

**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: 3999.98, 3999.131,
3999.133, 3999.147,
3999.325, 3999.327

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

OAL Matter Number: 2023-0410-02

OAL Matter Type: Regular Resubmittal (SR)

In this resubmitted rulemaking action, the California Department of Corrections and Rehabilitation (CDCR) updates the requirements for training and onboarding nurses, registered nurses, medical assistants. The rulemaking also updates the pronouncement of death process for registered nurses.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2023.

Date: May 22, 2023



Sam Micon
Attorney

For: Kenneth J. Pogue
Director

Original: Jeffrey Macomber, Secretary

Copy: Robin Hart

NOTICE PUBLICATION/REGULATIONS SUBMITTAL

(See instructions on
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2022-0405-03	REGULATORY ACTION NUMBER 2023-0410-02	EMERGENCY NUMBER SR
---------------------	--------------------------------------	--	------------------------

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2023 APR 10 PM 5:10

ENDORSED - FILED

In the office of the Secretary of State
of the State of California

MAY 22 2023

2:03 PM

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Medical Personnel		TITLE(S) 15	FIRST SECTION AFFECTED 3999.98	2. REQUESTED PUBLICATION DATE April 15, 2022
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Robin Hart	TELEPHONE NUMBER 916-896-6780	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/ Withdrawn		NOTICE REGISTER NUMBER 2022, 15-Z	PUBLICATION DATE 4/15/2022

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Medical Personnel	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2022-0812-03
---	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND
	3999.98, 3999.131, 3999.133, 3999.147, 3999.325, 3999.327
TITLE(S) 15	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<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"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
February 21, 2023- March 8, 2023

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input 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 Robin Hart	TELEPHONE NUMBER 916-896-6780	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
---------------------------------	----------------------------------	-----------------------	---------------------------

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 Jeffrey Macomber	DATE 3/30/2023
--	-------------------

TYPED NAME AND TITLE OF SIGNATORY Jeff Macomber, Secretary, California Department of Corrections and Rehabilitation
--

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 22 2023

Office of Administrative Law

FINAL TEXT OF REGULATIONS

In the following, ~~strikethrough~~ indicates deleted text and underline indicates added text.

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

Chapter 2. Rules and Regulations of Health Care Services

Article 1. Health Care Definitions

Section 3999.98 is amended to incorporate in alphabetical order the following, and all other text within this section remains the same:

Section 3999.98. Definitions.

Administrative Supervision means staff in supervisory positions who are responsible for administrative tasks for assigned employees including, but not limited to, completing probationary and annual evaluations, assessing proficiency in job duties, authorizing time off, and timekeeping activities.

Clinical Supervision means staff in supervisory positions who are responsible for the supervision of clinical tasks. This includes the institution Physician Managers which are comprised of the Chief Physician and Surgeon, Chief Medical Executive, Chief Psychiatrist, and Supervising Psychiatrist, and Institution Nursing Managers which include Chief Nurse Executive, Supervising Registered Nurse, Unit Supervisor, and Nurse Consultant III.

Death means an individual has sustained either: 1) an irreversible cessation of circulatory and respiratory functions, or; 2) irreversible cessation of all functions of the entire brain, including the brain stem.

Determination of Death means the process of establishing death has occurred through assessment of objective data in accordance with standards of care, including obtaining an independent confirmation by another physician when death occurs due to the cessation of brain function.

Medical Assistant means the same thing as in Business & Professions Code section 2069(b)(1).

Nurse Practitioner means the same thing as in 16 California Code of Regulations section 1480(o).

Physician Assistant means the same thing as in Business & Professions Code section 3501(d).

Pronouncement of Death means the formal process of recording the death in the health record and communicating the death to the patient's next of kin.

Specific Authorization means the same thing as in Business & Professions Code section 2069(b)(2).

Technical Supportive Services means the same thing as in Business & Professions Code section 2069(b)(4)(A).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Subchapter 1. Health Care Governance and Administration

Article 4. Professional Workforce

Section 3999.131 is amended to read:

3999.131. Nursing Onboarding.

Subsections (a) through (c)(6) remain unchanged.

(d) The CDCR shall recruit, orient, train, evaluate, and integrate MA staff into the health care delivery system.

(1) The Clinical Supervisor is responsible for training and administrative supervision of MAs, providing the initial orientation, testing of proficiencies to perform technical support services prior to performing those tasks, and ongoing mentoring of MAs assigned to their institution.

(2) MA staff onboarding orientation, at a minimum, shall include pertinent information regarding the work environment, institution and headquarters resources, as well as job expectations.

(3) MA staff proficiency testing, at a minimum, shall include:

(A) Proficiency in expected tasks and procedures. This testing shall be administered by the Clinical Supervisor. A designated physician from the institution's clinical supervision shall verify the MA's proficiency in expected tasks and procedures prior to the MA functioning in the clinic.

(B) Completion of position specific onboarding and proficiency testing at their assigned institution within 30 calendar days of the date of hire, in addition to the NEO.

(C) One week of nursing onboarding training that is institution specific.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.133 is amended to read:

3999.133. Advanced Practice Providers.

(a) The Department shall recruit, train, evaluate, ~~develop~~, and integrate Advanced Practice Provider (APP) staff into the Department's Medical Services Program. ~~health care delivery system.~~

(b) APP staff may diagnose, treat, perform minor procedures, and provide primary care services to patients designated as low to moderate risk and those patients with common primary care conditions. APP staff may also provide primary care services to patients designated as high risk, but they must document comanagement of these patients with a physician.

(c) In ~~extreme unforeseen~~ circumstances ~~and~~ when medically necessary for the preservation of life and limb, APP staff shall ~~may~~ provide emergency health care services in accordance with their training and experience.

(d) The hiring authority shall obtain verification of credentials from the headquarters Credentialing and Privileging Support Unit (CPSU) prior to making a formal job offer to an APP applicant.

(1) APP staff hired by the Department (civil service and contract employees) shall comply with the minimum professional requirements for credentialing and privileging approval.

(2) For Physician Assistant (PA) staff only, additional qualifications include proof of completion of an approved controlled substance education course. A certificate of completion shall be retained at the hiring institution for the duration of employment. An electronic copy of the certificate shall be submitted to the headquarters CPSU for retention in the credentialing file.

(A) PA staff who successfully complete a controlled substance education course are authorized to write medication orders for Schedule II through V controlled substances without prior approval from a physician.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Sections 2725(b), 2836.1, 2836.2, 2836.3 and 3500-3546, Business and Professions Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.147 is amended to read:

3999.147. Nursing Competency Program.

Subsections (a) through (c) remain unchanged.

(d) Medical Assistants (MA) who provide administrative and technical support services at California Department of Corrections and Rehabilitation institutions shall possess a valid certificate from an agency approved by the Medical Board of California to practice as an MA. Prior to performing technical support services, an MA shall receive training by the Clinical Supervisor to ensure the MA's competence in performing a technical support service at the standard of care.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Sections 2700 et seq., 2840 and 4500 et seq., Business and Professions Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Subchapter 3. Health Care Operations

Article 4. Nursing Care

Section 3999.325 is amended to read:

3999.325. Nursing Scope of Service.

Subsections (a) through (e)(5) remain unchanged.

(f) Medical Assistants (MA) are not ~~nurses; nursing in function~~ however, the performance of their functions contributes to nursing services. MAs are unlicensed personnel individuals who work in ambulatory care clinics, reception centers, specialty clinics, telehealth, and other clinical settings as determined by the Physician Manager, and perform administrative and ~~non-invasive routine~~ technical support services under the specific authorization (specific written order) and supervision of a licensed physician, psychiatrist, pPodiatrist, Advanced Practice Provider (APP), ~~nurse,~~ or Nurse Midwife in a medical office or clinic setting. ~~without the need of receiving a certification as~~

outlined under the Medical Practice Act in the BPC, sections 2069-2071. MAs shall not be utilized in inpatient settings, triage and treatment areas, or specialized health care housing units including Correctional Treatment Centers, Skilled Nursing Facilities, Outpatient Housing Units, and Psychiatric Inpatient Program units. The Registered Nurse shall only assign tasks to the Medical Assistant for which the Medical Assistant has received specific authorization from their Clinical Supervisor. These activities include, but are not limited to:

- ~~(1) Administering medication by intradermal, subcutaneous, or intramuscular injections.~~
- ~~(2) Performing skin tests, but not interpreting the results.~~
- ~~(3) Applying and removing bandages and dressings.~~
- ~~(4) Removing sutures.~~
- ~~(5) Performing ear lavage.~~
- ~~(6) Preparing patients for examinations.~~
- ~~(7) Shaving and disinfecting treatment sites.~~
- ~~(8) Other technical supportive services upon the specific authorization (specific written order) and supervision of a licensed Physician and Surgeon, Podiatrist, APP, or Nurse-Midwife.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

New section 3999.327 is adopted to read:

3999.327. Registered Nurse Pronouncement of Death.

(a) The California Department of Corrections and Rehabilitation (CDCR) shall permit Registered Nurses (RNs) to make the determination and pronouncement of patient death when all of the following conditions are met:

- (1) A Primary Care Provider (PCP), or an Advanced Practice Provider (APP) has determined and documented that the patient has a condition or illness whose natural course is expected to end in death and the patient's life expectancy is six months or less.
- (2) The patient signed a CDCR 7465, Physician's Orders for Life Sustaining Treatment, as provided in section 3999.99, indicating "Do Not Resuscitate." The CDCR 7465 must be signed and dated by a physician, or an APP acting under the supervision of the physician, and the patient or legally recognized health care decision maker.
- (3) The patient's PCP or an APP has documented in a progress note in the health record that death is expected and has completed an order in the Electronic Health Record System stating that an RN may pronounce death.
- (b) RNs shall receive death pronouncement training annually as part of their competency validation.
- (c) Assessment and determination of death. When a patient appears to have died, the RN on duty shall be physically present at the bedside to assess the patient for determination of death in accordance with standards of care.
- (d) Documentation of death. The RN shall document the assessment in the health record.
- (e) The physician on-call shall be notified if the PCP or an APP is not available in situations such as after business hours, weekends, and holidays.

(f) Notification of the next of kin shall occur pursuant to section 3999.417, Inmate Deaths.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.