



Department of Corrections and Rehabilitation

**NOTICE OF CHANGE TO
HEALTH CARE REGULATIONS**

Section(s): 3999.98, 3999.99, 3999.500,
3999.501, 3999.502, 3999.503, and 3999.504.



CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

Number:
22-05

Publication Date:
July 15, 2022

Effective Date:
To Be Announced

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendments to Sections 3999.98, and 3999.99 and the adoption of Sections 3999.500, 3999.501, 3999.502, 3999.503, and 3999.504 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to incorporate into the CCR, provisions concerning Health Care Administration.

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, **August 30, 2022 at 5:00 p.m.**

PUBLIC HEARING INFORMATION

The California Department of Corrections and Rehabilitation will hold a virtual public hearing on August 30, 2022. Go to <https://cchcs.ca.gov/health-care-regs/> for the link to join the virtual hearing or you may call (916) 701-9994 and enter phone conference ID 326325126# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on August 30, 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, 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 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, and 3999.99, and to adopt sections 3999.500, 3999.501, 3999.502, 3999.503, and 3999.504 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Health Care Administration.

PUBLIC HEARING:

A virtual public hearing will be held on August 30, 2022. Go to <https://cchcs.ca.gov/health-care-regs/> for the link to join the virtual hearing, or you may call (916) 701-9994 and enter phone conference ID 326325126# to join by phone (audio only) between the hours of 1:30 p.m. and 2:00 p.m. on August 30, 2022.

PUBLIC COMMENT PERIOD:

The public comment period will close on **August 30, 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 before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

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

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

AUTHORITY AND REFERENCE:

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

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

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

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

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

References cited pursuant to this regulatory action are as follows: Sections 5054, 6129, Penal Code; Sections 11340, 11546.7, 6250, 6253, 6253.1, 6253.9, 8547-8547.15, Government Code; 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, and 3999.99, and to adopt sections 3999.500, 3999.501, 3999.502, 3999.503, and 3999.504 of the CCR, Title 15, Division 3, governing Health Care Administration. Current law specific to health care administrative processes are not outlined or in Title 15. By amending and adopting the sections mentioned above, administrative processes will be outlined within Title 15 that are necessary to the function of Department health care programs and staff.

This action provides the following:

- Clarify specified statewide health care administrative processes.
- Provide administrative governance and accountability for health care programs and staff.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations will protect public health and safety, worker safety, and benefit CDCR staff and patients by clarifying specified statewide health care administrative processes and providing administrative governance and accountability for health care programs and staff.

FORMS INCORPORATED BY REFERENCE:

- CDCR 7554 Notice of Change to Health Care Regulations (Revised MM/YY)

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 regulatory action clarifies specified health care administrative processes and provides administrative governance and accountability for health care programs and staff which only affects 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 regulatory action clarifies specified health care administrative processes and provides administrative governance and accountability for health care programs and staff which only affects staff within CDCR.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The proposed regulations will protect public health and safety, worker safety, and benefit CDCR staff and patients by clarifying specified statewide health care administrative processes and providing administrative governance and accountability for health care programs and staff within CDCR.

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 regulatory action clarifies specified health care administrative processes and provides administrative governance and accountability for health care programs and staff which only affects staff within CDCR.

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS:

The Department anticipates that the proposed regulations will protect public health and safety, worker safety, and benefit CDCR staff and patients by clarifying specified statewide health care administrative processes and providing administrative governance and accountability for health care programs and staff. This regulation change will not have an impact on the State's environment, as the State's environment is not impacted by the administrative processes and administrative governance and accountability for health care programs and staff.

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 regulatory action clarifies specified health care administrative processes and provides

administrative governance and accountability for health care programs and staff which only affects 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 regulatory action clarifies specified health care administrative processes and provides administrative governance and accountability for health care programs and staff which only affects 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.

Bargaining Unit means a group of employees with a clear and identifiable community of interests who are (under U.S. law) represented by a single labor union in collective bargaining and other dealings with management.

Health Care Department Operations Manual means the clinical policies and procedures that govern the delivery of health care provided to patients within California Department of Corrections and Rehabilitation's jurisdiction.

Health Care Forms means approved health care forms used to provide and document patient health care within California Department of Corrections and Rehabilitation's jurisdiction.

Health Care Regulations means the administrative and clinical rules published in the California Code of Regulations, Title 15, Division 3, Chapter 2, that direct the health care provided to patients within California Department of Corrections and Rehabilitation's jurisdiction.

Public Records means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any State or local agency regardless of physical form or characteristics including, but not limited to: any handwriting; typewriting; printing; photostating; photographing; photocopying; transmitting by electronic mail or facsimile; and every other means of recording upon any tangible thing any form of communication or representation including letters; words; pictures; sounds; or symbols; or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Retaliation means intimidation, denial of appointment or promotion, threat of adverse action, poor performance evaluation, involuntary transfer, or any form of informal or formal disciplinary action taken against an individual due to their protected activity, including one's opposition to a discriminatory practice or participation in the discrimination complaint process.

Whistleblowers means an employee, applicant for employment, or contractor that reports improper governmental activity as defined within this section.

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

Article 2. Health Care Forms

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

3999.99. Forms.

CDCR 7554 (Rev. XX/XX), Notice of Change to Health Care Regulations

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

Subchapter 1. Health Care Governance ~~and Administration~~

Subchapter 5. Health Care Administration

New section 3999.500 is adopted to read:

3999.500. Implementation and Review of Health Care Regulations, Health Care Department Operations Manual, and Health Care Forms.

(a) The California Correctional Health Care Services (CCHCS), Health Care Regulations and Policy Section (RPS), shall facilitate the development, revision, adoption and publication of health care regulations, the Health Care Department Operations Manual (HCDOM), and health care forms.

(1) Health care regulations shall be adopted and maintained according to statutory requirements pursuant to the Administrative Procedure Act as set forth in Government Code (GC), section 11340, et seq. CCHCS' designated internal and external stakeholders shall have the opportunity to review health care regulations, and the HCDOM prior to implementation as defined within this section.

(b) RPS shall ensure noticed and adopted regulation packages, as required by statute, and the current version of the HCDOM are available electronically on the CCHCS internet.

(c) Notice Posting and Distribution

(1) Within five calendar days of receipt of the Notice, each institution's Public Information Officer (PIO), or designee, shall:

(A) Post the CDCR 7554, Notice of Change to Health Care Regulations, on staff and inmate bulletin boards.

(B) Post the CDCR 7554 in inmate housing units, corridors, and other areas easily accessible to inmates.

(C) Post the CDCR 7554 in institution health care facilities.

(D) Post the CDCR 7554 in inmate security housing and specialized housing units.

(E) Provide the full contents of the Notice to inmate law libraries.

(F) Provide the full contents of the Notice to inmate advisory committees/councils.

(2) Within ten calendar days of receipt of the Notice, each institution's PIO, or designee, shall submit a single, completed CDCR 621-HC to HealthCareRegulations@cdcr.ca.gov certifying the institution's compliance with the posting and distribution requirements outlined in section (c).

(3) RPS shall track each institution's compliance with the posting and CDCR 621-HC submittal requirements and notify the PIO, Chief Executive Officer, and Warden of non-responsive institutions 11 calendar days following the initial email to the PIOs.

(d) Annual Mailing

(1) Pursuant to GC, Section 14911, RPS shall send a notification to all individuals on the CDCR/CCHCS notice of regulatory action mailing and email lists requesting that individuals verify they wish to remain on the list and/or provide updated contact information.

(2) This notification shall be sent out via postcard to the mailing list and via email to the email list in April of each calendar year.

(3) RPS shall remove the names of individuals from the CDCR notice of regulatory action mailing and email lists when:

(A) Individuals do not respond within 30 calendar days of the notification.

(B) Notifications (email or postcard) are undeliverable or “returned to sender.”

(C) Individuals request to be removed from the list.

(4) At any time and upon request, RPS shall add an individual or entity to the mailing and/or email list.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code, Section 11340, Government Code, Section 11546.7, Government Code.

New section 3999.501 is adopted to read:

3999.501. California Public Records Act Requests.

(a) Under provisions of the Public Records Act (PRA), California Correctional Health Care Services (CCHCS) shall ensure timely responses to health care-related PRA requests.

(1) Responsive records to a PRA request shall be released unless they disclose personal, medical, or other private information about an individual; confidential, financial, or trade secret information about a company/vendor; are exempt under the PRA; or the PRA requester chooses not to remit the assessed fee for the records.

(2) Requests for records shall be considered PRA requests with the exception of subpoenas, court orders, search warrants, and legal documents.

(3) It is not necessary for a records request to cite the PRA or any other authority; to state the purpose for the request, or to identify themselves or their affiliation.

(b) Submittal of Public Records Act Requests

(1) PRA requests may be sent via email to CCHCSHealthPRAs@cdcr.ca.gov, or by mail to California Correctional Health Care Services, Attention: PRA Coordinator, Building C, P.O. Box 588500, Elk Grove, CA 95758.

(c) Physical Inspection of Public Records

(1) Physical inspection of responsive records to a PRA request shall be permitted within a CCHCS headquarters’ office during normal business hours or facilitated through the institution Litigation Coordinator.

(2) There is no fee for inspection of public records.

(3) CCHCS staff shall remain present for the duration of the inspection.

(4) Upon completion of the inspection or at the request of CCHCS staff, the PRA requester shall relinquish physical possession of the records.

(d) Denial of Public Records Request

(1) CCHCS shall deny the release of records which are exempt from disclosure under the PRA.

(2) If a request is denied, in whole or in part, CCHCS shall provide the requester with legal justification for withholding the record.

(3) If CCHCS denies a PRA request with knowledge that the records may be available within CDCR, CCHCS shall provide contact information for CDCR's PRA Coordinator to the PRA requester.

(e) Document Retention

(1) Copies of PRA records shall be maintained by CCHCS headquarters for a minimum of five years following closure of the request.

(2) PRA records shall be purged after the five-year period, unless there is duty to preserve the documentation pursuant to litigation.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code, Section 6250, Government Code, Section 6253, Government Code, Section 6253.1, Government Code, Section 6253.9, Government Code.

New section 3999.502 is adopted to read:

3999.502 Medical Bed Management.

(a) Local Level Placements and Discharges

(1) Admissions and discharges may be made at the local level and shall be reported as they occur unless Health Care Placement Oversight Program/Utilization Management (HCPOP/UM) has placed a hold on the medical bed. HCPOP/UM staff shall review all admissions for appropriate level of care placement.

(b) Health Care Placement Oversight Program

(1) Once HCPOP has placed a hold on a medical bed for an identified placement, the bed shall not be used without authorization from HCPOP.

(c) Medical Bed Placement/Weekends and Holidays

(1) When institutional medical staff determines the need for an inpatient medical bed within their institution and one is not available, medical staff shall contact HCPOP to determine if the needed type of specialized medical bed is available at an alternate institution prior to placing/retaining a patient in a community hospital.

(2) All transfers made during weekends/holidays are medical and return for short duration to avoid a hospital admission or delay in a community discharge. The transferred patient shall be returned to the sending institution upon bed availability.

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

New section 3999.503 is adopted to read:

3999.503. Reporting of Actual or Suspected Incidents of Fraud, Errors, and Improper Governmental Activities.

(a) The Department shall ensure incidents of actual or suspected fraud, misuse, theft, damage, and fiscal irregularities of State assets and funds are reported to the appropriate State agency.

(b) Reportable Incidents

(1) The following examples of potential reportable incidents under this section include, but are not limited to:

(A) Illegal or fraudulent acts involving State property, including cash.

(B) Forgery or alteration of State documents including, but not limited to, checks, timesheets, payroll documents, drafts, purchase orders, invoices.

- (C) Misappropriation of State funds, supplies, or any other State asset.
- (D) Theft, destruction, or disappearance of State records, equipment, or other assets.
- (E) Misrepresentation of information on State documents (e.g., travel reimbursement related documents, purchase orders, or false entries).
- (F) Authorizing or receiving State payment for goods not received or services not performed.
- (G) State financial reporting misrepresentation.
- (H) Fraud in securing an appointment to a State position.
- (I) Tampering with or inappropriate use of information technology, unauthorized disclosure of confidential or proprietary information, personal information or medical information.
- (J) Accepting bribes (e.g., contracting, subcontracting).
- (K) Working on incompatible activities using State resources.
- (L) Errors that are unusual and have a fiscal impact to the State fund.
- (M) Employee misconduct that is not subject to adverse action but may result in an informal discipline, letter of instruction, or counseling memorandum.
- (c) Filing an Incident
 - (1) The following incidents do not apply to this section and will not be reviewed by IAP:
 - (A) Incidents that have been first reported to external agencies (e.g., CSA Whistleblower, State Personnel Board, Office of Inspector General, or the Attorney General’s Office) unless directed by external agencies.
 - (B) Bargaining Unit (Union) specific grievances and complaints.
 - (C) Complaints regarding harassment and unlawful discrimination.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code, Sections 8547 – 8547.15, Government Code.

New section 3999.504 is adopted to read:

3999.504. Protecting Employees from Retaliation.

- (a) California Correctional Health Care Services and the California Department of Corrections and Rehabilitation (CDCR) shall protect whistleblowers from retaliation by reviewing complaints of whistleblowers, notification of incidents of fraud or errors, harassment, discrimination, and retaliation and investigate as appropriate.
- (b) Discipline and Liability
 - (1) Any employee of CDCR found to have engaged in retaliatory acts shall be disciplined in accordance with section 3392.4.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code, Section 6129, Penal Code, Sections 8547 – 8547.15, Government Code.



Department of Corrections and Rehabilitation

NOTICE OF CHANGE TO HEALTH CARE REGULATIONS

Section(s): [list section numbers
consecutively with appropriate
punctuation/conjunctions]



CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES

Number:

YY-XX

Publication Date:

Month DD, YYYY

Effective Date:

Month DD, YYYY

INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed [insert one or more of the following terms as applicable: "amendments to," "adoption of," "repeal of"] [insert "Section" or "Sections" and list section numbers consecutively] of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, to [insert "incorporate into" or "remove from"] the CCR, provisions concerning [insert overall subject matter(s) of the regulation change this will function as the basis for the "1. Subject of Notice" field in the STD 400].

IMPLEMENTATION: Month DD, YYYY [NOTE: May be "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, **Month DD, YYYY, at 5:00 p.m.**

PUBLIC HEARING INFORMATION

A virtual public hearing will be held on (TBD). Go to <https://cchcs.ca.gov/health-care-regs/> for the link to join the virtual hearing, or you may call (916) 701-9994 and enter phone conference ID XXXXXXXX# to join by phone (audio only) between the hours of (start time and end time) on (TBD).

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, Risk Management Branch, California Correctional Health Care Services (CCHCS) at California Correctional Health Care Services, P.O. Box 588500, Elk Grove, CA 95758; by telephone at (916) 691-2921; or by email at HealthCareRegulations@cdcr.ca.gov. In the event the contact person is unavailable, inquiries should be directed to 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

INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend sections 3999.98 and 3999.99, and to adopt sections 3999.500, 3999.501, 3999.502, 3999.503, and 3999.504, of the California Code of Regulations (CCR), Title 15, Division 3, Chapter 2, Subchapter 5, regarding Health Care Administration.

Summary of the Proposal

Problem Statement:

Specific health care administrative processes are currently not outlined or in Title 15.

Objective:

To include language within Title 15 that outlines administrative processes necessary to the function of Department health care programs and staff.

Benefit:

The proposed regulations will:

- Clarify specified statewide health care administrative processes.
- Provide administrative governance and accountability for health care programs and staff.

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 will include language within Title 15 that outlines administrative processes necessary to the function of Department health care programs and staff which only affects health care staff and health care programs 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 will include language within Title 15 that outlines administrative processes necessary to the function of Department health care programs and staff which only affects health care staff and health care programs 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 will include language within Title 15 that outlines administrative processes necessary to the function of Department health care programs and staff which only affects health care staff and health care programs 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 clarifying specified statewide health care administrative processes and providing administrative governance and accountability for health care programs and staff. The State's environment is not impacted by this regulation change as it is specific to health care administrative processes which only affect health care staff and programs within CDCR.

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 health care staff and health care programs 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. The State's environment is not impacted by this regulation change as it is specific to health care administrative processes which only affect health care staff and programs within CDCR.

Reports, Studies and Documents Relied Upon

N/A

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

Chapter 2. Rules and Regulations of Health Care Services

Article 1. Health Care Definitions

3999.98. Definitions.

Section 3999.98 is amended to include the definition for the following terms: "Bargaining Unit"; "Health Care Department Operations Manual"; "Health Care Forms"; "Health Care Regulations"; "Public Records"; "Retaliation"; and "Whistleblowers". This is necessary to ensure a standard definition for the above terms for the purposes of Title 15, Division 3, Chapter 2, Rules and Regulations of Health Care Services.

Subchapter 5. Health Care Administration

Section 3999.500 Implementation and Review of Health Care Regulations, Health Care Department Operations Manual, and Health Care Forms.

New section 3999.500(a) is adopted to establish that the California Correctional Health Care Services (CCHCS), Health Care Regulations and Policy Section (RPS), shall facilitate the development, revision, adoption and publication of health care regulations, the Health Care Department Operations Manual (HCDOM), and health care forms. This is necessary to ensure a centralized team is accountable to update the Department's health care regulations, HCDOM, and health care forms.

New section 3999.500(a)(1) is adopted to establish that health care regulations shall be adopted and maintained according to statutory requirements pursuant to the Administrative Procedure Act as set forth in Government Code (GC), section 11340, et seq. This is necessary to ensure health care regulations are developed according to applicable procedural guidelines and criteria. In addition, new section 3999.500(a)(1) is adopted to establish that CCHCS' designated internal and

external stakeholders shall have the opportunity to review health care regulations, and the HCDOM prior to implementation as defined within this section. This is necessary to ensure the participation of the public as well as an interdisciplinary review process prior to the

implementation of health care regulations and the HCDOM.

New section 3999.500(b) is adopted to require that RPS post the current version of the HCDOM on the CCHCS internet in addition to noticed and adopted regulation packages, as required by statute. This is necessary to establish that RPS is accountable for making noticed and adopted regulation packages and the current version of the HCDOM electronically accessible on the Department's website.

New section 3999.500(c) is adopted to introduce sections 3999.500(c)(1) – (c)(3).

New sections 3999.500(c)(1) – 3999.500(c)(1)(F) are adopted to establish that within five calendar days of receipt of the Notice, each institution's Public Information Officer (PIO), or designee shall post the CDCR 7554 Notice of Change to Health Care Regulations on staff and inmate bulletin boards; in inmate housing units, corridors, and other areas easily accessible to inmates; in institution health care facilities; in inmate security housing and specialized housing units; and shall provide the full contents of the Notice to inmate law libraries and inmate advisory committees/council. This is necessary to ensure that inmates are made aware of the development, revision, adoption, and publication of health care regulations as soon as possible with no delay.

New section 3999.500(c)(2) is adopted to establish that within ten calendar days of receipt of the Notice, each institution's PIO, or designee, shall submit a single, completed CDCR 621-HC Certification of Posting to HealthCareRegulations@cdcr.ca.gov certifying the institution's compliance with the posting and distribution requirements outlined in section (c). This is necessary to ensure and to track that each institution's PIO, or designee is complying with posting and distribution requirements as soon as possible with no delay. In addition, this is necessary to establish the method in which each institution's PIO, or designee shall submit the completed CDCR 621-HC.

New section 3999.500(c)(3) is adopted to establish that RPS shall track each institution's compliance with the posting and CDCR 621-HC submittal requirements and notify the PIO, Chief Executive Officer, and Warden of non-responsive institutions 11 calendar days following the initial email to the PIOs. This is necessary to establish a tracking process to ensure that all institutions are in compliance with posting and distribution requirements and to establish the timeframe for when non-responsive institutions shall be notified of non-compliance, which provides for public participation.

New section 3999.500(d) is adopted to introduce sections 3999.500(d)(1) – 3999.500(d)(4).

New section 3999.500(d)(1) is adopted to establish that pursuant to GC, Section 14911, RPS shall send a notification to all individuals on the CDCR/CCHCS notice of regulatory action mailing and email lists requesting that individuals verify they wish to remain on the list and/or provide updated contact information. This is necessary to ensure that the notice of regulatory action mailing and

email lists are kept up to date and to establish that the RPS is accountable for ensuring that these lists are kept up to date.

New section 3999.500(d)(2) is adopted to establish that notification requesting that individuals on the CDCR/CCHCS notice or regulatory action mailing and email lists verify that they wish to remain on the list and/or provide updated contact information shall be sent out via postcard to the mailing list and via email to the email list in April of each calendar year. This is necessary to ensure the Department maintains an updated mail and email list and provide for the standardized timeframe of this process occurring in April of each calendar year.

New sections 3999.500(d)(3) – 3999.500(d)(3)(C) are adopted to establish that RPS shall remove the names of individuals from the CDCR notice of regulatory action mailing and email lists when they do not respond within 30 calendar days of notification; their notifications are undeliverable or “returned to sender”; and they request to be removed from the list. This is necessary to establish the criteria and requirements for individuals to be removed from the CDCR notice of regulatory action mailing and email lists and to ensure the Department maintains an updated mail list.

New section 3999.500(d)(4) is adopted to establish that at any time and upon request, RPS shall add an individual or entity to the mailing and/or email list. This is necessary to establish that there is no timeframe or deadline for an individual or entity to be added to the mailing and/or email list and ensure full public participation in the rulemaking process.

Section 3999.501. California Public Records Act Requests.

New section 3999.501(a) is adopted to establish that under provisions of the Public Records Act (PRA), California Correctional Health Care Services (CCHCS) shall ensure timely responses to health care-related PRA requests. This is necessary to establish that CCHCS is accountable for responding to all health care related PRA requests.

New section 3999.501(a)(1) is adopted to establish that responsive records to a PRA request shall be released unless they disclose personal, medical, or other private information about an individual; confidential, financial, or trade secret information about a company/vendor; are exempt under the PRA; or the PRA requester chooses not to remit the assessed fee for the records. This is necessary to establish the criteria and grounds of which responsive records to a PRA request shall not be released.

New section 3999.501(a)(2) is adopted to establish that requests for records shall be considered PRA requests with the exception of subpoenas, court orders, search warrants, and legal documents. This is necessary to distinguish which requests for records shall be considered PRA requests.

New section 3999.501(a)(3) is adopted to establish that it is not necessary for a records request to cite the PRA or any other authority; to state the purpose for the request, or to identify themselves or their affiliation. This is necessary to establish what information is not needed for a records request.

New section 3999.501(b) is adopted to introduce sections 3999.501(b)(1) – 3999.501(b)(4).

New section 3999.501(b)(1) is adopted to establish that PRA requests may be sent to via email to CCHCSHealthPRAs@cdcr.ca.gov, or by mail to California Correctional Health Care Services, Attention: PRA Coordinator, Building C, P.O. Box 588500, Elk Grove, CA 95758. This is necessary to identify means by which the public may submit PRA requests.

New section 3999.501(c) is adopted to introduce section 3999.501(c)(1) – 3999.501(c)(3).

New section 3999.501(c)(1) is adopted to establish that physical inspection of responsive records to a PRA request shall be permitted within a CCHCS Headquarters' office during normal business hours or facilitated through the institution Litigation Coordinator. This is necessary to establish that CCHCS Headquarters' office is the place where the physical inspection of responsive records to a PRA request shall take place and to establish the time when the physical inspection shall take place. In addition, this is necessary to establish that the institution Litigation Coordinator is accountable for facilitating the physical inspection.

New section 3999.501(c)(2) is adopted to establish that CCHCS staff shall remain present for the duration of the inspection. This is necessary to establish that CCHCS staff are required to oversee and remain present during the inspection.

New section 3999.501(c)(3) is adopted to establish that upon completion of the inspection or at the request of CCHCS staff, the PRA requester shall relinquish physical possession of the records. This is necessary to establish that CCHCS staff have the authorization to end the inspection of records upon completion of the review or at their request.

New section 3999.501(d) is adopted to introduce sections 3999.501(d)(1) – (d)(3).

New sections 3999.501(d)(1) – 3999.501(d)(3) are adopted to establish the guidelines in the case that CCHCS denies a requester of the release of records. This is necessary to establish that CCHCS is accountable for denying the release of records and to establish the process CCHCS must follow if a Public Records Request is denied.

New section 3999.501(e) is adopted to introduce sections 3999.501(e)(1) – (e)(2).

New section 3999.501(e)(1) is adopted to establish that copies of PRA records shall be maintained by CCHCS headquarters for a minimum of five years following closure of the request. This is necessary to establish that CCHCS is accountable for a record keeping process for PRA records, and the timeframe in which copies of PRA records shall be kept.

New section 3999.501(e)(2) is adopted to establish that PRA records shall be purged after the five-year period, unless there is duty to preserve the documentation pursuant to litigation. This is necessary to ensure that an excessive amount of PRA records are not kept over an extended period of time.

Section 3999.502. Medical Bed Management.

New section 3999.502(a) is adopted to introduce section 3999.502(a)(1).

New section 3999.502(a)(1) is adopted to establish that admissions and discharges may be made at the local level and shall be reported as they occur unless Health Care Placement Oversight Program/Utilization Management (HCPOP/UM) has placed a hold on the medical bed. HCPOP/UM staff will review all admissions for appropriate level of care placement. This is necessary to establish where admissions and discharges can be made, when they shall be reported and to establish the exception to where admissions and discharges cannot be made at the local level. In addition, this is necessary to establish that HCPOP/UM staff is accountable for reviewing all admissions in order to determine the level of care placement.

New section 3999.502(b) is adopted to introduce sections 3999.502(b)(1).

New section 3999.502(b)(1) is adopted to establish that once HCPOP has placed a hold on a medical bed for an identified placement, the bed shall not be used without authorization from HCPOP. This is necessary to establish that authorization from HCPOP is required in order to use medical beds that are placed on hold by HCPOP.

New section 3999.502(c) is adopted to introduce sections 3999.502(c)(1) – (c)(2).

New section 3999.502(c)(1) is adopted to establish that when institutional medical staff determines the need for an inpatient medical bed within their institution and one is not available, medical staff shall contact HCPOP to determine if the needed type of specialized medical bed is available at an alternate institution prior to placing/retaining a patient in a community hospital. This is necessary to establish a process that allows institutional medical staff to possibly receive an inpatient medical bed at another institution when one is not available within the institution and to establish that HCPOP is the point of contact in finding an inpatient medical bed at another institution.

New section 3999.502(c)(2) is adopted to establish that all transfers made during weekends/holidays are medical and return for short duration to avoid a hospital admission or delay in a community discharge. The transferred patient shall be returned to the sending institution upon bed availability. This is necessary to establish that only medical transfers will be made during weekends/holidays, to establish a transfer process that does not consist of a hospital admission, and to establish that transferred patients will return depending on bed availability.

Section 3999.503. Reporting of Actual or Suspected Incidents of Fraud, Errors, and Improper Governmental Activities.

New section 3999.503(a) is adopted to establish that incidents of actual or suspected fraud, misuse, theft, damage, and fiscal irregularities of state assets and funds shall be reported to the appropriate State agency. This is necessary to establish the process for reporting actual or suspected fraud, errors, and improper governmental activities and to establish who these incidents shall be reported to.

New section 3999.503(b) is adopted to introduce sections 3999.503(b)(1) – 3999.503(b)(1)(M).

New sections 3999.503(b)(1) – 3999.503(b)(1)(M) are adopted to provide examples of incidents and actions that are considered reportable incidents. This is necessary to establish criteria that helps define what a reportable incident is.

New section 3999.503(c) is adopted to introduce sections 3999.503(c)(1) – 3999.503(c)(1)(C).

New sections 3999.503(c)(1) – (c)(1)(C) are adopted to provide examples of types of grievances and complaints that are not considered reportable under this section. This is necessary to establish criteria that helps define what a reportable incident is not.

Section 3999.504. Protecting Employees from Retaliation.

New section 3999.504(a) is adopted to establish that California Correctional Health Care Services (CCHCS) and California Department of Corrections and Rehabilitation (CDCR) shall protect whistleblowers from retaliation by reviewing complaints of whistleblowers, notification of incidents of fraud or errors, harassment, discrimination, and retaliation and investigate as appropriate. This is necessary to ensure that whistleblowers are protected when filing complaints and grievances and to establish that CCHCS and CDCR are accountable for ensuring that whistleblowers are protected when doing so.

New section 3999.504(b) is adopted to introduce section 3999.504(b)(1).

New section 3999.504(b)(1) is adopted to establish that any employee of CDCR found to have engaged in retaliatory acts shall be disciplined in accordance with section 3392.4. This is necessary to establish a disciplinary process for CDCR employees who engage in retaliatory acts.

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

CDCR 7554 (Rev. XX/XX), Notice of Change to Health Care Regulations is added to properly incorporate the form that the PIO or designee is required to post and distribute within California Department of Corrections and Rehabilitation institutions to indicate that a notice of change to health care regulations is being proposed.