



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO HEALTH CARE REGULATIONS

Sections: 3999.98, 3999.99, 3999.225 through
3999.237, CDCR 602 HC, CDCR 602 HC A



CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

Number:

21-01

Publication Date:

March 5, 2021

Effective Date:

To Be Announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to sections 3999.98, 3999.99, and 3999.225 through 3999.234, and repeal of sections 3999.235, 3999.236, and 3999.237 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to update provisions concerning Health Care Grievances.

IMPLEMENTATION: To Be Announced

PUBLIC COMMENT PERIOD

Any person may submit written comments about the proposed regulations to California Correctional Health Care Services, Health Care Regulations and Policy Section, P.O. Box 588500, Elk Grove, CA 95758, or by email to HealthCareRegulations@cdcr.ca.gov. All written comments must be received by the close of the public comment period, **April 20, 2021, at 5:00 p.m.**

PUBLIC HEARING INFORMATION

Based on guidance from the California Department of Public Health to cancel large community events in order to slow the spread of COVID-19, CDCR will hold a *virtual* public hearing on April 20, 2021 at 2:30 pm. To join the virtual hearing, follow this link: [click here](#) or you may call (916) 701-9994 and enter phone conference ID 97147994# to join by phone (audio only) between the hours of 2:30 p.m. and 3:00 p.m. on April 20, 2021.

POSTING

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

CONTACT PERSON

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

KATHLEEN ALLISON
Secretary
California Department of Corrections and Rehabilitation

J. CLARK KELSO
Receiver

Attachments

NOTICE OF PROPOSED REGULATORY ACTION

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

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC) section 12838.5 and Penal Code (PC) section 5055, and the rulemaking authority granted by PC section 5058, proposes to amend sections 3999.98, 3999.99, and 3999.225 through 3999.234, and repeal sections 3999.235, 3999.236, and 3999.237 of the California Code of Regulations (CCR), Title 15, Division 3, concerning health care grievances.

PUBLIC HEARING:

Based on guidance from the California Department of Public Health to cancel large community events in order to slow the spread of COVID-19, CDCR will hold a *virtual* public hearing on April 20, 2021, at 2:30 p.m. To join the virtual hearing, follow this link: [click here](#) or you may call (916) 701-9994 and enter phone conference ID 97147994# to join by phone (audio only) between the hours of 2:30 p.m. and 3:00 p.m. on April 20, 2021.

PUBLIC COMMENT PERIOD:

The public comment period will close **April 20, 2021, at 5:00 p.m.** Any person may submit public comments in writing (by mail or by email) regarding the proposed changes. To be considered, comments must be submitted to California Correctional Health Care Services (CCHCS), Health Care Regulations and Policy Section, P.O. Box 588500, Elk Grove, CA, 95758, or by email to HealthCareRegulations@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

D. Gouldy
Deputy Director (A)
Policy and Risk Management Services
California Correctional Health Care Services
P.O. Box 588500
Elk Grove, CA 95758
(916) 691-2921

J. Inderkum
Staff Services Manager II (A)
Health Care Regulations and Policy Section
California Correctional Health Care Services
(916) 691-2922

AUTHORITY AND REFERENCE:

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

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

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

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

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

References cited pursuant to this regulatory action are as follows: PC section 5054; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; Clark Remedial Plan, *Clark v. California* 123 F.3d 1267 (9th Cir. 1997); *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The CDCR and CCHCS propose to amend sections 3999.98, 3999.99, and 3999.225 through 3999.234; and repeal sections 3999.235 through 3999.237 of the CCR, Title 15, Division 3, governing health care grievances. Current grievance regulations which were adopted on September 1, 2017, address deficiencies and inconsistencies in the previous three-level health care appeals process. Despite the overall success of the health care grievances regulatory schema, over the past two years the Department has concluded that the current health care grievance regulations have led to operational challenges related to the effective communication process, grievance rejections, and grievance withdrawals.

This regulatory action will eliminate redundancies related to effective communication documentation, abolish the practice of withdrawing Health Care Grievances and Health Care Grievance Appeals, and limit grievance rejections for only duplicate and excessive grievance submittals. In addition to addressing these operational issues, amendments are included for clarity and consistency within the Title 15, Chapter 2, Subchapter 2, Article 5, Health Care Grievances.

This action will:

- Eliminate redundancies related to effective communication documentation.
- Revise processes that contribute to unnecessary reports and additional workload for staff throughout the institutions.
- Provide for better tracking of intervention within the Department.
- Alleviate stakeholder concerns related to grievants possibly withdrawing grievances under duress.
- Revise processes that delay providing responses to grievants and impede progress towards the exhaustion of administrative remedies.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations ensure access to care to all inmates within CDCR, by providing those who are dissatisfied with the health care being provided to them an opportunity to seek a meaningful administrative remedy for grievances. The regulations will establish a more efficient and effective health care grievance process which will further benefit the health and welfare of California residents housed in CDCR facilities. This regulation change will not have an impact on the State's environment, as the State's environment is not impacted by the administration of the health care grievance program.

DOCUMENTS INCORPORATED BY REFERENCE:

- CDCR 602 HC, Health Care Grievance (Revised 10/20)
- CDCR 602 HC A, Health Care Grievance Attachment (Revised 10/20)

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS:

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

LOCAL MANDATES:

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

FISCAL IMPACT STATEMENT:

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

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs because this regulatory action relates strictly to a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care; therefore, this proposed action only effects CDCR staff and inmates.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has determined that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because this regulatory action relates strictly to a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care; therefore, this proposed action only effects CDCR staff and inmates.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The proposed regulations ensure access to care to all inmates within CDCR, by providing those who are dissatisfied with the health care being provided to them an opportunity to seek a meaningful administrative remedy for grievances. The regulations will establish a more efficient and effective health care grievance process which will further benefit the health and welfare of California residents housed in CDCR facilities. This regulation will not have an impact on the State's environment, as the State's environment is not impacted by the administration of the health care grievance program.

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California because this regulatory action relates strictly to a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care; therefore, this proposed action only effects CDCR staff and inmates.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations ensure access to care to all inmates within CDCR, by providing those who are dissatisfied with the health care being provided to them an opportunity to seek a meaningful administrative remedy for grievances. The regulations will establish a more efficient and effective health care grievance process which will further benefit the health and welfare of California residents housed in CDCR facilities. This regulation change will not have an impact on the State's environment, as the State's environment is not impacted by the administration of the health care grievance program.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory action relates strictly to a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care; therefore, the proposed action only effects CDCR staff and inmates.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations will have no significant adverse economic impact on small businesses because this regulatory action relates strictly to a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care; therefore, this proposed action only effects CDCR staff and inmates.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. The Department has made an initial determination that the action will not have a significant adverse economic impact on

business. Additionally, there has been no testimony, reasonable alternative, or other evidence provided that would alter the CDCR's initial determination to proceed with this action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

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

TEXT OF PROPOSED REGULATIONS

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

Chief Executive Officer means the highest level health care executive assigned to a California Department of Corrections and Rehabilitation (CDCR) institution.

Health Care Discipline means medical, dental, or mental health.

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 602 HC (Rev. 10/207/48), Health Care Grievance

CDCR 602 HC A (Rev. 10/2042/47), Health Care Grievance Attachment

Subchapter 2. Patient's Entitlements and Responsibilities

Article 5. Health Care Grievances

Section 3999.225 is amended to read:

3999.225. Definitions.

For the purpose of Subchapter 2, Article 5 only, the following definitions apply:

Abuse means repeated submittal of non-compliant health care grievances.

~~(a)~~ Accepted means that the health care grievance qualified for processing at the level submitted.

~~(b)~~ Administrative ~~Remedy~~ means the non-judicial process provided to address patient health care grievances in which a grievant may allege an issue and seek a remedy and the Health Care Grievance Office and Health Care Correspondence and Appeals Branch (HCCAB) have an opportunity to intervene and respond. A headquarters ~~headquarters'~~ level ~~health care grievance appeal~~ disposition exhausts administrative remedies.

~~(c)~~ Amendment means a headquarters ~~headquarters'~~ instruction to the institution to revise a previously written institutional level health care grievance response which requires correction or clarification prior to conducting a headquarters ~~headquarters'~~ level ~~grievance appeal~~ review.

~~(d)~~ Appeal means a grievant's submission of a health care grievance to the headquarters ~~headquarters'~~ level for review of the institutional level disposition.

~~(e)~~ Business day means Monday through Friday excluding State holidays.

~~(f)~~ Chief Executive Officer (health care) means the highest level health care executive assigned to a CDCR institution.

~~(g)~~ Disposition means the outcome of the health care grievance review at the level submitted.

(1) Intervention means available administrative action or redress deemed necessary by staff to address health care grievance issues.

(2) No Intervention means administrative action or redress is not warranted.

~~(h)~~ Expedited health care grievance means a health care grievance determined by clinical staff to require expeditious handling.

~~(i)~~ Grievant means a patient who submits for review a CDCR 602 HC, Health Care Grievance.

~~(j)~~ Headquarters ~~Headquarters'~~ HLevel ~~d~~Directive means a written mandate by the headquarters ~~headquarters'~~ level Health Care reviewing aAuthority to the institutional level Health Care reviewing aAuthority requiring the action as identified in the directive, after conducting a headquarters level ~~headquarters'~~ review of a health care grievance appeal.

Health Care Authority means staff authorized to approve and sign responses to ensure procedural due process. The Health Care Authority shall not be the reviewer or an individual who participated in the event or decision being grieved.

(1) The Chief Executive Officer or designee is the institutional level Health Care Authority. Circumstances may warrant the headquarters level Health Care Authority to assign a designee.

(2) The Deputy Director, Policy and Risk Management Services, or designee is the headquarters level Health Care Authority.

Health Care Correspondence and Appeals Branch means the office responsible for statewide oversight of the grievance program and the headquarters level review.

~~(k)~~ Health care discipline means medical, dental, or mental health.

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

~~(m)~~ Health ~~e~~Care gGrievance means a written complaint submitted by a patient on the patient's own behalf using a CDCR 602 HC, pursuant to section 3999.226(a).

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

~~(o)~~ Health ~~e~~Care gGrievance pPackage means the CDCR 602 HC and the CDCR 602 HC A, Health Care Grievance Attachment, and all supporting documents. A health care grievance is not a record of care and treatment rendered and shall not be filed in the central file or health record.

~~(p)~~ Health ~~e~~Care gGrievance pProcess means all steps involving grievant preparation and ~~health~~ care staff receipt, review, disposition, and exhaustion of submitted health care grievances.

~~(q)~~ Health care staff means any administrative and/or clinical staff involved in the health care grievance process under health care's reviewing authority.

~~(r)~~ Intervention means available administrative action or redress deemed necessary by health care staff to address an identified health care grievance.

~~(s)~~ Material ~~a~~Adverse ~~e~~Effect means harm or injury that is measurable or demonstrable (even if that measurement or demonstration is subjective for the patient) or the reasonable likelihood of such harm or injury due to a health care policy, decision, action, condition, or omission.

~~(t) Multiple Health Care Grievances~~ means health care grievances received from more than one grievant on an identical issue.

Non-Compliant Health Care Grievance means a health care grievance submitted contrary to Article 5.

~~(u) Patient~~ means an inmate who is seeking or receiving health care services.

~~(v) Rejected~~ means that the submitted health care grievance is non-compliant and ~~or appeal of grievance disposition~~ did not qualify for processing for the reasons stated in the Rejection Notice rejection.

~~(w) Response~~ means the written notification provided to the grievant relative to the disposition ~~or rejection, or withdrawal of a health care grievance appeal.~~

(1) Institutional Level Response means written notification relative to the institutional level disposition.

(2) Headquarters Level Response means written notification relative to the headquarters level disposition.

(3) Rejection Notice means written notification relative to a non-compliant grievance submittal which includes instruction regarding further action the grievant must take to qualify the health care grievance for processing. The notice shall also notify the grievant of a 30 calendar day timeframe, unless the grievant is outside health care jurisdiction, to correct and resubmit the health care grievance to the identified office. A health care grievance rejection does not exhaust administrative remedies.

~~(x) Reviewing authority~~ means health care staff authorized to approve and sign health care grievance responses to ensure procedural due process. The reviewing authority does not conduct a clinical review.

~~(1) The reviewing authority shall not be an individual who participated in the event or decision being grieved.~~

~~(2) Health care grievances and staff complaints submitted at the institutional level are approved and signed by the Chief Executive Officer (health care) or designee. Circumstances may warrant the headquarters' level reviewing authority to assign a designee.~~

~~(3) Health care grievances and staff complaints submitted at contracted, community correctional, or out-of-state facilities are approved and signed by an executive level designee. Circumstances may warrant the headquarters' level reviewing authority to assign a designee.~~

~~(4) Health care grievance appeals and staff complaints submitted at the headquarters' level are approved and signed by the Deputy Director, Policy and Risk Management Services, or designee.~~

Reviewer means staff assigned to conduct a review pursuant to sections 3999.228(d), 3999.230(e), and 3999.231(a)(3). The reviewer shall not be an individual who participated in the event or decision being grieved.

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

~~(z) Supporting Documents~~ means any document the grievant may need to substantiate allegations made including, but not limited to, property inventory sheets, property receipts, trust account statements, and written requests for interviews, items, or health care services. Supporting documents do not include documents that only restate the issue(s) grieved, argue its merits, or introduce new issues not identified in the current health care grievance form(s), or documents accessible to health care staff, such as patient health records.

(1) If submitting a health care grievance concerning ~~related to~~ a reasonable accommodation decision, supporting documents include the reasonable accommodation request package and response.

(2) If submitting a health care grievance appeal, supporting documents include the original ~~institutional level health care grievance response(s)~~.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.226 is amended to read:

3999.226. Right to Grieve.

(a) The health care grievance process provides an administrative remedy to patients under health care's jurisdiction for review of complaints of applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health or welfare.

~~(1) Health care grievances are subject to an institutional level review and may receive a headquarters' level grievance appeal review, if requested by the grievant.~~

(b) Patients shall not use the health care grievance process to request health care services.

(c) Patients shall attempt to address health care issues pursuant to section 3999.303 prior to submitting a health care grievance.

~~(d2) Health care grievances shall be processed pursuant to the provisions of Subchapter 2, Article 5, Health Care Grievances, this article unless exempt from its provisions pursuant to court order or superseded by law or other regulations.~~

~~(3) Patients shall not use the health care grievance process to request health care services without a previous attempt to seek health care assistance through approved processes.~~

~~(4) The grievant shall not submit a health care grievance for issues outside the health care jurisdiction.~~

~~(b) Health care staff shall ensure effective communication is achieved and documented when there is an exchange of health care information involving patients with a hearing, vision, and/or speech impairment; developmental disability and/or learning disability; Test of Adult Basic Education (TABE) reading score of 4.0 or less, which includes zero or no TABE score; and/or Limited English Proficiency, and in health care grievance communications with such patients.~~

~~(ee) The grievant~~ A patient has the right to submit one health care grievance every 14 calendar days, ~~unless it is accepted as an expedited grievance.~~ The 14 calendar day period shall commence on the calendar day following the date the grievant's last ~~accepted~~ health care grievance was accepted.

~~(d) Health care grievance forms shall be available to all inmates.~~

~~(e) Staff shall not take reprisal against the grievant for filing a health care grievance.~~

~~(f) A grievant who abuses the health care grievance process may be subject to health care grievance restriction pursuant to section 3999.236.~~

(f) Health care grievances shall be subject to an institutional level disposition before a headquarters level review.

(g) Health care grievances are subject to a headquarters ~~headquarters'~~ level disposition before administrative remedies are deemed exhausted, pursuant to section 3999.230. A health care

~~grievance or health care grievance appeal rejection or withdrawal does not exhaust administrative remedies.~~

(h) Staff shall ensure health care grievance forms are available to all inmates.

(i) Staff shall not take reprisal against a grievant for filing a health care grievance.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; Clark Remedial Plan, *Clark v. California* 123 F.3d 1267 (9th Cir. 1997); *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.227 is amended to read:

3999.227. Preparation and Submittal of a Health Care Grievance.

(a) The grievant is limited to the use of Section A of one CDCR 602 HC to describe the specific complaint that relates to their health care which they believe has a material adverse effect on their health or welfare, and Section A of one CDCR 602 HC A, if additional space is needed.

~~(b) The grievant shall complete Section A of the CDCR 602 HC and submit to the HCGO where the grievant is housed within 30 calendar days of:~~

~~(1) The action or decision being grieved, or;~~

~~(2) Initial knowledge of the action or decision being grieved.~~

(be) An individual may help the grievant prepare the A patient may obtain assistance in preparing a health care grievance unless the act of providing such assistance results in any of, but not limited to, the following:

(1) Acting contrary to the provisions pursuant to sections 3163 and 3270.

(2) Allowing an individual to exercise unlawful influence or assume control over another.

(3) Unlawful access to the grievant's protected health information or personally identifiable information.

~~(d) An individual may not submit a health care grievance on behalf of another person.~~

(ce) The grievant is limited shall limit the health care grievance to one issue or set of issues related to a single health care discipline that can reasonably be addressed in a single health care grievance response.

(df) The grievant shall write printlegibly or type in a standard font on the lines provided on the CDCR 602 HC and CDCR 602 HC A health care grievance form(s). There shall be only one line of text on each line provided on the health care grievance form(s).

(eg) The grievant shall document clearly and coherently all information known and available to him or her regarding the issue.

(1) The grievant shall not use threatening, obscene, demeaning, or abusive language, unless doing so is necessary to quote language used by staff or others.

(2) The grievant shall include any involved staff member's last name, first initial, title or position, and the date(s) and description of their involvement.

(32) If the grievant does not have information to identify involved staff member(s), the grievant shall provide any other available information that may assist in processing the health care grievance.

~~(fh)~~ The grievant may request an interview by marking ~~initialing~~ the appropriate box on the CDCR 602 HC.

~~(i)~~ The grievant shall sign and date an original CDCR 602 HC. If the original health care grievance is not available, the grievant may obtain a copy stamped "treat as original" from the HCGO for submission.

(g) The grievant shall mark the appropriate box on the CDCR 602 HC if a CDCR 602 HC A is attached.

~~(hj)~~ The grievant shall include supporting documents necessary for the clarification and/or resolution of the issue(s) prior to submitting the health care grievance ~~pursuant to section 3999.225(z).~~

(1) The grievant shall mark the appropriate box on the CDCR 602 HC if supporting documents are attached.

~~(2k)~~ If unable to obtain some supporting documents, the grievant shall submit the health care grievance with all available documents and an explanation of why the remaining documents are not available.

(i) The grievant shall sign and date an original CDCR 602 HC. If the original health care grievance is not available, the grievant may obtain a copy stamped "treat as original" from the Health Care Grievance Office (HCGO) for submission.

~~(l)~~ The grievant shall present their health care grievance in a single submission.

~~(m)~~ The grievant shall submit the institutional level health care grievance for processing to the HCGO where the grievant is housed.

~~(n)~~ The grievant may not use threatening, obscene, demeaning, or abusive language, except if the grievant alleges health care staff used such language.

~~(j)~~ The grievant shall not deface the health care grievance package.

~~(kp)~~ The grievant shall not contaminate the health care grievance or attach physical, organic or inorganic objects, particles, other materials, or samples. Examples of contaminants or attachments include, but are not limited to, food, medication, clothing, razor blades, needles, human hair, tissue, and/or bodily fluids such as blood, saliva, or excrement. Health care grievances received that are suspected to contain hazardous or toxic material that may present a threat to the safety and security of staff, inmates, or the institution shall be referred to custody staff for potential disciplinary sanctions.

~~(lq)~~ The grievant shall not submit a health care grievance which includes information or accusations the grievant knows to be false or makes a deliberate attempt to distort the facts.

(m) The grievant shall not submit a health care grievance that concerns an anticipated action or decision.

(n) The grievant shall not submit a health care grievance for issues outside health care jurisdiction.

(o) The grievant shall not submit a health care grievance for issues that have been grieved in a previously submitted grievance for which a disposition was rendered or is pending.

(p) The grievant shall submit the health care grievance in a single submission to the HCGO where the grievant is housed within 30 calendar days of:

(1) The action or decision being grieved; or,

(2) Initial knowledge of the action or decision being grieved.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-2307-CW); *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.228 is amended to read:

3999.228. Institutional Level ~~Health Care Grievance Review.~~

- (a) The institutional level is for initial ~~clinical/administrative~~ review of health care grievances.
- (b) Clinical triage.
- (1b) Health care staff at a level no less than a Registered Nurse, utilizing clinical expertise within the scope of their his or her licensure, shall triage each health care grievance within one business day of receipt and: to determine if the grievant described a health care need that may require prompt medical attention.
- (2) Identified urgent/emergent health care issues shall be immediately referred to appropriate health care staff for care as clinically indicated.
- ~~(1) Determine if the health care grievance identifies a health care issue that may require clinical intervention.~~
- ~~(2) Determine if the health care grievance warrants expedited processing.~~
- ~~(3) Determine if the health care grievance is administrative or clinical.~~
- (c) Screening.
- ~~(1e) All submitted health care grievances shall be screened to identify: whether the submitted health care grievance complies with the requirements under section 3999.227 and may be rejected pursuant to section 3999.234.~~
- (A) Administrative issues, clinical issues, or allegations of staff misconduct.
- (B) Whether the health care grievance has been prepared and submitted in compliance with the provisions of this article. At the discretion of headquarters level Health Care Authority, non-compliant health care grievances may be subject to rejection and lead to restriction pursuant to section 3999.234.
- (2) Health Care Grievance Office (HCGO) staff shall present health care grievances that contain allegations of staff misconduct to the institutional level Health Care Authority within five business days of identification to determine if the health care grievance will be categorized as a staff complaint.
- ~~(d) Any health care grievance received outside the time limits pursuant to section 3999.227 may be accepted at the discretion of the HCGO if it is determined that the health care grievance should be subject to further review for reasons including, but not limited to:~~
- ~~(1) Good cause exists for untimely submission of the health care grievance.~~
- ~~(2) Issues stated in the health care grievance allege facts that warrant further inquiry.~~
- (d) Review.
- (1) Accepted health care grievances categorized as a staff complaint shall be addressed pursuant to 3999.231.

~~(2e)~~ Accepted health ~~Health~~ care grievances categorized ~~accepted~~ as clinical ~~in-nature~~ shall receive a clinical review by health care staff of the appropriate health care discipline ~~as determined during the triage.~~

~~(A)~~ Utilizing clinical expertise within the scope of their licensure, the reviewer shall conduct a focused review of the grievant's health record, applicable regulatory and departmental directives, and available resources relative to the health care grievance issues and facilitate any necessary intervention on outstanding clinical issues related to the health care grievance.

~~(3)~~ Accepted health care grievances categorized as administrative shall receive an administrative review by the supervisory staff or designee of the impacted health care area or function.

~~(A)~~ The reviewer shall conduct a focused review of the grievant's health record, applicable regulatory and departmental directives, and available resources relative to the health care grievance issues and facilitate any necessary intervention on outstanding administrative issues related to the health care grievance.

~~(e)~~ Interview.

~~(1f)~~ The reviewer shall conduct an ~~An~~ interview with the grievant ~~shall be conducted~~ in any of the following circumstances:

~~(A4)~~ The grievant requested an interview by ~~marking~~ ~~initialing~~ the appropriate box on the CDCR 602 HC.

~~(B2)~~ The reviewer ~~Health care staff~~ has determined an interview is necessary.

~~(C3)~~ The grievant has been identified as the first grievant to submit an accepted health care grievance that has been designated as a multiple health care grievance pursuant to section 3999.232.

~~(4)~~ The health care grievance is deemed a health care staff complaint and in such case, health care staff shall conduct the interview pursuant to section 3999.231.

~~(2)~~ The reviewer shall not conduct an interview with the grievant in any of the following circumstances:

~~(Ag)~~ If ~~the~~ The grievant refuses the health care grievance interview, ~~the HCGO shall complete the health care grievance without grievant input.~~

~~(B)~~ The grievant is temporarily outside health care jurisdiction for an indeterminate amount of time and not expected to return before the time limits for responding to the health care grievance have expired.

~~(h)~~ Health care staff who participated in the event or decision being grieved may not interview the grievant.

~~(f)~~ Response.

~~(1i)~~ Time limits for processing a health care grievance commence on the day it is received by the HCGO and shall be completed and returned to the grievant with a response within 45 business days, unless processed as an expedited health care grievance pursuant to section 3999.233(b).

~~(2)~~ If the grievant is paroled, discharged, or deceased before the time limits expire for responding to a health care grievance a response will not be prepared.

~~(j)~~ Health care grievance responses shall be approved and signed pursuant to section 3999.225(x).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-

2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.229 is amended to read:

3999.229. Preparation and Submittal of a Health Care Grievance Appeal.

(a) If dissatisfied with the institutional level ~~health care grievance~~ disposition, the grievant may appeal the disposition by completing and signing Section ~~CB~~ of the CDCR 602 HC and submitting the health care grievance package to the Health Care Correspondence and Appeals Branch HCCAB via the United States Postal Service within 30 calendar days plus ~~five~~ five calendar days for mailing from the date noted in Section B, Box 17 of ~~on the~~ CDCR 602 HC, ~~in the “Date closed and mailed/delivered to grievant” section on page 1 of 2.~~

(1) The requirements of sections 3999.227(~~be~~) through (~~eg~~) and (~~gj~~) through (~~oq~~) apply to this section.

(2) The health care grievance package shall include the original Institutional Level Response and, if applicable, any Rejection Notices ~~institutional level grievance response.~~

(3) The grievant shall not include new issues that were not included in the original health care grievance.

(4) ~~For appeals of health care grievances processed on an expedited basis at the institutional level, the grievant shall forward the health care grievance package to the HCCGO where the grievant is housed if continued expedited processing is requested.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.230 is amended to read:

3999.230. Headquarters ~~Headquarters' Level~~ Health Care Grievance Appeal Review.

(a) The headquarters ~~headquarters' level~~ is for review of appeals of institutional level ~~health care grievance~~ dispositions.

(b) Clinical triage.

(1b) Health care staff at a level no less than a Registered Nurse, utilizing clinical expertise within the scope of their licensure, shall triage each health care grievance within one business day of receipt to determine if the grievant described a health care need that may require prompt medical attention. his or her licensure, shall:

(1) Triage each health care grievance appeal within one business day of receipt and:

(A) Determine if the health care grievance appeal identifies a health care issue that may require clinical intervention.

(B) Determine if the health care grievance appeal warrants continued expedited processing as requested by the grievant pursuant to section 3999.229(a)(4).

~~(2) Determine if a clinical review is warranted.~~

(2) Identified urgent/emergent health care issues shall be immediately referred to appropriate health care staff for care as clinically indicated.

~~(3) Review the grievant's health record and applicable clinical and/or custodial information, as necessary, to aid in drafting the headquarters' level response and coordinate with the appropriate health care discipline as necessary, when an accepted health care grievance appeal is determined to warrant a clinical review.~~

(c) Clinical screening.

(1) Health care staff at a level no less than a Registered Nurse, utilizing clinical expertise within the scope of their licensure, shall clinically screen each health care grievance to identify administrative issues, clinical issues, allegations of staff misconduct, Americans with Disabilities Act issues, and Prison Rape Elimination Act issues and determine if a clinical review is warranted.

(d) Administrative screening.

~~(1e) Each~~ All submitted health care grievance appeals shall be administratively screened to identify whether the health care grievance appeal complies with the requirements under this article sections 3999.227 and 3999.229 and may be rejected pursuant to section 3999.234.

~~(d) Any health care grievance appeal received outside the time limits pursuant to sections 3999.227 and 3999.229 may be accepted at the discretion of the HCCAB if it is determined that the health care grievance appeal should be subject to further review for reasons including, but not limited to:~~

~~(1) Good cause exists for untimely submission of the health care grievance appeal.~~

~~(2) Issues stated in the health care grievance appeal allege facts that warrant further inquiry.~~

(e) Review.

(1) Accepted health care grievances categorized as a staff complaint shall be addressed pursuant to section 3999.231.

(2) Accepted health care grievances categorized as clinical shall receive a clinical review by health care staff at a level no less than a Registered Nurse when determined to warrant a clinical review pursuant to subsection (c)(1).

(A) Utilizing clinical expertise within the scope of their licensure, the reviewer shall conduct a focused review of the grievant's health record, applicable regulatory and departmental directives, and available resources relative to the health care grievance issues and facilitate any necessary intervention on outstanding clinical issues related to the health care grievance.

(3) Accepted health care grievances categorized as administrative or determined to not warrant a clinical review shall receive an administrative review by Health Care Correspondence and Appeals Branch (HCCAB) staff.

(A) The reviewer shall conduct a focused review of the grievant's health record, applicable regulatory and departmental directives, and available resources relative to the health care grievance issues and facilitate any necessary intervention on outstanding administrative issues related to the health care grievance.

(f) Interview.

~~(1e) An~~ If determined to be necessary by HCCAB staff, an interview with the grievant may be conducted if determined to be necessary by HCCAB staff.

(g) Response.

~~(1f)~~ Time limits for processing a health care grievance appeal commence on the day it is received by the HCCAB and shall be completed and returned to the grievant with a response within 60

business days, ~~unless processed as an expedited health care grievance appeal pursuant to section 3999.233(b).~~

~~(g) Headquarters' level health care grievance appeal responses shall be approved and signed pursuant to section 3999.225(x).~~

~~(h) The headquarters' level review constitutes the final disposition on a health care grievance and exhausts administrative remedies but does not preclude amending a response previously made at the headquarters' level.~~

~~(2i) At its sole discretion, HCCAB may address new issues not previously submitted or included in the original health care grievance.~~

~~(A) A headquarters headquarters' level disposition addressing new issues exhausts administrative remedies.~~

~~(3) If the grievant is paroled, discharged, or deceased before the time limits expire for responding to a health care grievance a response will not be prepared.~~

~~(h) Amendments.~~

~~(1k) Amendments. HCCAB shall notify the Health Care Grievance Office (HCGO) and grievant when it is determined a health care grievance response issued by the HCGO requires amendment.~~

~~(2l) The HCGO shall complete the amendment amended response and return the health care grievance package to the grievant within 3045 calendar days of notice issuance or earlier as determined by HCCAB.~~

~~(2) The grievant shall have 30 calendar days plus five calendar days for mailing from the amended health care grievance response issue date to resubmit the entire original health care grievance package for a headquarters' level grievance appeal review.~~

~~(3) If dissatisfied with the amended response, the grievant shall resubmit the health care grievance to the appropriate level of review within regular submittal timeframes pursuant to sections 3999.228 or 3999.230.~~

~~(4) Exhaustion of administrative remedies does not preclude amending a Headquarters Level Response.~~

~~(5) Upon identification of a Headquarters Level Response requiring amendment, HCCAB shall complete the amendment and return the health care grievance package to the grievant within a timeframe of no more than 30 calendar days.~~

~~(f) Headquarters' level directive. When it is determined intervention is appropriate, HCCAB may issue a headquarters' level directive to the institutional level reviewing authority; the headquarters' level directive shall be completed within 60 calendar days of the health care grievance appeal disposition. The 60 calendar day period may be extended by HCCAB after notification from the HCGO that there is a delay in the completion of a headquarters' level directive and the estimated completion date.~~

~~(i) Headquarters level directive.~~

~~(1) HCCAB may issue a headquarters level directive to the institutional level Health Care Authority when it is determined intervention is appropriate.~~

~~(2) The HCGO shall complete the headquarters level directive within the timeframe specified by HCCAB of no more than 60 calendar days from receipt of the directive.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of

Civil Procedure; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.231 is amended to read:

3999.231. ~~Health Care~~Staff Complaints.

(a) Institutional level.

(1a) ~~A Health care grievance determined to be health care grievance categorized as a staff complaint complaints after receiving a clinical triage shall be processed pursuant to this section Subchapter 2, Article 5, and not as a citizen's complaint.~~

(2) The staff complaint process is for review of health care grievances with identified allegations of staff misconduct that are not subject to a separate administrative review process. The Health Care Authority shall refer allegations of staff misconduct that are exempt from the provisions of this section to the applicable investigating authority.

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

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

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

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

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

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

(C) A staff complaint that contains staff misconduct allegations accepted by the Office of Internal Affairs for an allegation inquiry or investigation shall not be processed pursuant to this section.

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

(3f) Confidential inquiry Report. Health care sStaff with supervisory authority over the subject of the health care staff complaint shall:

(A4) Conduct an inquiry to determine if health care staff behavior or activity violated a law, regulation, policy, or procedure, or was contrary to an ethical or professional standard, even if the grievant has paroled, discharged, or is deceased.

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

1.(A) The grievant.

2.(B) All necessary witnesses.

3.(C) The subject of the health care staff complaint, unless no longer employed by the Department CDCR or on a leave of absence. The subject of the staff complaint shall be given notice of the interview at least 24 hours prior to the interview. If the subject chooses to waive the 24-hour

requirement, the subject must indicate this at the time they are given notice. If waived, the subject may be interviewed immediately.

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

~~(C3) Prepare a eConfidential iInquiry rReport and include evidence to support a determination of the findings concerning the allegation(s).~~

(4) Response.

(A) The Institutional Level Response to a staff complaint shall inform the grievant of either:

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

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

(b) Headquarters level. The headquarters level shall:

(1) Provide administrative review of the Institutional Level Response of a staff complaint for which the grievant is dissatisfied with the institutional level disposition.

(2) Review allegations of headquarters staff misconduct. The provisions of subsections (a)(3) through (a)(3)(C) shall apply.

(c) Confidential records.

~~(1)(4)-The Health Care Grievance Office (HCGO) shall maintain the original and any redacted versions of the eConfidential iInquiry rReport.~~

~~(2A) The eConfidential iInquiry rReport shall not be released to inmates under any circumstances.~~

~~(3B) The subject of the health care staff complaint is entitled to know whether or not they he or she violated policy and may view the eConfidential iInquiry rReport and health care grievance package in the HCGO with under the following conditions: redaction of information related to other staff including, but not limited to, identity, interview content, potential discipline, or inquiry findings. Copies shall not be provided.~~

~~1. With approval from the institutional litigation coordinator.~~

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

~~(4C) Requests for release of a eConfidential iInquiry rReport relating to litigation shall be forwarded to the headquartersheadquarters' health care Litigation Coordinator for review and approval to release.~~

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

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

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

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

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

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

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

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.232 is amended to read:

3999.232. Multiple Health Care Grievances.

(a) Each identified multiple health care grievance shall be individually processed.

(b) Review.

(1) An administrative review shall be conducted pursuant to sections 3999.228 and 3999.230 for the first accepted multiple health care grievance.

(c) Interview.

(1) The grievant who submitted the first accepted multiple health care grievance shall be identified and. The identified grievant shall receive an interview pursuant to section 3999.228(e)(1)(C)(f)(3). No other grievant will receive an interview unless health care grievance staff needs further clarification related to the issue.

(2) No other grievant will receive an interview unless:

(A) Health care grievance staff needs further clarification related to the issue; or

(B) Section 3999.228(e)(2) applies to the first grievant.

(d) Response.

(1) An Institutional Level Response to each grievant shall be provided containing a statement to indicate that the health care grievance was processed as one of multiple health care grievances to each grievant.

(2) The Institutional Level Response prepared for the grievant who filed the initial health care grievance identified as a multiple health care grievance shall:

(A) Serve as the template for all other responses to the same issue.

(B) Contain a statement to indicate that the health care grievance was processed as one of multiple health care grievances.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.233 is amended to read:

3999.233. Exceptions to Health Care Grievance Process Time Limits.

(a) Exceptions to health care grievance process time limits pursuant to sections 3999.228(f)(1i) and 3999.230(g)(1f) shall be permitted only when:

(1) Grievant, staff, or witnesses are not available prior to the expiration of the response time limits to provide information to prepare the ~~health care grievance or health care grievance appeal~~ response.

(2) The complexity of the decision, action, or policy requires additional research.

(3) Involvement of other departments, agencies, or jurisdictions is necessary.

(4) A state of emergency requires the postponement of nonessential administrative decisions and actions pursuant to ~~section 3383(a)~~ issued orders, memoranda, and directions.

~~(b) Expedited health care grievances and health care grievance appeals identified pursuant to sections 3999.228(b)(2) or 3999.230(b)(1)(B) shall be processed and returned to the grievant within five business days from the date of receipt.~~

~~(c) Headquarters' level directives shall specify the timeframe for completion for expedited health care grievance appeals.~~

~~(d) The HCGO shall notify the grievant and HCCAB if there is a delay in the completion of a headquarters' level directive and the estimated completion date.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.234 is amended to read:

3999.234. Health Care Grievance Process Non-Compliance and ~~Health Care Grievance Appeal Rejection.~~

(a) If a health care grievance is not prepared and submitted in compliance with the provisions of this article, the health care grievance shall be considered non-compliant and, at the discretion of the Headquarters Level Health Care Authority, may:

(1) Be subject to rejection.

~~(2a) Subject the grievant to A health care grievance appeal may be rejected for reasons, which include, but are not limited to:~~restriction.

~~(1) The grievant did not submit the health care grievance or health care grievance appeal pursuant to Subchapter 2, Article 5.~~

~~(2) The health care grievance concerns an anticipated action or decision.~~

~~(3) The grievant submitted the health care grievance without a prior attempt to obtain health care services through approved processes. In this case, HCGO staff shall submit a request for health care services, if medically necessary, to the appropriate facility clinic on behalf of the grievant.~~

~~(4) An individual submitted a health care grievance or health care grievance appeal on behalf of another person.~~

~~(5) The grievant is temporarily outside health care jurisdiction for an indeterminate amount of time, including, but not limited to, out to court or at an offsite hospital, and not expected to return~~

~~before the time limits for responding to the health care grievance or health care grievance appeal have expired.~~

~~(6) The health care grievance duplicates the grievant's previous health care grievance upon which a decision was rendered or is pending and the grievant has not provided any new information that would indicate additional review is warranted.~~

~~(7) A health care grievance is submitted as a group grievance by more than one grievant related to a policy, decision, action, condition, or omission affecting all members of the group.~~

~~(b) When a health care grievance or health care grievance appeal is rejected, a response to the grievant shall provide written instruction regarding further action the grievant must take to qualify the health care grievance or health care grievance appeal for processing and the timeframe necessary, as determined by the HCGO or HCCAB, to correct and resubmit the health care grievance or health care grievance appeal to the identified office.~~

~~(1) If the grievant submits a health care grievance or health care grievance appeal more than twice without complying with the written instruction, the health care grievance or health care grievance appeal will be adjudicated based on available information. Adjudication of a health care grievance or health care grievance appeal without complying with written instruction to correct submission does not preclude consideration for abuse pursuant to section 3999.236(a)(2).~~

~~(b) Rejection Notices shall be issued pursuant to sections 3999.230(g)(1) and 3999.230(g)(3).~~

~~(c) If the grievant resubmits a health care grievance without complying with the written instruction in the Rejection Notice, the non-compliant health care grievance shall be adjudicated based on available information.~~

~~(1) Reviews and interviews pursuant to sections 3999.228 and 399.230 shall be conducted at the discretion of the headquarters level Health Care Authority.~~

~~(2) Adjudication of a non-compliant health care grievance does not preclude consideration for restriction pursuant to this section.~~

~~(d) The Health Care Grievance Office or Health Care Correspondence and Appeals Branch must provide a written and verbal warning to a grievant prior to noticing the grievant of any restriction on the basis of health care grievance process abuse.~~

~~(1) Following a written and verbal warning, the headquarters level Health Care Authority shall have the discretion to authorize preparation and issuance of a notice restricting the grievant to one health care grievance submittal every 30 calendar days for a period of up to one year.~~

~~(2) Any subsequent violation of the health care grievance restriction may result in an extension of the restriction for up to an additional one-year period upon approval by the headquarters level Health Care Authority.~~

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.

Section 3999.235 is repealed:

~~3999.235. Health Care Grievance and Health Care Grievance Appeal Withdrawal.~~

~~(a) With the exception of health care grievances determined to be health care staff complaints, the grievant may withdraw a health care grievance or health care grievance appeal by requesting to have the processing stopped at any point up to receiving a signed response.~~

~~(b) The request to withdraw a health care grievance or health care grievance appeal shall identify the reason for the withdrawal in Section E of the CDCR 602 HC, and shall be signed and dated by the grievant. The grievant may also submit a written request to the reviewing authority, including the reason for withdrawal, grievant signature, and date.~~

~~(c) If there is agreed upon relief noted in writing at the time of a withdrawal and the relief is not provided, the grievant may submit a new separate health care grievance on that issue within 30 calendar days of the failure to receive relief.~~

~~(d) The withdrawal of a health care grievance or health care grievance appeal does not preclude further administrative action regarding the issues being grieved.~~

~~(e) The decision to accept a request to withdraw a health care grievance or health care grievance appeal is at the discretion of the HCGO or HCCAB.~~

~~(1) The grievant shall be provided a response of acceptance of the request to withdraw a health care grievance or health care grievance appeal.~~

~~(2) If the request to withdraw a health care grievance or health care grievance appeal is not accepted, the processing of the health care grievance or health care grievance appeal shall continue and a response shall be issued, unless the grievant is paroled, deceased, or discharged pursuant to section 3999.237.~~

~~Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-2307 CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.~~

Section 3999.236 is repealed:

~~3999.236. Abuse of Health Care Grievance Process.~~

~~(a) The following are abuse of the health care grievance process and may lead to health care grievance restriction:~~

~~(1) The submission of more than one health care grievance for initial review within a 14 calendar day period, unless it is accepted as an expedited grievance.~~

~~(2) The repeated filing of a health care grievance or health care grievance appeal that has been rejected and resubmitted without complying with rejection response instructions pursuant to section 3999.234(b).~~

~~(3) The grievant continues to submit health care grievances or health care grievance appeals contrary to section 3999.227.~~

~~(b) After the HCGO identifies health care grievance abuse and provides a written and verbal warning to the grievant, the headquarters' level reviewing authority shall have the discretion to authorize preparation and issuance of a notice restricting the grievant to one routine health care grievance every 30 calendar days for a period of up to one year. Any subsequent violation of the~~

health care grievance restriction may result in an extension of the restriction for up to an additional one year period upon approval by the headquarters' level reviewing authority.

Note: Authority cited: ~~Section 5058, Penal Code. Reference: Sections 148.6(a) and 5054, Penal Code; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.~~

Section 3999.237 is repealed:

~~3999.237. Changes in Health Care Jurisdiction.~~

~~(a) If the grievant is temporarily outside health care jurisdiction for an indeterminate amount of time, including, but not limited to, out to court or at an offsite hospital, and not expected to return before the time limits for responding to the health care grievance or health care grievance appeal have expired, the health care grievance or health care grievance appeal may be rejected pursuant to section 3999.234(a). Upon return to health care jurisdiction, the grievant may resubmit the health care grievance or health care grievance appeal pursuant to section 3999.234(b).~~

~~(b) Paroled. If the grievant paroled before the time limits expire for responding to a health care grievance or health care grievance appeal, the grievant shall not receive a response.~~

~~(c) Deceased or Discharged. If the grievant is deceased or discharged before the time limits expire for responding to a health care grievance or health care grievance appeal, a response will not be prepared.~~

Note: Authority cited: ~~Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act, Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; Section 35.107, Title 28, Code of Federal Regulations; *Armstrong v. Newsom* (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Newsom* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Newsom* (No. C01-1351 JST), U.S. District Court, Northern District of California.~~

STAFF USE ONLY

Tracking #:

SECTION C:

Health Care Grievance Appeal. If you are dissatisfied with the Institutional Level Grievance Response, explain the reason below (if more space is needed, use Section C of the CDCR 602 HC A), and submit the entire health care grievance package by mail for Headquarters' (HQ) Level health care grievance appeal review. Mail to: Health Care Correspondence and Appeals Branch, P.O. Box 588500, Elk Grove, CA 95758.

Grievant Signature:

Date Submitted:

SECTION D: HEALTH CARE GRIEVANCE APPEAL REVIEW HQ LEVEL: Staff Use Only

Is a CDCR 602 HC A attached? ☐ Yes ☐ No

This grievance has been:

☐ Rejected (See attached letter for instructions)

☐ Withdrawn (see section E)

☐ Accepted

Interview Conducted?

☐ Yes ☐ No

Date of Interview:

Interview Location:

Interviewer Name and Title (print):

Signature:

Date:

Disposition: See attached letter

☐ Intervention

☐ No Intervention

This decision exhausts your administrative remedies.

HQ Use Only: Date closed and mailed/delivered to grievant:

SECTION E:

Grievant requests to WITHDRAW health care grievance: I request that this health care grievance be withdrawn from further review. Reason:

Grievant Signature:

Date Submitted:

Staff Name and Title (Print):

Signature:

Date:

STAFF USE ONLY

Distribution: **Original** - Returned to grievant after completed; **Scanned Copy** - Health Care Appeals and Risk Tracking System 2.0 (Do not place in central file or health record)

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.

STAFF USE ONLY

Tracking #:

Attach this form to the CDCR 602 HC, Health Care Grievance, only if more space is needed. Only one CDCR 602 HC A may be used.

Do not exceed more than one row of text per line. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

| | | |
|-------------------------|--------------|-------------------|
| Name (Last, First, MI): | CDCR Number: | Unit/Cell Number: |
|-------------------------|--------------|-------------------|

| | |
|-------------------|--|
| SECTION A: | Continuation of CDCR 602 HC, Health Care Grievance, Section A only (Explain the decision, action, condition, omission, policy or regulation that has had a material adverse effect upon your health or welfare for which you seek administrative remedy) : |
|-------------------|--|

REPEAL

| | |
|---------------------------|-----------------------|
| Grievant Signature: _____ | Date Submitted: _____ |
|---------------------------|-----------------------|

| | |
|-------------------|---|
| SECTION B: | Staff Use Only: Grievants do not write in this area. Grievance Interview Clarification. Document issue(s) clarified during interview. |
|-------------------|---|

| | | |
|-----------------------|------------------|--------------|
| Name and Title: _____ | Signature: _____ | Date : _____ |
|-----------------------|------------------|--------------|

STAFF USE ONLY

Tracking #:

| | |
|-------------------|---|
| SECTION C: | Continuation of CDCR 602 HC, Health Care Grievance Appeal, Section C only (Dissatisfied with Health Care Grievance Response): |
|-------------------|---|

REPEAL

Grievant Signature: _____ Date Submitted: _____

| | |
|-------------------|---|
| SECTION D: | Staff Use Only: Grievants do not write in this area. Grievance Appeal Interview Clarification. Document issue(s) clarified during interview (If necessary at HQ Level). |
|-------------------|---|

Name and Title: _____ Signature: _____ Date : _____

STAFF USE ONLY

Distribution: Original - Returned to grievant after completed, **Scanned Copy** - Health Care Appeals and Risk Tracking System 2.0 (Do not place in central file or health record)

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.

Tracking #:

Notify staff immediately if you have a medical, mental health, or dental emergency.

Health care grievances shall be processed pursuant to California Code of Regulations (CCR), Title 15, Chapter 2, Subchapter 2, Article 5. The institutional level is for initial review of health care grievances. The headquarters level is for review of appeals of institutional level dispositions, constitutes the final disposition on a health care grievance, and exhausts administrative remedies.

SECTION A: TO BE COMPLETED BY GRIEVANT

NAME OF GRIEVANT (Last, First, MI)

CDCR NUMBER

HEALTH CARE GRIEVANCE. Clearly state the specific issue about your health care that you believe has had a poor effect upon your health or well-being. Include dates, times, places, and names. Use Section A of one CDCR 602 HC A, Health Care Grievance Attachment, if you need additional space.

ADOPT

CHECK APPLICABLE BOXES

☐ Interview Requested

☐ One CDCR 602 HC A Attached

☐ Supporting Documents Attached (CCR 3999.227)

SIGNATURE OF GRIEVANT

DATE SUBMITTED

Submit to the Health Care Grievance Office (HCGO) for an institutional level review.

SECTION B - INSTITUTIONAL LEVEL: STAFF USE ONLY

1.1. DATE RECEIVED

1.2. DATE RECEIVED (resubmission)

CLINICAL TRIAGE

2.1. NAME/TITLE OF HCARN OR DESIGNEE

3.1. SIGNATURE OF HCARN OR DESIGNEE

4.1. DATE TRIAGED

2.2. NAME/TITLE OF HCARN OR DESIGNEE (resubmission)

3.2. SIGNATURE OF HCARN OR DESIGNEE (resubmission)

4.2. DATE TRIAGED (resubmission)

SCREENING

5.1. OUTCOME

5.2. OUTCOME (resubmission)

6a. DATE REJECTION NOTICE MAILED/DELIVERED

☐ Accepted

☐ Accepted

6b. DATE ACCEPTED

☐ Accepted/Non-Compliant

☐ Accepted/Non-Compliant

☐ Rejected

REVIEW

7. HEALTH CARE DISCIPLINE

8. REVIEW TYPE

9. NAME/TITLE OF REVIEWER

10. DATE ASSIGNED

☐ Medical

☐ Clinical

11. SIGNATURE OF REVIEWER

12. DATE GRIEVANT INTERVIEWED (if applicable)

☐ Mental Health

☐ Administrative

☐ Dental

☐ Staff Complaint

INSTITUTIONAL LEVEL RESPONSE

13. NAME/TITLE OF HEALTH CARE AUTHORITY OR DESIGNEE

14. SIGNATURE OF HEALTH CARE AUTHORITY OR DESIGNEE

15. DATE ILR REVIEWED AND SIGNED

16. DISPOSITION

17. DATE CLOSED AND ILR MAILED/DELIVERED

☐ No Intervention

☐ Intervention

SECTION C: TO BE COMPLETED BY GRIEVANT AFTER RECEIVING AN INSTITUTIONAL LEVEL RESPONSE

| |
|-------------|
| CDCR NUMBER |
|-------------|

ADOPT

| |
|----------------|
| DATE SUBMITTED |
|----------------|

SECTION D - HEADQUARTERS LEVEL: STAFF USE ONLY

| |
|-----------------------------------|
| 1.2. DATE RECEIVED (resubmission) |
|-----------------------------------|

| | | |
|---|--|----------------------------------|
| 2.1. NAME/TITLE OF HCARN OR DESIGNEE | 3.1. SIGNATURE OF HCARN OR DESIGNEE | 4.1. DATE TRIAGED |
| 2.2. NAME/TITLE OF HCARN OR DESIGNEE (resubmission) | 3.2. SIGNATURE OF HCARN OR DESIGNEE (resubmission) | 4.2. DATE TRIAGED (resubmission) |

| | | |
|--|---|----------------------------------|
| 5.1. OUTCOME | 5.2. OUTCOME (resubmission) | 6a. DATE NOTICE MAILED/DELIVERED |
| <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected | <input type="checkbox"/> Accepted | 6b. DATE ACCEPTED |
| <input type="checkbox"/> Accepted/Non-Compliant <input type="checkbox"/> Amendment | <input type="checkbox"/> Accepted/Non-Compliant | |

| | | |
|---|--|-------------------|
| 7. HEALTH CARE DISCIPLINE | 8. REVIEW TYPE | 9. DATE OF REVIEW |
| <input type="checkbox"/> Medical <input type="checkbox"/> Mental Health <input type="checkbox"/> Dental | <input type="checkbox"/> Clinical <input type="checkbox"/> Administrative <input type="checkbox"/> Staff Complaint | |

| | |
|---|--|
| 10. SIGNATURE OF HEALTH CARE AUTHORITY OR DESIGNEE | 11. DATE HLR REVIEWED AND SIGNED |
| 12. DISPOSITION <input type="checkbox"/> No Intervention <input type="checkbox"/> Intervention | 13. DATE CLOSED AND HLR MAILED/DELIVERED |

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.

Page 1 of 2

| |
|-------------|
| Tracking #: |
|-------------|

Attach this form to the CDCR 602 HC, Health Care Grievance, if more space is needed. **Only one CDCR 602 HC A may be used.**

SECTION A - CDCR 602 HC CONTINUATION: TO BE COMPLETED BY GRIEVANT

| |
|------------------------------------|
| NAME OF GRIEVANT (Last, First, MI) |
|------------------------------------|

| |
|-------------|
| CDCR NUMBER |
|-------------|

HEALTH CARE GRIEVANCE. Continue to clearly state the specific issue about your health care that you believe has had a poor effect upon your health or well-being. Include dates, times, places, and names.

ADOPT

| |
|-----------------------|
| SIGNATURE OF GRIEVANT |
|-----------------------|

| |
|----------------|
| DATE SUBMITTED |
|----------------|

SECTION C - CDCR 602 HC CONTINUATION: TO BE COMPLETED BY GRIEVANT

| |
|-------------|
| CDCR NUMBER |
|-------------|

HEALTH CARE GRIEVANCE APPEAL. Continue to clearly explain the reason you are dissatisfied with the institutional level disposition.

ADOPT

| |
|----------------|
| DATE SUBMITTED |
|----------------|

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.

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3999.98, 3999.99, 3999.225, 3999.226, 3999.227, 3999.228, 3999.229, 3999.230, 3999.231, 3999.232, 3999.233, and 3999.234, and repeal sections 3999.235, 3999.236, and 3999.237 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, regarding health care grievances.

Summary of the Proposal

Problem Statement:

Due to operational issues related to the effective communication process, grievance rejections, and grievance withdrawals, the Department has concluded substantive regulatory changes are required.

Objective:

This regulatory action eliminates redundancies related to effective communication documentation, eliminate the practice of withdrawing health care grievances and health care grievance appeals, and limit grievance rejections to duplicative, excessive, or non-compliant grievance submittals. In addition to addressing these operational concerns, amendments are included to improve clarity and consistency within Title 15, Chapter 2, Subchapter 2, Article 5, Health Care Grievances.

Benefit:

The proposed regulations will:

- Eliminate redundancies related to effective communication documentation.
- Revise processes that contribute to unnecessary reports and additional workload for staff throughout the institutions.
- Provide for better tracking of intervention within the Department.
- Alleviate stakeholder concerns related to grievants possibly withdrawing grievances under duress.
- Revise processes that delay providing responses to grievants and impede progress toward the exhaustion of administrative remedies.

ECONOMIC IMPACT ASSESSMENT

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

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

The Department does not expect that the proposed regulations will have an impact on the creation of new or the elimination of existing jobs within the State of California. The proposed regulations only affect a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care.

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

The Department does not expect that the proposed regulations will have an impact on the creation of new or the elimination of existing businesses within the State of California. The proposed regulations only affect a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care.

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

The Department does not expect that the proposed regulations will have an impact on the expansion of businesses currently doing business within the State of California. The proposed regulations only affect a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care.

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

The proposed regulations ensure access to care to all inmates within CDCR by providing those who are dissatisfied with the health care being provided to them an opportunity to seek a meaningful administrative remedy for grievances. The regulations will establish a more efficient and effective health care grievance process, which will further benefit the health and welfare of California residents housed in CDCR facilities. This regulation will not have an impact on the State's environment, as the State's environment is not impacted by the administration of the health care grievance program.

Statement of Determinations

Reasonable Alternatives

In accordance with GC section 11346.5(a)(13), the Department has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Local Mandates

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

Significant Adverse Economic Impact

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because this regulatory action relates strictly to a program that affords inmates within CDCR an opportunity to seek a meaningful administrative remedy for grievances regarding their health care.

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

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

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

Reports, Studies and Documents Relied Upon

Not applicable

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

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

Chapter 2. Rules and Regulations of Health Care Services

Article 1. Health Care Definitions

Section 3999.98. Definitions.

Section 3999.98 is amended to include a definition for the following terms:

“Chief Executive Officer,” which is moved from section 3999.225, Definitions, and amended to delete the modifier “(health care).” This is necessary as this definition is applicable to all of Title 15, Division 3, Chapter 2, and because the modifier “(health care)” is unnecessary within the context of this chapter.

“Health Care Discipline,” which is moved from section 3999.225, Definitions. This is necessary, as this definition is applicable to all of Title 15, Division 3, Chapter 2.

Chapter 2. Rules and Regulations of Health Care Services

Article 1. Health Care Forms

Section 3999.99. Forms.

Section 3999.99 is amended to update the revision dates for the CDCR 602 HC, Health Care Grievance, and CDCR 602 HC A, Health Care Grievance Attachment. Necessity for the revisions to these forms is addressed in the section of this document entitled Specific Purpose and Rationale for Each Form Proposed for Amendment, Adoption, or Repeal.

Subchapter 2. Patient’s Entitlements and Responsibilities

Article 5. Health Care Grievances

Section 3999.225. Definitions.

Section 3999.225 is amended as follows:

Numbering is deleted as definitions are listed alphabetically. This is necessary for consistency with other definitions sections in Title 15, Division 3, Chapter 2.

“Abuse” is added to clarify the meaning of the term within these regulations. This is necessary for a common understanding of what qualifies as abuse.

“Administrative Remedy” is amended to delete the term “health care grievance” before the word “disposition.” This is necessary for consistency of reference, as other references to a headquarters disposition within these regulations do not include the term “health care grievance.”

“Amendment” is amended to delete the term “grievance appeal” before the word “review.” This is necessary for consistency of reference as other references to a headquarters level review within these regulations do not include the term “grievance appeal.”

“Business day” is deleted, as this definition is already included section 3999.98, Definitions. This is necessary to eliminate duplication.

“Chief Executive Officer” is moved to section 3999.98, as it applies to all of Title 15, Division 3, Chapter 2.

“Disposition” is amended to include two subsections that define the terms “Intervention” and “No Intervention.” This is necessary to clarify the possible dispositions for submitted health care grievances at the level submitted.

“Expedited health care grievance” is deleted as this term is no longer used in these regulations.

“Headquarters Level Directive” is amended to replace the term “reviewing authority” with term “Health Care Authority.” This is necessary for consistency of reference as the term “reviewing authority” is no longer defined and has been replaced by the term “Health Care Authority.” In addition, the phrase “headquarters’ review of a health care grievance appeal” has been replaced with the phrase “conducting a headquarters level review” in the final sentence. This is necessary for consistency of reference and grammatical accuracy.

“Health care discipline” is moved to section 3999.98 as it applies to all of Title 15, Division 3, Chapter 2.

“Health Care Authority” is added to replace the term “Reviewing Authority.” This is necessary to provide a common understanding of the term “Health Care Authority” and to distinguish this individual from references to the reviewing authority in the custody appeals process. In addition, the new definition deletes language that unnecessarily explicates the ability of the Health Care Authority to designate authority.

“Health Care Correspondence and Appeals Branch (HCCAB)” is moved into alphabetical order within this section and amended delete the term “health care grievance appeal” before the word “review.” This is necessary for consistency of reference as the term is referenced as “headquarters level review” throughout these regulations.

“Health Care Grievance” is amended to add the phrase “on the patient’s own behalf” following the phrase “a written complaint submitted by a patient.” This is necessary clarify that a health care grievance must be a written complaint submitted by a patient on the patient’s own behalf.

“Health Care Grievance Process” is amended to delete the term “health care” before the word “staff.” This is necessary to clarify that health care grievances may be processed by staff other than health care staff, as defined in section 3999.98.

“Health care staff” is deleted because it conflicts with the established definition of health care staff in section 3999.98.

“Intervention” is moved to subsection (1) within the definition of the term “disposition.” This is necessary to clarify that the term “intervention” is a subcategory within the term “disposition.”

“Patient” is deleted to eliminate duplication, as this definition is already included in section 3999.98.

“Rejected” is amended to replace the phrase “or appeal of grievance disposition” with the phrase “is non-compliant and” and to replace the word “rejection” with the term “Rejection Notice.” This is necessary to clarify that a health care grievance that is non-compliant will not qualify for processing and the reason for non-compliance will be stated on a Rejection Notice to the grievant.

“Response” is amended to delete the reference to withdrawal as a grievance status and to delete the word “appeal” following the term “health care grievance.” This is necessary as the proposed regulations remove withdrawal as a possible status for health care grievances, and the word “appeals” incorrectly limits the scope of the definition as it applies to all grievances. In addition, the definition includes a description of the three possible responses that can be provided to the

grievant regarding their health care grievance; Institutional Level Response, Headquarters Level Response, and Rejection Notice. This is necessary for a common understanding of these terms and to identify the form of the response.

“Reviewing authority” is deleted and replaced by the term “Health Care Authority.”

“Reviewer” is added to clarify the meaning of the term within these regulations. This is necessary to provide common terminology and criteria for staff assigned to review health care grievances at either level or staff complaints.

“Staff Misconduct” is amended to remove the term “health care” before the word “staff”. This is necessary to clarify that the term applies to behavior or activity that violates a law, regulation, policy, or procedure, or is contrary to an ethical or professional standard from any staff not just health care staff.

“Supporting Documents” is amended to remove the term “health care” before the word “staff.” This is necessary to clarify that supporting documents do not include documents that are accessible to any staff. In addition, the phrase “institutional level health care grievance” is deleted before the word “response(s)” in subsection (2). This is necessary to remove redundancy.

Section 3999.226. Right to Grieve.

Section 3999.226(a)(1) is renumbered as section 3999.226(f) and amended to clarify the directive and provide for a chronological description of the grievance process.

New sections 3999.226(b) and 3999.226(c), formerly section 3999.226(a)(3), are adopted to clarify that the health care grievance process shall not be used to request health care services and that patients shall attempt to address health care issues through approved processes prior to submitting a health care grievance. This is necessary to ensure that patients utilize the health care services request process as designed, which is the timeliest and most appropriate means to access care.

Section 3999.226(a)(2) is renumbered as section 3999.226(d) and amended to remove unnecessary verbiage.

Section 3999.226(a)(3) is renumbered as new sections 3999.226(b) and 3999.226(c) and amended to clarify the directives and provide for a chronological description of the grievance process.

Section 3999.226(a)(4) is renumbered as new section 3999.227(n) and is otherwise unchanged.

Section 3999.226(b) is repealed to comply with the non-duplication standard of the Administrative Procedure Act as the provisions contained in section 3999.26(b) are already set forth in section 3999.201, Effective Communication, which ensures a single source reference for effective communication documentation standards.

Section 3999.226(c) is renumbered as section 3999.226(e) and amended to replace the term “grievant” with the term “patient.” This is necessary for accuracy of reference as patients become

grievants only after they file a health care grievance. In addition, the phrase “unless it is accepted as an expedited grievance” is deleted from the first sentence. This is necessary as the expedited health care grievance status has been removed from these regulations. The final sentence of this section is amended to provide a more specific description of the commencement of the 14 calendar day timeframe.

Section 3999.226(d) is renumbered as new section 3999.226(h) and amended to include a directive to staff to ensure grievance forms are available. This is necessary for staff accountability and to not break up the chronological flow of process description within the section.

Section 3999.226(e) is renumbered as new section 3999.226(i) but is otherwise unchanged.

Section 3999.226(f) is repealed as section 3999.236 and non-compliance with the health care grievance process is addressed within section 3999.234.

New section 3999.226(f), formerly section 3999.226(a)(1), is amended to clarify that an institutional disposition shall be issued prior to a headquarters level review. This is necessary to ensure that frontline staff at institutions have the opportunity to provide timely administrative relief to the patients.

Section 3999.226(g) is amended to delete an extraneous reference and remove the final sentence, which restates the information contained in the first sentence including a reference to withdrawal. This is necessary for concision and to remove redundancy as withdrawal is removed from these regulations as a possible grievance status.

New section 3999.226(h), formerly section 3999.226(d) is amended as discussed above.

New section 3999.226(i), formerly section 3999.226(e) but is otherwise unchanged.

Section 3999.227. Preparation and Submittal of a Health Care Grievance.

Section 3999.227(a) is amended to clarify that grievants are limited to the use of Section A of the CDCR 602 HC and CDCR 602 HC A to describe the reason for their grievance. This is necessary to ensure health care grievance submissions are easy to understand by staff, and so that grievances can be processed in a timely manner.

Sections 3999.227(b) through 3999.227(b)(2) are renumbered as new sections 3999.227(p) through 3999.227(p)(2) and amended to remove the reference to the requirement to complete Section A of the CDCR 602 HC. This is necessary to provide a more logical process description and as the requirement for the grievant to complete Section A of the CDCR 602 HC is now included in section 3999.227(a). In addition, provisions are added to require patients to submit health care grievances in a single submission to the HCGO where the grievant is housed, which incorporates provisions from sections 3999.227(l) and 3999.227(m). This is necessary for concision and clarity for patients and staff.

Section 3999.227(c) is renumbered as 3999.227(b) and amended to replace the phrase “An individual may help the grievant prepare the” with the phrase “A patient may obtain assistance in preparing a” prior to the term “health care grievance.” This is necessary to ensure patients

understand that they are not limited to obtaining assistance from just one individual in preparing a health care grievance and may seek multiple resources for assistance.

Sections 3999.227(c)(1) through 3999.227(c)(3) are renumbered as 3999.227(b)(1) through 3999.227(b)(3) and are otherwise unchanged.

Section 3999.227(d) is repealed as section 3999.225 now specifies that a health care grievance, by definition, be submitted on the patient's own behalf. This is necessary to remove redundancy.

Section 3999.227(e) is renumbered as 3999.227(c) and amended to replace the phrase "is limited" with the phrase "shall limit the health care grievance." This is necessary to clarify the provision as a directive and specify that it relate directly to health care grievances.

Section 3999.227(f) is renumbered as 3999.227(d) and amended to replace the word "print" with the word "write" and the phrase "health care grievance form(s)" with the official titles "CDCR 602 HC and CDCR 602 HC A." This is necessary for consistency of reference and to clarify that the CDCR 602 HC and CDCR 602 HC A do not have to be completed by printing only.

Section 3999.227(g) is renumbered as 3999.227(e) and amended to remove a binary gender reference.

New Section 3999.227(e)(1), formerly section 3999.227(n), is amended replace the word "may" with the word "shall," to remove the term "health care" before the word "staff," And to clarify the only maner in which threatening, obscene, demeaning, or abusive language can be used in a health care grievance. This is necessary to ensure that the provision is understood as a prohibition rather than a permissive statement and to clarify that such language may be used only to quote staff or others relevant to the grievance.

Sections 3999.227(g)(1) through 3999.227(g)(2) are renumbered as 3999.227(e)(2) through 3999.227(e)(3) and are otherwise unchanged.

Section 3999.227(h) is renumbered as new section 3999.227(f) and is amended to replace the word "initialing" with the word "marking." This is necessary to ensure that grievants are not denied the opportunity for a grievance interview because they inadvertently marked the appropriate box instead of initialing it or they are unable to initial the box.

Section 3999.227(i) retains its number but is moved to follow section 3999.227(k) which is renumbered as 3999.227(h)(2). Section 3999.227(i) is otherwise unchanged.

New section 3999.227(g) is adopted to require grievants to notify staff when a CDCR 602 HC A is included in a grievance package by marking the appropriate box on the CDCR 602 HC. This is necessary to ensure that complete grievance packages are reviewed by staff and that all of the grievant's issues are addressed.

Section 3999.227(j) is renumbered as section 3999.227(h) and amended to delete "/or" from the phrase "clarification and/or resolution" and remove a superfluous reference to section 3999.225. This is necessary for concision and as supporting documents must include documents that both clarify and provide for the resolution of the grievance.

New section 3999.227(h)(1) is adopted to require grievants to notify staff when supporting documents are included in a grievance package by marking the appropriate box on the CDCR 602 HC. This is necessary to ensure that complete grievance packages are reviewed by staff and that the grievant has the opportunity to substantiate facts related to the health care grievance.

Section 3999.227(k) is renumbered as new section 3999.227(h)(2) and is otherwise unchanged.

Section 3999.227(l) is repealed as the requirement for grievants to present their health care grievances in a single submission is included in new section 3999.227(p).

Section 3999.227(m) is repealed as the requirement for grievants to submit their health care grievances to the HCGO where the grievant is housed is included in new section 3999.227(p).

Section 3999.227(n) is renumbered as new section 3999.227(e)(1) and is amended as discussed above.

Section 3999.227(o) is renumbered as new section 3999.227(j) and is otherwise unchanged.

Section 3999.227(p) is renumbered as new section 3999.227(k) and is amended to delete “/or” from “and/or” in the second sentence as all elements listed are examples of contaminations and are non-exclusive.

Section 3999.227(q) is renumbered as new section 3999.227(l) and is otherwise unchanged.

New section 3999.227(m) is adopted to require that grievants only submit grievances for actions that have occurred and not for anticipated actions. This is necessary to ensure health care grievances are submitted for grievances that can be factually verified and the processing of grievances is not delayed by spurious claims.

New section 3999.227(n) is former section 3999.226(a)(4) and is otherwise unchanged.

New section 3999.227(o) is adopted to prohibit grievants from submitting grievances for issues that have already been grieved in a previously submitted grievance for which a disposition was rendered or is pending. This is necessary to reduce unnecessary workload on staff and allow for the timely processing of grievance packages.

New sections 3999.227(p) through 3999.227(p)(2), formerly sections 3999.227(b) through 3999.227(b)(2), are amended as discussed above.

Section 3999.228. Institutional Level.

Section 3999.228(a) is amended to delete the terms “clinical/administrative” before the word “review.” This is necessary as these terms are not interchangeable and the review process is now clearly delineated and described throughout the section in all of its components.

New section 3999.228(b) is adopted to introduce sections 3999.228(b)(1)-(2).

Section 3999.228(b) is renumbered as new section 3999.228(b)(1), and amended to replace the phrase “his or her” with the word “their” and to add the phrase “to determine if the grievant described a health care need that may require prompt medical attention.” This is necessary to remove gender binary language and clarify the overarching purpose of clinical triage.

New section 3999.228(b)(2) is adopted to require that health care grievances with identified urgent/emergent health care issues be immediately referred to appropriate health care staff for care as clinically indicated. This is necessary to ensure timely access to care for grievants who are in need of urgent/emergent medical care and clarify the referral timeframe for such cases.

Section 3999.228(b)(1) is repealed as the provisions therein have been incorporated into new section 3999.228(b)(1).

Section 3999.228(b)(2) is repealed as it refers to expedited processing of health care grievances. This is necessary as the expedited status is being removed from the health care grievances process due to the negligible impact of grievances in need of expedited processing and numerous misunderstandings that have occurred in the field as to the use of expedited processing. The grievances which contain urgent/emergent health care issues are immediately referred to appropriate health care staff and emerging or routine health care issues identified in grievances are addressed by appropriate health care staff based on existing clinical timeframes

Section 3999.228(b)(3) is repealed as the current language implies a false dichotomy; grievances may contain both administrative issues and health care needs that may require prompt medical attention.

New section 3999.228(c) is adopted to introduce sections 3999.228(c)(1) through 3999.228(c)(2).

Section 3999.228(c) is renumbered as new section 3999.228(c)(1) and is amended to introduce new sections 3999.228(c)(1)(A) and 3999.228(c)(1)(B) and to delete language now covered by new section 3999.228(c)(1)(B).

New section 3999.228(c)(1)(A) is adopted to require each health care grievance to be screened for administrative issues, clinical issues, and allegations of staff misconduct. This is necessary for staff accountability and to clearly set forth the categories of issues that may be identified in a health care grievance.

New section 3999.228(c)(1)(B) is adopted to require that health care grievances are screened to verify compliance with the provisions of Article 5, Health Care Grievances, and allow the hiring authority discretionary authority to reject non-compliant health care grievances and place the submitting grievant under restriction. This is necessary to ensure the screening process identifies non-compliant health care grievances, which could contribute to backlogs in processing compliant health care grievances. In addition, this is necessary to clarify the consequences of submitting non-compliant grievances.

New section 3999.228(c)(2), formerly existing section 3999.228(f)(4) has been amended to ensure that health care grievances that contain allegations of staff misconduct are presented to the institutional level Health Care Authority to determine if the health care grievance will be

categorized as a staff complaint. This is necessary so that allegations of staff complaints are reviewed and assessed by qualified staff.

Sections 3999.228(d) through 3999.228(d)(2) are repealed as section 3999.227 has been repealed, and the requirements for rejection have been deleted to remove the opportunity for needless rejections from the health care grievance process.

New section 3999.228(d) is adopted to introduce sections 3999.228(d)(1) through 3999.228(d)(3)(A).

New section 3999.228(d)(1) is adopted to require that accepted health care grievances categorized as staff complaints are addressed pursuant to section 3999.231. This is necessary to ensure a consistent methodology is followed to identify and address staff complaints.

Section 3999.228(e) is renumbered as new section 3999.228(d)(2) and amended to add the word “Accepted” prior to the term “health care grievances” and, following that term, replace the word “accepted” with the word “categorized.” This is necessary to clarify that the categorization of health care grievances presupposes acceptance and that categorization of health care grievances is a distinct step within the review process. The phrase “in nature” following the word “clinical” is deleted to remove superfluous verbiage. The phrase “health care staff of” is added before the phrase “the appropriate health care discipline.” This is necessary to ensure health care grievances categorized as clinical are reviewed by qualified clinical staff.

New section 3999.228(d)(2)(A) is adopted to require that health care staff using clinical expertise and within the scope of their licensure conduct a focus review relative to the health care grievance issues and facilitate necessary intervention on outstanding clinical issues related to the health care grievance. This is necessary to ensure the health care needs of grievants are addressed and that the health care grievance process supports coordination of care.

New section 3999.228(d)(3) is adopted to require that accepted health care grievances categorized as administrative are reviewed by the supervisory staff or designee of the impacted health care area or function. This is necessary to ensure grievants receive a timely review that is directly relevant to the subject of their accepted health care grievance by staff who are subject matter experts in the impacted health care area or function.

New section 3999.228(d)(3)(A) is adopted to require staff to conduct a focused review relative to the health care grievance issues and facilitate necessary intervention on outstanding administrative issues related to the health care grievance. This is necessary to ensure issues raised by administrative health care grievances are reviewed in the context of the full record and existing processes and that any needed systemic changes are identified.

New section 3999.228(e) is adopted to introduce sections 3999.228(e)(1) through 3999.228(e)(2)(B).

Section 3999.228(f) is renumbered as new section 3999.228(e)(1) and amended to clarify that health care grievance interviews are conducted by the reviewer of the grievance given the criteria set forth in new sections 3999.228(e)(1)(A) through 3999.228(e)(1)(C). This is necessary to

provide grievants with the opportunity to present facts directly to the staff charged with reviewing their health care grievance.

Section 3999.228(f)(1) is renumbered as new section 3999.228(e)(1)(A) and amended to replace the word “initialing” with the word “marking” prior to the phrase “the appropriate box on the CDCR 602 HC. This is necessary to ensure that grievants are not denied the opportunity for a grievance interview because they inadvertently marked the appropriate box instead of initialing it or they are unable to initial the box.

Section 3999.228(f)(2) is renumbered as new section 3999.228(e)(1)(B) and amended to replace the term “Health care staff” with the term “The reviewer.” This is necessary as the reviewer may not be health care staff as defined in section 3999.98.

Section 3999.228(f)(3) is renumbered as new section 3999.228(e)(1)(3).

Section 3999.228(f)(4) is repealed to eliminate duplication as the provision is covered in new section 3999.228(d)(1) and section 3999.231.

New section 3999.228(e)(2) is adopted to introduce new sections 3999.228(e)(2)(A) through 3999.228(e)(2)(B).

Section 3999.228(g) is renumbered as new section 3999.228(e)(2)(A) and amended to delete the phrase “the HCGO shall complete the health care grievance without grievant input.” This is necessary for concision and clarity, given the new introductory subsection.

New section 3999.228(e)(2)(B) is adopted to clarify that health care grievance interviews are not conducted when the grievant is outside of health care jurisdiction for an indeterminate amount of time and not expected to return before the time limits for responding to the health care grievance have expired. This is necessary to avoid needlessly expending Department resources as grievants outside of health care jurisdiction would neither be available for health care grievance interviews nor be available to receive any granted relief.

Section 3999.228(h) is repealed to eliminate duplication as the provision is included in the definition for Reviewer in section 3999.225.

New section 3999.228(f) is adopted to introduce sections 3999.228(f)(1) through 3999.228(f)(2).

Section 3999.228(i) is renumbered as section 3999.228(f)(1) and amended to add the phrase “with a response” prior to the phrase “shall complete and return to the grievant.” This is necessary for clarity and to ensure grievants receive a proper response within the 45 business day timeframe. In addition, provisions regarding the expedited health care grievance process are removed. This is necessary as the expedited status is being removed from the health care grievances process due to the negligible impact of grievances in need of expedited processing and numerous misunderstandings that have occurred in the field as to the use of expedited processing.

New section 3999.228(f)(2) is adopted to incorporate provisions previously included in section 3999.237(c). This is necessary as section 3999.237 is repealed and to clarify that this provision applies to institutional level grievances.

Section 3999.228(j) is repealed to eliminate duplication as the provision is included within the new definition for Health Care Authority.

Section 3999.229. Preparation and Submittal of a Health Care Grievance Appeal.

Section 3999.229(a) is amended to delete the term “health care grievance” prior to the word “disposition.” This is necessary for concision and consistency of reference as other references to a disposition within these regulations do not include the modifying term “health care grievance.” This section is also amended to update instructions for preparation of the CDCR 602 HC, Health Care Grievance form. This is necessary because the regulations as currently drafted no longer apply to the preparation of the CDCR 602 HC, which is being revised as part of this regulatory action.

Section 3999.229(a)(1) is amended to update references to subsections of section 3999.227.

Section 3999.229(a)(2) is amended to clarify that applicable Rejection Notices must be included in the grievance package. This is necessary to ensure that all necessary documents are available for processing to minimize delays providing grievants with relief when warranted.

Section 3999.229(a)(3) is unchanged.

Section 3999.229(a)(4) is repealed as this section references the expedited processing of health care grievances. This is necessary as the expedited status is being removed from the health care grievances process due to the negligible impact of grievances in need of expedited processing and numerous misunderstandings that have occurred in the field as to the use of expedited processing.

Section 3999.230. Headquarters Level.

Section 3999.230(a) is amended to remove the term “health care grievance” from before the word “disposition.” This is necessary for concision and consistency of reference as other references to a disposition within these regulations do not include the modifying term “health care grievance.”

New section 3999.230(b) is adopted to introduce sections 3999.230(b)(1) through 3999.230(b)(2).

Section 3999.230(b) is renumbered as new section 3999.230(b)(1) and amended to incorporate provisions included in sections 3999.230(b)(1) and 3999.230(b)(1)(A) and replace the phrase “require clinical intervention” with the phrase “require prompt medical attention.” This is necessary for clarity and concision and to specify the nature of the clinical intervention being identified.

Sections 3999.230(b)(1) and 3999.230(b)(1)(A) are repealed as these provisions have been incorporated into new section 3999.230(b)(1).

Section 3999.230(b)(1)(B) repealed as this section references the expedited processing of health care grievances. This is necessary as the expedited status is being removed from the health care grievances process due to the negligible impact of grievances in need of expedited processing and numerous misunderstandings that have occurred in the field as to the use of expedited processing.

Section 3999.230(b)(2) is repealed as the provision is incorporated into new section 3999.230(c)(1).

New section 3999.230(b)(2) is adopted to require that urgent/emergent health care issues identified during clinical triage are immediately referred to appropriate health care staff for care as clinically indicated. This is necessary for patient safety and to clearly identify the timeframe within which urgent/emergent health care issues shall be referred health care staff responsible for direct patient care.

Section 3999.230(b)(3) is repealed as the specified steps for review of more clearly described in new sections 3999.230(e) through 3999.230(e)(3)(A).

New section 3999.230(c) is adopted to introduce section 3999.230(c)(1).

New section 3999.230(c)(1) is adopted to require that health care staff at a level no less than a Registered Nurse, working within the scope of their licensure, screen health care grievances to identify all distinct issues and determine if a clinical review is warranted. This is necessary to ensure clinically qualified health care staff thoroughly screen health care grievances and refer grievances for clinical review as appropriate based on the issues contained therein.

New section 3999.230(d) is adopted to introduce section 3999.230(d)(1).

Section 3999.230(c) is renumbered to new section 3999.230(d)(1) and amended to replace the phrase “All submitted” with the word “Each” and the phrase “sections 3999.227 and 3999.229” with the phrase “this article.” This is necessary for clarity and concision.

Sections 3999.230(d) through 3999.230(d)(2) are repealed for consistency as new section 3999.228(c)(1)(B) sets forth that restriction or rejection of non-compliant health care grievances is specifically at the discretion of the headquarters level Health Care Authority.

New section 3999.230(e) is adopted to introduce sections 3999.230(e)(1) through 3999.230(e)(3)(A).

New section 3999.230(e)(1) is adopted to require that accepted health care grievances categorized as staff complaints are addressed pursuant to section 3999.231. This is necessary to ensure consistent criteria and methodology are applied to the processing to health care grievances classified as staff complaints.

New sections 3999.230(e)(2) through 3999.230(e)(2)(A) is adopted to require that accepted health care grievances as clinical receive a review by health care staff at a level no less than a Registered Nurse utilizing clinical expertise within the scope of their licensure, which will include a review the grievant’s health record and other documentation related to the grievance. This is necessary to ensure that accepted grievances categorized as clinical are reviewed by qualified

clinical staff and receive a comprehensive review at the headquarters level accounting for all contextual documentation and the patient's condition.

New sections 3999.230(e)(3) through 3999.230(e)(3)(A) is adopted to require that accepted health care grievances categorized as administrative or determined to warrant a clinical review receive a review by HCCAB staff, which will include a review of the grievant's health record and other documentation related to the grievance. This is necessary to ensure that accepted grievances categorized as administrative receive a comprehensive review accounting for all contextual documentation and the patient's condition.

New section 3999.230(f) is adopted to introduce section 3999.230(f)(1).

Section 3999.230(e) is renumbered as 3999.230(f)(1) and remains substantively unchanged.

New section 3999.230(g) is adopted to introduce sections 3999.230(g)(1) through 3999.230(g)(3).

Section 3999.230(f) is renumbered as 3999.230(g)(1) and amended to add the phrase "with a response" prior to the phrase "within 60 business days." In addition, the phrase "unless processed as an expedited health care grievance appeal pursuant to section 3999.233(b)" is necessary to clarify that a response from HCCAB will be provided and not merely the completed health care grievance appeal. This is necessary as the expedited status is being removed from the health care grievances process due to the negligible impact of grievances in need of expedited processing and numerous misunderstandings that have occurred in the field as to the use of expedited processing.

Section 3999.230(g) is repealed as this provision is incorporated into the new definition for Health Care Authority in section 3999.225.

Section 3999.230(h) is repealed as the provision is incorporated into new section 3999.230(h)(4).

Section 3999.230(i) is renumbered as new section 3999.230(g)(2) and is otherwise unchanged.

Section 3999.230(j) is renumbered as new section 3999.230(g)(2)(A) and remains substantively unchanged.

New section 3999.230(g)(3) is adopted to clarify that health care grievance responses will not be prepared for grievants who are paroled, discharged, or deceased before time limits expire for responding to a health care grievance. This is necessary because when the grievant is outside the jurisdiction or health care, health care staff is unable to provide administrative remedies or the issue may be moot.

New section 3999.230(h) is adopted to introduce sections 3999.230(h)(1) through 3999.230(h)(5).

Section 3999.230(k) is renumbered as new section 3999.230(h)(1) and remains substantively unchanged.

Section 3999.230(k)(1) is renumbered as new section 3999.230(h)(2) and amended to clarify that the HCGO is required to complete amendments requested by HCCAB. This is necessary because as currently stated, it could be misconstrued that the HCGO may complete a response to

an amendment request by HCCAB. This amendment also ensures that the HCGO returns amended grievance packages to grievants within 45 rather than 30 calendar days of notice of issuance or earlier if so determined by HCCAB. This is necessary to account for additional time needed when the HCGO is asked to amend a rejection notice in which case the health care grievance has to be reopened and processed and a response sent to the grievant; as opposed to simply amending an Institutional Level Response and returning it to the grievant.

Section 3999.230(k)(2) is repealed as resubmittal timeframes do not differ from the standard timeframes for grievance submittal set forth in sections 3999.228 and 3999.230.

New section 3999.230(h)(3) is adopted to require grievants to follow proper resubmittal timeframes when dissatisfied with an amendment response. This is necessary to ensure that the grievant can receive timely relief or exhaustion of administrative remedies.

New section 3999.230(h)(4) is adopted to require that erroneous Headquarters Level Responses be amended even after exhaustion of the grievant's administrative remedies. This is necessary to ensure there is an opportunity to properly and thoroughly address the grievant's health care concerns even after apparent exhaustion of administrative remedies.

New section 3999.230(h)(5) is adopted to require that Headquarters Level Responses requiring amendment are amended and returned with the grievance package to the grievant within 30 calendar days. This is necessary to ensure substantive due process to the grievant on the issues raised in the health care grievance, and to allow sufficient time to for HCCAB staff to make the corrections and send the amended package back to the grievant.

Existing section 3999.230(l) is repealed as its provisions are incorporated into new sections 3999.230(i) through 3999.230(i)(2) for clarity.

New section 3999.230(i) is adopted to introduce sections 3999.230(i)(1) through 3999.230(i)(2).

New sections 3999.230(i)(1) through 3999.230(i)(2) are adopted to set forth that headquarters level directives are issued to the institutional level authority when intervention is appropriate, and that the HCGO completes such directives within the timeframe specified by HCCAB or within 60 calendar days. This is necessary to ensure substantive due process is provided to the grievant on the issues raised in the health care grievance, and to allow sufficient time for the institution to provide remedy.

Section 3999.231. Staff Complaints.

New section 3999.231(a) is adopted to introduce sections 3999.231(a)(1) through 3999.231(a)(4)(A)2.

Section 3999.231(a) is renumbered as section 3999.231(a)(1) and is amended to delete the phrase "Health care grievances determined to be" prior to the term "health care staff complaint" and add the phrase "grievance categorized as a" prior to the term staff complaint. This is necessary to for consistency of reference and to reflect the standardized process for health care grievance review. In addition, the phrase "complaints after receiving a clinical triage" is deleted and the

phrase “Subchapter 2, Article 5, and not as a citizen’s complaint” is replaced with “this section.” This is necessary for clarity, concision and to remove duplication.

Section 3999.231(b) and 3999.231(b)(1) are repealed as the provisions contained therein are incorporated into the new section 3999.228(c)(2). The requirement that health care grievances alleging staff misconduct shall be forwarded to the reviewing authority within 5 days of receipt is changed to 5 days of identification in section 3999.228(c)(2). This is necessary as not all allegations of staff misconduct are identified when the health care grievance is received by the HCGO; for example, allegations of staff misconduct could be identified during a health care grievance interview when the grievant is allowed the opportunity to clarify issues.

Sections 3999.231(b)(2) and 3999.231(b)(3) are repealed to eliminate duplication as the provisions contained therein are addressed in new sections 3999.231(a)(2) through 3999.231(a)(3)(C).

New section 3999.231(a)(2) is adopted to clarify that this section refers to the process for review of grievances with identified allegations of staff misconduct not subject to a separate administrative review process and to require the Health Care Authority to refer allegations of staff misconduct exempt from the grievance review process to the applicable investigating authority. This is necessary to ensure the allegations of staff misconduct are addressed under the appropriate administrative authority to provide for due process to patients and staff accountability.

Sections 3999.231(c) and 3999.231(d) are renumbered as section 3999.231(a)(2)(A) and 3999.231(a)(2)(B), respectively, and amended to remove the term “health care” before the word “staff.” This is necessary as the staff member who is the subject of the grievance may not be health care staff as defined in section 3999.98.

New section 3999.231(a)(2)(C) is adopted to require allegations of staff misconduct under inquiry or investigation by the Office of Internal Affairs (OIA) will not be processed by the HCGO or HCCAB. This is necessary as the OIA assumes jurisdiction over misconduct allegations it accepts for inquiry or investigation.

Section 3999.231(e) is repealed to remove the requirement for notifying grievants that issues unrelated to the staff misconduct in the grievance categorized as a staff complaint are grieved separately. This is necessary to remove a superfluous administrative process which may cause confusion for patients and has resulted in an undue burden on staff.

Section 3999.231(f) is renumbered as section 3999.231(a)(3) and amended to replace the word “report” with the word “inquiry.” This is necessary for consistency of reference. In addition, the term “health care staff” is replaced with the word “staff.” This is necessary as the staff member who is the subject of the grievance may not be health care staff as defined in section 3999.98.

Section 3999.231(f)(1) is renumbered as section 3999.231(a)(3)(A) and amended to remove the term “health care” before the word “staff.” This is necessary as the staff member who is the subject of the grievance may not be health care staff as defined in section 3999.98.

Sections 3999.231(f)(2), 3999.231(f)(2)(A), and 3999.231(f)(2)(B) are renumbered as new sections 3999.231(a)(3)(B), 3999.231(a)(3)(B)1., and 3999.231(a)(3)(B)2., respectively, and are otherwise unchanged.

Section 3999.231(f)(1)(C) is renumbered as new section 3999.231(a)(3)(B)3. and amended to remove the term “health care” before the word “staff.” This is necessary as the staff member who is the subject of the grievance may not be health care staff as defined in section 3999.98. In addition, the provisions of section 3999.231(f)(3)(C)1. are incorporated into the new section 3999.231(a)(3)(B)3.

Section 3999.231(f)(1)(C)1. is repealed as its provisions have been incorporated into new section 3999.231(a)(3)(B)3.

Section 3999.231(f)(3) is renumbered as new section 3999.231(a)(3)(C) and remains substantively unchanged.

New section 3999.231(a)(4) is adopted to introduce new sections 3999.231(a)(4)(A)1 and 3999.231(a)(4)(A)2.

New sections 3999.231(a)(4)(A), 3999.231(a)(4)(A)1., and 3999.231(a)(4)(A)2. are adopted to incorporate the provisions of sections 3999.231(g), 3999.231(g)(1), and 3999.231(g)(2), respectively.

New sections 3999.231(b), 3999.231(b)(1), and 3999.231(b)(2) are adopted to include the provisions of section 3999.231(j) and to clarify that subsections (a)(3) through (a)(3)(C) shall apply to processing headquarters level staff complaints. This is necessary to ensure staff complaints are processed appropriately and uniformly at the headquarters level.

New section 3999.231(c) is adopted to introduce sections 3999.231(c)(1) through 3999.231(c)(4).

Sections 3999.231(f)(4) and 3999.231(f)(4)(A) are renumbered as new sections 3999.231(c)(1) and 3999.231(c)(2) and remain substantively unchanged.

Section 3999.231(f)(4)(B) is renumbered as new section 3999.231(c)(3) and is amended to remove the term “health care” before the word “staff” as well as replace “he or she” with “they” in the first sentence. This is necessary to remove gender binary language and as the staff member who is the subject of the grievance may not be health care staff as defined in section 3999.98. The phrase “and health care grievance package” is added following the term “Confidential Inquiry Report.” This is necessary to protect the right of subject of the staff complaint to understand the context for the alleged misconduct. In addition, section 3999.231(f)(4)(B)2. is incorporated into the second sentence and the sentence “Copies shall not be provided” is added as the concluding sentence. This is necessary for clarity and concision and to ensure confidential information is not provided to subjects of staff complaints.

Section 3999.231(f)(3)(B)1. is repealed to ensure that the review of the Confidential Inquiry Report and health care grievance package by the subject of a staff complaint no longer requires approval from the institutional litigation coordinator. This is necessary to protect the right of

subject of the staff complaint to understand the context for the alleged misconduct as this right is not at the institutional litigation coordinator's discretion.

Section 3999.231(f)(3)(B)2 is repealed as its provisions have been incorporated into new section 3999.231(c)(3).

Section 3999.231(f)(4)(C) is renumbered as new section 3999.231(c)(4) and remains substantively unchanged.

Sections 3999.231(g), 3999.231(g)(1), and 3999.231(g)(2) are repealed as the provisions contained therein have been incorporated into new sections 3999.231(a)(4)(A), 3999.231(a)(4)(A)1., and 3999.231(a)(4)(A)2.

Section 3999.231(h) is repealed to eliminate unnecessary cross-references as staff complaints are a category of health care grievance and timeframes from processing health care grievances are covered elsewhere in the article.

Section 3999.231(i) is repealed to eliminate unnecessary cross-references as staff complaints are a category of health care grievances and approval and signature requirements for health care grievances are covered elsewhere in the article.

Section 3999.231(j) is repealed as its provisions are incorporated into new sections 3999.231(b) through 3999.231(b)(2).

Section 3999.231(k) is repealed to eliminate unnecessary cross-references as staff complaints are a category of health care grievances and approval and signature requirements for health care grievances are covered elsewhere in the article.

Section 3999.232. Multiple Health Care Grievances.

Section 3999.232(a) is unchanged.

New section 3999.232(b) is adopted to introduce new section 3999.232(b)(1).

New section 3999.232(b)(1) is adopted to require that when multiple health care grievances raising the same issue are received, the first accepted health care grievance will receive an administrative review. This is necessary to ensure a complete administrative review is provided for the first grievance received in a series of grievances submitted from more than one grievant on an identical issue, and subsequent multiple health care grievances in that series may be processed without the complete administrative review to conserve staff resources and ensure timely resolution of the grievances.

New section 3999.232(c) is adopted to introduce sections 3999.232(c)(1) through 3999.232(c)(2)(B).

Section 3999.232(a)(1) is renumbered as new section 3999.232(c)(1) and amended to replace the phrase "The identified grievant shall" with the word "and" and update the reference to section

3999.228. This is necessary for concision, clarity and accuracy of reference. In addition, the final sentence is removed as it is incorporated into sections 3999.232(c)(2) and 3999.232(c)(2)(A).

New sections 3999.232(c)(2) and 3999.232(c)(2)(A) are adopted to incorporate provisions from the final sentence of section 3999.232(c)(1).

New section 3999.232(c)(B) is adopted to establish that when multiple health care grievances raising the same issue are received, the grievant of the first accepted health care grievance will receive an interview pursuant to section 3999.228(e)(2). This is necessary to ensure an interview is provided for the first grievance received in a series of grievances submitted from more than one grievant on an identical issue, and subsequent multiple health care grievances in that series may be processed without each grievant receiving an interview to conserve staff resources and ensure timely resolution of the grievances.

New section 3999.232(d) is adopted to introduce sections 3999.232(d)(1) through 3999.232(d)(2)(B).

Section 3999.232(a)(2) is renumbered as new section 3999.232(d)(1) and amended to clarify that an institutional level response will be provided to each grievant of multiple health care grievances, and to remove provisions requiring notification of all grievants that their health care grievance was processed as one of multiple health care grievances. This is necessary to establish that the HCGO is responsible for providing a response to multiple health care grievances and as the grievant is now notified within the grievance response that their grievance is identified as a multiple health care grievance pursuant to new section 3999.232(d)(2)(B).

New sections 3999.232(d)(2) through 3999.232(d)(2)(B) are adopted to establish that an Institutional Level Response to a grievant who filed the initial health care grievance identified as a multiple health care grievance shall be used as a template for other responses to the same issue, and notification will be provided to grievants that their health care grievance was processed as one of multiple health care grievances. This is necessary to save staff time and provide all grievants of the same issue to receive timely and consistent responses. It also informs grievants of the same issue who may be confused as to why they received a response without being contacted or interviewed by health care grievance staff.

Section 3999.233(a) has been amended to account for an amendment to section 3999.230 which is referenced in this section.

Section 3999.233. Exceptions to Health Care Grievance Process Time Limits.

Section 3999.233(a) is amended to update references and is otherwise unchanged.

Section 3999.233(a)(1) is amended to delete the phrase “health care grievance and health care grievance appeal” prior to the word “response.” This is necessary for concision and consistency of reference as within this article the term “response,” as defined in section 3999.225, refers to a health care grievance response at any level.

Section 3999.233(a)(4) is amended to delete the reference to “section 3383(a)” and replace with the phrase “issued orders, memoranda, and directions.” This is necessary as the previous reference

does not cover all means by which a state of emergency could be enacted temporarily suspending nonessential administrative health care functions.

Sections 3999.233(a)(2) and 3999.233(a)(3) are unchanged.

Sections 3999.233(b) and 3999.233(c) are repealed as the text refers to expedited procession. This is necessary as the expedited status is being removed from the health care grievances process due to the negligible impact of grievances in need of expedited processing and numerous misunderstandings that have occurred in the field as to the use of expedited processing.

Section 3999.233(d) is repealed for consistency as provisions for delay notices are not incorporated into other processes within this article that must be completed within certain timeframes. This is necessary to avoid confusion for grievants who may think this delay notification also applies to other processes such as the processing of staff complaints.

Section 3999.234. Health Care Grievance Process Non-Compliance.

New sections 3999.234(a) and 3999.234(a)(1) are adopted to establish that health care grievances that are not prepared or submitted in compliance with the provisions of Title 15, Division 3, Chapter 2, Article 5, may be subject to rejection at the discretion of the Headquarters Level Health Care Authority, but that rejection is not required. This is necessary to ensure that health care grievances are not rejected at the institutional level without good cause. It is also necessary as health care grievances prepared and submitted in compliance with this article are conducive for providing grievants with timely and thorough adjudication of their health care issues.

Section 3999.234(a) is renumbered as new section 3999.234(a)(2) and amended to establish that grievants whose health care grievances are not prepared or submitted in compliance with Title 15, Division 3, Chapter 2, Article 5, may be subject to health care grievance restriction. This is necessary as health care grievances prepared and submitted in compliance with this article are conducive for providing grievants with timely and thorough adjudication of their health care issues.

Sections 3999.234(a)(1) through 3999.234(a)(7) are repealed as the provisions therein are covered by new section 3999.234(a).

Existing sections 3999.234(b) and 3999.234(b)(1) are repealed as the provisions therein are covered by newly adopted sections 3999.234(c) and 3999.234(c)(2).

New section 3999.234(b) is adopted to establish the timeline for issuing rejection notices and that rejection notices will not be issued to grievants outside health care jurisdiction. This is necessary to notify the grievant of what is needed for timely and thorough adjudication of their health care issues, and as the Department is unable to provide administrative remedies for grievants outside the health care jurisdiction and the issue may be moot.

New section 3999.234(c) is adopted to require that when a grievant does not comply with instructions on a Rejection Notice, the health care grievance will be adjudicated based on the available information. This is necessary to provide timely relief to patients and save staff resources.

New section 3999.234(c)(1) is adopted to establish that reviews and interviews for non-compliant health care grievances shall be conducted at the discretion of the headquarters level Health Care Authority. This is necessary to allow the headquarters level Health Care Authority to make decisions on whether non-compliant health care grievances provide timely and adequate substantiation of claims to proceed with processing and to conserve staff resources in cases where grievances cannot be properly adjudicated.

New section 3999.234(c)(2) is adopted to establish that adjudication of non-compliant health care grievances does not preclude placing the grievant on health care grievance restrictions. This is necessary to discourage grievants from willfully disregarding the provisions of Title 15, Division 3, Chapter 2, Article 5, as health care grievances prepared and submitted in compliance with this article are conducive for providing grievants with timely and thorough adjudication of their health care issues.

New section 3999.234(d) is adopted to require the HCGO or HCCAB to provide written and verbal warning prior to placing grievants on restriction because of health care grievance process abuse. This is necessary to afford the grievant an opportunity to correct and the abuse of the health care grievance process, and to protect the rights of grievants to understand the basis for the restriction.

New sections 3999.234(d)(1) and 3999.234(d)(2) are adopted to incorporate provisions from section 3999.236(b) within this section. This is necessary for concision and clarity as abuse of the health care grievance system is now covered under this section.

Section 3999.235. Health Care Grievance and Health Care Grievance Appeal Withdrawal.

Section 3999.235 is repealed to address concerns stakeholders have expressed that a grievant may possibly withdraw a grievance under duress caused by staff; decrease workload and delays of exhaustion of administrative remedies since withdrawals do not exhaust remedies; and to eliminate further dissatisfaction by grievants who may have withdrawn the health care grievance because of an agreed future relief that may be delayed because of circumstances outside the HCGO or HCCAB's control (i.e. health care staffing issues or lockdowns).

Section 3999.236 is repealed as its provisions into amended section 3999.234 which establishes the criteria and consequences for non-compliance. This is necessary for concision and clarity as abuse of the health care grievance system is now covered under non-compliance.

Section 3999.237. Changes in Health Care Jurisdiction.

Section 3999.237 is repealed as its provisions are incorporated into amended sections 3999.226(a), 3999.228(e)(2)(B), 3999.228(f)(2) and 3999.230(g)(3) which establish that health care grievance interviews will not be conducted for grievants outside health care jurisdiction, nor will health care grievance responses be issued to grievants outside health care's jurisdiction.

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

CDCR 602 HC, Health Care Grievance, and CDCR 602 HC A, Health Care Grievance Attachment are incorporated by reference and amended to clarify the functional relationship between the CDCR 602 HC and CDCR 602 HC A, make the forms consistent with health Care grievance operations, allow grievants to more clearly explain their complaint to health care grievance staff, replace unnecessary fields with more relevant ones, eliminate duplicative tasks for CDCR staff and simplifies instruction language. This is necessary to ensure the accurate relaying of information between health care grievance staff, the reporting of the most relevant information, timely, relevant, adequate responses to health care grievances, and comports instruction language with the average reading level of incarcerated people who will be using the form.