

**State of California  
Office of Administrative Law**

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

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:**

**Amend sections: 3350, 3350.1**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6, and Penal Code Section 5058.3**

**OAL Matter Number: 2018-0718-02**

**OAL Matter Type: Emergency Operational  
Necessity (EON)**

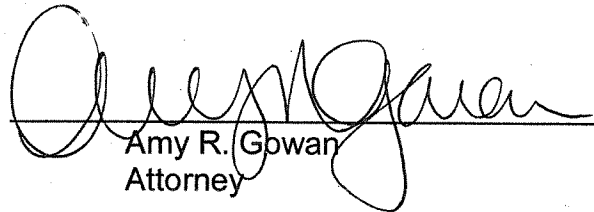
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In this emergency action, submitted as operationally necessary pursuant to Penal Code section 5058.3, the Department of Corrections and Rehabilitation amends two sections regarding the basis for providing health care services. The amendments are to definitions and conditions that may be excluded from care.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 8/1/2018 and will expire on 1/9/2019. The Certificate of Compliance for this action is due no later than 1/8/2019.

**Date: August 1, 2018**

  
Amy R. Goway  
Attorney

**For: Debra M. Cornez  
Director**

**Original: Scott Kernan, Secretary**

**Copy: Justin McCall**

# EMERGENCY

STD. 400 (REV. 01-2013)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2018-0718-02EON</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**AUG 01 2018**

*1:46pm*

2018 JUL 18 P 3:19  
OFFICE OF  
ADMINISTRATIVE LAW

<b>AGENCY WITH RULEMAKING AUTHORITY</b> California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any)
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### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

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

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Provisions of Care and Treatment Exclusions	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND 3350, 3350.1
TITLE(S) 15	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) per agency <i>over 7/31/18</i>
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only request
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <i>PC 50558.3 operational necessity</i>	

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

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

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  \$100 Changes Without Regulatory Effect  Effective other (Specify)

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

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify)

7. CONTACT PERSON Justin McCall	TELEPHONE NUMBER (916) 691-3325	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Justin.McCall@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>[Signature]</i>	DATE <b>7-18-18</b>
TYPED NAME AND TITLE OF SIGNATORY Scott Kernan, Secretary, California Department of Corrections and Rehabilitation	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**AUG 01 2018**

Office of Administrative Law

## TEXT OF PROPOSED REGULATIONS

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

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

Section 3350 is amended to read:

### 3350. Provision of ~~Medical Care~~ and Definitions.

(a) The ~~d~~Department shall ~~only~~ provide ~~medical~~ health care services for ~~inmates~~ patients which are based on medical or clinical necessity as defined in subsection 3350(b). ~~and supported by outcome data as effective medical care. In the absence of available outcome data for a specific case, treatment will be based on the judgment of the physician that the treatment is considered effective for the purpose intended and is supported by diagnostic information and consultations with appropriate specialists. Treatments for conditions which might otherwise be excluded may be allowed pursuant to section 3350.1(d).~~

(b) For the purposes of this article, the following definitions apply:

(1) Clinically Necessary means health care services or supplies that are determined by health care staff to be needed to diagnose or treat an illness, injury, condition, disease, or its symptoms.

~~(4)~~ (2) Medically Necessary means health care services that are determined by the attending physician a health care provider to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, ~~and are supported by health outcome data as being effective medical care.~~

~~(2)~~ Outcome Study means the definition, collection and analysis of comparable data, based on variations in treatment, concerning patient health assessment for purposes of improving outcomes and identifying cost-effective alternatives.

~~(3)~~ Outcome Data mean statistics such as diagnoses, procedures, discharge status, length of hospital stay, morbidity and mortality of patients, that are collected and evaluated using science-based methodologies and expert clinical judgment for purposes of outcome studies.

~~(4)~~ (3) Severe pain means a degree of discomfort that significantly disables the patient from reasonable independent function.

~~(5)~~ (4) Significant illness and disability means any medical health care condition that causes or may cause if left untreated a severe limitation of function or ability to perform the daily activities of life or that may cause premature death.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and *Plata v. Brown*, United States District Court, N.D. Cal., No. C01-1351 JST.

**Section 3350.1 is amended to read:**

**3350.1. Medical and Dental Health Care Treatment/Service Exclusions.**

(a) Treatment refers to attempted curative treatment and does not preclude palliative therapies to alleviate serious debilitating conditions such as pain management and nutritional support. Treatment shall not be provided for the following conditions:

(1) Conditions that improve on their own without treatment. ~~Examples include, but are not limited to:~~

- ~~(A) Common cold.~~
- ~~(B) Mononucleosis.~~
- ~~(C) Viral hepatitis A.~~
- ~~(D) Viral pharyngitis.~~
- ~~(E) Mild sprains.~~
- ~~(F) Benign oral lesions.~~
- ~~(G) Traumatic oral ulcers.~~
- ~~(H) Recurrent aphthous ulcer.~~

(2) Conditions that are not readily amenable to medically and clinically necessary treatment, including, but not limited to, ~~those which may be made worse by treatment with conventional medication or surgery, and those that are so advanced in the disease process that the outcome would not change with existing conventional or heroic treatment regimens.~~ Examples include, but are not limited to: the following:

- ~~(A) Multiple organ transplants.~~
- ~~(B) Temporomandibular joint dysfunction.~~
- ~~(C) Grossly metastatic cancer.~~
- ~~(D) Shrinkage and atrophy of the bony ridges of the jaws.~~
- ~~(E) Benign root fragments whose removal would cause greater damage or trauma than if retained for observation.~~
- (D) Benign oral lesions.
- (E) Traumatic oral ulcers.
- (F) Recurrent aphthous ulcer.

(3) Conditions that are cosmetic. ~~Examples include, but are not limited to:~~

- ~~(A) Removal of tattoos.~~
- ~~(B) Removal of nontoxic goiter.~~
- ~~(C) Breast reduction or enlargement.~~
- ~~(D) Penile implants.~~
- ~~(E) Removal of existing body piercing metal or plastic rings or similar devices within the oral cavity, except for security reasons.~~
- ~~(F) Restoration or replacement of teeth for esthetic reasons.~~
- ~~(G) Restoration of any natural or artificial teeth with unauthorized biomaterials.~~

~~(b) (4) Surgery that is not medically or clinically necessary shall not be provided. Examples include, but are not limited to: including, but not limited to, the following:~~

- ~~(1) Castration.~~
- ~~(2) Vaginoplasty (except for Cystocele or Rectocele).~~
- ~~(3) Vasectomy.~~
- ~~(4) Tubal ligation.~~

~~(5A)~~ Extractions of asymptomatic teeth or root fragments unless required for a dental prosthesis, or for the general health of the patient's mouth.

~~(6B)~~ Removal of a benign bony enlargement (torus) unless required for a dental prosthesis.

~~(7C)~~ Surgical extraction of asymptomatic un-erupted teeth.

~~(e) (5)~~ Services that have no established outcome on morbidity or improved mortality except for acute health care conditions ~~shall not be provided. Examples include, but are not limited to: including, but not limited to, the following conditions:~~

~~(1) Acupuncture.~~

~~(2) Orthoptics.~~

~~(3) Pleoptics.~~

~~(4A)~~ Root canals on posterior teeth (bicuspid and molars).

~~(5B)~~ Dental Implants.

~~(6C)~~ Fixed prosthodontics (dental bridges).

~~(7D)~~ Laboratory processed crowns.

~~(8E)~~ Orthodontics.

~~(d) (b)~~ Treatment for those conditions that are excluded within these regulations ~~may~~ shall be provided in cases where all of the following criteria are met:

~~(1) The inmate's patient's primary care provider (PCP) attending physician or treating dentist prescribes the treatment as medically or clinically necessary; and-~~

~~(2) The service is approved by the Utilization Management (UM) Committee for medical treatment, or Dental Authorization Review Committee and the Dental Program Health Care Review Committee for dental treatment, or the Institutional Utilization Management committee and the Headquarters Utilization Management committee for medical treatment. The decision of the review committee, as applicable, to approve an otherwise excluded service shall be based on:~~

~~(A) Available health and dental care outcome data supporting the effectiveness of the services as medical or dental treatment.~~

~~(B) Other factors, such as:~~

~~1. Coexisting medical or dental problems.~~

~~2. Acuity.~~

~~3. Length of the inmate's sentence.~~

~~4. Availability of the service.~~

~~5. Cost.~~

~~(c) Notwithstanding section 3350.1(b), sex-reassignment surgery (SRS) cases shall be referred to the SRS Review Committee and headquarters UM Committee for a decision to treat. The PCP and institutional UM Committee shall neither recommend approval or denial to requests for SRS surgery.~~

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Plata v. Brown, United States District Court, N.D. Cal., No. C01-1351 JST; and Perez, et al. v. Cate, et al., USDC no. 3:05-cv-05241-JSW (No. Cal.).