

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3999.204, 3999.204.1,
3999.204.2, 3999.204.3,
3999.204.4, 3999.204.5,
3999.204.6

Amend sections: 3999.98, 3999.99,
3999.202, 3999.203

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2020-0924-03

OAL Matter Type: Regular (S)

This action specifies the process for properly identifying inmate patients who meet the criteria for an administrative determination of their capacity to provide informed consent, or the informed withholding of consent, to health care treatment in a correctional setting. The action delineates the substantive and procedural due process rights of affected inmate patients. The action adopts procedures concerning the selection and appointment of a surrogate decisionmaker. The action also adopts various forms to be used in executing the above-described provisions.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 3/1/2021.

Date: March 1, 2021



**Dale P. Mentink
Senior Attorney**

For: Kenneth J. Pogue
Director

Original: Ralph Diaz, Secretary
Copy: DeAnna Goulby

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2020-0303-14	REGULATORY ACTION NUMBER 2020-0924-035	EMERGENCY NUMBER
------------------	---	--	------------------

For use by Office of Administrative Law (OAL) only

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

MAR 01 2021

1:20pm

2020 SEP 24 P 4: 23
 OFFICE OF ADMINISTRATIVE LAW

--	--

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any) NCHCR 20-01
---	--

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

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2020 11-2	PUBLICATION DATE 3/13/20

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Capacity for Informed Consent	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0303-14
---	--

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3999.204, 3999.204.1, 3999.204.2, 3999.204.3, 3999.204.4, 3999.204.5, 3999.204.6
	AMEND 3999.98, 3999.99, 3999.202, 3999.203
	REPEAL 15

3. TYPE OF FILING

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

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
2/9/21 - 2/23/21

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
---	---	--	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON DeAnna Gouldy	TELEPHONE NUMBER (916) 691-3325	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
------------------------------------	------------------------------------	-----------------------	---------------------------

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Ralph Diaz</i>	DATE 9.5.20
TYPED NAME AND TITLE OF SIGNATORY Ralph Diaz, Secretary, California Department of Corrections and Rehabilitation	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 01 2021

Office of Administrative Law

FINAL TEXT OF 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

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.

Interested Person means any blood relative of the first, second, or third degree, or in a capital case, the patient's designated next-friend.

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

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 7701 (Rev. 10/20), Penal Code 2604 Rights

CDCR 7702 (Rev. 01/21), Petition for Capacity Determination

CDCR 7702-A (Rev. 10/20), Petition for Capacity Determination-Additional Page

CDCR 7703 (Rev. 01/21), Renewal Petition for Capacity Determination

CDCR 7704 (Rev. 10/20), Penal Code 2604 Reconsideration

CDCR 7705 (Rev. 10/20), Confidential Surrogate Decisionmaker Screening

CDCR 7706 (Rev. 10/20), Notice of Revocation or Termination of Penal Code 2604 Order

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

Subchapter 2. Patient Entitlements and Responsibilities

Article 1. Provisions of Health Care Services

Section 3999.202 is amended to read:

3999.202. Informed Consent Requirement for Treatment.

When unusual, serious or major health care procedures are indicated and time and circumstances permit, the patient's ~~specific~~ written informed consent shall be obtained before treatment is undertaken, except as otherwise provided in sections ~~3999.204 through 3999.204.6, 3999.210, and 3999.344~~. If the ~~recommended treatment is refused~~ patient or the patient's guardian or responsible relative objects to the recommended treatment, such objection ~~refusal~~ shall be documented for ~~inclusion~~ in the patient's health record.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

Section 3999.203 is amended to read:

3999.203. Capacity for Informed Consent.

~~(a) A patient shall be considered capable of giving informed consent if in the opinion of health care staff the patient is:~~

~~(1) Aware that there is a physiological disorder for which treatment or medication is recommended.~~

~~(2) Able to understand the nature, purpose, and alternatives of the recommended treatment, medication, or health care procedures.~~

~~(3) Able to understand and reasonably discuss the possible side effects and any hazards associated with the recommended treatment, medication, or health care procedures. A patient shall not be deemed incapable of informed consent solely because of being diagnosed as mentally disordered, abnormal, or mentally defective.~~

(a) If a patient lacks capacity and an issue or issues arise that would require the patient's informed consent, the procedures set forth in section 3999.204 shall be followed.

(b) If a surrogate decisionmaker has been lawfully appointed to act on behalf of a patient, the outside facility or institution caring for the patient shall accept the surrogate decisionmaker's informed consent or informed refusal. The Department shall seek to appoint a surrogate decisionmaker pursuant to this section for a patient who lacks capacity except in the case of a medical emergency.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

New section 3999.204 is adopted to read:

3999.204. Petitions for Capacity Determination.

(a) Preparation of petition.

(1) Initial proceedings to determine a patient's capacity to give informed consent and make a health care decision shall be legibly documented and noticed by the CDCR 7702, Petition for Capacity Determination, and CDCR 7701, Penal Code 2604 Rights.

(2) These forms may be dictated, completed by hand, or completed on computer.

(A) Clinical or administrative staff may help gather necessary data or record observations to complete portions of the forms as needed.

(3) Additional pages may be added using the CDCR 7702-A, Petition for Capacity Determination-Additional Page.

(4) The CDCR 7702 shall be verified by the declarant pursuant to California Code of Civil Procedure section 446, prior to filing.

(A) The CDCR 7702 shall be reviewed and signed under penalty of perjury by the licensed health care provider who completes the petition prior to filing with the Office of Administrative Hearings (OAH).

(B) Petitions signed under penalty of perjury may utilize digital authentication and verification to facilitate electronic transmission.

(b) Supplemental petitions.

(1) Office of Legal Affairs, California Department of Corrections and Rehabilitation (OLA) shall file a supplemental petition prior to any hearing. The supplemental petition shall be served on counsel appointed by OAH.

(2) The supplemental petition shall include the Department's recommendation for an appointed surrogate and an alternate appointed surrogate.

(c) Identification of surrogate decisionmaker.

(1) The OLA shall attempt to locate and contact family members identified in the petition, or identifiable from the patient's chart, who are potential surrogate decisionmakers. OLA shall utilize the CDCR 7705, Confidential Surrogate Decisionmaker Screening, to ensure consistency of data when contacting potential surrogate decisionmakers. The CDCR 7705 will be confidential and not part of the administrative filing but may be shared with the Administrative Law Judge (ALJ) or patient's attorney upon request or direction from the ALJ. Each potential surrogate decisionmaker shall be asked to fill out background information on a CDCR 7705.

(A) Evaluation of the suitability of family members as potential surrogate decisionmakers shall be conducted by OLA.

(B) If the Department is recommending a particular family member to the exclusion of other candidates, the Department shall articulate its reasoning in the supplemental petition, and confirm the proposed candidate's willingness to act on behalf of the patient.

(2) If there is no suitable family member to serve as surrogate decisionmaker, the Department may recommend an institutional executive not directly involved in the patient's care or have the Health Care Ethics Committee serve as surrogate decisionmaker for the patient.

(3) The patient's attorney may attempt to contact the potential surrogate decisionmakers as identified either by the patient or by OLA.

(d) Service of petition.

(1) The completed petition and notice of rights shall be served on the patient, the patient's appointed or retained attorney, and the State's attorney.

(2) The patient shall be personally served.

(A) For purposes of this section, personal service means the patient receives the forms CDCR 7701 and the CDCR 7702.

(B) In cases where the patient may not be able to communicate and/or the patient meets any of the criteria listed in section 3999.201(a), the person serving the forms shall document efforts made at effective communication to the patient pursuant to section 3999.201.

(3) A copy shall be filed electronically with OAH the same day the patient is served with the CDCR 7701 and CDCR 7702.

(4) The institution's Medication Court Administrator (MCA) shall collect and securely transmit supporting documentation of any filed petition, as well as contact information for family members

who may have an interest in the case, by electronic means to both the State's and patient's attorney within seven business days from the date of service on the patient.

(5) The outside facility or institution shall allow the patient's attorney access to view the pertinent records on site prior to the hearing, if the patient's attorney was not previously served under subsection (c)(4).

(e) Independent expert.

(1) If the petition alleges a health care condition that a reasonably competent attorney could not properly investigate or litigate by speaking to the declarant in the petition, the patient's attorney may request in writing that the ALJ appoint an independent expert to evaluate the patient at the Department's expense.

(2) The Department shall have seven business days to respond to any such request.

(3) The decision to appoint an independent expert is at the discretion of the ALJ to make a finding by a preponderance that the case cannot be fairly presented without an additional expert.

(f) Condemned patients.

(1) In any proceeding involving a condemned patient, in addition to service under subsection (b), a digital version of any petition initiating or renewing a capacity determination shall be sent by the institution's MCA to the California Appellate Project via encrypted or secure email to keyhea@capsf.org.

(2) Service under this subsection shall not include discovery materials.

(3) OAH shall retain the authority to appoint an attorney, unless an attorney from the California Appellate Project or an attorney otherwise retained on behalf of the patient, enters an appearance on behalf of the condemned patient.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

New section 3999.204.1 is adopted to read:

3999.204.1. Appointment of Counsel for Capacity Determination Hearings.

(a) The Office of Administrative Hearings (OAH) shall not appoint an attorney to represent the patient on a filed CDCR 7702 petition who may have a conflict of interest with the patient or the Department.

(b) Any interested person may object to the attorney appointed by OAH by verified objection stating the facts and circumstances of the conflict of interest and reasons why OAH should appoint a different attorney to represent the patient on the petition.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

New section 3999.204.2 is adopted to read:

3999.204.2. Capacity Determination Hearings.

(a) Hearing location.

(1) The hearing shall take place at the outside facility or institution where the patient is located.

(2) On the day of the hearing, the outside facility or institution shall provide a space for the patient's attorney and each patient to meet confidentially if the patient is ambulatory. If the patient is not ambulatory, the Administrative Law Judge (ALJ) may determine how to best accommodate a meeting between the patient's attorney and the patient.

(3) The ALJ and the attorneys may conduct a hearing in a medical setting as long as safety precautions are in place.

(4) The ALJ may elect to hold the hearing remotely at their discretion.

(A) Notwithstanding subsection (a)(4), the ALJ shall hold the hearing remotely if recommended by the California Department of Public Health or institutional leadership based on public health guidance.

(b) Required appearances.

(1) The patient shall be brought to the hearing unless one of the following exceptions has occurred:

(A) The patient is unable to attend the hearing by reason of medical unavailability. The Department shall establish the patient's medical unavailability by declaration or testimony of a health care provider familiar with the patient's condition. Medical unavailability is presumed if the patient is at an outside facility for emergent care. The ALJ may conduct a hearing with the patient in absentia if the patient is medically unavailable.

1. If the patient is unable to attend the hearing due to a medical unavailability, the ALJ may continue the hearing if it appears that the patient will be able to attend the hearing within a reasonable time; issue temporary orders based on the circumstance presented, including orders that any necessary treatment may proceed; or proceed with the hearing in the absence of the patient if it appears the patient's medical condition will preclude appearance within a reasonable time period.

2. The ALJ may conduct a hearing in a Mental Health Crisis Bed, at the patient's cell or housing unit, or other medical setting as long as safety precautions are in place and custody staff is able to accommodate the ALJ's request to conduct a hearing at the selected location.

(B) If a sworn correctional officer or health care staff indicates that the patient is not willing to attend the hearing, or the patient expressly chooses not to attend the hearing, or that the patient does not wish to contest the petition, the ALJ presiding over the hearing shall appoint the Medication Court Administrator (MCA), the patient's attorney, or other sworn person to do the following:

1. Interview the patient personally, or in a language the patient can understand, and provide facts to allow the ALJ to determine whether the patient has capacity to knowingly and intelligently waive his or her attendance at the hearing.

2. If the patient has capacity to understand the nature of the proceedings, inform the patient, in a language the patient can understand, of the contents of the petition; of the nature, purpose and effect of the proceeding, and of the following rights of the patient: the right of the patient to attend the hearing; to oppose the request for determination of capacity and appointment of a surrogate decisionmaker; to be represented by legal counsel; to confront the witnesses; to have his or her attorney cross-examine witnesses; and to testify on his or her own behalf.

3. Determine whether the patient is able to attend and participate in the hearing and, if able to attend, whether the patient wishes to attend the hearing.

4. Determine whether the patient wishes to contest the petition.

5. Determine whether the patient wishes to speak to his or her appointed attorney or, if the patient has retained private counsel, obtain the name or any other identifying information about private counsel so that the petition and supporting documentation can be served by the MCA on privately retained counsel and a new hearing date can be set within a reasonable time for the appearance of private counsel.

(2) If the licensed health care provider with the most knowledge of the patient's condition is not available to testify in person, that licensed health care provider may present either an initial case or a renewal case by way of videoconference or teleconference.

(3) The ALJ may allow attendance by telephone.

(A) If the recommended surrogate or alternate surrogate decisionmaker is a family member, the ALJ may direct or allow the family member to appear at the hearing by telephone.

(B) Any proposed surrogate decisionmaker may request to attend the hearing by telephone.

(C) A next friend may request to attend the hearing by telephone in condemned cases.

(D) The MCA is responsible for ensuring that a telephone is available to facilitate testimony or attendance by telephone on the day of the hearing.

(c) Timing and frequency of hearings.

(1) Hearings on CDCR 7702 petitions shall be scheduled within the timeframes of Penal Code (PC), section 2604.

(A) Hearings may be rescheduled based on availability of attorneys, witnesses, and/or the ALJ.

(2) Upon good cause, such as the patient's clinical condition or the availability of a needed witness, the Department may seek to advance a hearing or may ask appointed counsel to stipulate to an accelerated hearing date.

(d) Hearing procedure.

(1) On the day of the hearing, the patient shall again be given the advisements listed in PC, section 2604(e)(1), in a language the patient can understand, and be further advised that the patient may attend the hearing and may contest the petition with the assistance of counsel. In the event the patient refuses to meet with their attorney, if the petition is the initial petition, the patient's attorney shall be taken to the patient's housing location to attempt an interview and assessment. If the petition is a renewal petition and the patient refuses to meet with their attorney, the advisements shall be given to the patient by a sworn correctional officer or by a sworn MCA.

(2) The ALJ shall take sworn testimony from the individual who contacted the patient to establish that procedures were followed to obtain a knowing and intelligent waiver.

(A) If the agent of the court reports the patient may have capacity or limited capacity, the ALJ shall make further inquiry before proceeding. After receiving this information, the ALJ shall make an express finding by a preponderance of evidence that the patient's presence at the hearing is excused and/or find that the patient has made a knowing and intelligent waiver of the right to be present at the hearing or is medically unavailable.

(B) If any party, or the ALJ, raises a question as to the patient's capacity to waive presence at the hearing, the ALJ shall order the patient brought to the hearing, or conduct the hearing at the patient's housing unit.

(3) ALJs shall retain the discretion to manage all aspects of the hearing and courtroom process on the day of the hearing.

(e) Record of proceedings.

(1) A record of proceedings shall be created for all hearings conducted pursuant to this section. The record consists of the findings of fact and determinations of law in the order issued by the ALJ following the hearing, the petition, all documents related to the petition, and a record of the hearing. The record shall be retained by the Department.

(2) The record of hearing shall be a sound recording.

(3) The ALJ shall make findings by a preponderance of evidence or by stipulation of the parties that the patient is an adult committed to State prison; that there is no person with legal authority to provide informed consent for the patient; that no valid advance directive exists that was executed

while the patient had capacity and that based on the record of proceedings, the ALJ determines which proposed surrogate and proposed alternate surrogate shall be appointed.

(A) The ALJ may review the CDCR 7705 for any family member who has returned the form, and shall consider the supplemental petition prepared by Office of Legal Affairs, CDCR, summarizing the available candidates and their relative suitability or lack of suitability.

(B) Any expression of agreement or disagreement by the patient's family members with the contents of the petition shall be disclosed to the ALJ and the patient's attorney.

(4) In the event the Department files both a PC, section 2602, and a PC, section 2604 petition, on the same patient to be heard the same day, and if the ALJ consolidates the two cases and conducts only one hearing, the ALJ shall prepare and execute separate findings and orders for each case.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

New section 3999.204.3 is adopted to read:

3999.204.3. Procedures Following the Capacity Hearing.

(a) Immediately upon issuance of an order pursuant to Penal Code (PC), section 2604, by an Administrative Law Judge (ALJ), the Medication Court Administrator shall transmit a copy of the order to the Office of Legal Affairs, CDCR; the institution Chief Nursing Executive; Chief Executive Officer (CEO); and Chief Medical Executive.

(b) Upon receipt of an order pursuant to PC, section 2604, by an ALJ, the CEO of the institution where the patient is located shall ensure that the following occurs:

(1) Within one day of receipt of the order, a health care provider familiar with the case shall note in the health record the results of the hearing and route the matter back to the Interdisciplinary Treatment Team or the Primary Care Team, as applicable, to have the patient's treatment plan updated to reflect both the ALJ ruling and plan for implementation of the ruling.

(2) Within one day of receipt of the order, ensure that the patient's health record, or medical chart if being cared for at an outside facility, is updated to reflect the appointment of a surrogate decisionmaker with the person's contact information, and ensure that health care providers caring for the patient are aware that a surrogate decisionmaker has been appointed.

(3) If a family member is designated as a surrogate decisionmaker, a Registered Nurse (RN), Supervising Registered Nurse (SRN) II, SRN III, health care provider, or designee shall be assigned, within five business days of receipt of the order, to prepare a summary limited to what is outlined in the petition as it pertains to treatment.

(A) This summary shall be completed within seven business days of receipt of the order.

(B) The health care provider referenced in subsection (b)(1) shall review the summary for accuracy and completeness before it is to be disclosed to the appointed surrogate decisionmaker.

1. A written summary shall be provided to the designated surrogate upon appointment. Upon request of the surrogate decisionmaker, an updated summary shall be provided on a quarterly basis.

(C) The RN, SRN II, SRN III, or health care provider assigned in subsection (b)(3) shall communicate the contents of the summary with the designated surrogate decisionmaker within 14 calendar days following the hearing.

1. Communication of the summary may either be by phone or secure and encrypted electronic mail.

(4) The surrogate decisionmaker shall be provided the institution's release of information phone number to be used to make inquiries about the patient.

(A) Health care providers shall have five business days to respond to any inquiry from an appointed surrogate decisionmaker received through the release of information phone line.

(5) If the patient requires emergent care for a serious or life-threatening issue, the outside facility or institution shall attempt to contact the appointed surrogate decisionmaker to obtain consent.

(c) Pursuant to a valid ALJ order under PC, section 2604, and 45 Code of Federal Regulations, section 164.512(e), the outside facility or institution shall timely disclose relevant protected health information of the patient to the appointed surrogate decisionmaker where that information is directly relevant to the patient's care and needed to allow the appointed surrogate decisionmaker to give or withhold informed consent on behalf of the patient.

(d) If an appointed surrogate decisionmaker gives notice that they can no longer serve, becomes incapacitated and thus unable to serve, or if there is any indication that the appointed surrogate decisionmaker is not appropriately fulfilling their duties, fails to respond to communications from the outside facility or institution, or cannot be reached, the Department shall then communicate with the alternate surrogate decisionmaker.

(1) If the alternate appointed surrogate decisionmaker gives notice that they can no longer serve, becomes incapacitated and thus unable to serve, or if there is any indication that the alternate appointed surrogate decisionmaker is not appropriately fulfilling their duties or fails to respond to communications from the outside facility or institution, or cannot be reached, the Department shall then place the case back on the Office of Administrative Hearings' calendar within 45 calendar days of receiving such information and seek appointment of a substitute and alternate surrogate decisionmaker.

(e) Nothing in this section creates an entitlement or exception in favor of a surrogate decisionmaker to circumvent an institution's standard security screening, visitation procedures, and protocols.

(f) If a patient's health condition materially declines, or if additional factors develop that were not originally pleaded, the Department may file a motion to modify the original petition to include the new information.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

New section 3999.204.4 is adopted to read:

3999.204.4. Revocation or Termination of Capacity Determination Orders.

(a) Revocation or termination of Capacity Determination Orders shall issue on request by the filing of a verified request to revoke or terminate a Capacity Determination Order.

(1) Reasons to revoke or terminate a Capacity Determination Order include that the patient has regained capacity for informed consent, that a specified medical condition has abated, or that the patient has been released from the custody of the Department.

(2) The treating health care provider shall document reasons for revocation or termination of a Capacity Determination Order on a CDCR 7706, Notice of Revocation or Termination of Penal Code 2604 Order.

(3) The treating health care provider may recommend the revocation or termination of Capacity Determination Order take effect immediately or upon the natural expiration of the existing order.

(4) If the Administrative Law Judge issues a revocation or termination order, Office of Legal Affairs, CDCR, shall notify the appointed designated surrogate decisionmaker in writing with a copy of the order.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

New section 3999.204.5 is adopted to read:

3999.204.5. Appeals from or Reconsideration of Capacity Determination Orders.

(a) Motions for Reconsideration by patients shall be legibly documented and noticed by the CDCR 7704, Penal Code 2604 Reconsideration. Patients who complete this form must submit the form to the Medication Court Administrator (MCA), who shall scan and send a copy on the same day as received to Office of Legal Affairs, CDCR (OLA), the patient's previously-appointed attorney, and to Office of Administrative Hearings (OAH).

(1) Patients may seek reconsideration within one year of the decision for which review is sought.

(2) OAH shall notice all involved parties of its decision on the Motion for Reconsideration.

(3) Upon receipt of a reconsideration ruling by OAH, OLA shall forward a copy of the ruling to the institution's MCA.

(b) Motions for Reconsideration by the Department may be filed using a pleading form filed with OAH within 30 calendar days of the signed order for which reconsideration is being sought.

(1) If the State's attorney files the Motion for Reconsideration, the patient shall be served with a copy.

(2) A copy shall be filed electronically with OAH the same day the patient is served.

(3) OAH shall notice all involved parties of its decision on the Motion for Reconsideration.

(4) Upon receipt of a reconsideration ruling by the OAH, OLA shall forward a copy of the ruling to the institution's MCA.

(c) If a petition is denied by an Administrative Law Judge and there exists new material information that may not be raised in a Motion for Reconsideration, the Department may elect to re-file the case and set forth the additional information.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

New section 3999.204.6 is adopted to read:

3999.204.6. Renewal Petitions for Capacity Determination.

(a) Before the expiration of an order determining capacity, a licensed health care provider shall conduct an in-person interview with the patient to determine whether a renewal petition is required. When it is not possible to conduct the interview in person, the use of videoconferencing or teleconferencing is acceptable.

(b) Renewal proceedings to determine capacity to give informed consent and make a health care decision shall be legibly documented and noticed by the CDCR 7701 and CDCR 7703, Renewal Petition for Capacity Determination.

(c) The CDCR 7701 and CDCR 7703 shall be completed and submitted pursuant to section 3999.204.

(d) If there is internal disagreement about the patient's capacity, the matter shall be referred to the Health Care Ethics Committee to determine how to proceed.

(1) If the surrogate decisionmaker is a family member, the Office of Legal Affairs, CDCR (OLA) shall send a copy of the CDCR 7705 to the surrogate decisionmaker to update the surrogate's background information if the Health Care Ethics Committee decides to file the CDCR 7703.

(2) If the Health Care Ethics Committee decides not to renew the petition, the surrogate decisionmaker shall be notified in writing by OLA of the revocation or termination.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2604 and 5054, Penal Code.

Your Rights Regarding a Hearing to Determine Capacity

Adults housed in California prisons have a right to make informed decisions about their own health care and welfare. An informed decision means that health care staff recommended health care and you were able to agree or refuse after knowing the risks and benefits. It appears you are not able to understand or make decisions about your health care or personal welfare. For this reason, health care staff at this institution requested that an Administrative Law Judge review your case to decide whether another person should make those decisions for you. **You have rights as part of this process and they are listed below:**

- The right to be present at any hearing about the decision to appoint someone to make decisions for you.
- The right to hire your own attorney or to have a court-appointed attorney.
- The right to present evidence.
- The right to question any witness.
- The right to seek reconsideration once per year if a judge makes a decision that you do not agree with.
- The right to have a superior court review any decision a judge makes about your ability to understand or make decisions about your health care.
- Your attorney may review any documents needed to prepare for your hearing but is not allowed to see the confidential section of your central file.
- The right to a hearing in front of a judge within 30 days of being given notice that the Department is seeking a hearing.
- The right to 10 days' notice of a renewal hearing if the Department wants to renew an order that says you are unable to make informed decisions.
- The right to have any immediate family informed of the hearing.
- You, or your attorney, have 14 days from receipt of any petition to file a response or objection with the Office of Administrative Hearings.
- The right to be given a copy of any petition (CDCR 7702 or CDCR 7703) that relates to your medical or mental health condition.

Person Explaining These Rights to Patient:

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

<p>1. Disability Code:</p> <p><input type="checkbox"/> TABE score ≤ 4.0 <input type="checkbox"/> DPH <input type="checkbox"/> DPV <input type="checkbox"/> LD <input type="checkbox"/> DPS <input type="checkbox"/> DNH <input type="checkbox"/> DNS <input type="checkbox"/> DDP <input type="checkbox"/> Not Applicable</p>	<p>2. Accommodations:</p> <p><input type="checkbox"/> Additional Time <input type="checkbox"/> Equipment <input type="checkbox"/> SLI <input type="checkbox"/> Louder <input type="checkbox"/> Slower <input type="checkbox"/> Basic <input type="checkbox"/> Transcribe <input type="checkbox"/> Other*</p>	<p>3. Effective Communication:</p> <p><input type="checkbox"/> Patient asked questions <input type="checkbox"/> Patient summed information</p> <p>Please check one: <input type="checkbox"/> Not Reached* <input type="checkbox"/> Reached <small>*See chrono/notes</small></p>	<p>CDCR #:</p> <p>Last Name:</p> <p>First Name: MI:</p> <p>DOB:</p>
<p>4. Comments:</p>			

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

Instructions

Purpose of CDCR 7701 (Rev. 10/20) Penal Code 2604 Rights: This form provides an advisement of rights to a patient who is named in a PC 2604 initial petition case (CDCR 7702), or a patient who is named in a PC 2604 renewal petition case (CDCR 7703). The patient must be given this advisement of rights when served with any PC 2604 petition, and the person explaining must note their own name, title, signature, and the date.

1. This document may be served by any CDCR employee who normally interacts with patients in the scope of their daily routine.
2. This form shall be used any time a patient is served with either a Petition for Capacity Determination (CDCR 7702) or a Renewal Petition for Capacity Determination (CDCR 7703).
3. The person serving documents on the patient shall attempt to contact and communicate with the patient, explain generally what a PC 2604 proceeding is about, relate introductory information found on the CDCR 7701, and then advise the patient of the rights shown on the CDCR 7701, checking off the boxes as each is explained.
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, the person serving the form must complete the accommodation and effective communication section.
5. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
6. The person effecting service of documents on the patient shall fill in their name, sign their name, and date the form.
7. Provide one copy to the patient along with a copy of any CDCR 7702 or CDCR 7703 being served, one copy to be returned to the Office of Administrative Hearings, and one copy to be returned to the CDCR Office of Legal Affairs.
8. Scan the CDCR 7701 into a single PDF with either CDCR 7702 or CDCR 7703 and file with the Office of Administrative Hearings on the same day the patient was served.
9. Transmit a copy of the documents (CDCR 7701 and any CDCR 7702 or CDCR 7703 being served) to the CDCR Office of Legal Affairs by uploading to their secure document repository, and then send an e-mail, with no attachment, to PC 2604 Intake (m_keyheaintake@cdcr.ca.gov), to the assigned institution's Medication Court Administrator, and to the assigned attorney.

Effective Communication: The Effective Communication section must be completed.

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

Date: _____ Institution: _____ Interpreter: Yes No Language: _____ Interpreter Name (Print): _____

VERIFIED PETITION FOR CAPACITY DETERMINATION

The licensed physician whose name and signature appears at the end of this verified petition alleges that:

1. You are an adult housed under the custody of the California Department of Corrections and Rehabilitation;
2. You appear to be unable to understand and rationally process information given to you about your situation or condition; and
3. You do not appear to be able to give informed consent.

For these reasons, you have been provided with an attorney whose name is listed below. You have been scheduled for a hearing in front of an Administrative Law Judge (ALJ) to review the facts and allegations in this document. The ALJ will decide if you are able to make sound decisions, or if you should have a person appointed to act on your behalf.

Medication Court Administrator: Please write in a hearing date, time, and location no later than 30 days from the date you serve the patient with this petition.

HEARING DATE: _____ HEARING TIME: _____ HEARING INSTITUTION: _____

YOUR ATTORNEY IS: Attorney Name: _____ Contact Phone: _____
 Attorney Address: _____

Please identify the basis for the verified petition being submitted (mark all that apply):

- Lack of capacity for informed consent. (Complete Sections I and III)
 Serious or emergent health care issue for which patient lacks capacity to consent. (Complete Section I, II, and III)

If the primary condition is psychiatric, does the patient also have a medical condition? Yes No N/A
 If the primary condition is medical, does the patient also have a psychiatric condition? Yes No N/A
 Is the patient medically and psychiatrically cleared to be transported and attend the hearing? Yes No
 Is there a valid Advance Directive in the patient's chart? Yes No

<p>1. Disability Code:</p> <p><input type="checkbox"/> TABE score :: 4.0 <input type="checkbox"/> DPH <input type="checkbox"/> DNH <input type="checkbox"/> DPS <input type="checkbox"/> DDP <input type="checkbox"/> DPV <input type="checkbox"/> LD <input type="checkbox"/> Not Applicable</p>	<p>2. Accommodations:</p> <p><input type="checkbox"/> Additional Time <input type="checkbox"/> Equipment <input type="checkbox"/> Louder <input type="checkbox"/> Basic <input type="checkbox"/> Other*</p> <p><input type="checkbox"/> SLI <input type="checkbox"/> Slower <input type="checkbox"/> Transcribe</p>	<p>3. Effective Communication:</p> <p><input type="checkbox"/> Patient asked questions <input type="checkbox"/> Patient summed information</p> <p>Please check one: <input type="checkbox"/> Not Reached* <input type="checkbox"/> Reached <small>*See chrono/notes</small></p>	<p>CDCR #: Last Name: First Name: MI: DOB:</p>
<p>4. Comments:</p>			

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

I. Verified Petition for Capacity Determination

- 1. Describe the patient's current physical condition, and health care conditions, if any:
- 2. Describe the patient's current mental health condition to the extent it may affect his or her capacity to give informed consent or to make a health care decision:
- 3. Does this patient have any record of relevant prior court proceedings, either in the community or while in a prison setting, in which there has been a finding of lack of capacity? If so, provide details and dates:

List the deficit(s) that you have observed in the patient's mental functions.

- 4. Alertness and attention, including, but not limited to:
 - A) Level of arousal or consciousness:
 - B) Orientation as to time, place, person, and situation:
 - C) Ability to attend and concentrate:
- 5. Information processing, including, but not limited to:
 - A) Short and long-term memory, including immediate recall:
 - B) Ability to understand or communicate with others, either verbally or otherwise:

Petition for Capacity Determination
CDCR 7702 (Rev. 01/21)

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

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

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

I. Verified Petition for Capacity Determination (continued)

C) Recognition of familiar objects and familiar persons:

D) Ability to understand and appreciate quantities:

E) Ability to reason using abstract concepts:

F) Ability to plan, organize, and carry out actions in one's own rational self-interest:

G) Ability to reason logically:

6. Thought processes/content/perception. Deficits in these functions may be demonstrated by the presence of the following:

A) Severely disorganized thinking:

B) Hallucinations:

C) Delusions:

D) Uncontrollable, repetitive, or intrusive thoughts:

Petition for Capacity Determination
CDCR 7702 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

DOB:

MI:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

I. Verified Petition for Capacity Determination (continued)

7. Deficits in the ability to modulate mood and affect may be indicated if a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness, despair, helplessness, apathy, or indifference is present that is inappropriate to the individual's circumstances. Describe any observations here:

8. If you identified any deficits in your responses to questions 4-7, please state whether any deficit, either alone or in conjunction with other deficits noted, significantly impairs the patient's ability to understand and appreciate the consequences of his or her actions:

9. Indicate whether the patient's periods of impairment are transient, fixed, or likely to change during the one-year period of the proposed court order, and explain on what basis you have this opinion:

10. Is there other background information that would provide a basis for the symptomology or deficit(s) listed above?

11. Provide the logical connection(s) between the deficits you have identified and the patient's ability to make decisions using a rational and informed thought process.

12. Detail what efforts have been made to obtain informed consent from the patient, including dates, relevant events, and the patient's response:

Petition for Capacity Determination
CDCR 7702 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

MI:

DOB:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

I. Verified Petition for Capacity Determination (continued)

13. Describe the efforts made to locate family members of the patient who could act as a surrogate decision-maker, and if located, provide additional details below:		
A) Efforts made:		
B) Name, address, and phone number of known relatives:	Information suggests this person would not act in the patient's best interest.	Information suggests this person may be suitable as a surrogate.
i.	<input type="checkbox"/>	<input type="checkbox"/>
ii.	<input type="checkbox"/>	<input type="checkbox"/>
iii.	<input type="checkbox"/>	<input type="checkbox"/>
iv.	<input type="checkbox"/>	<input type="checkbox"/>
v.	<input type="checkbox"/>	<input type="checkbox"/>
vi.	<input type="checkbox"/>	<input type="checkbox"/>

14. Detail the probable impact to the patient with the recommended intervention or course of treatment:

Petition for Capacity Determination CDCR 7702 (Rev. 01/21)	CDCR #: Last Name: First Name: MI: DOB:
--	---

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

I. Verified Petition for Capacity Determination (continued)

15. Detail the probable impact to the patient without the recommended intervention or course of treatment:
16. Describe what is known about the patient's desires and personal values, to the extent known. This would include discussion about whether there exists any Advance Directive that may have been executed while the patient had capacity, or any other document or anecdote evidencing the patient's desires and personal values.
17. As the Petitioner, based on a review of the documentation submitted in support of this Petition for Capacity Determination, who are you recommending as a qualified and willing surrogate decision-maker, and the reason(s) supporting therecommendation?

II. Serious or Emergent Health Care Issue(s)

18. Describe the patient's current physical condition, including any serious or life-threatening conditions for which the patient needs treatment and, in your opinion, lacks capacity to give informed consent:
19. List the recommended course of care for each of the conditions set forth in your response to question 18 and state why that is the accepted practice:

Petition for Capacity Determination
CDCR 7702 (Rev. 01/21)

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

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

II. Serious or Emergent Health Care Issue(s) (continued)

20. For each recommended procedure or course of care specified in your response to question 19, please list the possible ancillary procedures and medications that may likely be necessary to ensure success. (For example, a surgical amputation may not be successful without frequent dressing changes, antibiotics, and washing. An MRI may not be successful without anesthesia. You are requested to predict or list the supporting procedures needed to make the recommended procedure successful.)(Use CDCR 7702-A to add pages as needed.)

Was a CDCR 7702-A used? Yes No

21. What are both the short-term and long-term risks or detriments to the patient if the health care conditions set forth in the response to question 18 are allowed to continue without medical intervention?

Petition for Capacity Determination
CDCR 7702 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

MI:

DOB:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

II. Serious or Emergent Healthcare Issue(s) (continued)

22. Set forth the likely outcome or benefits to the patient if the health care matters listed in question 18 are addressed:

<p>Petition for Capacity Determination CDCR 7702 (Rev. 01/21)</p>	<p>CDCR #: Last Name: First Name: MI: DOB:</p>
--	--

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

III. Verification

Based on the information above, it is my opinion that the patient who is the subject of this petition:

Lacks the capacity to give informed consent, because based upon deficits identified in this petition, he/she is either unable to participate in decisions either knowingly and intelligently or by means of a rational thought process.

I declare under penalty of perjury that I am the individual who completed this petition and the facts contained herein are true and correct to the best of my knowledge and belief. Verified and signed this _____ day of _____, 20____ at _____, California.

_____ Date

_____ Institution

_____ Name and Title (print)

_____ Signature of Declarant

IV. Proof of Service

I declare under penalty of perjury that this document was served on the patient on the date shown below:
Served and signed this _____ day of _____, 20____ at _____, California.

_____ Date

_____ Institution

_____ Name and Title (print)

_____ Signature of Declarant

Petition for Capacity Determination
CDCR 7702 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

MI:

DOB:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

Instructions

Purpose of CDCR 7702 (Rev. 01/21) Petition for Capacity Determination: This form summarizes and gathers medical and mental health information regarding patients who are believed to lack capacity to give informed consent, or who are believed to require certain medical or mental health procedures for which judicial authorization is required. This form, when filed with the Office of Administrative Hearings, initiates the PC 2604 process.

1. This document may be served by any CDCR employee who normally interacts with patients in the scope of their daily routine.
2. The Petition for Capacity Determination (CDCR 7702) should be used to initiate a process to obtain administrative determination of the patient's lack of capacity to give informed consent.
3. The treating clinician requesting a hearing or the patient's treatment team may fill out the CDCR 7702. Sections of the form are completed by the discipline who has clinical expertise and knowledge of the patient. The treatment team includes staff from the following disciplines: psychology, nursing, psychiatry, medical, and social work.
4. The CDCR 7702 shall be signed under penalty of perjury by the physician or dentist who plans to present the case at hearing. The signatory shall have some treatment time and clinical relationship with the patient, and must be a licensed physician or licensed dentist.
5. Page 1 of the CDCR 7702 is used to summarize the contents of the document to allow the Administrative Law Judge (ALJ) to quickly assess the reason for the petition.
6. The person(s) filling out the CDCR 7702 should enter data into every relevant box. If a specific section or box does not apply, fill in "N/A."
7. If a patient is clinically compromised and cannot provide the requested information, do not write "N/A" but instead specify what objective facts, specific behaviors, and conditions the clinician observed that did not allow information to be collected. For example, if asked to opine on a catatonic patient's ability to reason logically, the writer would not write "unable to assess," but should write something like "patient is catatonic and cannot respond."
8. The person(s) completing the CDCR 7702 should always complete Sections I (Verified Petition) and III (Verification). If there are medical procedures for which informed consent is desirable, complete Section II (Serious or Emergent Health care Issues).
9. If the patient has a variety of emergent or ongoing health conditions for which informed consent is needed, document each separate condition on the Add-a-Page (CDCR 7702-A), using one CDCR 7702-A for each separate matter for judicial evaluation.
10. Do not reference documentation contained in the health record. You must specify the condition and treatment being requested in this document. For example, you must not write "see note dated 6/13/2015" or "see oncology note." If you fail to include relevant information within the formed petition, the ALJ cannot properly evaluate the petition.
11. 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.
12. Once the CDCR 7702 is completed and signed under penalty of perjury by the physician or dentist who will present the case, it shall be delivered to the institution's Medication Court Administrator (MCA).
13. The MCA shall identify a hearing date no later than 30 days from the anticipated date the patient will be served, using the available statewide PC 2602 master calendar when possible. Cases should be set on the same day as PC 2602 hearings when possible. Contact the CDCR Office of Legal Affairs, Health Care Team, if your institution is not listed on the master rotation document.
14. The MCA shall identify an attorney to be assigned to the patient.
15. The MCA shall fill in the name and contact information for the assigned attorney, and the proposed hearing date, location, and time.
16. Do not set hearings on days when your presenting witness is unavailable.
17. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
18. The person effecting service of documents on the patient, generally the MCA, should fill in his/her name, sign his/her name, and date the form.
19. Provide one copy of the petition to the patient, along with a notification of rights (CDCR 7701), one copy to be returned to the Office of Administrative Hearings, and one copy to be returned to the CDCR Office of Legal Affairs.
20. Scan the CDCR 7702, coupled with a CDCR 7701, and any CDCR 7702-A additions into a single PDF for court filing and file with the Office of Administrative Hearings on the same day the patient was served.
21. Transmit a copy of the documents (CDCR 7701 and any CDCR 7702 or CDCR 7703 being served) to the CDCR Office of Legal Affairs by uploading the PDF to their secure document repository, and then send an e-mail, with no attachment, to PC 2604 Intake (m_keyheaintake@cdcr.ca.gov), to the institution's MCA as a record of the filing, and to the assigned attorney.

PETITION FOR CAPACITY DETERMINATION

CDCR 7702 (Rev. 03/21)

Effective Communication: The Effective Communication section must be completed.

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

Date: _____ Institution: _____ Interpreter: Yes No Language: _____ Interpreter Name (Print): _____

VERIFIED PETITION FOR CAPACITY DETERMINATION - ADDITIONAL PAGE

Include as additional information Addendum to CDCR 7702/7703 dated: _____ Add as: Update Correction

(This area is intentionally left blank for the petitioner to provide additional information.)

1. Disability Code:

- TABE score ≤ 4.0
- DPH DNH
- DPS DDP
- DPV LD
- 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

CDCR #:

Last Name:

First Name:

DOB:

MI:

4. Comments:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

Instructions

Purpose of CDCR 7702-A (Rev. 10/20) Petition for Capacity Determination - Additional Page: This form is to be used when there is more information than will fit on a Petition for Capacity Determination (CDCR 7702) or a Renewal Petition for Capacity Determination (CDCR 7703). This form becomes an attachment to any CDCR 7702 or CDCR 7703 being filed with the Office of Administrative Hearings.

1. If the patient has a variety of emergent or ongoing health conditions for which informed consent is needed, document each separate condition on the CDCR 7702-A.
2. Use one CDCR 7702-A for each separate matter for judicial evaluation.
3. Ensure that all CDCR 7702-A Additional Pages are scanned and included for court filing with any CDCR 7702 or CDCR 7703 to which they relate.

Effective Communication: The Effective Communication section must be completed.

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

I. Renewal Petition for Capacity Determination (continued)

What is the current status of any deficit(s) that you have observed in the patient's mental functions?

4. Alertness and attention, including, but not limited to:

A) Level of arousal or consciousness:

B) Orientation as to time, place, person, and situation:

C) Ability to attend and concentrate:

5. Information processing, including, but not limited to:

A) Short and long-term memory, including immediate recall:

B) Ability to understand or communicate with others, either verbally or otherwise:

C) Recognition of familiar objects and familiar persons:

D) Ability to understand and appreciate quantities:

E) Ability to reason using abstract concepts:

F) Ability to plan, organize, and carry out actions in one's own rational self-interest:

Renewal Petition for Capacity Determination
CDCR 7703 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

MI:

DOB:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)

G) Ability to reason logically:

6. Thought processes/content/perception. Deficits in these functions may be demonstrated by the presence of the following:

A) Severely disorganized thinking:

B) Hallucinations:

C) Delusions:

D) Uncontrollable, repetitive, or intrusive thoughts:

7. Deficits in the ability to modulate mood and affect may be indicated if the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness, despair, helplessness, apathy, or indifference is present that is inappropriate to the individual's circumstances. Describe any observations here:

8. If you identified any deficits in your responses to questions 4-7, please state whether any deficit, either alone or in conjunction with other deficits noted, significantly impairs the patient's ability to understand and appreciate the consequences of his or her actions:

Renewal Petition for Capacity Determination
CDCR 7703 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

DOB:

MI:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)

9. Indicate whether the patient's periods of impairment are transient, fixed, or likely to change during the one-year period of the proposed court order, and explain on what basis you have this opinion:

10. Is there other background information, or an optional diagnosis providing a basis for the symptomology or deficit(s) listed above?

11. Are you able to identify a link, if any, between the deficits identified in your responses to questions 4-7 and the patient's ability to participate in decisions either knowingly and intelligently or by means of a rational thought process?

12. Detail what efforts have been made to obtain informed consent from the patient, including dates, relevant events, and the patient's response:

13. Describe the efforts made to locate family members of the patient who could act as a surrogate decision-maker, and if located, provide additional details below:

A) Efforts made:

Renewal Petition for Capacity Determination
CDCR 7703 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

MI:

DOB:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

I. Renewal Petition for Capacity Determination (continued)		
B) Name, address, and phone number of known relatives:	Information suggests this person would not act in the patient's best interest.	Information suggests this person may be suitable as a surrogate.
i.	<input type="checkbox"/>	<input type="checkbox"/>
ii.	<input type="checkbox"/>	<input type="checkbox"/>
iii.	<input type="checkbox"/>	<input type="checkbox"/>
iv.	<input type="checkbox"/>	<input type="checkbox"/>
v.	<input type="checkbox"/>	<input type="checkbox"/>
vi.	<input type="checkbox"/>	<input type="checkbox"/>
14. Detail the probable impact on the patient with, or without, the continued appointment of a decision-maker:		
15. In your opinion, does the patient continue to lack capacity to give informed consent? If yes, state recent facts.		
Renewal Petition for Capacity Determination CDCR 7703 (Rev. 01/21)		CDCR #: Last Name: First Name: MI: DOB:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

I. Renewal Petition for Capacity Determination (continued)

16. (If applicable) In your opinion, does the patient still require the appointment of a surrogate decision-maker? If yes, state recent facts and current state of patient's condition.

II. Verification

Based on the information above, it is my opinion that the patient who is the subject of this petition:

Continues to lack the capacity to give informed consent, because based upon deficits identified in this petition, he/she is either unable to participate in decisions either knowingly and intelligently or by means of a rational thought process.

I declare under penalty of perjury that I am the individual who completed this petition and the facts contained herein are true and correct to the best of my knowledge and belief. Verified and signed this _____ day of _____, 20____ at _____, California.

_____ Date

_____ Institution

_____ Name and Title (print)

_____ Signature of Declarant

III. Proof of Service

I declare under penalty of perjury that this document was served on the patient on the date shown below:
Served and signed this _____ day of _____, 20____ at _____, California.

_____ Date

_____ Institution

_____ Name and Title (print)

_____ Signature of Declarant

Renewal Petition for Capacity Determination
CDCR 7703 (Rev. 01/21)

CDCR #:

Last Name:

First Name:

DOB:

MI:

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Patient, Health Records, Office of Administrative Hearings, CDCR Office of Legal Affairs

SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other

EHR LOCATION: Legal > Court Ordered Care > PC 2604

RENEWAL PETITION FOR CAPACITY DETERMINATION

CDCR 7703 (Rev. 03/21)

Instructions

Purpose of CDCR 7703 (Rev. 01/21) Renewal Petition for Capacity Determination: This form summarizes and gathers medical and mental health information to renew an existing order pertaining to patients who have been found to lack capacity to give informed consent, or who have been found to require certain medical or mental health procedures for which continuing judicial authorization is required. This form, when filed with the Office of Administrative Hearings, renews the PC 2604 process.

1. The CDCR 7703 is used to seek extension of an existing order for treatment or to extend an order appointing a surrogate decision maker.
2. The CDCR 7703 may be filled out by the treating clinician requesting a hearing, or by the patient's treatment team, who would each fill out appropriate sections of the form relating to their clinical expertise and knowledge of the patient. The treatment team includes staff from the following disciplines: psychology, nursing, psychiatry, medical, and social work.
3. The CDCR 7703 shall be signed under penalty of perjury by the physician or dentist who plans to present the case at hearing. The signatory shall have a current treatment time and clinical relationship with the patient, and must be a licensed physician or licensed dentist.
4. The person(s) filling out the CDCR 7703 should enter data into every relevant box. If a specific section or box does not apply, fill in "N/A."
5. If a patient is clinically compromised and cannot provide the requested information, do not write "N/A" but instead specify what objective facts, specific behaviors, and conditions the clinician observed that did not allow information to be collected. For example, if asked to opine on a catatonic patient's ability to reason logically, the writer shall not write "unable to assess," but shall write something like "patient is catatonic and cannot respond."
6. The person(s) completing the CDCR 7703 should always fill out Sections I (Renewal Petition) and II (Verification).
7. If the patient has a variety of emergent or ongoing health conditions for which informed consent is needed, document each separate condition on the Petition for Capacity Determination-Add-A-Page (CDCR 7702-A), using one CDCR 7702-A for each separate matter for judicial evaluation.
8. Do not reference documentation contained in the health record. You must specify the condition and treatment being requested in this document. You must not write "see note dated 6/13/2015" or "see oncology note." If you fail to include relevant information within the formed petition, the Administrative Law Judge (ALJ) cannot properly evaluate the petition.
9. 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, the person serving the form must complete the sections regarding accommodation and effective communication.
10. Once the CDCR 7703 is completed and signed under penalty of perjury by the physician or dentist who will present the case, it should be delivered to the institution's Medication Court Administrator (MCA).
11. The MCA shall identify a hearing date no sooner than 10 days from the anticipated date of service upon the patient, using the available statewide PC 2602 master calendar where possible. Cases should be set on the same day as PC 2602 hearings where possible. Contact the CDCR Office of Legal Affairs, Healthcare Team, if your institution is not listed on the master rotation document.
12. The MCA shall identify an attorney to be assigned to the patient.
13. The MCA shall fill in the name and contact information for the assigned attorney, and the proposed hearing date, location, and time. The attorney for the patient may agree to a shorter notice period than the default of 10 days.
14. Do not set hearings on days when your presenting witness is unavailable.
15. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
16. The person effecting service of documents on the patient, generally the MCA, should fill in their name, title, sign their name, and date the form.
17. Provide one copy of the petition to the patient, along with a notification of rights (CDCR 7701), one copy to be returned to the Office of Administrative Hearings, and one copy to be returned to the CDCR Office of Legal Affairs.
18. Scan the CDCR 7703, coupled with a CDCR 7701, and any CDCR 7702-A additions, into a single PDF for court filing and file with the Office of Administrative Hearings on the same day the patient was served.
19. Transmit a copy of the documents (CDCR 7701 and any CDCR 7702 or CDCR 7703 being served) to the CDCR Office of Legal Affairs by uploading the PDF to their secure document repository, and then send an e-mail, with no attachment, to PC 2604 Intake (m_keyheaintake@cdcr.ca.gov), to the institution's MCA as a record of the filing, and to the assigned attorney.

RENEWAL PETITION FOR CAPACITY DETERMINATION

CDCR 7703 (Rev. 03/21)

Effective Communication: The Effective Communication section must be completed.

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

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

Penal Code 2604 Reconsideration

Today's Date: _____ Date of Hearing: _____ Hearing Institution: _____

Patient Home Institution: _____ Office of Administrative Hearings Case# (if known): _____

Patient Attorney (if known): _____

Outline facts and circumstances that you believe show good cause for a judge to reconsider your Penal Code section 2604 case. If you have new evidence, state what that is and why that was not previously presented. (Use additional pages as necessary.):

Patient Address: _____

I certify that I am aware that I can file only one reconsideration per 12-month period from the date of my hearing, as stated in Penal Code section 2604, subdivision (j).

Print Name: _____ Signature: _____

Once complete, mail the CDCR 7704 (Rev. 10/20) Penal Code 2604 Reconsideration, to the following address:

Penal Code 2604 Filings
Office of Administrative Hearings
2349 Gateway Oaks, Suite 200
Sacramento, CA 95833

This section is for official use only.	The above facts and circumstances have been considered. It is ordered that:
	<input type="checkbox"/> Reconsideration granted, new hearing on: _____ <input type="checkbox"/> Reconsideration denied
	Administrative Law Judge (print name): _____
	Administrative Law Judge (signature): _____ Date: _____

Penal Code 2604 Reconsideration CDCR 7704 (Rev. 10/20)	CDCR #: Last Name: First Name: MI: DOB:
--	--

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

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

Instructions

Purpose of CDCR 7704 (Rev. 10/20) Penal Code 2604 Reconsideration: This form can be given to a patient who has been taken to hearing for either an initial or renewal PC 2604 proceeding and who believes that the Administrative Law Judge (ALJ) misunderstood the case or failed to consider key evidence. This form is handed directly to the patient, who is then responsible for completing it with assistance from staff, and sending it via inmate legal mail to the Office of Administrative Hearings.

A patient is entitled to file one motion for reconsideration per calendar year following a determination that he or she lacks capacity for informed consent, and may seek a hearing to present new evidence upon a showing of good cause. As a general rule, 'good cause' includes reasons that are fair, honest, in good faith, not trivial, arbitrary, capricious, or pretextual, and reasonably related to legitimate needs, goals, and purposes. (Cotran v. Rollins Hudig Hall Intern., Inc. (1998) 17 Cal.4th 93, 107-108.)

In determining the meaning of 'good cause' in a particular context, courts utilize common sense based upon the totality of the circumstances. If you believe that you have information or circumstances that shows 'good cause' to have a new hearing, fill out this form with as much information as you can supply to support your position.

1. Fill in the information sections at the top of the form.
2. Briefly describe the facts and circumstances that you believe show good cause for a judge to reconsider your case. If you need additional space to describe the facts and circumstances for good cause, you may use extra sheets of paper. Please label these additional sheets as PC 2604 Reconsideration.
3. Fill in your address where you can be reached to receive notice if the application has been granted or denied.
4. Print and sign your name.
5. Once you have filled out the form, and printed and signed your name, obtain a #10 standard envelope from the institution and write "Legal Mail" on the front of the envelope.
6. On the top left corner of the envelope, write your full return address where you can be reached.
7. Address the envelope to the address listed on the form.
8. Follow your institution's protocol for sending legal mail and ask that the reconsideration form be mailed on your behalf.
(See CCR 15 §3142)
9. If you have any issues with this process or having this item mailed, contact the Medication Court Administrator.

CONFIDENTIAL (DO NOT ATTACH TO PETITION)

Proposed Decisionmaker Name: _____ Case Number: _____

This form shall remain confidential and shall not be made part of the administrative record.

Notice: By completing this form, you consent to the release of information related to alcohol and drug addiction diagnosis and treatment pursuant to California Health and Safety Code 11845.5. By completing this form, you voluntarily release information about mental health diagnosis or treatment you have received under the Lanterman-Petris-Short Act. In the event that records may be requested, you will be asked to consent in writing to the release to the CDCR Office of Legal Affairs.

How this form will be used:

This form is **confidential** and will not be a part of the public administrative file in this case. Each proposed surrogate decisionmaker must complete and sign a separate copy of this form. The information provided in this form will be used by the court and by the persons and agencies designated by the court to assist the court in determining whether to appoint the proposed surrogate decisionmaker as decisionmaker. The proposed surrogate decisionmaker **must** respond to each item.

1. a. Proposed Surrogate Decisionmaker (name): _____
b. Date of Birth: _____
c. Social Security Number: _____
d. Driver's License Number: _____ State: _____
e. Telephone Numbers: Home: _____ Work: _____ Other: _____
f. Physical Address: Street: _____
City: _____ State: _____ Zip: _____

2. a. I am related to the proposed Respondent-patient as (specify relationship): _____
b. I have personally known the proposed patient for _____ years, and _____ months.

3. I am the spouse of the proposed Respondent-patient, and I *have* filed for legal separation, dissolution of marriage, annulment, or adjudication of nullity of the marriage.
 I am the spouse of the proposed Respondent-patient, and I *have not* filed for legal separation, dissolution of marriage, annulment, or adjudication of nullity of the marriage.
 I am not the spouse of the proposed Respondent-patient.
 I am a former spouse of the proposed Respondent-patient. My marriage with the proposed Respondent-patient was terminated on: _____

4. a. Do you owe money or have financial obligation to the proposed Respondent-patient? No Yes
b. Does the proposed Respondent-patient owe you money or have financial obligations to you? No Yes
c. Are you an agent for a creditor of the proposed Respondent-patient? No Yes

5. Have you been convicted of a felony, or had a felony expunged from your record? No Yes (please specify): _____

Confidential Surrogate Decisionmaker Screening
CDCR 7705 (Rev. 10/20)

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

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

CONFIDENTIAL (DO NOT ATTACH TO PETITION)

6. Have you been charged with, arrested for, or convicted of a crime involving embezzlement, theft, or any other crime involving the taking of property? (if yes, include dates, charges, and circumstances) No Yes
7. Have you been charged with, arrested for, or convicted of a crime involving fraud, conspiracy, or misrepresentation of information? (if yes, include dates, charges, and circumstances) No Yes
8. Have you been charged with, arrested for, or convicted of a crime involving elderly abuse or neglect? (if yes, include dates, charges, and circumstances) No Yes
9. Have you had a restraining order or protective order filed against you by the proposed Respondent-patient in the last 10 years? No Yes
10. Have you previously been appointed conservator, executor, or fiduciary in another proceeding? No Yes
11. Have you been removed or resigned as a conservator, guardian, executor, or fiduciary in any other case? No Yes
12. Are you currently receiving services from a psychiatrist, psychologist, or therapist for a mental health related issue? No Yes (please specify):
13. Have you received services from a psychiatrist, psychologist, or therapist for a mental health related issue in the past? No Yes (please specify):
14. Have you ever been diagnosed with a mental illness? No Yes (please specify):
15. Do you have a social worker, or probation or parole officer assigned to you? No Yes

Confidential Surrogate Decisionmaker Screening
CDCR 7705 (Rev. 10/20)

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

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Health Records, CDCR Office of Legal Affairs
SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHR LOCATION: Legal > Court Ordered Care > PC 2604

CONFIDENTIAL (DO NOT ATTACH TO PETITION)

16. Are you now, or have you been in contact with the proposed Respondent-patient's medical doctor(s)?	<input type="checkbox"/> No <input type="checkbox"/> Yes
17. Are you familiar with the proposed Respondent-patient's condition and need for a surrogate decisionmaker?	<input type="checkbox"/> No <input type="checkbox"/> Yes
18. I live within _____ miles of the facility where the proposed Respondent-patient is housed.	
19. I am in contact with the proposed Respondent-patient on a <input type="checkbox"/> weekly, or <input type="checkbox"/> monthly basis. Please specify when you last had contact (in person, by phone, or mail) with the proposed Respondent-patient:	
20. I am regularly out of the state of California for _____ months per year.	<input type="checkbox"/> No <input type="checkbox"/> Yes
21. Do you have a cellular phone with active service?	<input type="checkbox"/> No <input type="checkbox"/> Yes
22. Do you have any personal beliefs that will make you oppose health care?	<input type="checkbox"/> No <input type="checkbox"/> Yes (please specify):
23. Do you have any religious beliefs that will make you oppose health care?	<input type="checkbox"/> No <input type="checkbox"/> Yes (please specify):
24. Is there any reason you would be unable to make a decision on behalf of the proposed Respondent-patient?	<input type="checkbox"/> No <input type="checkbox"/> Yes (please specify):
25. <input type="checkbox"/> I do not have an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of surrogate decisionmaker. <input type="checkbox"/> I have, or may have, an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of surrogate decisionmaker (please specify below).	
26. If you are appointed, are you willing to serve as a surrogate decisionmaker?	<input type="checkbox"/> No <input type="checkbox"/> Yes

Confidential Surrogate Decisionmaker Screening
CDCR 7705 (Rev. 10/20)

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

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Health Records, CDCR Office of Legal Affairs
SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHR'S LOCATION: Legal > Court Ordered Care > PC 2604

CONFIDENTIAL (DO NOT ATTACH TO PETITION)

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date

County

Type or Print Name of Proposed Surrogate Decisionmaker

Signature of Proposed Surrogate Decisionmaker

Relationship to Respondent-patient

**Each proposed surrogate decisionmaker must fill out and file a separate screening form.*

Confidential Surrogate Decisionmaker Screening CDCR 7705 (Rev. 10/20)	CDCR #: Last Name: First Name: MI: DOB:
---	--

Unauthorized collection, creation, use, disclosure, modification, or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.

DISTRIBUTION: Health Records, CDCR Office of Legal Affairs
SCANNING LOCATION: Outpatient; MHChrono/Misc-Legal/Other; Other
EHR LOCATION: Legal > Court Ordered Care > PC 2604

CONFIDENTIAL SURROGATE DECISIONMAKER SCREENING

CDCR 7705 (Rev. 03/21)

Instructions

Purpose of CDCR 7705 (Rev. 10/20) Confidential Surrogate Decisionmaker Screening: This form must be filled out and returned to the CDCR Office of Legal Affairs by any individual who wishes to be considered as a possible decisionmaker for a patient being considered for lack of capacity to give informed consent, known as PC 2604.

1. Each person willing to act as a surrogate decisionmaker for a patient shall fill out their own copy of the Confidential Surrogate Decisionmaker Screening form, filling out all four pages.
2. Sign and date the form on Page 4, under penalty of perjury.
3. Indicate your relationship to the patient.
4. If you are unwilling to act as a decisionmaker, you may write "unwilling to act" on page 1, provide your contact information, and return the form.
5. Once you have filled out the form and printed and signed your name, you may either scan the form to PDF and email to CDCR PC 2604 Intake (m_keyhearintake@cdcr.ca.gov), or send the completed form by mail to the Department of Corrections and Rehabilitation. Address the envelope as follows:

Penal Code 2604 Intake
CONFIDENTIAL
Department of Corrections and Rehabilitation
Office of Legal Affairs
1515 S Street, Suite 314S
P.O. Box 942883
Sacramento, CA 94823-0001

Instructions

Purpose of CDCR 7706 (Rev. 10/20) Notice of Revocation or Termination of Penal Code 2604 Order: This form provides a method to indicate that a patient has regained capacity and no longer requires the PC 2604 process.

1. The CDCR 7706 (Notice of Revocation or Termination of PC 2604 Order) shall be used when the patient's clinical team has formed the opinion that the patient has capacity to give informed consent, and that a court order is no longer required.
2. The current treating clinician shall fill out the CDCR 7706.
3. Fill in the name of the reviewer and the justification for not renewing the PC 2604 order.
4. The provider or Medication Court Administrator (MCA) must complete Box 3 indicating whether the decision to terminate a PC 2604 order has been reviewed either by an Interdisciplinary Treatment Team or by the clinician's supervisor.
5. Document that the clinician had a conversation about termination of the order with the patient, and the date of the conversation.
6. 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, the person serving the form must complete all sections regarding accommodation and effective communication.
7. Fill in the patient's CDCR number, last name, middle initial, first name, and date of birth.
8. If the surrogate is a family member, the institution shall send a copy of this form to the appointed surrogate decision maker to advise the surrogate of the decision to terminate the order.
9. Provide one copy of the Notice of Revocation or Termination of PC 2604 Order to the patient, and one copy to be returned to the Office of Legal Affairs.
10. Do not send this form to the Office of Administrative Hearings.
11. Scan the CDCR MH-7706 to PDF for electronic transmission. File with only the CDCR Office of Legal Affairs by sending an e-mail, with the non-renewal attached, to PC 2604 Intake (m_keyheaintake@cdcr.ca.gov), to the institution's MCA as a record of the filing, and to the previously assigned attorney.

Effective Communication: The Effective Communication section must be completed.

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