CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES	**Department of Corrections and Rehabilitation** **NOTICE OF CHANGE TO HEALTH CARE REGULATIONS** **Section(s): 3999.98, 3999.99, and 3999.348**	**Number:** 25-01 **Publication Date:** January 3, 2025 **Effective Date:** To Be Announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to sections 3999.98, 3999.99, and 3999.348 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning electroconvulsive therapy.

IMPLEMENTATION: **To Be Announced**

PUBLIC COMMENT PERIOD
Any person may submit written comments about the proposed regulations to California Correctional Health Care Services, Health Care Regulations and Policy Section, P.O. Box 588500, Elk Grove, CA 95758, or by email to **HealthCareRegulations@cdcr.ca.gov.** All written comments must be received by the close of the public comment period, **February 18, 2025, at 5:00 p.m.**

PUBLIC HEARING INFORMATION
A virtual public hearing will be held on February 18, 2025. Go to https://cchcs.ca.gov/health-care-regs/ for the link to join the virtual hearing, or you may call (916) 701-9994 and enter phone conference ID 650 402 349# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on February 18, 2025.

POSTING
This Notice shall be posted immediately upon receipt at locations accessible to incarcerated persons, supervised persons, and employees in each Department facility and field office not later than five calendar days after receipt. Also, facilities shall make this Notice available for review by incarcerated persons in restricted housing who do not have access to the posted copies and shall distribute it to incarcerated person law libraries and advisory councils. CDCR 621-HC (Rev. 07/20), Certification of Posting, shall be returned to the Health Care Regulations and Policy Section electronically. See Health Care Department Operations Manual, Section 5.1.1 for posting procedures.

CONTACT PERSON
Inquiries regarding this action may be directed to R. Hart, Associate Director, Risk Management Branch, California Correctional Health Care Services (CCHCS) at California Correctional Health Care Services, P.O. Box 588500, Elk Grove, CA 95758; by telephone at (916) 691-2921; or by email at **HealthCareRegulations@cdcr.ca.gov.** In the event the contact person is unavailable, inquiries should be directed to A. Burrell, Staff Services Manager II, Health Care Regulations and Policy Section, CCHCS, at (916) 691-2922.

JEFFREY MACOMBER
Secretary
California Department of Corrections and Rehabilitation

J. CLARK KELSO
Receiver

Attachments

NOTICE OF PROPOSED REGULATORY ACTION

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

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC) section 12838.5 and Penal Code (PC) section 5055, and the rulemaking authority granted by PC section 5058, proposes to amend sections 3999.98, 3999.99, and 3999.348 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Electroconvulsive Therapy (ECT).

PUBLIC HEARING:

The CDCR will hold a virtual public hearing on February 18, 2025. To join the virtual hearing, follow this link: click here, or you may call (916) 701-9994 and enter phone conference ID 650 402 349# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on February 18, 2025.

PUBLIC COMMENT PERIOD:

The public comment period will close on **February 18, 2025.** Any person may submit public comments in writing (by mail or by email) regarding the proposed changes. To be considered, comments must be submitted to California Correctional Health Care Services (CCHCS), Health Care Regulations and Policy Section, P.O. Box 588500, Elk Grove, CA, 95758, or by email to HealthCareRegulations@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

R. Hart
Associate Director
Risk Management Branch
California Correctional Health Care Services
P.O. Box 588500
Elk Grove, CA 95758
(916) 691-2922

A. Burrell
Staff Services Manager II
Health Care Regulations and Policy Section
California Correctional Health Care Services
(916) 691-2921

AUTHORITY AND REFERENCE:

GC section 12838.5 provides that commencing July 1, 2005, 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.

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 the CDCR.

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

References cited pursuant to this regulatory action are as follows: PC 2670.5, 2671, 2672, 2673, and 5054; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The CDCR and CCHCS propose to amend sections 3999.98, 3999.99, and 3999.348 of the CCR, Title 15, Division 3, governing ECT. Current regulations do not take into account structural changes in the correctional landscape and largely restate what is already in the PC without providing guidance on how the ECT process should work operationally. In addition, existing regulations do not explain the required forms that are needed to request for ECT and the flow of paperwork, necessary to initiate a case or see it through fruition. The Department has concluded that the current regulations actually make the ECT process more cumbersome than what the PC requires by creating artificial roadblocks that delay care to patients.

This action will:

- Establish a standardized process for documenting patients need for initiation, or continuation, of ECT.
- Create accountability related to who at the institution is responsible for handling the various forms as well as service of the forms, and create time-bound rule to ensure the paperwork moves quickly through the approval chain.
- Provide clarity as to how this procedure would be used in the event of a medical emergency.
- Eliminate redundancy already defined in the statute.
- Provide clarity on selection of appropriate housing and determination of acuity for patients, to receive timely care.
- Establish a written consent process to align with the PC requirements.
- Ensure all CDCR patients in the Mental Health Service Division benefit from having a clear guideline as to how to start and renew this type of treatment.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations will benefit the health and welfare of CDCR patients, staff, and the general public and protect worker safety by ensuring an efficient and effective ECT process is available to CDCR staff to utilize in the treatment of patients. The regulations will establish a standard workflow, timelines, and forms which will prevent delays in processing ECT cases and ensure quick access to ECT. This regulation will not have an impact on the State's environment, as it is not impacted by the administration of the ECT process.

FORMS INCORPORATED BY REFERENCE:

- CDCR 7707, Patient Electroconvulsive Therapy Rights (xx/xx)
- CDCR 7708, Patient Informed Consent for Electroconvulsive Therapy (xx/xx)
- CDCR 7712, Clinical Recommendation for Electroconvulsive Therapy (xx/xx)
- CDCR 7713, Clinical Recommendation for Electroconvulsive Therapy Renewal (xx/xx)
- CDCR 7715, Routing Sheet for Electroconvulsive Therapy (xx/xx)

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS:

Pursuant to GC section 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. Pursuant to this evaluation, the Department has determined these proposed regulations are not inconsistent or incompatible with any existing regulations within CCR, Title 15, Division 3.

LOCAL MANDATES:

The proposed regulatory action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to GC section 17500 — 17630.

FISCAL IMPACT STATEMENT:

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

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs because the proposed action relates strictly to ECT which only affects staff and patients within CDCR.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has determined that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because the proposed action relates strictly to ECT which only affects staff and patients within CDCR.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The proposed changes will benefit the health and welfare of CDCR patients, staff, and the general public and protect worker safety by ensuring an efficient and effective ECT process is available to CDCR staff to utilize in the treatment of patients. The regulations will establish a standard workflow, timelines, and forms which will prevent delays in processing ECT cases and ensure quick access to ECT. This regulation will not have an impact on the State's environment, as it is not impacted by the administration of the ECT process.

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California because this regulatory action relates strictly to ECT which only affects staff and patients within CDCR.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations will benefit the health and welfare of CDCR patients, staff, and the general public and protect worker safety by ensuring an efficient and effective ECT process is available to CDCR staff to utilize in the treatment of patients. The regulations will establish a standard workflow, timelines, and forms which will prevent delays in processing ECT cases and ensure quick access to ECT.

The proposed regulations will not have an impact on the State's environment, as it is not impacted by these administrative and operational changes and clarifications.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed action relates strictly to ECT which only affects CDCR staff and patients.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations will have no significant adverse economic impact on small businesses because the proposed action relates strictly to ECT which only affects staff and patients within CDCR.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony, reasonable alternative, or other evidence provided that would alter the CDCR's initial determination to proceed with this action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulatory action. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the contact person listed in this Notice. The proposed text, ISOR, and Notice of Proposed Action will also be made available on CCHCS's website https://cchcs.ca.gov and CDCR institution law libraries.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the contact person listed in this Notice.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person listed in this Notice. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.

TEXT OF PROPOSED REGULATIONS

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

Decision Making Capacity means a clinical determination that refers to whether a patient demonstrates understanding of relevant information; appreciates the medical situation they are in and its possible consequences; reasons through risks, benefits, and alternatives of treatment options; and communicates without duress or coercion based on their own values. In order to determine capacity, the health care provider must be versed in the facts of the specific decision. By contrast, determination of competency requires a legal judgment.

Electroconvulsive Therapy means a type of organic therapy, as defined in Penal Code 2670.5(c), used to treat certain psychiatric disorders in patients who do not respond to or cannot tolerate the side effects of psychiatric medication.

Informed Consent means ~~a patient who has the capacity to make informed decisions is made aware of risks, benefits, and alternatives to proposed treatment for a disease or condition from which the patient suffers, and the patient is able to agree and clearly agrees to the recommended treatment without duress or coercion.~~ a process of communication between the patient and the doctor which leads to agreement to proceed with a particular treatment. For informed consent, a patient with decision making capacity must be provided the information about the treatment being discussed, including the risks and benefits, and alternatives to that treatment as well as the potential outcomes of no treatment; demonstrate understanding of the medical information provided; and voluntarily agree to get the treatment, without duress or coercion. Only adult patients with decision making capacity are able to provide informed consent.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2670.5 and 5054, Penal Code; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Article 2. Health Care Forms

Section 3999.99 is amended to incorporate in alpha-numerical order the following and all other text within this section remains the same:

Section 3999.99. Forms.

CDCR 7707 (xx/xx), Patient Electroconvulsive Therapy Rights
CDCR 7708 (xx/xx), Patient Informed Consent for Electroconvulsive Therapy
CDCR 7712 (xx/xx), Clinical Recommendation for Electroconvulsive Therapy
CDCR 7713 (xx/xx), Clinical Recommendation for Electroconvulsive Therapy Renewal
CDCR 7715 (xx/xx), Routing Sheet for Electroconvulsive Therapy

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Subchapter 3. Health Care Operations

Article 5. Mental Health Care

Section 3999.348. Electroconvulsive Therapy is amended to read:

Section 3999.348. Electroconvulsive Therapy.

~~(a) Shock therapy is the only form of organic therapy, as defined by law, which may be used in the treatment of persons committed to the custody of the Secretary. No patient who is competent and capable of giving informed consent will be administered any form of shock therapy without having given his or her consent. Prior authorization of a superior court is also required before shock therapy may be administered for any treatment purpose other than as an emergency lifesaving measure.~~

~~(1) Shock therapy as a lifesaving emergency medical measure may be administered to a patient who is competent and capable of giving informed consent and who has given consent, or a patient who is incompetent or incapable of giving informed consent, without prior court authorization. However, all pertinent clinical data relating to the nature of the emergency and the treatment given will be presented to the court for review within ten days of the first instance of emergency shock treatment.~~

~~(2) When a patient is competent and capable of giving informed consent and has done so, and the court has authorized such treatment, shock therapy may be administered in a nonemergency course of treatment. No form of shock therapy may exceed three months of continuous treatment nor more than three months in any 12-month period.~~

~~(b) Informed Consent. The term, "Informed Consent," means that a person must knowingly and intelligently, without duress or coercion, and clearly and explicitly consent to the proposed shock therapy. The patient's consent must be given in writing and in the presence of the attending physician. It must be preserved and be available to the patient, the patient's attorney, guardian, or conservator.~~

~~(c) Determining need. If the attending physician determines that shock therapy is required for the health and safety of the patient, permission may be requested of the warden or superintendent to administer the therapy.~~

~~(1) The warden or superintendent will appoint a committee of physicians, two of whom are board certified or eligible for board certification in psychiatry or neurosurgery, to review the patient's treatment record and the determination of the attending physician. At least one of the attending physicians must not be a full-time employee of the Department.~~

~~(2) Before shock treatment may be administered, this committee must unanimously agree with the attending physician's determination that it is required and, if it is to be performed under the provisions of subsection (b), that the patient has the ability to give informed consent and has in fact given informed consent.~~

~~(d) Withdrawal of consent. Any patient who has given informed consent may withdraw it at any time. The shock therapy must cease immediately.~~

~~(e) Court petition.~~

~~(1) A patient, or patient's attorney, guardian or conservator may file a petition with the superior court of the county in which the patient is confined for an order to prohibit the administration of shock therapy upon the patient. This petition must be served by the county clerk upon the warden or superintendent on the same day it is filed and constitutes a refusal of consent or withdrawal of any prior consent.~~

~~(2) The warden or superintendent has ten days to file a response to the petition. The superior court may grant a continuance of ten additional days. The response must be served upon the patient, and upon the patient's attorney, guardian or conservator on the same day it is filed with the clerk of the superior court.~~

~~(f) Correspondence regarding shock therapy. The patient is entitled to communicate in writing with his or her attorney, and by writing or visits with his or her parents, guardian or conservator regarding any proposed administration of shock therapy or organic therapy. Any mail regarding shock therapy will not be prevented from leaving the institution.~~

~~(g) Incapable of informed consent.~~

~~(1) If the patient is incapable of giving informed consent to a program of shock therapy, and the attending physician believes that such treatment is required for the health and safety of the patient, the attending physician may request the permission of the warden or superintendent. If the warden or superintendent agrees with the request and the committee, appointed pursuant to subsection (c)(1), also unanimously agrees that such therapy is required, the warden or superintendent will forward the request to the Chief, Medical Services, for review and recommendation to the Secretary. If the Secretary concurs in the course of treatment, the warden or superintendent will petition the superior court for permission to conduct the hearing. No treatment will be conducted until after a hearing at which the patient is represented by counsel and after a court order authorizing the treatment is issued.~~

~~(2) In an extraordinary case, the attending physician may determine that shock treatment is required for a longer period of time than three months, or more frequently than three months in the period of one year. The same procedures as in subsection (g)(1) will be followed before any further shock therapy will be administered.~~

~~(h) Patient rights. If the attending physician determines that a patient should be administered shock therapy, the patient will be informed of his or her rights under this article. A copy of Penal Code sections 2670 through 2680 will be made and will be given to the patient at that time.~~

(a) Overview.

(1) The California Department of Corrections and Rehabilitation (CDCR) may provide Electroconvulsive Therapy (ECT) to patients when medically necessary.

(2) ECT may be considered for patients with delusional depression, mania, catatonia, psychosis, severe unipolar depression, bipolar disorder, schizophrenia, schizoaffective disorder, catatonia, and neuroleptic malignant syndrome, or any other serious mental illness or mental disturbance for which ECT is clinically indicated.

(3) ECT may be used in conjunction with other treatment modalities, such as psychiatric medication, to achieve the best result for the patient.

(4) Prior authorization of a superior court is required before ECT is administered for any treatment purpose other than as an emergency lifesaving measure under subsection (c).

(5) ECT may be provided to patients who are able to consent to treatment, as set forth in subsection (d), and those who lack the capacity to make informed decisions, as set forth in subsection (e).

(b) Intake and referral.

(1) For patients who have been identified as ECT candidates and determined to require ECT treatment, the attending psychiatrist, or designee, shall:

(A) Complete the CDCR 7715, Routing Sheet for Electroconvulsive Therapy, and CDCR 7712, Clinical Recommendation for Electroconvulsive Therapy, as provided in section 3999.99.

(B) Submit the CDCR 7715 and CDCR 7712 to the Medication Court Administrator (MCA).

(C) Inform the institution Chief Psychiatrist, or designee, of the patient's need for ECT on the same day the forms are completed.

(2) The MCA, under the direction of the institution Chief Psychiatrist, or designee, shall inform the Warden, institution Chief Medical Executive (CME), Regional Chief Psychiatrist, and the Statewide Chief of Psychiatry, or designee, and submit the CDCR 7715 and CDCR 7712 to the Office of Legal Affairs, CDCR (OLA).

(c) Emergency ECT.

(1) When lifesaving intervention is medically necessary, ECT may be performed on an emergency basis. In such emergencies, the attending psychiatrist shall initiate and complete a clinical review, including documentation as to what factors are precipitating an emergency within the meaning of Penal Code section 2671, as set forth in subsection (c).

(2) ECT shall not be administered in the event of a medical emergency unless the following requirements have been met:

(A) There is agreement among the attending psychiatrist, institution Chief Psychiatrist, or designee, and the Statewide Chief of Psychiatry, or designee.

(B) A case conference facilitated by the MCA shall be held with OLA within one business day of the attending psychiatrist making the decision to administer emergency ECT.

(3) Pertinent clinical data relating to the nature of the emergency and the treatment given shall be presented to a superior court for review within seven business days of the first instance of emergency ECT.

(d) ECT with patient's informed consent.

(1) The attending psychiatrist, or designee, shall:

(A) Make a clinical determination that the patient has capacity for informed consent, as defined in section 3999.98.

(B) Obtain informed consent on form CDCR 7708, Patient Electroconvulsive Therapy Informed Consent, as provided in section 3999.99.

(2) The MCA shall notify the patient of their rights to due process, by providing the patient with a copy of the CDCR 7707, Patient Electroconvulsive Therapy Rights, as provided in section 3999.99, and reviewing each item with the patient.

(3) Prior authorization of a superior court is required before ECT, even if the patient provides informed consent.

(4) A patient who has given informed consent for ECT may withdraw consent at any time and by any means.

(A) ECT shall cease immediately unless a gradual reduction of therapy sessions is medically necessary.

(B) A patient who withdraws consent shall be re-evaluated for capacity if the attending psychiatrist determines ECT is still medically necessary.

(C) The patient's capacity for informed consent shall be in writing, documented on form CDCR 7708, and in the subsequent petition filed in superior court.

(e) ECT for a patient who lacks capacity.

(1) A patient who lacks the capacity to provide informed consent, consistent with Penal Code section 2672, regarding ECT may receive treatment by following the steps set forth in these regulations.

(2) The patient's lack of capacity for informed consent shall be documented on the CDCR 7712 and in the subsequent petition filed in superior court.

(3) To the extent any information can be discovered about the patient's known wishes on the ECT procedure, the petition shall disclose to the court any historical information to suggest the patient would, or would not, consent to ECT if competent.

(4) In situations where there is a legally designated agent or surrogate decisionmaker, the matter shall nonetheless be presented to a superior court. The wishes of any designated agent, or surrogate, shall be made known to the court as part of any petition.

(5) Prior authorization of a superior court is required before ECT except in emergency circumstances as outlined in section 3999.348(c).

(f) Patient due process.

(1) The institution's MCA shall serve the CDCR 7707 to the patient, their attorney, and any existing guardian, conservator, or surrogate decisionmaker.

(2) In any proceeding involving a condemned patient, a digital version of any petition initiating or renewing the ECT order shall be sent by the institution's MCA as a courtesy to the California Appellate Project via email to keyhea@capsf.org, who will act as a distribution point to notify involved capital attorneys.

(3) In all types of ECT cases, the MCA shall notify the patient of their rights during the initial consultation by providing the patient with a copy of the CDCR 7707.

(4) If the patient's presence is required at the hearing, OLA shall notify the Warden, or designee, and the institution Out-To-Court desk.

(5) Pending a court hearing, the patient shall be entitled to communicate by writing, telephone, or personal visits with their parents, spouse, guardian, or conservator regarding any proposed administration of ECT.

(6) The patient shall be entitled to communicate with their attorney by writing or during a scheduled legal visit.

(g) Medication Court Administrator role in ECT treatment.

(1) The MCA is responsible for:

(A) Facilitating communications between the institution, OLA, and Department of Justice (DOJ).

(B) Preparing documentation requested by DOJ.

(C) Acting as a liaison between the institution and DOJ.

(D) Keeping the institution team apprised on the status of legal filings, court order, and treatment.

(h) Patient transfer and housing for ECT treatment.

(1) A patient shall be transferred pursuant to section 3999.306 to an appropriate institution close to where ECT treatment will be provided.

(2) The superior court petition shall be filed in the county in which the patient is housed at the time the petition is filed.

(3) Changes in level of care shall only be made in agreement with the attending psychiatrist involved in the patient's clinical recommendation for ECT. If it is determined that the patient is suitable for transfer, the patient shall be transferred in accordance with section 3999.306 and housed at the closest facility that can meet their needs.

(4) The MCA, under the direction of the Chief Psychiatrist, is responsible for facilitating coordination of transport of the patient for treatment appointments.

(5) Once a patient has begun treatment, the patient shall be housed in an appropriate level of care, determined with the agreement of the attending psychiatrist, at the institution to allow observation and monitoring for the duration of treatment.

(i) Renewal process.

(1) The MCA shall inform the attending psychiatrist of court orders for ECT expiring in the next 90 calendar days.

(2) The attending psychiatrist, in collaboration with the psychiatrist providing the treatment, shall review the patient's progress and, if clinically indicated, initiate renewal ECT proceedings before the expiration of the current court order and coordinate with OLA through the MCA.

(A) If the attending psychiatrist determines renewal is in the patient's best interest, a CDCR 7713, Clinical Recommendation for Electroconvulsive Therapy Renewal, as provided in section 3999.99, shall be prepared and forwarded to the MCA.

(B) Within two business days of receipt of a CDCR 7713 and CDCR 7715, the institution's MCA shall forward the completed forms to OLA.

(C) The MCA shall serve the court order to the patient, their attorney, and any existing guardian, conservator, or surrogate decisionmaker for the patient.

(D) If the patient's capacity to consent has changed, the appropriate documentation shall be completed and provided to the court.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 2670.5, 2671, 2672, 2673, and 5054, Penal Code.

Your Rights Regarding Electroconvulsive Therapy

Electroconvulsive therapy (ECT) is a type of organic therapy that can be used to treat certain psychiatric disorders in patients who do not respond to, or cannot tolerate the side-effects of psychiatric medication. Your rights are governed by Penal Code section 2670-2680. **You have the following statutory rights:**

☐	The right to be provided with a copy of Penal Code section 2670-2680.
☐	The right to be represented by court-appointed, or retained, counsel.
☐	The right to have the a psychiatrist directly discuss with you the nature and seriousness of your illness; the nature of the proposed ECT; the likelihood of improvement or deterioration, temporary or permanent, without administration of ECT; the likelihood and degree of improvement, remission, control, or cure that may result from ECT; the risks and hazards of ECT; the risks of not getting treatment; reasonable alternatives to ECT; the length, duration, and amount of treatments proposed; and whether or not the proposed treatment is considered medically-sound based upon your clinical condition.
☐	The right to be given notice and copies, along with your attorney, guardian, conservator, or surrogate decision-maker, of pleadings showing the time, date, and substance of any court proceeding involving you with regards to ECT.
☐	The right to file a petition in opposition within ten days of the filing date of the state's petition.
☐	The right to be examined by an independent medical expert not employed by the Department of Corrections and Rehabilitation, unless you have capacity to consent to the treatment and your attorney agrees.
☐	The right to have the matter reviewed and heard by a judge within ten days of the filing of the petition before any treatment can occur.
☐	The right to communicate in writing, or by personal visit, with your parents, spouse, guardian, or conservator.
☐	The right to communicate in writing, or by scheduled legal visit, with your attorney.
☐	The right to consent in writing using form CDCR 7708 Patient Informed Consent for Electroconvulsive Therapy, or to withdraw consent to ECT, if you are determined to have capacity to consent.
☐	The right to have a judge review whether to extend your treatment every six months.

Person Explaining These Rights to Patient:

Name and Title (print): _____ Signature: _____ Date: _____

Patient Name: _____ Signature: _____ Date: _____

1. Disability Code:
☐ Reading level score ≤ 4.0
☐ DPH ☐ DPV ☐ LD
☐ DPS ☐ DNH
☐ DNS ☐ DDP
☐ Not Applicable

2. Accommodations:
☐ Additional Time
☐ Equipment ☐ SLI
☐ Louder ☐ Slower
☐ Basic ☐ Transcribe
☐ Other*

3. Effective Communication:
☐ Patient asked questions
☐ Patient summed information

Please check one:
☐ Not Reached* ☐ Reached
*See chrono/notes

4. Comments:

CDCR #:
Last Name: MI:
First Name:
DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

PATIENT ELECTROCONVULSIVE THERAPY RIGHTS

CDCR 7707 (xx/xx) [Revision date to be determined upon filing with the Secretary of State]

Instructions

Purpose of CDCR 7707 (xx/xx) Patient Electroconvulsive Therapy Rights: This form provides an advisement of rights to a patient who is being recommended for electroconvulsive treatment (ECT) to be served by the Medication Court Administrator (MCA).

1. This form is used any time a patient is served with a CDCR 7712 (Clinical Recommendation for Electroconvulsive Therapy) that incorporates any request for ECT.
2. The MCA serving the documents provides the patient with a printed copy of Penal Code section 2670 to 2680, inclusive. This document can be obtained from the CDCR Office of Legal Affairs.
3. The MCA serving documents on the patient shall attempt to contact and communicate with the patient, and advise the patient of the rights shown on the CDCR 7707.
4. If the patient is unable to communicate or appears to have difficulty processing the information being given, or if the patient has a documented need for any type of accommodation, complete the sections regarding accommodation and effective communication.
5. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
6. The MCA completing service of documents on the patient shall legibly print their name, sign their name, and date the form.
7. Provide one copy to the patient and one copy to be returned to the Office of Legal Affairs.
8. Scan the CDCR 7707 into a single PDF to be filed. Proceedings relating to ECT shall not be sent to the Office of Administrative Hearings, as these will be routed by the Office of Legal Affairs to a superior court.
9. In ECT cases, the superior court will need to appoint an attorney for the patient.
10. Transmit a copy of the CDCR 7707, being served to the Office of Legal Affairs by uploading to their secure document repository, and then send and to the appropriate attorney as specified in the master rotation list.

Effective Communication: The Effective Communication section must be completed.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: Reading level score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

Patient Informed Consent for Electroconvulsive Therapy

DO NOT SIGN THIS FORM UNTIL A PSYCHIATRIST HAS ANSWERED ALL OF YOUR QUESTIONS CONCERNING ELECTROCONVULSIVE THERAPY (ECT) AND YOU HAVE REVIEWED AND AGREED TO EACH STATEMENT.

Patient Name:_____ CDCR#:_____

Psychiatrist: _____ DOB:_____

I understand that ECT is a type of organic therapy that treats certain psychiatric disorders in patients who do not respond to, or cannot tolerate the side-effects of psychiatric medication. I have been informed that ECT may be considered for patients with delusional depression, mania, catatonia, depression or any other serious mental illness for which ECT is indicated, and that patients have been known to experience permanent improvement, no improvement, or temporary improvement requiring ongoing treatment.

I have been provided a copy of Penal Code section 2670-2680 pertaining to how the California Department of Corrections and Rehabilitation can use ECT.

I understand that though the exact mechanism of ECT is not completely understood, it is still one of the most effective treatments available in psychiatry.

I understand that ECT involves passage of an electrical stimulus across my brain for a few seconds, triggering a seizure that lasts about 30 seconds. The amount of electricity used to produce the seizure will be adjusted to my individual needs.

I understand that ECT can be administered by stimulating both sides of the brain (bilateral) or one side of the brain (unilateral). In certain patients, bilateral is more effective. In certain patients, unilateral ECT is less likely to produce memory difficulties.

I understand that ECT may produce minor side effects such as headaches, muscle soreness, confusion, nausea and upset stomach. These can occur immediately after the procedure. The minor side effects are often temporary and are treated with the appropriate medications.

I understand that rarely ECT may produce major side effects that involve the heart (heart attack or irregular heart rhythm), the lungs (difficulty breathing), the brain (stroke, prolonged seizure) or the bones/teeth (dental injuries, bone fractures).

I understand that in preparation for an ECT treatment, anesthesia and a muscle relaxant will be administered to me through a syringe and plastic tube (IV). Oxygen will be administered to help me breathe. Sensors will be placed on my heart, arms, legs, and head to measure my heart rate, heart rhythm, blood pressure, and brain waves.

I understand that immediately after an ECT treatment, I may have trouble remembering events that happened before the treatment. These memories often return after the ECT course is completed. Certain patients experience a more permanent loss of memory for events close to ECT. Remembering new events may also be impaired.

1. Disability Code:
☐ Reading level score ≤ 4.0
☐ DPH ☐ DPV ☐ LD
☐ DPS ☐ DNH
☐ DNS ☐ DDP
☐ Not Applicable

2. Accommodations:
☐ Additional Time
☐ Equipment ☐ SLI
☐ Louder ☐ Slower
☐ Basic ☐ Transcribe
☐ Other*

3. Effective Communication:
☐ Patient asked question
☐ Patient summed information

Please check one:
☐ Not Reached* ☐ Reached
*See chrono/notes

4. Comments:

CDCR #:
Last Name: MI:
First Name:
DOB:

THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

Patient Informed Consent for Electroconvulsive Therapy

I have discussed with my psychiatrist my personal medical conditions, which are:_____

_____

and whether these conditions may increase my risk(s) during ECT.

I understand that, as with any procedure using anesthesia, there is a remote possibility of death.

I understand that by signing this document, I am consenting to ECT by a psychiatrist specializing in ECT, and any necessary treatments by that provider to address the emergent side effects that may occur.

I understand that ECT consists of a number of treatments, of which the amount and duration will be decided by a licensed provider, but will not exceed treatment delivered over a six month time period unless otherwise approved by court. Generally, a minimum of six treatments within that time period is recommended to determine how effective the treatment is, followed by two or three treatments per week for at least six weeks.

I understand that if I do consent to ECT, I may withdraw my consent at any time.

I understand that, other than in the event of a medical emergency requiring ECT, I cannot receive this treatment until approved by a superior court judge even if I consent to the treatment.

I am signing this document freely and voluntarily and have not been coerced to consent to this form of treatment.

Patient Signature (Required only if the patient has the capacity to make informed decisions regarding ECT)	Date
County	Facility where patient is located
Psychiatrist Signature	Date
Psychiatrist Printed Name	

Patient Informed Consent for Electroconvulsive Therapy CDCR 7708 (xx/xx)	CDCR #: Last Name: MI: First Name: DOB: THIS DOCUMENT CONTAINS CONFIDENTIAL PATIENT INFORMATION

DISTRIBUTION: Patient, Office of Administrative Hearings, Office of Legal Affairs
eUHR SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHRS LOCATION: Legal > Court Ordered Care > PC 2604

PATIENT INFORMED CONSENT FOR ELECTROCONVULSIVE THERAPY

CDCR 7708 (xx/xx) [Revision date to be determined upon filing with the Secretary of State]

Instructions

Purpose of CDCR 7708 (xx/xx) Patient Informed Consent for Electroconvulsive Therapy: This form is an informed consent form and is the required written documentation of a patient's ability to give informed consent to ECT.

1. This form shall be filled out correctly and diligently by both the patient and a psychiatrist. (It will very likely become an exhibit in superior court).
2. This form is used to document a patient's consent to ECT.
3. This form is also used to document patient's capacity to make informed decisions about ECT, including those who have regained the capacity to provide informed consent.
4. The psychiatrist recommending ECT shall review every item on the CDCR 7708 with the patient.
5. The patient is asked to write in their primary conditions requiring treatment with ECT as indicated in the 10th consent item on page 2.
6. This form requires a witness. The witness may be the psychiatrist recommending ECT who is responsible for informing the patient by explaining items on the form, and explaining the ECT process.
7. The patient's signature is not required if the patient is unable to communicate, or lacks the capacity to make informed decisions about ECT. In that case, a psychiatrist shall check the box that the patient lacks capacity, and sign the form.
8. If the patient has a documented need for any type of accommodation, or requests accommodation during the process, a psychiatrist shall complete the sections regarding accommodation and effective communication.
9. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
10. Provide one copy of the signed informed consent to the patient, and the original shall be returned to the Office of Legal Affairs.
11. Completed CDCR 7707 shall be provided to the Medication Court Administrator to scan into a single PDF to file. Proceedings relating to ECT shall not be sent to the Office of Administrative Hearings, as the Office of Legal Affairs will route these to a superior court.

Effective Communication: The Effective Communication section must be completed.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: Reading level score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

I. PATIENT AND PSYCHIATRIST INFORMATION

Patient Name: _____ CDCR #: _____

Today's Date: _____

The following recommendation was prepared by Dr. _____

Job Title and Classification: _____

Relationship to Patient: ☐ Attending Psychiatrist ☐ Consultant Psychiatrist

Institution where patient is located: _____ County: _____

Psychiatric diagnosis: _____

II. DETERMINATION OF NEED FOR ELECTROCONVULSIVE THERAPY

Summary of patient's psychiatric condition:

Summary of patient's medical and physical condition:

State why electroconvulsive therapy (ECT) would be beneficial for this patient:

State why there is a compelling reason to use ECT in lieu of other treatments:

Based on the patient's presentation and condition, are there viable treatments for this patient that are less restrictive? (If the answer is 'yes,' please explain why those are not being utilized.)

If this patient has been tried on medication without improvement, or is allergic to certain medications, please discuss here:

Summary of patient's position, personal values and wishes on ECT treatment, if known and if determined when patient had capacity.

To your knowledge, has any other court rendered a decision on this patient's capacity? (Include any administrative determinations pursuant to Penal Code section 2604.) ☐ Yes (attached copy of ruling or minute order) ☐ No

What is the prognosis for this patient if provided ECT?

What is the prognosis for this patient if denied ECT?

III. MENTAL STATUS EXAMINATION

Please indicate your opinion as to this patient's capacity to consent to this procedure:
Note to psychiatrist: This form is intended to assist you in recording your *impressions* of the patient's mental abilities.

A. Cooperation

☐ Guarded ☐ Evasive ☐ Cooperative ☐ Defensive ☐ Hostile ☐ Uncooperative ☐ Unable to cooperate

B. Alertness and Attention

(1) Levels of arousal

☐ Stuporous ☐ Lethargic ☐ Drowsy ☐Confused ☐Alert ☐ Hypervigilant

(2) Orientation (types of orientation impaired)

Person:

☐ Intact ☐ Absent

Time (day, date, month, season, year):

☐ Intact ☐ Impaired ☐ Absent

Place (institution, town, state):

☐ Intact ☐ Impaired ☐ Absent

(3) Ability to attend and concentrate (give detailed answers from memory, mental ability required to thread a needle)

☐ Intact ☐ Impaired ☐ Absent

C. Information Processing

1. Memory

a. Immediate recall (ability to remember a question before answering)

☐ Intact ☐ Impaired ☐ Absent

b. Short term memory (ability to remember events of the past 24 hours)

☐ Intact ☐ Impaired ☐ Absent

c. Long-term recall (ability to recall events in distant past)

☐ Intact ☐ Impaired ☐ Absent

2. Speech Production

☐ Mute ☐ Delayed ☐ Dysarthric ☐ Normal ☐ Hyperverbal

3. Understand and communicate either verbally or otherwise (deficits reflected by inability to comprehend questions, follow instructions, use words correctly, or name objects; use of nonsense words)

☐ Intact ☐ Impaired ☐ Absent

4. Recognize familiar objects and persons (deficits reflected by inability to recognize familiar faces, objects, etc.)

☐ Intact ☐ Impaired ☐ Absent

5. Understand and appreciate quantities (deficits reflected by inability to perform simple calculations, i.e. number of nickels in one quarter)

☐ Intact ☐ Impaired ☐ Absent

6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest (deficits reflected by inability to break down complex task into simple steps and execute them)

☐ Intact ☐ Impaired ☐ Absent

7. Reason logically

☐ Intact ☐ Impaired ☐ Absent

8. Reason using abstract concepts (deficits reflected by inability to interpret proverb)

☐ Intact ☐ Impaired ☐ Absent

D. Affect

1. Stability: ☐ Labile ☐ Stabile
2. Intensity: ☐ Blunted ☐ Flat ☐ Constricted ☐ Full Range ☐ Exaggerated
3. Quality: ☐ Tearful ☐ Dysphoric ☐ Angry ☐ Hostile ☐ Detached ☐ Euthymic ☐ Anxious ☐ Irritable ☐ Euphoric ☐ Dramatic
4. Appropriateness: ☐ Appropriate to Situation ☐ Inappropriate to Situation ☐ Congruent with Thought Content ☐ Incongruent with Thought Content

E. Thought Process, Thought Content, Perception

1. Thought process or thought from:

☐ Linear, Goal Directed ☐ Tangential ☐ Loose Associations ☐ Disorganized ☐ Not Able to Assess (pt mute)

2. Thought Content:

☐ Delusions ☐ Paranoia ☐ Referential Thinking ☐ Obsessions/Ruminations ☐ Suicide Ideation ☐ Homicide Ideation ☐ No Abnormalities

3. Perception (hallucinations):

☐ Auditory ☐ Visual ☐ Tactile ☐ Somatic ☐ Olfactory ☐ No Hallucinations

4. ☐ Unable to assess thought process as patient is mute.

Comments: _____

F. Variability

The patient's periods of impairment due to the deficits in items A-E:

☐ Do NOT vary substantially in frequency, severity, or duration.

☐ Do vary substantially in frequency, severity, or duration.

IV. CAPACITY EVALUATION

Was the patient presented with relevant medical information that includes the diagnosis, nature and purpose of recommended treatment (ECT), and risks vs benefits of all options, including forgoing treatment?

☐ Yes ☐ No

In your clinical opinion,

Does the patient understand the medical problem? ☐ Yes ☐ No

Does the patient understand the proposed treatment (ECT)? ☐ Yes ☐ No

Does the patient understand the alternatives to proposed treatment, including withholding treatment? ☐ Yes ☐ No

Does the patient understand the consequences of accepting or refusing treatment? ☐ Yes ☐ No

Was the patient's decision affected by depression? ☐ Yes ☐ No

Was the patient's decision affected by delusions/psychosis? ☐ Yes ☐ No

Does the patient make a decision of their own free will, without pressure from others? ☐ Yes ☐ No

ABILITY TO CONSENT TO ECT

Based on the information above, it is my opinion that the patient:

a. ☐ Has the capacity to give informed consent for ECT.

b. ☐ Lacks the capacity to give informed consent for ECT because they are ***either*** (1) unable to respond knowingly and intelligently regarding medical treatment ***or*** (2) unable to participate in a treatment decision by means of a rational thought process, ***or both***. The deficits in the mental functions described in item 6 above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of medical decisions.

c. ☐ Has a surrogate who has consented to ECT, but requires court approval.

V. URGENCY OF TREATMENT BASED ON PATIENT'S PRESENTATION

Please indicate the urgency of providing this treatment to the patient (pick one):

☐ The patient is stable and can wait for a superior court hearing on the merits.

☐ The patient is not stable and requires immediate intervention, because

☐ The patient has inflicted, or attempted to inflict, substantial physical harm upon self or others; or

☐ As a result of a serious mental illness, the patient presents an imminent threat of substantial harm to self or others, through either positive or negative symptoms.

And

☐ The patient's condition will be severely threatened if ECT is not started immediately.

VI. PSYCHIATRIST ATTESTATION

All information from sections I-V is completed based on my interview with the patient.

PSYCHIATRIST

_____ _____
Signature Date

_____ _____
Print Name Job Classification/Title

VII. DUE PROCESS INFORMATION

This patient, who has been determined to have the capacity to make informed decisions about ECT, was provided with their rights as follows:

Rights from CDCR-7707 issued on (date): _____

Consent Form CDCR-7708 issued and initialed on (date): _____

This patient, who has been determined to lack the capacity to make informed decisions about ECT, was provided with their rights as follows:

Rights from CDCR-7707 issued on (date): _____

MEDICATION COURT ADMINISTRATOR

_____ _____
Signature Date

_____ _____
Print Name Job Classification/Title

VIII. SECONDARY REVIEW

I have reviewed this document and have reviewed the patient's chart. Based thereupon:

☐ I concur with the recommendation.

☐ I disagree with the recommendation.

SECOND REVIEWING PSYCHIATRIST OR DESIGNEE

_____ _____
Signature Date

_____ _____
Print Name Job Title/Classification

IX. NON-CONCURRENCE

If there is non-concurrence regarding the need for ECT, the case shall be elevated to the statewide Chief Psychiatrist for the final decision.

☐ I concur with the recommendation and make the final determination to proceed with ECT.

☐ I disagree with the recommendation and make the final determination not to proceed with ECT.

Signature _____ Date _____

Print Name _____ Job Classification/Title _____

X. EMERGENCY ECT PRIOR TO COURT PETITION

DISCLOSE ANY ECT TREATMENT ALREADY RENDERED IN THE CURRENT ADMISSION

☐ Not applicable

☐ Emergency ECT has been administered as follows, pending a court hearing:

Number of treatments total: _____

Frequency of treatments: _____

(Note: Emergency ECT may not exceed 7 days without a court order.)

ECT Provider: _____

Please explain why treatment was emergently provided in the absence of a court order approving treatment:

Patient's response to emergency ECT:

Psychiatrist Signature _____ Date _____

Effective Communication: The Effective Communication section must be completed.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: Reading level score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

CLINICAL RECOMMENDATION FOR ELECTROCONVULSIVE THERAPY

CDCR 7712 (xx/xx) [Revision date to be determined upon filing with the Secretary of State]

Instructions

Purpose of CDCR 7712 (xx/xx) Clinical Recommendation for Electroconvulsive Therapy: This form is used for the determination of Electroconvulsive Therapy (ECT) treatment for patients and shall be completed by the appropriate staff.

Sections I to V of this form shall be completed by the psychiatrist recommending treatment/ providing the first opinion. Section VII shall be completed by the Medication Court Administrator (MCA).

1. **Section I. Patient and Psychiatrist Information**
   - Patient's name, CDCR number, and the date the form was completed.
   - Name, job title and classification of the psychiatrist completing the form, institution or location where the psychiatrist is working, county where patient is located, and the patient's psychiatric diagnosis.
2. **Section II. Determination of Need for ECT**
   - Summary of the patient's psychiatric condition, and medical and physical condition.
   - Why ECT may be beneficial for this patient.
   - Reason to use ECT in lieu of other treatments.
   - Any other viable less restrictive treatment options.
   - A discussion of medication trials without improvement, or allergies to certain medications.
   - Summary of the patient's position on this type of treatment, if known and if determined when patient had capacity.
   - Confirmation if any other court rendered a decision on the patient's capacity.
   - Prognosis for patient if provided ECT.
   - Prognosis for patient if denied ECT.
3. **Section III. Mental Status Examination**
   - This assessment includes comments regarding patient's level of cooperation, alertness and attention, information processing, affect, thought process, thought content and perception.
4. **Section IV. Capacity Evaluation**
   - An assessment of the patient's ability/ capacity to make informed decisions regarding ECT.
5. **Section V. Urgency of Treatment Based on Patient's Presentation**
6. **Section VI. Psychiatrist Attestation**
   - Psychiatrist's attestation that all information is based on the psychiatrist's independent assessment of the patient.
7. **Section VII. Due Process Information**

   Completed by the MCA. The MCA shall check the box that applies.
   - Either it has been determined that the patient has the capacity to make informed decisions about ECT, in which case add the date rights were delivered to the patient and the date the patient consented for treatment.
   - Or the patient lacks the capacity to make informed decisions about ECT, in which case add the date rights were delivered to the patient.
8. **Section VIII. Secondary Review**
   - Secondary review shall be completed by the psychiatry leadership at the institution where the petition is being filed, or in the absence of local leadership, regional psychiatrist.
9. **Section IX. Non-concurrence**
   - Used to document the disagreement between the psychiatrist recommending treatment and the one providing a second opinion. In the case of non-concurrence, the final decision is made by the Statewide Chief Psychiatrist or another Chief or Senior Psychiatrist designated by the statewide Chief Psychiatrist to make that decision.
10. **Section X. Emergency ECT Prior to Court Petition**

    The last section of the form is used by a psychiatrist to document.
    - Whether patient received emergency treatment prior to court, or not.
    - Details of treatment, if applicable.

CLINICAL RECOMMENDATION FOR ELECTROCONVULSIVE THERAPY

CDCR 7712 (xx/xx)

Effective Communication: The Effective Communication section must be completed.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: Reading level score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

I. PATIENT AND PSYCHIATRIST INFORMATION

Patient Name: _____ CDCR #: _____

Today's Date: _____

The following recommendation was prepared by Dr. _____

Current Electroconvulsive Therapy (ECT) Provider: _____

Job Title and Classification: _____

Relationship to Patient: ☐ Attending Psychiatrist ☐ Consultant Psychiatrist

Institution where patient is located: _____ County: _____

Psychiatric diagnosis: _____

II. CURRENT ELECTROCONVULSIVE THERAPY

Date of first ECT session since the most recent court order: _____

Was there a delay between the court's order and the first ECT session: ☐ Yes ☐ No

Reason for delay, if known: _____

_____

Total weeks of treatment since the most recent court order: _____

ECT sessions received per week: _____

Any change in the frequency of the ECT session within a week: _____

What was the change and why? _____

_____

Any missed ECT sessions: ☐ Yes ☐ No

Reason for missed sessions: _____

_____

_____

III. CONTINUED NEED FOR ELECTROCONVULSIVE THERAPY

Is the reason(s) for continuing ECT any different than the reason(s) for initially seeking the most-recent court order? ☐ Yes ☐ No

Explain:

Current psychiatric condition:

Current medical and physical condition:

Response to ECT:

State why continued ECT would be beneficial for this patient:

Has ECT helped alleviate any other concerns (e.g., has the inmate-patient's treating psychiatrist reduced the dosage or quantity of their prescribed antipsychotic medications)?

Any adverse effects of ECT:

Response to current medication regimen including side effects:

What is the prognosis for this patient if ECT is continued?

What is the prognosis for this patient if ECT is discontinued?

IV. MENTAL STATUS EXAMINATION

Note to psychiatrist: This form is intended to assist you in recording your *impressions* of the patient's mental abilities.

A. Cooperation

☐ Guarded ☐ Evasive ☐ Cooperative ☐ Defensive ☐ Hostile ☐ Uncooperative ☐ Unable to cooperate

B. Alertness and Attention

(1) Levels of arousal

☐ Stuporous ☐ Lethargic ☐ Drowsy ☐Confused ☐Alert ☐ Hypervigilant

(2) Orientation (types of orientation impaired)

Person:

☐ Intact ☐ Absent

Time (day, date, month, season, year):

☐ Intact ☐ Impaired ☐ Absent

Place (institution, town, state):☐ Intact ☐ Impaired ☐ Absent

(3) Ability to attend and concentrate (give detailed answers from memory, mental ability required to thread a needle)

☐ Intact ☐ Impaired ☐ Absent

C. Information Processing

1. Memory

a. Immediate recall (ability to remember a question before answering)

☐ Intact ☐ Impaired ☐ Absent

b. Short term memory (ability to remember events of the past 24 hours)

☐ Intact ☐ Impaired ☐ Absent

c. Long-term recall (ability to recall events in distant past)

☐ Intact ☐ Impaired ☐ Absent

2. Speech Production

☐ Mute ☐ Delayed ☐ Dysarthric ☐ Normal ☐ Hyperverbal

3. Understand and communicate either verbally or otherwise (deficits reflected by inability to comprehend questions, follow instructions, use words correctly, or name objects; use of nonsense words)

☐ Intact ☐ Impaired ☐ Absent

4. Recognize familiar objects and persons (deficits reflected by inability to recognize familiar faces, objects, etc.)

☐ Intact ☐ Impaired ☐ Absent

5. Understand and appreciate quantities (deficits reflected by inability to perform simple calculations, i.e., number of nickels in one quarter)

☐ Intact ☐ Impaired ☐ Absent

6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest (deficits reflected by inability to break down complex task into simple steps and execute them)

☐ Intact ☐ Impaired ☐ Absent

7. Reason logically

☐ Intact ☐ Impaired ☐ Absent

8. Reason using abstract concepts (deficits reflected by inability to interpret proverb)

☐ Intact ☐ Impaired ☐ Absent

D. Affect

1. Stability: ☐ Labile ☐ Stabile
2. Intensity: ☐ Blunted ☐ Flat ☐ Constricted ☐ Full Range ☐ Exaggerated
3. Quality: ☐ Tearful ☐ Dysphoric ☐ Angry ☐ Hostile ☐ Detached ☐ Euthymic ☐ Anxious ☐ Irritable ☐ Euphoric ☐ Dramatic
4. Appropriateness: ☐ Appropriate to Situation ☐ Inappropriate to Situation ☐ Congruent with Thought Content ☐ Incongruent with Thought Content

E. Thought Process, Thought Content, Perception

1. Thought process or thought from:

☐ Linear, Goal Directed ☐ Tangential ☐ Loose Associations ☐ Disorganized ☐ Not Able to Assess (pt mute)

2. Thought Content:

☐ Delusions ☐ Paranoia ☐ Referential Thinking ☐ Obsessions/Ruminations ☐ Suicide Ideation ☐ Homicide Ideation ☐ No Abnormalities

3. Perception (hallucinations):

☐ Auditory ☐ Visual ☐ Tactile ☐ Somatic ☐ Olfactory ☐ No Hallucinations

4. ☐ Unable to assess thought process as patient is mute.

Comments: _____

F. Additional Information _____

_____

G. Variability

The patient's periods of impairment due to the deficits in items A-E:

☐ Do NOT vary substantially in frequency, severity, or duration.

☐ Do vary substantially in frequency, severity, or duration.

V. CAPACITY EVALUTION

Was the patient presented with relevant medical information that includes the diagnosis, nature and purpose of recommended treatment (ECT), and risks vs benefits of all options, including forgoing treatment?

☐ Yes ☐ No

In your clinical opinion,

Does the patient understand the medical problem? ☐ Yes ☐ No

Does the patient understand the proposed treatment (ECT)? ☐ Yes ☐ No

Does the patient understand the alternatives to proposed treatment, including withholding treatment? ☐ Yes ☐ No

Does the patient understand the consequences of accepting or refusing treatment? ☐ Yes ☐ No

Was the patient's decision affected by depression? ☐ Yes ☐ No

Was the patient's decision affected by delusions/psychosis? ☐ Yes ☐ No

Does the patient make a decision of their own free will, without pressure from others? ☐ Yes ☐ No

ABILITY TO CONSENT TO ECT

Based on the information above, it is my opinion that the patient:

a. ☐ Has the capacity to give informed consent for ECT.

b. ☐ Lacks the capacity to give informed consent for ECT because they are ***either*** (1) unable to respond knowingly and intelligently regarding medical treatment ***or*** (2) unable to participate in a treatment decision by means of a rational thought process, ***or both***. The deficits in the mental functions described in item 6 above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of medical decisions.

c. ☐ Has a surrogate who has consented to ECT, but requires court approval.

To your knowledge, has any other court rendered a decision on this patient's capacity? (Include any administrative determinations pursuant to Penal Code section 2604.) ☐ Yes (attached copy of ruling or minute order) ☐ No

VI. PSYCHIATRIST ATTESTATION

All information is completed based on my interview with the patient.

PSYCHIATRIST

Signature _____ Date _____

Print Name _____ Job Classification/Title _____

VII. DUE PROCESS INFORMATION

This patient, who has been determined to have the capacity to make informed decisions about ETC, was provided with their rights as follows:

Rights from CDCR-7707 issued on (date): _____

Consent Form CDCR-7708 issued and initialed on (date): _____

This patient, who has been determined to lack the capacity to make informed decisions about ETC, was provided with their rights as follows:

Rights from CDCR-7707 issued on (date): _____

MEDICATION COURT ADMINISTRATOR

Signature _____ Date _____

Print Name _____ Job Classification/Title _____

Effective Communication: The Effective Communication section must be completed.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: Reading level score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.

4. Comments:
Provide any additional information regarding effective communication.

CLINICAL RECOMMENDATION FOR ELECTROCONVULSIVE THERAPY RENEWAL

CDCR 7713 (xx/xx) [Revision date to be determined upon filing with the Secretary of State]

Instructions

Purpose of CDCR 7713 (XX/XX) Clinical Recommendation for Electroconvulsive Therapy Renewal: This form is completed to make the determination whether a renewal of Electroconvulsive Therapy (ECT) treatment is clinically indicated. Must be completed by a psychiatrist.

Sections I to V are required to be completed by a psychiatrist.

1. **Section I. Patient and Psychiatrist Information**
   - Completed by the psychiatrist making the determination to continue treatment.
2. **Section II. Current ECT**
   - To be completed by the psychiatrist.
3. **Section III. Continued Need for ECT**
   - This includes, but is not limited to, the reason to continue ECT if it is different from the reason for the current court order; current psychiatric, medical and physical condition; response to current treatment; benefits of continuing ECT; additional benefits of treatment seen in response to current treatment; and adverse effects of treatment.
4. **Section IV. Mental Status Examination**
   - This includes, but is not limited to, patient's level of cooperation, alertness and attention, information processing, affect, thought process, thought content and perception, variability and psychiatrist's determination of the patient's ability to provide informed consent.
5. **Section V. Capacity Evaluation**
   - An assessment of the patient's ability/ capacity to make informed decisions regarding ECT.
6. **Section VI. Psychiatrist Attestation**
7. **Section VII. Due Process Information**
   - Completed by the Medication Court Administrator (MCA). The MCA shall check all boxes that apply.

Effective Communication: The Effective Communication section must be completed.

1. Disability:	2. Accommodation:	3. Effective Communication:
a. Check all boxes that apply regarding the patient's disability. Disability Codes: Reading level score ≤ 4.0 DPH – Permanent Hearing Impaired DPV – Permanent Vision Impaired LD – Learning Disability DPS – Permanent Speech Impaired DNH – Permanent Hearing Impaired; improved with hearing aids. DNS – Permanent Speech Impaired; can communicate in writing. DDP – Developmental Disability Program N/A – Not applicable	a. Check all boxes that apply to the special accommodations made to facilitate effective communication: Additional time – Patient was given additional time to respond or complete a task. Equipment – Special equipment was used to facilitate effective communication. Note the type of equipment used in the comments section. SLI – Sign Language Interpreter. Louder – The provider spoke louder. Slower – The provider spoke slower. Basic – The provider used basic language. Transcribe – Communication was written down. Other – Any other tool that was used to facilitate effective communication.	a. Check all boxes that apply that summarize how it was verified that effective communication was reached. Patient asked questions – The patient asked questions regarding the interaction. Patient summed information – The patient summarized information regarding the interaction. b. Check one box to indicate if effective communication was or was not reached. ONE of these boxes must be checked.
4. Comments: Provide any additional information regarding effective communication.		

Patient Name: _____ CDCR #: _____

Patient Date of Birth: _____ Today's Date: _____

Electroconvulsive Therapy Treatment

☐ Routine ☐ Expedited ☐ Emergency

☐ Patient has capacity to provide informed consent. If patient has capacity, select one:

- ☐ Patient does consent to ECT treatment
- ☐ Patient does not consent to ECT treatment

☐ Patient lacks capacity to provide informed consent to ECT treatment

ATTENDING PHYSICIAN

_____ _____
Signature Date

_____ _____
Print Name Job Classification/Title

Instructions

Purpose of CDCR 7715 (XX/XX) Form Routing Sheet for Electroconvulsive Therapy:

This form is completed by the psychiatrist and a copy provided to the Medication Court Administrator along with form CDCR 7712 (Clinical Recommendation for Electroconvulsive Therapy). The purpose of this document is to efficiently communicate the nature of the petition for electroconvulsive therapy treatment (ECT) to the Office of Legal Affairs and the Statewide Chief of Psychiatry.

1. In the first section, the psychiatrist shall document the patient name, CDCR number, date of birth and date the form is completed.
2. In the second section, the psychiatrist shall document:
   - Whether the ECT treatment petition is routine, expedited, or in response to an emergency.
   - Whether the patient has the capacity to provide informed consent, and if they do whether the patient consents to treatment or not; or if the patient lacks the capacity to provide informed consent to ECT.
3. In the third section, the psychiatrist shall sign, date, and print their name and their job classification/title.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3999.98, 3999.99, and 3999.348 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, Subchapter 3, Article 5 regarding Electroconvulsive Therapy (ECT).

Summary of the Proposal

Problem Statement:

CDCR currently performs ECT on a small number of patients (less than ten) every year. The ECT procedure in the community has become mainstream since the 1960s and is considered the community standard for treatment of specific mental health conditions that are not showing improvement with medication, or where the patient is allergic and cannot tolerate medication. CDCR has an obligation to provide constitutionally adequate medical and mental health care, and timely, efficient access to ECT is necessary to ensure CDCR can fulfill that mission.

Existing regulations are not adequate for several reasons. Most notably, these regulations fail to consider structural changes in the correctional landscape:

- In April 2006, the federal courts created a Receivership for the delivery of medical care. That resulted in the development of a completely independent management structure in the prisons, leaving the Warden in charge of custodial operations, and installing a Chief Executive Officer in charge of the health care operations. The current regulations do not acknowledge the existence of that separate management chain.
- In 2017, the Legislature transferred all psychiatric inpatient units operated by the Department of State Hospitals (DSH) to CDCR. The current regulations contemplate a committee to evaluate the suitability of using ECT, including one person who is not a CDCR employee. When DSH was in the institutions, this hurdle could be managed. With DSH no longer in the institutions, CDCR needs to identify a process to ensure oversight and independent review using the existing organizational structure, as it no longer has access to DSH employees who can consult on these cases.
- Title 15 CCR 3999.348 largely restates what is already in the Penal Code without offering guidance on how the process should operate. Notably there is no specificity as to how long psychiatrists can take to work up a case, and there is no specificity on how this process could be used in a medical emergency, although the statute contemplates that it could be used in a medical emergency.
- Title 15 CCR 3999.348 does not describe the forms, process, or flow of paperwork necessary to start a case or see it through to fruition. Patients suffer long delays due to the lack of guidance and standardized procedures.

Existing regulations make this process more cumbersome than the Penal Code requires by creating artificial roadblocks that delay care.

Objective:

The objective for this regulatory package is to standardize the ECT workflow and create a durable process that any psychiatrist can access, while retaining procedural due process for patients. Where there was previously no standard process, this regulatory action adds standard forms and timelines, as well as a vetting process to ensure that ECT is utilized appropriately and efficiently. This will provide CDCR patients with better mental health care.

Benefit:

The proposed regulations will:

- Create a standardized process for documenting a patient's need for initiation or continuation of ECT.
- Create time-bound rules to ensure that paperwork moves quickly through the approval chain.
- Allow CDCR to provide this service using its existing organizational structure.
- Provide clarity as to how this procedure would be used in the event of a medical emergency.
- Eliminate duplication of elements already defined in the statute.
- Provide needed clarity on selection of appropriate housing and determination of acuity for patients, many of whom need to be moved closer to where they will be receiving treatment to receive timely care.
- Create accountability related to who at the institution is responsible for handling the various forms as well as service of the forms.
- Align with the requirements in the Penal Code and establish a process for written consent for ECT.
- Ensure CDCR patients in the Mental Health Program benefit from having a clear guideline as to how to start and renew this type of treatment.

ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code (GC) section 11346.3(b), the Department has made the following assessments regarding the proposed regulation:

1. Creation or Elimination of Jobs within the State of California

   The Department does not expect that the proposed regulations will have an impact on the creation of new or the elimination of existing jobs within the State of California. The proposed regulations clarify and standardize the ECT process which only affects staff and patients within CDCR.

2. Creation of New or Elimination of Existing Businesses within the State of California

   The Department does not expect that the proposed regulations will have an impact on the creation of new or the elimination of existing businesses within the State of California. The proposed regulations clarify and standardize the ECT process which only affects the staff and patients within CDCR.

3. Expansion of Businesses Currently Doing Business within the State of California

   The Department does not expect that the proposed regulations will have an impact on the expansion of businesses currently doing business within the State of California. The proposed regulations clarify and standardize the ECT process which only affects staff and patients within CDCR.

4. Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

   The proposed changes will benefit the health and welfare of CDCR patients, staff, and the general public and protect worker safety by ensuring an efficient and effective ECT process is available for CDCR staff to utilize in the treatment of patients. The regulations will establish a standard workflow, timelines, and forms which will prevent delays in processing ECT cases and ensure quick access to ECT. This regulation will not have an impact on the State's environment, as it is not impacted by the administration of the ECT process.

Statement of Determinations

Reasonable Alternatives

In accordance with GC section 11346.5(a)(13), 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 this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Local Mandates

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to GC sections 17500 - 17630.

Significant Adverse Economic Impact

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because this regulatory action relates strictly to clarify and standardize the ECT process which only affects the staff and patients within CDCR.

Based on the economic impact assessment, the Department has determined that the regulation will not significantly affect the following:

1. The creation or elimination of jobs within the State of California.

2. The creation of new businesses or the elimination of existing businesses within the State of California.

3. The expansion of businesses currently doing business within the State of California.

The economic impact assessment shows that the proposed regulatory action will benefit the health and welfare of California residents, worker safety, and/or the State's environment.

Reports, Studies and Documents Relied Upon

1. Not applicable.

SPECIFIC PURPOSE AND RATIONALE FOR EACH REGULATION PROPOSED FOR AMENDMENT, ADOPTION, OR REPEAL

Chapter 2. Rules and Regulations of Health Care Services

Article 1. Health Care Definitions

Section 3999.98. Definitions.

Section 3999.98 is amended as follows:

The definition for "Decision Making Capacity" is included in alphabetical order in this section. This is necessary to establish a common understanding of the term used to describe a clinical determination that refers to whether a patient demonstrates understanding of relevant information, the medical situation they are in, its possible consequences, and the risks, benefits, and alternatives of treatment options, and communicates without duress or coercion based on their own values. This is also necessary to ensure a standard definition of the term for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for "Electroconvulsive Therapy" is included in alphabetical order in this section. This is necessary to ensure a standard definition of the term "Electroconvulsive Therapy" for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for "Informed Consent" is amended to describe a process of communication between the patient and doctor which leads to agreement to proceed with a particular treatment. This is necessary to clarify the process and required information provided by the doctor to the patient for informed consent and ensure a standard definition of the term for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

Chapter 2. Rules and Regulations of Health Care Services

Article 2. Health Care Forms

Section 3999.99. Forms.

Section 3999.99 is amended to include the CDCR 7707, Patient Electroconvulsive Therapy Rights, CDCR 7708, Patient Informed Consent for Electroconvulsive Therapy, CDCR 7712, Clinical Recommendation for Electroconvulsive Therapy, CDCR 7713, Clinical Recommendation for Electroconvulsive Therapy Renewal, and CDCR 7715, Routing Sheet for Electroconvulsive Therapy. Necessity for the adoption of these forms is addressed in the section of this document entitled Specific Purpose and Rationale for Each Form Proposed for Amendment, Adoption, or Repeal.

Subchapter 3. Health Care Operations

Article 5. Mental Health Care

Section 3999.348. Electroconvulsive Therapy.

Sections 3999.348(a) – 3999.348(h) are repealed to remove references to the existing shock therapy process. This is necessary because the updated process, which is renamed as Electroconvulsive Therapy (ECT), is now outlined in section 3999.348, Electroconvulsive Therapy.

New section 3999.348(a) is adopted to introduce sections 3999.348(a)(1) – 3999.348(a)(5) which outline the ECT overview.

New sections 3999.348(a)(1) – 3999.348(a)(5) are adopted to establish that the CDCR may provide ECT to patients when medically necessary and outline the overview of the ECT process, timelines, and guidelines. This is necessary to establish and maintain a standardized statewide ECT process for treatment referrals to achieve the best result for patients.

New section 3999.348(b) is adopted to introduce sections 3999.348(b)(1) – 3999.348(b)(2) which outline the intake and referral for ECT.

New sections 3999.348(b)(1) – 3999.348(b)(1)(C) are adopted to establish the requirements that the attending psychiatrist, or designee, shall complete when patients have been identified as ECT candidates and determined to require ECT treatment. This is necessary to ensure an effective and standardized statewide process for reviewing, examining, and determining patients for ECT treatment and to establish forms that must be utilized as documentation of the patient's assessment for ECT treatment. This is also necessary to ensure proper assessment and documentation of ECT treatment by clinically qualified health care staff. Additionally, this is necessary to ensure timely and appropriate processing and assessing of the ECT petitions for better patient outcomes, proper documentation of patient consent prior to ECT treatment, and protection of the patient's right to participate in the ECT decision making process.

New section 3999.348(b)(2) is adopted to establish that the Medication Court Administrator (MCA), under the direction of the institution Chief Psychiatrist, or their designee, shall inform the Warden, institution Chief Medical Executive (CME), Regional Chief Psychiatrist, and the Statewide Chief of Psychiatry, or designee, and submit the CDCR 7715 and CDCR 7712 to the Office of Legal Affairs, CDCR (OLA). This is necessary to ensure an effective and standardized statewide process for reviewing, examining, and determining patients for ECT treatment. This is

also necessary to establish which forms must be utilized as documentation of patient assessment for ECT treatment. In addition, this is necessary to ensure staff accountability by establishing the MCA as accountable for the coordination of ECT cases and for facilitating communications of ECT cases to appropriate entities.

New section 3999.348(c) is adopted to introduce sections 3999.348(c)(1) – 3999.348(c)(3) which outline the emergency ECT process.

New section 3999.348(c)(1) is adopted to establish that when lifesaving intervention is medically necessary, ECT may be performed on an emergency basis and the attending psychiatrist shall initiate and complete clinical review, including documentation as to what factors are precipitating an emergency within the meaning of Penal Code section 2671, as set forth in subsection (c). This is necessary to establish standardized and required statewide guidelines for providing emergency ECT treatment and to ensure proper documentation of the clinical determination in an emergency.

New sections 3999.348(c)(2) – 3999.348(c)(2)(B) are adopted to establish that ECT shall not be administered in the event of a medical emergency unless there is agreement among the attending psychiatrist, institution Chief Psychiatrist, or designee, and the Statewide Chief of Psychiatry, or designee, and a case conference facilitated by the MCA shall be held with OLA within one business day of the attending psychiatrist making the decision to administer emergency ECT. This is necessary to establish standardized and required statewide guidelines for providing emergency ECT treatment to patients in a timely manner with minimized risk to patients. This is also necessary to sustain organizational integrity and ensure the emergency ECT is reviewed and assessed by qualified staff.

New section 3999.348(c)(3) is adopted to establish that pertinent clinical data relating to the nature of the emergency and the treatment given shall be presented to a superior court for review within seven business days of the first instance of emergency ECT. This is necessary to establish standardized and required statewide guidelines for providing a superior court with all the ECT-related clinical records of patient emergency ECT treatment. This is also necessary to sustain organizational integrity and protect the health and safety of patients.

New section 3999.348(d) is adopted to introduce sections 3999.348(d)(1) – 3999.348(d)(4)(C).

New sections 3999.348(d)(1) – 3999.348(d)(1)(B) are adopted to establish that the attending psychiatrist, or designee, shall make a clinical determination that the patient has capacity for informed consent, as defined in section 3999.98, and obtain informed consent on form CDCR 7708. This is necessary to establish standardized and required statewide guidelines for the documentation of the patient's capacity for informed consent for ECT and patient's written agreement to receiving ECT treatment. This is also necessary to ensure patients are appropriately informed of matters impacting their health care because of ECT treatment.

New section 3999.348(d)(2) is adopted to establish that the MCA shall notify the patient of their rights to due process, by providing the patient with a copy of the CDCR 7707 and reviewing each item with the patient. This is necessary for staff accountability and to ensure patients are appropriately informed and notified of their rights before any ECT treatment can occur. This is also necessary to establish which form must be utilized as notification of patient rights.

New section 3999.348(d)(3) is adopted to establish that prior authorization of a superior court is required before ECT, even if the patient provides informed consent. This is necessary to ensure the required court order is obtained before any ECT treatment can occur.

New section 3999.348(d)(4) is adopted to establish that a patient who has given informed consent for ECT may withdraw consent at any time and by any means. This is necessary to ensure patients are allowed to terminate ECT treatment any time throughout the process and to protect the patient's right to withdraw consent at any time.

New section 3999.348(d)(4)(A) is adopted to establish that ECT shall cease immediately unless a gradual reduction of therapy sessions is medically necessary. This is necessary to establish that ECT shall only continue if medically necessary for better patient outcome and patient safety.

New section 3999.348(d)(4)(B) is adopted to establish that a patient who withdraws consent shall be re-evaluated for capacity if the attending psychiatrist, determines ECT is still medically necessary. This is necessary to ensure the patient demonstrates understanding of the risks, benefits, and alternatives for ECT and potential outcomes of no treatment and to ensure capacity determinations are made by qualified clinical staff.

New section 3999.348(d)(4)(C) is adopted to establish that the patient's capacity for informed consent shall be in writing, documented on the form CDCR 7708, and in the subsequent petition filed in superior court. This is necessary to ensure proper documentation of the patient's capacity for informed consent and decision to receive ECT treatment.

New section 3999.348(e) is adopted to introduce sections 3999.348(e)(1) – 3999.348(e)(4).

New section 3999.348(e)(1) is adopted to establish that a patient who lacks the capacity to provide informed consent, consistent with Penal Code section 2672, regarding ECT may receive treatment by following the steps set forth in these regulations. This is necessary to establish criteria in determining when a patient is deemed incapable of providing consent to ECT treatment.

New section 3999.348(e)(2) is adopted to establish that the patient's lack of capacity for informed consent shall be documented on the CDCR 7712 and in the subsequent petition filed in superior court. This is necessary to ensure proper documentation of the patient's lack of capacity for informed consent of ECT and ensure staff accountability.

New section 3999.348(e)(3) is adopted to establish that to the extent any information can be discovered about the patient's known wishes on the ECT procedure, the petition shall disclose to the court any historical information to suggest the patient would, or would not, consent to ECT if competent. This is necessary to ensure all necessary information and requests of the patient are documented for the superior court before any ECT treatment can occur.

New section 3999.348(e)(4) is adopted to establish that in situations where there is a legally designated agent or surrogate and decisionmaker, the matter shall nonetheless be presented to a superior court and their wishes shall be made known to the court as part of any petition. This is necessary to ensure the required court order is obtained and all necessary information and requests

of any designated agent, or surrogate and decisionmaker are documented for the superior court before any ECT treatment can occur.

New section 3999.348(e)(5) is adopted to establish that prior authorization of a superior court is required before ECT except in emergency circumstances as outlined in section 3999.348(c). This is necessary to ensure the required court order is obtained before ECT treatment can occur.

New section 3999.348(f) is adopted to introduce sections 3999.348(f)(1) – 3999.348(f)(6) which outline the patient due process.

New section 3999.348(f)(1) is adopted to establish that the institution's MCA shall serve the CDCR 7707 to the patient, their attorney, and any existing guardian, conservator, or surrogate decisionmaker for the patient. This is necessary to identify the entities who shall be served with the notice of rights and ensure staff accountability.

New section 3999.348(f)(2) is adopted to establish that in any proceeding involving a condemned patient, a digital version of any petition initiating or renewing the ECT order shall be sent by the institution's MCA as a courtesy to the California Appellate Project via email to keyhea@capsf.org, who will act as a distribution point to notify involved capital attorneys. This is necessary to ensure involved capital attorneys are made aware of petition initiating or renewing ECT for patients and to ensure a collaborative decisionmaking process.

New section 3999.348(f)(3) is adopted to establish that in all types of ECT cases, the MCA shall notify the patient of their rights during the initial consultation by providing the patient with a copy of the CDCR 7707. This is necessary to ensure due process and that the Department makes every effort to inform the patient of their rights.

New section 3999.348(f)(4) is adopted to establish that if the patient's presence is required at the hearing, OLA shall notify the Warden, or designee, and the institution Out-To-Court desk. This is necessary to establish OLA as accountable for informing the institution that the patient is required to attend the hearing.

New section 3999.348(f)(5) is adopted to establish that pending a court hearing, the patient shall be entitled to communicate by writing, telephone, or personal visits with their parents, spouse, guardian, or conservator regarding any proposed administration of ECT. This is necessary to ensure due process and establish the patient's rights to continue communicating with their parents, spouse, guardian, or conservator regarding their ECT case.

New section 3999.348(f)(6) is adopted to establish that the patient shall be entitled to communicate with their attorney by writing or during a scheduled legal visit. This is necessary to ensure due process and establish the patient's rights to continue communicating with their attorney regarding their ECT case.

New section 3999.348(g) is adopted to introduce sections 3999.348(g)(1) – 3999.348(g)(1)(D).

New sections 3999.348(g)(1) – 3999.348(g)(1)(D) are adopted to outline the role of the MCA in ECT treatment. This is necessary to establish that the MCA is accountable for the coordination of all ECT cases, and accountable for facilitating communications between the different entities

throughout the ECT process. This is also necessary to establish that the MCA is accountable for ensuring requested documentation is prepared and available for review.

New section 3999.348(h) is adopted to introduce sections 3999.348(h)(1) – 3999.348(h)(5) which outline patient transfer and housing for ECT treatment.

New section 3999.348(h)(1) is adopted to establish that a patient shall be transferred pursuant to section 3999.306 to an appropriate institution close to where ECT treatment will be provided. This is necessary to ensure the patient receives timely access to necessary ECT treatment.

New section 3999.348(h)(2) is adopted to establish that the superior court petition shall be filed in the county in which the patient is housed at the time the petition is filed. This is necessary to establish the requirement for where a petition shall be filed.

New section 3999.348(h)(3) is adopted to establish that changes in level of care shall only be made in agreement with the attending psychiatrist involved in the patient's clinical recommendation for ECT, and if it is determined that the patient is suitable for transfer, the patient shall be transferred in accordance with section 3999.306 and housed at the closest facility that can meet their needs. This is necessary to ensure any changes in the patient's care shall only occur if approved by the appropriate qualified psychiatric staff. This is also necessary to ensure staff follow existing health care transfer procedures when the patient is determined suitable for transfer to receive proper care.

New section 3999.348(h)(4) is adopted to establish that the MCA, under the direction of the Chief Psychiatrist, is responsible for facilitating coordination of transport of the patient for treatment appointments. This is necessary to clarify that the MCA is accountable for scheduling and organizing the transport of patients for ECT appointments.

New section 3999.348(h)(5) is adopted to establish that once a patient has begun treatment, the patient shall be housed in an appropriate level of care, determined with the agreement of the attending psychiatrist, at the institution to allow observation and monitoring for the duration of treatment. This is necessary to ensure assessment of the patient's health care needs are completed in collaboration with the appropriate qualified clinical health care staff. This is also necessary to ensure the care plan meets the patient's health care needs to minimize risk to the patient.

New section 3999.348(i) is adopted to introduce sections 3999.348(i)(1) – 3999.348(i)(2)(D) which outline the ECT renewal process.

New section 3999.348(i)(1) is adopted to establish that the MCA shall inform the attending psychiatrist of court orders for ECT expiring in the next 90 days. This is necessary to ensure staff accountability and establish a standardized process and timeline for renewing expiring court orders of ECT cases and ensure proper, timely coordination of the assessment.

New section 3999.348(i)(2) is adopted to establish that the attending psychiatrist, in collaboration with the psychiatrist providing the treatment, shall review the patient's progress and, if clinically indicated, initiate renewal ECT proceedings before the expiration of the current court order and coordinate with OLA through the MCA. This is necessary to establish a standardized process and

timeline for renewing ECT cases and ensure timely treatment decisions and continuity of care. This is also necessary to ensure staff accountability.

New section 3999.348(i)(2)(A) is adopted to establish that if the attending psychiatrist determines renewal is in the patient's best interest, a CDCR 7713 shall be prepared and forwarded to the MCA. This is necessary to ensure proper documentation of the patient's need for continued ECT treatment and ensure staff accountability.

New section 3999.348(i)(2)(B) is adopted to establish that within two business days of receipt of a CDCR 7713 and CDCR 7715, the institution's MCA shall forward the completed forms to OLA. This is necessary to establish a standardized process and timeline for providing the required forms to the appropriate staff for ECT renewals. This is also necessary to ensure staff accountability.

New section 3999.348(i)(2)(C) is adopted to establish that the MCA shall serve the court order to the patient, their attorney, and any existing guardian, conservator, or surrogate decisionmaker for the patient. This is necessary for staff accountability and to identify the entities who shall be served with the court order.

New section 3999.348(i)(2)(D) is adopted to establish that if the patient's capacity to consent has changed, the appropriate documentation shall be completed and provided to the court. This is necessary to require proper documenting of the patient's capacity to consent and noticing of the patient's condition to the court.

Specific Purpose and Rationale for Each Form Proposed for Amendment, Adoption, or Repeal

New CDCR 7707, Patient Electroconvulsive Therapy Rights, is incorporated by reference and adopted to provide patients and the Department the means to document patient ECT rights governed by Penal Code section 2607-2680. This is necessary to ensure patients receiving ECT treatment are aware of their statutory rights and ensure the ECT is conducted in compliance with California Law.

New CDCR 7708, Patient Electroconvulsive Therapy Informed Consent, is incorporated by reference and adopted to provide the patients and the Department the means to establish and document patient informed consent of potential risks, side effects, treatments, and withdrawal rights from ECT and ensure witness signature is documented. This is necessary to ensure patient understanding of ECT is properly communicated and to protect the Department from incurring unwarranted responsibilities for the results of a patient's outcome of ECT treatment.

New CDCR 7712, Clinical Recommendation for Electroconvulsive Therapy, is incorporated by reference and adopted to provide the Department a means to document their clinical review, evaluation, and recommendation of patients for the determination of ECT treatment. This is necessary to ensure proper documentation of assessments for ECT treatment are completed by qualified clinical health care staff. This is also necessary to protect patients' rights and ensure better patient outcomes.

New CDCR 7713, Clinical Recommendation for Electroconvulsive Therapy Renewal, is incorporated by reference and adopted to provide the Department a means to document their clinical review, evaluation, and recommendations of patients for the determinations of ECT renewal. This is necessary to ensure proper documentation of assessments for ECT renewal are completed by qualified clinical health care staff. This is also necessary to ensure better patient outcomes.

New CDCR 7715, Routing Sheet for Electroconvulsive Therapy, is incorporated by reference and adopted to provide the qualified clinical health care staff means to document and communicate the nature of the petition for ECT to the Department. This is necessary to efficiently triage and coordinate ECT cases between entities involved in the ECT process, and to ensure timely processing of ECT referrals.