



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO HEALTH CARE REGULATIONS

Sections: 3999.225, 3999.228, 3999.231,
3999.235, 3999.239



CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

Number:
25-02

Publication Date:
May 30, 2025

Effective Date:
To Be Announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to sections 3999.225, 3999.228 and 3999.235; the repeal of section 3999.231; and adoption of section 3999.239, of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to update provisions concerning allegations of misconduct against health care staff.

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 CDCRHealthCareRegulationsandPolicySection@cdcr.ca.gov. All written comments must be received by the close of the public comment period, **July 15, 2025 at 5:00 p.m.**

PUBLIC HEARING INFORMATION

The California Department of Corrections and Rehabilitation will hold a virtual public hearing on July 15, 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 726 777 604# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on July 15, 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 segregated 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 CDCRHealthCareRegulationsandPolicySection@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.

JEFF 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 3999.225, 3999.228, and 3999.235; repeal section 3999.231 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, Article 5; and adopt Article 5.1 and Section 3999.239 into the CCR, Title 15, Division 3, Chapter 2.

PUBLIC HEARING:

A virtual public hearing will be held on July 15, 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 726 777 604# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on July 15, 2025.

PUBLIC COMMENT PERIOD:

The public comment period will close on **July 15, 2025, at 5:00 p.m.** Any person may submit public comments in writing (by mail or 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 CDCRHealthCareRegulationsandPolicySection@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: Sections 4040(a)(2), 4076, 4170 and 4171(b), Business and Professions Code; Section 1157, Evidence Code; Section 11150 Health and Safety Code; Sections 3424 and 5054, Penal Code; *Perez, et al. v. Cate, et al.*, (No. C05-05241 JSW), U.S. District Court, Northern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The CDCR proposes to amend California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, Subchapter 2, Article 5, Sections 3999.225, 3999.228 and 3999.235; repeal section 3999.231; and adopt Article 5.1 and Section 3999.239 governing allegations of misconduct against health care staff. Current Title 15 regulations do not reflect improvements made to the Department's handling of health care staff misconduct allegations involving incarcerated and supervised persons, which includes improvement of departmental transparency, integrity, and staff accountability. Additionally, CDCR must comply with expanded Armstrong Court Orders (*Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020) that call for reforms to the Department's staff complaint, investigation, and discipline processes to ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct for class members under the Armstrong Remedial Plan and the Americans with Disabilities Act (ADA).

This proposed action will:

- Significantly improve the Department's handling of health care allegations of staff misconduct involving incarcerated and supervised persons.
- Improve departmental transparency, integrity, and staff accountability.
- Bring CDCR into compliance with expanded Armstrong Court Orders (*Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020) that call for reforms to the Department's staff complaint, investigation, and discipline processes.
- Ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct for class members under the ADA.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates the proposed regulations will benefit CDCR staff and the regulated public by helping to properly and, in a timely fashion, investigate allegations of health care staff misconduct toward an incarcerated or supervised person.

FORMS INCORPORATED BY REFERENCE:

Not applicable

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: | <i>None</i> |
| • Cost to any local agency or school district that is required to be reimbursed: | <i>None</i> |
| • Other nondiscretionary cost or savings imposed on local agencies: | <i>None</i> |
| • Cost or savings in federal funding to the state: | <i>None</i> |

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 regulations only affect a program that handles health care staff misconduct allegations involving incarcerated and supervised persons 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 only affects a program that handles health care staff misconduct allegations involving incarcerated and supervised persons within CDCR.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The proposed regulations will benefit the health and welfare of Californians, and worker safety by deterring unethical or unsafe behavior; identifying and correcting hazardous practices; promoting adherence to established medical protocols; and enhancing trust between Department staff and incarcerated and supervised persons. This regulation will not have an impact on the State's

environment, as the State's environment is not impacted by the administration of the allegations of staff misconduct against health care staff program.

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

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 or the elimination of existing jobs within the State of California.

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 businesses or the elimination of existing businesses within the State of California.

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.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The proposed regulations will benefit the health and welfare of Californians, and worker safety by deterring unethical or unsafe behavior; identifying and correcting hazardous practices; promoting adherence to established medical protocols; and enhancing trust between Department staff and incarcerated and supervised persons. This regulation will not have an impact on the State's environment, as the State's environment is not impacted by the administration of the allegations of staff misconduct against health care staff program.

The Department anticipates the proposed regulations will benefit CDCR staff and the regulated public by helping to properly, and in a timely fashion, investigate allegations of health care staff misconduct toward an incarcerated or supervised person.

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 only affects a program that handles health care staff misconduct allegations involving incarcerated and supervised persons within CDCR.

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 only affects a program that handles health care staff misconduct allegations involving incarcerated and supervised persons 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.

AVAIABILITY 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 EMERGENCY REGULATIONS

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

Chapter 2. Rules and Regulations of Health Care Services

Subchapter 2. Patient's Entitlements and Responsibilities

Article 5. Health Care Grievances

3999.231 Health Care Staff complaints

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

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

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

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

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

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

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

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

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

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

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

(A) The patient.

(B) All necessary witnesses.

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

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

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

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

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

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

1. With approval from the institutional litigation coordinator.

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

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

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

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

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

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

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

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

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

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

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

Article 5.1 Allegations of Misconduct Against Health Care Staff

3999.239 Allegations of Misconduct Against Health Care Staff

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

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

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

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

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

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

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

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

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

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

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

(b) Right to Report.

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

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

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

(c) Submission.

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

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

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

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

(3) Verbal ASM.

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

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

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

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

(d) Receipt and Routing.

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

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

(e) Screening.

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

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

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

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

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

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

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

(f) Review.

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

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

(g) CAR Approval.

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

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

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

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

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

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

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

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

(j) Confidentiality.

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

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

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

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, Subchapter 2, Article 5, Sections 3999.225, 3999.228, and 3999.235; repeal section 3999.231; and adopt Article 5.1, Section 3999.239 regarding allegations of misconduct against health care staff.

Summary of the Proposal

Problem Statement:

There is a need for significant improvement in the Department's handling of health care staff misconduct allegations involving incarcerated and supervised persons, which includes improvement of departmental transparency, integrity, and staff accountability. Additionally, CDCR must comply with expanded Armstrong Court Orders (*Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020) that call for reforms to the Department's staff complaint, investigation, and discipline processes to ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct for class members under the Armstrong Remedial Plan and the Americans with Disabilities Act (ADA).

Objective:

This rulemaking action is necessary to implement a modified regulatory process for addressing health care allegations of staff misconduct. The Department proposes to implement regulations in furtherance of Penal Code section 5058.4 by establishing specific requirements for investigating allegations of health care staff misconduct toward an incarcerated or supervised person.

Benefit:

The Department anticipates the proposed regulations will:

- Significantly improve the Department's handling of health care allegations of staff misconduct involving incarcerated and supervised persons.
- Improve departmental transparency, integrity, and staff accountability.
- Bring CDCR into compliance with expanded Armstrong Court Orders (*Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, Court Case number 94-cv-02307 CW on September 8, 2020) that call for reforms to the Department's staff complaint, investigation, and discipline processes.
- Ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct for class members under the Armstrong Remedial Plan and the Americans with Disabilities Act (ADA).

ECONOMIC IMPACT ASSESSMENT

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

California Department of Corrections and Rehabilitation
California Correctional Health Care Services

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 only affect an internal administrative program that handles health care staff misconduct allegations involving incarcerated and supervised persons.

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 only affect an internal administrative program that handles health care staff misconduct allegations involving incarcerated and supervised persons.

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 only affect an internal administrative program that handles health care staff misconduct allegations involving incarcerated and supervised persons.

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

The proposed regulations will benefit the health and welfare of Californians and worker safety by deterring unethical or unsafe behavior; identifying and correcting hazardous practices; promoting adherence to established medical protocols; and enhancing trust between Department staff and incarcerated/supervised persons. This regulation will not have an impact on the State's environment, as the State's environment is not impacted by the administration of the allegations of staff misconduct against health care staff.

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 people than the proposed action, or would be more cost effective to affected private people 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 that 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 a program that receives, documents, examines, and addresses allegations of misconduct against health care staff.

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, or the State's environment.

Reports, Studies and Documents Relied Upon

Order filed on September 8, 2020, calling for reforms to the Department's staff complaint, investigation, and discipline processes, *Armstrong et al. v. Newsom et al.*, United States District Court for the Northern District of California, (No. 94-cv-02307 CW).

<https://casetext.com/case/armstrong-v-newsom-1>

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

Non-substantive grammar and punctuation changes are made throughout the following regulatory sections for accuracy and readability.

Chapter 2. Rules and Regulations of Health Care Services

Subchapter 2. Patient's Entitlements and Responsibilities

Article 5. Health Care Grievances

Section 3999.225 Definitions

Sections 3999.225(a) through (v) remain unchanged.

Section 3999.225(w) is amended to incorporate provisions from (w)(1) and is otherwise unchanged.

Section 3999.225(w)(1) is repealed and provisions moved to section 3999.225(w).

Sections 3999.225(w)(2) through (w)(4) are repealed. This is necessary as the “staff complaint” process referenced in these sections is being replaced by the process outlined in new section 3999.239.

Section 3999.228 Institutional Level Health Care Grievance Review.

Sections 3999.228(a) through (f)(3) remain unchanged.

Section 3999.228(f)(4) is repealed. This is necessary as the “staff complaint” process referenced in this section is being replaced by the process outlined in new section 3999.239.

Sections 3999.228(g) through 3999.228(j) remain unchanged.

Section 3999.231 Health Care Staff Complaints

Section 3999.231 Health Care Staff Complaints is repealed. This is necessary as the process outlined in this section is has been replaced by the process outlined in new section 3999.239.

Section 3999.235 Health Care Grievance and Health Care Grievance Appeal Withdrawal

Section 3999.235(a) is amended to remove the reference to the “staff complaint” process. This is necessary as the “staff complaint” process referenced in this section is being replaced by the process outlined in new section 3999.239.

Sections 3999.235(b) through 3999.235(e)(2) remain unchanged.

New Article 5.1 Allegations of Misconduct Against Health Care Staff is adopted.

New section 3999.239 Allegations of Misconduct Against Health Care Staff is adopted.

New section 3999.239(a) is adopted to introduce section 3999.239(a)(1) through 3999.239(a)(7).

New section 3999.239(a)(1) is adopted to define the term “Centralized Screening Team.” This is necessary for a common understanding of staff responsible for screening all grievances, reasonable accommodation requests, and allegations of staff misconduct, and then routing the claim.

New section 3999.239(a)(2) is adopted to define the term “Health Care Allegation Examiner.” This is necessary for a common understanding of departmental staff trained in techniques to conduct inquiries and research into allegations of staff misconduct.

New section 3999.239(a)(3) is adopted to define the term “Health Care Correspondence and Appeals Branch.” This is necessary for a common understanding of the office responsible for statewide oversight of the grievance program and the headquarters' level health care grievance appeal review.

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New section 3999.239(a)(4) is adopted to define the term “Health Care Grievance Office.” This is necessary for a common understanding of the office responsible for coordinating the institutional level health care grievance review.

New section 3999.239(a)(5) is adopted to define the term “Hiring Authority.” This is necessary for a common understanding of who can be delegated as a hiring authority, with the power to hire, initiate the investigation process by submitting a confidential request for an internal affairs investigation or approval for direct adverse action, discipline, and dismiss staff.

New section 3999.239(a)(6) is adopted to define the term “Office of Internal Affairs.” This is necessary for a common understanding of the entity with authority to investigate allegations of employee misconduct.

New section 3999.239(a)(7) is adopted to define the term “Staff misconduct.” This is necessary for a common understanding of the term as it applies to Article 5.1.

New section 3990.239(b) is adopted to introduce sections 3999.239(b)(1) through 3999.239(b)(3).

New section 3999.239(b)(1) is adopted to provide that any person may report an allegation of staff misconduct against health care staff when they believe misconduct has occurred. This is necessary for patient safety and to maintain a just, ethical, and accountable prison system.

New section 3999.239(b)(2) is adopted to prohibit departmental staff from retaliating against any person for submitting an allegation of staff misconduct. This is necessary to maintain a fair, safe, and just environment; ensuring accountability; and fostering a culture of transparency and integrity.

New section 3999.239(b)(3) is adopted to provide that all allegations of staff misconduct are documented, examined, and addressed with discipline imposed including referrals for criminal prosecution, when warranted. This is necessary to ensure accountability, fairness, and the safety and well-being individuals involved; and to maintain a professional, ethical, and legally compliant institutions.

New section 3999.239(c) is adopted to introduce sections 3999.239(c)(1) through 3999.239(c)(4)(A)1.b.

New sections 3999.239(c)(1) through 3999.239(c)(1)(B) are adopted to establish that incarcerated persons may submit an allegation of misconduct against health care staff by using a CDCR 602 HC, Health Care Grievance; that supervised persons, members of the public, or departmental staff may submit an allegation of misconduct against health care staff by a using written correspondence; and also to describe the information that is needed on the written allegation of misconduct. This is necessary to maintain official records, and help legally protect the Department, incarcerated persons, supervised persons, members of the public, and departmental staff.

New sections 3999.239(c)(2) through 3999.239(c)(3) are adopted to describe the information that is needed on the written allegation of misconduct. This is necessary for a more effective and timely processing of the allegation of misconduct.

New sections 3999.239(c)(4) through 3999.239(c)(4)(A)1.b. are adopted to instruct that verbal allegations of misconduct against health care staff by a member of the public or supervised person must be transcribed and submitted via email to m_CCHCSPHCI@cdcr.ca.gov or via mail to Health Care Correspondence and Appeals Branch, Policy and Risk Management Services, P.O. Box 588500, Elk Grove, CA 95758. This is necessary to maintain official records, helping to legally protect the Department, members of the public or supervised persons.

New sections 3999.239(d) through 3999.239(d)(1)(B) are adopted to set forth the proper routing process and routing timelines for allegations of misconduct against health care staff received via a CDCR 602 HC or written correspondence received from the public, once they have been clinically triaged for urgent or emergent health care issues. This is necessary to ensure the health and welfare of patients, timely review of allegations of misconduct against health care staff, and protection of patients by preventing harmful behavior from escalating into more serious problems.

New section 3999.239(e) is adopted to introduce sections 3999.239(e)(1) through 3999.239(e)(1)(B)1.

New sections 3999.239(e)(1) through 3999.239(e)(1)(B)1. are adopted to outline how allegations of misconduct against health care staff shall be processed by the Allegations of Staff Misconduct (ASM) Team following screening by the Centralized Screening Team (CST). This is necessary to ensure transparency; that allegations of misconduct against health care staff are treated fairly, consistently and in a timely manner; and that allegations of misconduct against health care staff are not mishandled.

New sections 3999.239(f) through 3999.239(f)(1)(C) are adopted to assign the responsibility of ensuring the Confidential Allegation Report (CAR) is sufficient, complete, and unbiased; recommending a finding for each allegation and referring to the hiring authority for determination; and ensuring cases are reviewed and closed within 90 business days from the date the ASM is received from the CST. In addition, it provides that the hiring authority shall make a determination of findings and notify the ASM Management Team within 14 business days. This is necessary to mitigate risk to the Department by ensuring CARs can withstand scrutiny are appropriately referred to the authority responsible for initiating investigations or approving direct adverse actions and facilitate timely adjudication of ASM. Additionally, it supports effective communication between the ASM Team and the hiring authority, ensuring cases are handled properly and not mismanaged.

New section 3999.239(g) is adopted to establish that when there are multiple submissions of the same ASM from different incarcerated persons or supervised persons, the ASM shall be combined and conducted as a single examination. This is necessary to save time and resources by investigating the same facts and evidence more than once.

New section 3999.239(h) through 3999.239(h)(1) is adopted to establish that a CAR shall be completed ASM received against contract or registry health care personnel, then reviewed and referred to health care Direct Care Contracts Section to consider further action related to the contract. This is necessary so that the Department can consider appropriate action related to contracts that apply to employees alleged of misconduct.

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New sections 3999.239(i) through 3999.239(i)(2) are adopted to establish that the CAR is a confidential document only to be seen by those involved in the allegation of staff misconduct process; and that the CAR shall not be released without subpoena or court order, or without approval from the Department's Office of Legal Affairs. This is necessary to safeguard the confidentiality of the CAR by restricting access to those directly involved in the staff misconduct process and preventing unauthorized disclosure.