

**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:** 3355.1 (renumbered to  
3999.367), 3999.99,  
3999.206, 3999.234,  
3999.237, 3999.375  
(renumbered to 3999.395)

**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: 2019-0226-01**

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

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The Department of Corrections and Rehabilitation submitted this emergency action to amend regulations addressing health care copayments and artificial appliances and a related incorporated by reference form. The amendments eliminate copayments for health care services and payment for prescribed artificial appliances.

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 3/12/2019 and will expire on 8/20/2019. The Certificate of Compliance for this action is due no later than 8/19/2019.

**Date:** March 12, 2019



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**Richard L. Smith  
Senior Attorney**

**For:** Debra M. Cornez  
Director

**Original:** Ralph Diaz, Acting Secretary  
**Copy:** Julie Inderkum

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2019-0226-01</b>	EMERGENCY NUMBER <b>EON</b>
For use by Office of Administrative Law (OAL) only			
		<b>2019 FEB 26 P 4:44</b> <b>OFFICE OF ADMINISTRATIVE LAW</b>	
NOTICE		REGULATIONS	

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

MAR 12 2019

1:39 PM

AGENCY WITH RULEMAKING AUTHORITY  
 California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)  
 NCHCR 19-01

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

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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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

1a. SUBJECT OF REGULATION(S) Copayment and Artificial Appliances	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)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	per agency request
	AMEND	(renumbered to 3999.367)
	3355.1, 3999.99, 3999.206, 3999.234, 3999.237, and 3999.375	(renumbered to 3999.395)
TITLE(S) 15	REPEAL	

## 3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<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"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input checked="" type="checkbox"/> Other (Specify) <b>PC 5058.3 Operational Necessity</b>	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only
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## 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)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)
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## 6. CHECK IF OTHER REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

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

Julie Inderkum

## TELEPHONE NUMBER

(916) 691-0697

## FAX NUMBER (Optional)

## E-MAIL ADDRESS (Optional)

Julie.Inderkum@cdcr.ca.gov

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

DATE

2-25-19

TYPED NAME AND TITLE OF SIGNATORY

Ralph Diaz, Secretary (A), California Department of Corrections and Rehabilitation

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 12 2019

Office of Administrative Law

## 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 2. Health Care Forms

Section 3999.99 is amended to read:

##### **3999.99. Forms.**

The following forms, referred to in this chapter, are hereby incorporated by reference:

CDCR 602 HC (Rev. 7/18), Health Care Grievance

CDCR 602 HC A (Rev. 12/17), Health Care Grievance Attachment

CDCR 7362 (Rev. 03/19), Health Care Services Request Form

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

#### Subchapter 2. Patient's Entitlements and Responsibilities

##### Article 1. Provisions of Health Care Services

Section 3999.206 is amended to read:

##### **3999.206. Copayment for Right to Health Care Services.**

Section (a) remains unchanged but is shown to provide context.

(a) Patients shall be provided an opportunity to report an illness or any other health problem and receive an evaluation of the condition and medically necessary treatment and follow-up by health care staff.

~~(b) Patients shall be charged and patients shall pay a fee of five dollars (\$5.00) for each patient-initiated health care visit. The fee for this visit shall:~~

~~(1) Cover the evaluation, assessment, and medically necessary treatment, including follow-up services that relate to the initial condition and which are determined by health care staff to be necessary.~~

~~(2) Be charged for subsequent dental services provided in accordance with a prescribed dental treatment plan. Such services shall not be considered as a follow-up service as described in section 3999.206(b)(1) and shall be subject to a copayment unless the visit was initiated by the dental care provider.~~

~~(3) Be charged to the trust account of the patient. When the patient is without sufficient funds at the time for the charge, and remains without sufficient funds for 30 days after this time, the patient shall not be charged for any remaining balance of the fee.~~

~~(4) Be waived for the following:~~

~~(A) Emergencies: any medical or dental condition for which evaluation and therapy, as determined by health care staff, are immediately necessary to prevent death, severe or permanent disability, or to alleviate or lessen objectively apparent and disabling pain. Signs of objectively apparent and disabling pain may include, but are not limited to, visible injuries, high blood pressure, rapid heart rate, sweating, pallor, involuntary muscle spasms, nausea and vomiting, high fever, and facial swelling. Emergency also includes, as determined by health care staff, necessary crisis intervention for patients suffering from situational crises or acute episodes of mental illness.~~

~~(B) Diagnosis and treatment of communicable disease conditions as outlined in Title 17, Chapter 4, Subchapter 1, Section 2500 of the California Code of Regulations, including human immunodeficiency virus and Acquired Immunodeficiency Syndrome.~~

~~(C) Diagnosis and necessary mental health treatment for which there is a clinical determination of mental illness.~~

~~(D) Follow-up health care services defined as any request or recommendation by a member of the health care staff to provide subsequent health care services.~~

~~(E) Health care services necessary to comply with state law and/or regulations that shall include, but not be limited to, annual testing for tuberculosis.~~

~~(F) Reception center health screening and evaluation.~~

~~(G) Inpatient services, extended care, or skilled nursing services.~~

NOTE: Authority cited: Sections 5007.5 and 5058, Penal Code. Reference: Section 5054, Penal Code.

## **Article 5. Health Care Grievances**

**Section 3999.234 is amended to read:**

### **3999.234. Health Care Grievance and Health Care Grievance Appeal Rejection.**

**Sections (a)(1) and (2) remain unchanged.**

~~(3) The grievant submitted the health care grievance without a prior attempt to obtain health care services through approved processes. In this case, HCGO staff shall submit a request for health care services, if medically necessary, to the appropriate facility clinic on behalf of the grievant, which may be subject to a copayment pursuant to section 3999.206.~~

**Sections (a)(4) through (a)(7), (b), and (b)(1) remain unchanged.**

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

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

**Section 3999.237 is amended to read:**

**3999.237. Changes in Health Care Jurisdiction.**

**Section (a) remains unchanged.**

(b) Paroled. If the grievant paroled before the time limits expire for responding to a health care grievance or health care grievance appeal, the grievant shall not receive a response ~~unless the health care grievance or health care grievance appeal disputes the appropriateness of a charge (e.g., copayment).~~

**Section (c) remains unchanged.**

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

**Subchapter 3. Health Care Operations**

**Section 3355.1 is renumbered and amended to read:**

**Article 6. Dental Care**

**Section ~~3355.1~~ 3999.367. Dental Care.**

**Sections (a) and (a)(1) remain unchanged.**

**Sections (a)(2) and (a)(3) are amended to read:**

(2) Face-to-face triage encounter means a planned visit to assess and diagnose a patient's chief complaint and to provide necessary treatment following submittal of a CDCR 7362 (Rev. 03/04), Health Care Services Request Form, ~~hereby incorporated by reference~~, by a patient or when dental staff issues a ducat to a patient after performing a health record review.

(3) Limited problem focused exam encounter means an unplanned visit to assess and diagnose a patient's chief complaint and to provide treatment if necessary for a patient with a dental emergency who arrives at the dental clinic unannounced without an appointment or who is referred to the dental clinic by health care or custody staff and dental staff has not issued a ducat to the

patient and there is also no record of recently receiving a CDCR 7362 from the patient addressing the emergent condition.

**Sections (a)(4) through (a)(6), (b), and (b)(1) remain unchanged.**

**Section (b)(1)(A) is amended to read:**

(A) Submitting a CDCR 7362 requesting dental care for which ducated face-to-face triage encounters shall be scheduled to have specific complaints addressed.

**Sections (b)(1)(B) through (g)(2)(B) remain unchanged.**

**Section (g)(2)(C) is amended to read:**

(C) Patients requiring early treatment for any ~~unusal~~unusual hard or soft tissue pathology. Treatment shall be initiated within 60 calendar days from the date of diagnosis.

**Sections (g)(2)(D) through (g)(3)(B) remain unchanged.**

**Section (g)(3)(C) is amended to read:**

(C) Patients with moderate or advanced periodontitis requiring non-surgical periodontal treatment (scaling and/or root ~~planning~~planing).

**Sections (g)(3)(D) through (g)(4)(G) remain unchanged.**

**Section (g)(5) is amended to read:**

(5) No dental care needed. Patients not appropriate for inclusion in Emergency, Urgent, ~~Interepative~~Interceptive, Routine Rehabilitative, or Special Dental Needs Care.

**Sections (g)(6) through (h)(2) remain unchanged.**

**Section (h)(3) is amended to read:**

(3) Dental treatment provided to RC patients shall be limited to the treatment of Emergency and Urgent Care dental conditions, as defined in subsections (g)(1) and (g)(2). Patients who remain on RC status in an RC for 90 calendar days or longer may submit a CDCR 7362 to request Interceptive Care, as defined in subsection (g)(3), excluding prosthetics. Upon receipt of a CDCR 7362, the dentist shall exercise professional judgment in considering treatment for an Interceptive Care condition for the patient.

**Section (i)(1) is amended to read:**

(i) Mainline facility.

(1) Within ten business days of arrival at a mainline facility, all patients shall be notified that they are eligible to receive an initial comprehensive dental examination performed by a dentist who

shall formulate and document a dental treatment plan. ~~The patients shall be notified that no copayment is required for this service.~~

**Sections (i)(2) through (i)(5) remain unchanged.**

**Section (j) is amended to read:**

(j) Re-examination. After the initial comprehensive dental examination, mainline facility patients shall be notified that they are eligible to receive a periodic comprehensive dental examination by a dentist ~~with no copayment required~~ as follows:

(1) Every two years (biennially), up to the age of 50.

(2) Annually starting at the age of 50 and regardless of age if the patient is diagnosed with diabetes, HIV, or seizure disorder.

**Sections (k) through (w) remain unchanged.**

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 3424 and 5054, Penal Code; and *Perez, et al. v. Cate, et al.*, (No. C05-05241 JSW), U.S. District Court, Northern District of California.

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

**Section 3999.375 is renumbered and amended to read:**

### **Article 9. Durable Medical Equipment/Supplies and Accommodations**

#### **3999.375. 3999.395. Artificial Appliances.**

(a) ~~Appliance C~~categories. Appliances include, but are not limited to, eyeglasses, artificial eyes, dental prosthesis, artificial limbs, orthopedic braces and shoes, and hearing aids. A patient's need for such appliances shall be based on medical necessity and prescribed appliances shall be provided at state expense.

(b) Possession of ~~A~~appliance. No patient shall be deprived of a prescribed orthopedic or prosthetic appliance in the patient's possession upon arrival into the Department's custody or properly obtained while in the Department's custody unless a Department physician or dentist determines the appliance is no longer needed and the patient's personal physician, if any, concurs in that opinion. If a patient's dental prosthetic appliance is confiscated for safety and security reasons, a dentist shall be notified by the next business day to determine whether the patient will require any accommodations due to the loss of the prosthetic appliance.

(c) ~~Purchase of appliance~~Dental appliances. ~~Prescribed appliances shall be provided at state expense if a patient is indigent, otherwise the patient shall purchase prescribed appliances through the Department or an approved vendor as directed by the Chief Medical Executive or Supervising Dentist.~~ Departmental dentists shall not order prescribed dental appliances made from precious metal, and departmental dentists or dental laboratories shall not perform repairs to existing dental prosthesis made from precious metal. If a patient's existing dental appliance made from precious metal needs repair, the dentist shall offer the patient the option of having a new prosthesis made.

~~When a prescribed appliance is to be provided the patient shall sign a CDC Form 193, Trust Account Withdrawal Order, to pay for the materials.~~

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