to assist an employee to improve work performance, or correct behavior or conduct as set forth in section 3392.2.

(5) Health Care Allegation Examiner means departmental staff trained in techniques to conduct inquiries and research into allegations of staff misconduct.

(6) Health Care Correspondence and Appeals Branch (HCCAB) means the office responsible for statewide oversight of the grievance program and the headquarters' level health care grievance appeal review.

(7) Health Care Grievance Office (HCGO) means the office responsible for coordinating the institutional level health care grievance review.

(8) Hiring Authority (HA) means the appointing power may act, or delegate the power to act, as the hiring authority. The hiring authority has the power to hire, initiate the investigation process by submitting a confidential request for internal affairs investigation or approval for direct adverse action, discipline, and dismiss staff. The power to act as a hiring authority may be delegated to the following classifications: Undersecretary; Assistant Secretary; General Counsel; Chief Deputy General Counsel; Executive Officer; Chief Information Officer; Director; Deputy Director; Associate Director; Assistant Deputy Director; Chief, Office of Correctional Safety; Chief, Office of Labor Relations; Warden; Superintendent; Health Care Chief Executive Officer; Regional Health Care Administrator; Regional Parole Administrator; Parole Administrator; Superintendent of Education; Assistant Superintendent of Education; Administrator at the Richard A. McGee Correctional Training Center for Correctional Officer Cadets; or any other person authorized by the appointing power.

(9) Office of Internal Affairs (OIA) means the entity with authority to investigate allegations of employee misconduct.

(10) Staff misconduct means health care staff behavior or activity that violates a law, regulation, policy, or procedure, or is contrary to an ethical or professional standard.

(b) Right to Report.

(1) Any person may report an ASM against health care staff when they believe the behavior resulted in a violation of law, regulation, policy, or procedure, or actions contrary to an ethical or professional standard. Such persons shall be referred to as the Reporting Party (RP).

(2) Departmental staff shall not retaliate against any RP for submitting an ASM.

(3) The Department shall ensure all ASM are documented, examined, and addressed with discipline imposed including referrals for criminal prosecution, when warranted, as provided in this Article, and Chapter 1, Subchapter 5, Article 2.

(c) Submission.

(1) An ASM against health care staff may be submitted by any incarcerated person using a CDCR 602 HC, Health Care Grievance, as incorporated by reference in section 3999.99, pursuant to section 3999.226.

(2) An ASM against health care staff may be submitted by a supervised person, member of the public, or departmental staff using written correspondence.

(A) The RP shall document clearly all information known and available to them regarding the ASM including identification of any involved health care staff including last name, first initial, title or position, a description of their involvement and date(s).

(B) If the RP does not have information to identify health care staff, the RP shall provide all other available information that may assist in processing the ASM, including but not limited to, physical description, location, and time of alleged incident.

(3) Verbal ASM.

(A) Departmental staff shall provide the RP with information on how to submit ASM in writing as follows:

1. Members of the public or supervised persons shall submit via:

a. Email to: m_CCHCSPHCI@cdcr.ca.gov; or

b. Mail to: Health Care Correspondence and Appeals Branch, Policy and Risk Management Services, P.O. Box 588500, Elk Grove, CA 95758.

(d) Receipt and Routing.

(1) After clinical triage, ASM received on CDCR 602 HC shall be forwarded by the institution Health Care Grievance Office to the Centralized Screening Team (CST) within three business days of receipt.

(2) ASM received from the public shall be forwarded by the Health Care Correspondence and Appeals Branch to the CST within three business days of receipt.

(e) Screening.

(1) Following CST review pursuant to Chapter 1, Subchapter 5.1, Article 1.5, the ASM Screening Team shall review the ASM within two business days.

(A) If alleged misconduct is identified and if true could result in:

1. Adverse action, the ASM Screening Team shall refer back to the CST for elevation to OIA for processing pursuant to Chapter 1, Subchapter 5.1, Article 1.5.

2. Corrective action, the ASM Screening Team shall refer to a Health Care Allegation Examiner (HCAE) to process pursuant to section 3999.239(f).

(B) If alleged misconduct is identified and does not involve an incarcerated person or supervised person (i.e., staff on staff, staff toward citizen), refer to the HA.

(2) The ASM Screening Team shall refer allegations of substandard clinical performance to the applicable clinical program area.

(3) The ASM Screening Team shall send a written acknowledgement to the RP within five business days of screening.

(f) Review.

(1) ASM shall be assigned to a HCAE who is responsible for:

(A) Conducting a confidential ASM examination and completing a confidential allegation report (CAR). If the HCAE discovers evidence of misconduct that if true could result in adverse action, the HCAE shall suspend the ASM examination, document the evidence in a CAR, and refer back to the CST for consideration to elevate to OIA for processing pursuant to Chapter 1, Subchapter 5.1, Article 1.5.

(g) CAR Approval.

(1) The ASM Management Team, at the level of Staff Services Manager II or above, shall:

(A) Ensure the CAR is sufficient, complete, and unbiased.

(B) Recommend a finding for each allegation and refer to the HA for determination.

1. The hiring authority shall make a determination of findings pursuant to Section 3392.1 and notify the ASM Management Team within 14 business days.

(C) Ensure cases are reviewed and closed within 90 business days from the date ASM was identified by the ASM Screening Team.

(h) Multiple submissions of duplicate allegations. When there are multiple submissions of the same ASM from different incarcerated persons, or supervised persons the ASM shall be combined and conducted as a single examination.

(i) A CAR shall be completed on ASM received against contract or registry health care personnel, as outlined in this Article.

(1) Upon completion of the CAR, ASM Management shall review and refer to health care Direct Care Contracts Section to consider further action related to the contract.

(j) Confidentiality.

(1) The CAR is a confidential document and shall only be seen by those involved in the ASM process as outlined in this Article.

(2) The CAR shall not be released without subpoena or court order, or without approval from the Department's Office of Legal Affairs.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5058.4, Penal Code; *Armstrong et al. v. Newsom* et al., United States District Court for the Northern District of California, Court Case number 94-cv-02307-CW; *Madrid v. Woodford*, Special Masters Final Report Re: Department of Corrections Post Powers Investigations and Employee Discipline; Case No. C90-3094-T.E.H; *Madrid v. Woodford*, Order; and Case No. C90-3094-T.E.H. Class Action.