



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO  
HEALTH CARE REGULATIONS**

Section(s): 3999.98, 3999.131, 3999.133,  
3999.147, 3999.325, 3999.327

Number:

22-02

Publication Date:

April 15, 2022

Effective Date:

To Be Announced



CALIFORNIA CORRECTIONAL  
HEALTH CARE SERVICES

**INSTITUTION POSTING AND CERTIFICATION REQUIRED**

This Notice announces the proposed amendments to Sections 3999.98, 3999.131, 3999.133, 3999.147, 3999.325; and adoption of 3999.327 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to update provisions concerning Medical Personnel.

**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](mailto:HealthCareRegulations@cdcr.ca.gov). All written comments must be received by the close of the public comment period, **May 31, 2022 at 5:00 p.m.**

**PUBLIC HEARING INFORMATION**

The California Department of Corrections and Rehabilitation will hold a virtual public hearing on May 31, 2022. To join the virtual hearing, follow this link: [click here](#) or you may call (916) 701-9994 and enter phone conference ID 830093692# to join by phone (audio only) between the hours of 10:00 a.m. and 10:30 a.m. on May 31, 2022.

**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 R. Hart, Associate Director (A), Risk Management Branch, California Correctional Health Care Services (CCHCS) at California Correctional Health Care Services, P.O. Box 588500, Elk Grove, CA 95758; by telephone at (916) 691-2921; or by email at [HealthCareRegulations@cdcr.ca.gov](mailto:HealthCareRegulations@cdcr.ca.gov). In the event the contact person is unavailable, inquiries should be directed to T. Adams, Staff Services Manager II, 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, 3999.131, 3999.133, 3999.147, 3999.325; and adopt section 3999.327 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, concerning Medical Personnel.

### **PUBLIC HEARING:**

CDCR will hold a virtual public hearing on May 31, 2022, at 10:00 a.m. To join the virtual hearing, follow this link: [click here](#) or you may call (916) 701-9994 and enter phone conference ID 830093692# to join by phone (audio only) between the hours of 10:00 a.m. and 10:30 a.m. on May 31, 2022.

### **PUBLIC COMMENT PERIOD:**

The public comment period will close on **May 31, 2022 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](mailto:HealthCareRegulations@cdcr.ca.gov) before the close of the comment period.

### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**R. Hart**  
Associate Director (A)  
Risk Management Branch  
California Correctional Health Care Services  
P.O. Box 588500  
Elk Grove, CA 95758  
(916) 691-2921

**T. Adams**  
Staff Services Manager II  
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: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Armstrong Remedial Plan. *Armstrong v. Newsom* (No. C94-2307 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.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

The CDCR and CCHCS propose to amend sections 3999.98, 3999.131, 3999.133, 3999.147, 3999.325; and adopt section 3999.327 of the CCR, Title 15, Division 3, Chapter 2, governing medical personnel. Existing regulations do not outline or specify the onboarding process, required training, and certification for Medical Assistants (MA). Also, while Title 15, Chapter 2, Subchapter 3, Article 4, currently outlines the overall responsibilities and functions of an MA, the MA's function within the health care team is not explicitly set forth in Title 15, including administrative and technical support tasks they are authorized to perform and the management structure for MA. In addition, the Registered Nurse (RN) pronouncement of death process is not currently captured in Title 15. Lastly, the current Advanced Practice Provider (APP) section does not clearly outline that the use of APP personnel is specific to the Department's Medical Services Program, and the current regulations lack specificity with regard to APP function and scope with regard to substance use disorder treatment.

This action will:

- Ensure MA personnel contributing to CDCR patient care receive appropriate onboarding, training, certification, and evaluation.
- Ensure timely pronouncement of death for CDCR patients.
- Clarify the scope and function of APP personnel in providing care to CDCR patients.

### **BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:**

The Department anticipates the proposed regulations will benefit the CDCR staff and inmates by ensuring MA personnel contributing to CDCR patient care receive appropriate onboarding, training, certification, and evaluation; and these regulations ensure timely pronouncement of death for CDCR patients by permitting an RN to make the determination and pronouncement of patient death under specified circumstances. In addition these regulations will benefit CDCR staff and patients by clarifying the function of the Department's APP personnel.

**DOCUMENTS INCORPORATED BY REFERENCE:**

- Not applicable

**EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS:**

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

**LOCAL MANDATES:**

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

**FISCAL IMPACT STATEMENT:**

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

**EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs because the proposed action will relate strictly to MA staff, the RN pronouncement of death process, and APP staff which only affects patients and staff within CDCR.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

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

**RESULTS OF ECONOMIC IMPACT ASSESSMENT:**

CDCR has determined the proposed regulations may have a positive impact on public safety, the health and welfare of California’s residents, worker safety, and on inmates by ensuring a consistent standard for MA and APP staff, and ensure timely pronouncement of death for CDCR patients.

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 the proposed action will relate strictly to MA staff, the RN pronouncement of death process, and APP staff which only affects patients and staff within CDCR.

**BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:**

The Department anticipates the proposed regulations will benefit the CDCR staff and inmates by ensuring MA personnel contributing to CDCR patient care receive appropriate onboarding, training, certification, and evaluation; and these regulations ensure timely pronouncement of death for CDCR patients by permitting an RN to make the determination and pronouncement of patient death under specified circumstances. In addition these regulations will benefit CDCR staff and patients by clarifying the function of the Department's APP personnel.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed action relate strictly to MA staff, the RN pronouncement of death process, and APP staff which only affects patients and staff within CDCR.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations will have no significant adverse economic impact on small businesses because the proposed action relate strictly to MA staff, the RN pronouncement of death process, and APP staff which only affects patients and staff within CDCR.

**CONSIDERATION OF ALTERNATIVES:**

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

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

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

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

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

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

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes

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

## TEXT OF PROPOSED REGULATIONS

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

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

Clinical Supervision means staff in supervisory positions who are responsible for the supervision of clinical tasks. This includes, but not limited to, the institution Physician Managers which are comprised of the Chief Physician and Surgeon, Chief Medical Executive, Chief Psychiatrist, and Supervising Psychiatrist, and Institution Nursing Managers which include Chief Nurse Executive and Supervising Registered Nurses.

Death means when an individual has sustained either an irreversible cessation of circulatory and respiratory functions or irreversible cessation of all brain functions including the brain stem.

Determination of Death means the process of ascertaining if death has occurred through assessment of objective data in accordance with accepted medical standards.

Medical Assistant means unlicensed personnel who work in ambulatory care, or other specified settings, and perform administrative and technical support services, provided the service is not prohibited by law. As a member of the care team, a Medical Assistant addresses the ongoing needs of patients, works with physicians, psychiatrists, podiatrists, Advanced Practice Providers, nurses, and other health care staff to promote the timely, efficient, and cost-effective use of health care resources.

Nurse Practitioner means a Registered Nurse who has advanced clinical training and has achieved an expert knowledge base through additional licensure, education, and skills in physical diagnosis, psycho-social assessment, and management of medical and mental health care needs in primary health care settings, and with additional training, in certain specialty health care settings.

Physician Assistant means a licensed health care provider who works under the supervision of a physician to provide patient evaluation, education, and health care services.

Pronouncement of Death means the formal process of recording and communicating death.

Specific Authorization means a specific written order prepared by the licensed health care provider and documented in the health record, authorizing the procedure to be performed on a patient; or a standing order utilized by the licensed health care provider authorizing the procedures to be performed, the duration of which shall be consistent with accepted medical practice.

Technical Supportive Services means simple, routine medical tasks and procedures that shall be safely performed by a Medical Assistant who has limited training and who functions under the clinical supervision of a physician, psychiatrist, podiatrist, or Advanced Practice Provider.

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

## **Subchapter 1. Health Care Governance and Administration**

### **Article 4. Professional Workforce**

#### **Section 3999.131 is amended to read:**

#### **3999.131. Nursing Onboarding.**

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

(d) The CDCR shall recruit, orient, train, evaluate, develop, and integrate MA staff into the health care delivery system. MA staff onboarding orientation and proficiency testing, at a minimum, shall include:

(1) Pertinent information regarding the work environment, institution and headquarters resources, as well as job expectations.

(2) Proficiency in expected tasks and procedures shall be tested and shall be administered by the institution Chief Nurse Executive (CNE), or designee. A designated physician from the institution's clinical supervision shall, in collaboration with the Supervising Registered Nurse, verify the MA's proficiency in expected tasks and procedures prior to the MA functioning independently in the clinic.

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

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

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

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

#### **Section 3999.133 is amended to read:**

#### **3999.133. Advanced Practice Providers.**

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

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



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

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

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

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

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

(B) PA staff who have not successfully completed a controlled substance education course are only authorized to write medication orders for Schedules III through V without prior approval from a physician. Orders for Schedule II medications must have prior approval from a physician.

(3) APP staff who treat Substance Use Disorder patients are required to obtain a Drug Abuse Treatment Act Medication-Assisted Treatment waiver from the Substance Abuse and Mental Health Services Administration.

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

**Section 3999.147 is amended to read:**

### **3999.147. Nursing Competency Program.**

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

(d) Medical Assistants (MA) who provide administrative and technical support services at California Department of Corrections and Rehabilitation institutions shall possess a valid certificate from an agency approved by the Medical Board of California to practice as an MA. Prior to performing technical support services, an MA shall receive training by the Supervising Registered Nurse, nursing instructor, licensed health care provider, or an instructor in an approved school program to ensure the MA's competence in performing a technical support service at the appropriate standard of care.

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

## Subchapter 3. Health Care Operations

### Article 4. Nursing Care

Section 3999.325 is amended to read:

#### **3999.325. Nursing Scope of Service.**

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

(f) Medical Assistants (MA) are not ~~nurses nursing in function~~; however, the performance of their functions contributes to nursing services. MAs are unlicensed ~~personnel~~ individuals who work in ambulatory care clinics, reception centers, specialty clinics, telehealth, and other clinical settings as determined by the Physician Manager, and perform administrative and non-invasive routine technical support services under the specific authorization (specific written order) and supervision of a licensed physician, psychiatrist, podiatrist, Advanced Practice Provider (APP), nurse, or Nurse Midwife in a medical office or clinic setting, without the need of receiving a certification as outlined under the Medical Practice Act in the BPC, sections 2069-2071. MAs shall not be utilized in inpatient settings; triage and treatment areas, or specialized health care housing units including Correctional Treatment Centers, Skilled Nursing Facilities, Outpatient Housing Units, and Psychiatric Inpatient Program units. The Registered Nurse shall only assign tasks to the Medical Assistant for which the Medical Assistant has received specific authorization from their Clinical Supervisor. ~~These activities include, but are not limited to:~~

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

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

**New section 3999.327 is adopted to read:**

#### **3999.327. Registered Nurse Pronouncement of Death.**

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

- (1) A Primary Care Provider (PCP), or an Advanced Practice Provider (APP) has determined and documented that the patient has a condition or illness whose natural course is expected to end in death and the patient's life expectancy is six months or less.

(2) The patient signed a CDCR 7465, Physician's Orders for Life Sustaining Treatment, indicating "Do Not Resuscitate." The CDCR 7465 must be signed and dated by a physician, or an APP acting under the supervision of the physician, and the patient or legally recognized health care decision maker.

(3) The patient's PCP or an APP has documented in a progress note in the health record that death is expected and has completed an order in the Electronic Health Record System stating that an RN may pronounce death.

(b) Assessment and determination of death. When a patient appears to have died, the RN on duty shall be physically present at the bedside to assess the patient for determination of death in accordance with accepted medical standards.

(c) Documentation of death. The RN shall document the assessment in the health record.

(d) The physician on-call shall be notified if the PCP or an APP is not available in situations such as after business hours, weekends, and holidays.

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

(f) RNs shall receive death pronouncement training annually as part of their competency validation.

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

## **INITIAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3999.98, 3999.131, 3999.133, 3999.147 and 3999.325, and adopt section 3999.327 of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, regarding Nursing Services.

### **Summary of the Proposal**

#### **Problem Statement:**

Currently, Title 15, Chapter 2, Subchapter 1, Article 4 does not outline or specify the onboarding process, required training, and certification for Medical Assistants (MA). In addition, the Registered Nurse (RN) pronouncement of death process is not currently captured in Title 15. Lastly, the current Advanced Practice Provider (APP) section does not clearly outline that the use of APP personnel is specific to the Department's Medical Services Program, and the current regulations lack specificity with regard to APP function and scope with regard to substance use disorder treatment.

#### **Objective:**

This regulatory action provides authority and direction to CDCR staff for providing appropriate onboarding and training to MA staff, and clarifies the functions and tasks an MA is authorized to perform that contribute to nursing services. This regulatory action also provides authority to permit an RN to make a determination and pronouncement of patient death within CDCR institutions, which aligns CDCR care with community standards. This action ensures the dignity of patients and the effective utilization of staff resources by providing for a timely pronouncement of death by an RN. This action also clarifies the scope and function of the Department's APP personnel, specifically as it is related to substance use disorder treatment.

#### **Benefit:**

The proposed regulations will:

- Ensure MA personnel contributing to CDCR patient care receive appropriate onboarding, training, certification, and evaluation.
- Ensure timely pronouncement of death for CDCR patients.
- Clarify the scope and function of APP personnel in providing care to CDCR patients.

## **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 relate strictly to MA staff, the RN pronouncement of death process, and APP staff which only affects patients and staff within CDCR.

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

The Department does not expect that the proposed regulations will have an impact on the creation of new or the elimination of existing businesses within the State of California. The proposed regulations relate strictly to MA staff, the RN pronouncement of death process, and the APP staff which only affects patients and staff within CDCR.

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

The Department does not expect that the proposed regulations will have an impact on the expansion of businesses currently doing business within the State of California. The proposed regulations relate strictly to MA staff in nursing services, the RN pronouncement of death process, and the APP staff which only affects patients and staff within CDCR.

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

The proposed regulations will protect public health and safety, worker safety, and benefit CDCR staff and patients by ensuring MA personnel contributing to CDCR patient care receive appropriate onboarding, training, certification, and evaluation; and these regulations ensure timely pronouncement of death for CDCR patients by permitting an RN to make the determination and pronouncement of patient death under specified circumstances. In addition, these regulations will benefit CDCR staff and patients by clarifying the function of the Department's APP personnel.

## Statement of Determinations

### Reasonable Alternatives

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

### Local Mandates

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

### Significant Adverse Economic Impact

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because this regulatory action relates strictly to nursing services and nursing onboarding within CDCR.

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

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

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

### **Reports, Studies and Documents Relied Upon**

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:

The definition for the term "Administrative Supervision." This is necessary to ensure a standard definition of the term "Administrative Supervision" for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term "Clinical Supervision." This is necessary to ensure a standard definition of the term "Clinical Supervision" for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term "Death." This is necessary to ensure a standard definition of the term "Death" for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term “Determination of Death.” This is necessary to ensure a standard definition of the term “Determination of Death” for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term “Medical Assistant.” This is necessary to ensure a standard definition of the term “Medical Assistant” for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term “Nurse Practitioner.” This is necessary to ensure a standard definition of the term “Nurse Practitioner” for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term “Physician Assistant.” This is necessary to ensure a standard definition of the term “Physician Assistant” for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term “Pronouncement of Death.” This is necessary to ensure a standard definition of the term “Pronouncement of Death” for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term “Specific Authorization.” This is necessary to ensure a standard definition of the term “Specific Authorization” for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

The definition for the term “Technical Supportive Services.” This is necessary to ensure a standard definition of the term “Technical Supportive Services” for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

## **Subchapter 1. Health Care Governance and Administration**

### **Article 4. Professional Workforce**

#### **Section 3999.131. Nursing Onboarding.**

**New sections 3999.131(d) – (d)(2)(A) are adopted** to establish the responsibility of CDCR to recruit, orient, train, evaluate, develop, and integrate MA staff into the health care delivery system and outline MA staff onboarding, orientation, and proficiency testing. This is necessary to establish that CDCR is accountable for ensuring that MA staff are properly trained and evaluated prior to functioning and performing required tasks independently in the institutions.

**New section 3999.131(d)(3) is adopted** to require MA staff to complete position specific onboarding and proficiency testing at their assigned institution within 30 calendar days of the date of hire, in addition to the New Employee Orientation. This is necessary to ensure newly appointed MA staff receive the necessary education and tools to successfully transition into the correctional patient care environment.

**New section 3999.131(d)(4) is adopted** to ensure that one week of nursing onboarding training, which is institution specific, is provided. This is necessary to ensure that newly appointed MA staff receive the necessary education and tools to successfully transition into the correctional patient care environment.

### **Section 3999.133. Advanced Practice Providers.**

**Section 3999.133(a) is amended** to replace the phrase “health care delivery system” with the phrase “Department’s Medical Services Program.” This is necessary to clarify that APP personnel are utilized for care specifically within the Department’s Medical Services Program rather than other aspects of the Department’s health care delivery system, such as the Mental Health Program.

### **Section 3999.133(b) remains unchanged.**

**Section 3999.133(c) is amended** to remove, “extreme unforeseen.” This is necessary as APP staff provide on-call emergency health care services. Also, changed “may” to “shall.” This is necessary to remove permissive language.

**New Sections 3999.133(d) – (d)(1) are adopted** to outline the education, experience, and certification needed prior to making a formal job offer to an APP applicant. This is necessary to ensure that APP staff possess the appropriate education and qualifications to provide care to CDCR patients.

**New Sections 3999.133(d)(2)-(d)(2)(B) are adopted** to specify Physician Assistant (PA) staff are required to acquire proof of completion of an approved controlled substance education course and outline the retention process for PA completion certificates. This is necessary to ensure PA staff possess the appropriate education and qualifications to provide care to CDCR patients and to ensure staff accountability.

**New Section 3999.133(d)(3) is adopted** to specify that APP staff who treat substance use disorder patients be required to obtain a Drug Abuse Treatment Act Medication-Assisted Treatment waiver. This is necessary to ensure APP staff possess the appropriate education and qualifications to provide care to CDCR patients who suffer from substance use disorder.

### **Section 3999.147. Nursing Competency Program.**

**New section 3999.147(d) is adopted** to require that MA staff who provide administrative and technical support services at CDCR institutions possess a valid certificate from an agency approved by the Medical Board of California to practice as an MA; and to require MA staff to receive training by the Supervising Registered Nurse, nursing instructor, licensed health care provider, or an instructor in an approved school program, prior to performing technical support services. This is necessary to ensure the MA’s competence in performing an administrative and technical support service at the appropriate standard of care.

## **Subchapter 3. Health Care Operations**

### **Article 4. Nursing Care**



**Section 3999.325. Nursing Scope of Service.**

**Section 3999.325(f) is amended** to replace “nursing in function” with “nurses.” This is necessary to clarify the MA role. Also, replace the term “individuals” with the term “personnel.” This is necessary for clarity and consistency of reference as MA staff are referred to as unlicensed personnel in the “Medical Assistant” definition in section 3999.98. The phrase “work in ambulatory care clinics, reception centers, specialty clinics, telehealth, and other clinical settings as determined by the Physician Manager and” is added before the term “perform.” This is necessary to clarify where MA staff are permitted to provide services to patients. Also, the phrase “administrative and” replaces the phrase “non-invasive routine.” This is necessary to clarify the type of services MAs are permitted to perform. The phrase “(specific written order)” is being removed. This is necessary to reduce redundancies as the definition of Specific Authorization in section 3999.98 indicates “...a specific written order...” In addition, this section is amended to add the term “psychiatrist” after the term “licensed physician” and add the term “nurses” after the term “Advanced Practice Provider (APP).” This is necessary for expansion of the health care professional classifications who may provide MA supervision, which more accurately reflects the treatment environments and clinical circumstances in which MAs may provide support. The phrase “without the need of receiving a certification as outlined under the Medical Practice Act in the BPC, sections 2069-2071,” is being removed. This is necessary because it contradicts Business and Professions Code, section 2069(b)(1), which requires that the MA receive a "certificate by the training institution or instructor indicating satisfactory completion of the required training." In addition this section is amended to add the sentence, “MAs shall not be utilized in inpatient settings; triage and treatment areas, or specialized health care housing units including Correctional Treatment Centers, Skilled Nursing Facilities, Outpatient Housing Units, and Psychiatric Inpatient Program units.” This is necessary to specify the MA’s role in inpatient settings. Finally, this section is amended to add the phrase, “The Registered Nurse shall only assign tasks to the Medical Assistant for which the Medical Assistant has received specific authorization from their Clinical Supervisor.” This is necessary to ensure staff accountability and that tasks performed by the MA are consistent with the patient’s treatment plan as determined by a health care provider.

**Sections 3999.325(f)(1) – (f)(8) are repealed** to remove the required skills for MA staff. This is necessary to remove language that was clinically detailed, which may not provide the flexibility to adapt to frequent changes in health care processes.

**Section 3999.327. Registered Nurse Pronouncement of Death.**

**New section 3999.327(a) is adopted** to establish that the Department shall permit RN staff to make the determination and pronouncement of patient death under specific conditions. This is necessary to align the Department’s care with community standards and ensure the maximum level of patient dignity by timely pronouncement of death by a RN when specific conditions have been met.

**New section 3999.327(a)(1) is adopted** to require a Primary Care Provider (PCP) or APP has determined and documented that the patient has a condition or illness whose natural course is expected to end in death and the patient’s life expectancy is six months or less. This is necessary to establish the responsibility of PCP and APP to correctly determine and document the patient’s health condition or illness, and life expectancy.

**New section 3999.327(a)(2) is adopted** to require the patient and physician, or an APP acting under the supervision of the physician, and the patient or legally recognized health care decision maker, to sign a CDCR 7465, Physician's Orders for Life Sustaining Treatment, indicating "Do Not Resuscitate." This is necessary to establish the requirement that the physician or an APP acting under the supervision of the physician, and the patient or legally recognized health care decision maker both sign the required CDCR 7465. This is also necessary to establish the agreement that CDCR staff will not resuscitate the patient under any circumstance.

**New section 3999.327(a)(3) is adopted** to require the patient's PCP or an APP has documented in a progress note in the health record that death is expected and has completed an order in the Electronic Health Record System stating that an RN shall pronounce death. This is necessary to establish the responsibility of the PCP or an APP to document the required information in the health record and authorization of the patient death pronouncement by an RN.

**New section 3999.327(b) is adopted** to establish that when a patient appears to have died, the RN on duty shall be physically present at the bedside to assess the patient, utilizing the required steps. This is necessary to establish and outline a process that will ensure the RN correctly assesses and determines a patient death.

**New section 3999.327(c) is adopted** to require the RN to document the assessment on a progress note titled "Death Pronouncement" and document the outcome of the required assessments. This is necessary to establish and outline a process that will ensure the RN correctly documents the patient death and include the outcome of the required assessment.

**New section 3999.327(d) is adopted** to establish that the physician on-call shall be notified if the PCP or an APP is not available in situations such as after business hours, weekends, and holidays. This is necessary to establish the responsibility of the RN to notify the physician on-call if the PCP or an APP is unavailable after the RN makes a determination and pronouncement of patient death.

**New section 3999.327(e) is adopted** to establish that CDCR is responsible for the notification of the next of kin which shall occur pursuant to section 3999.417, Inmate Deaths. This is necessary to establish that CDCR is accountable for ensuring that proper notification of the next of kin is followed.

**New section 3999.327(f) is adopted** to establish that RNs shall receive death pronouncement training annually as part of their competency validation. This is necessary to ensure RNs receive proper training annually relevant to death pronouncement and their competency in death pronouncement.