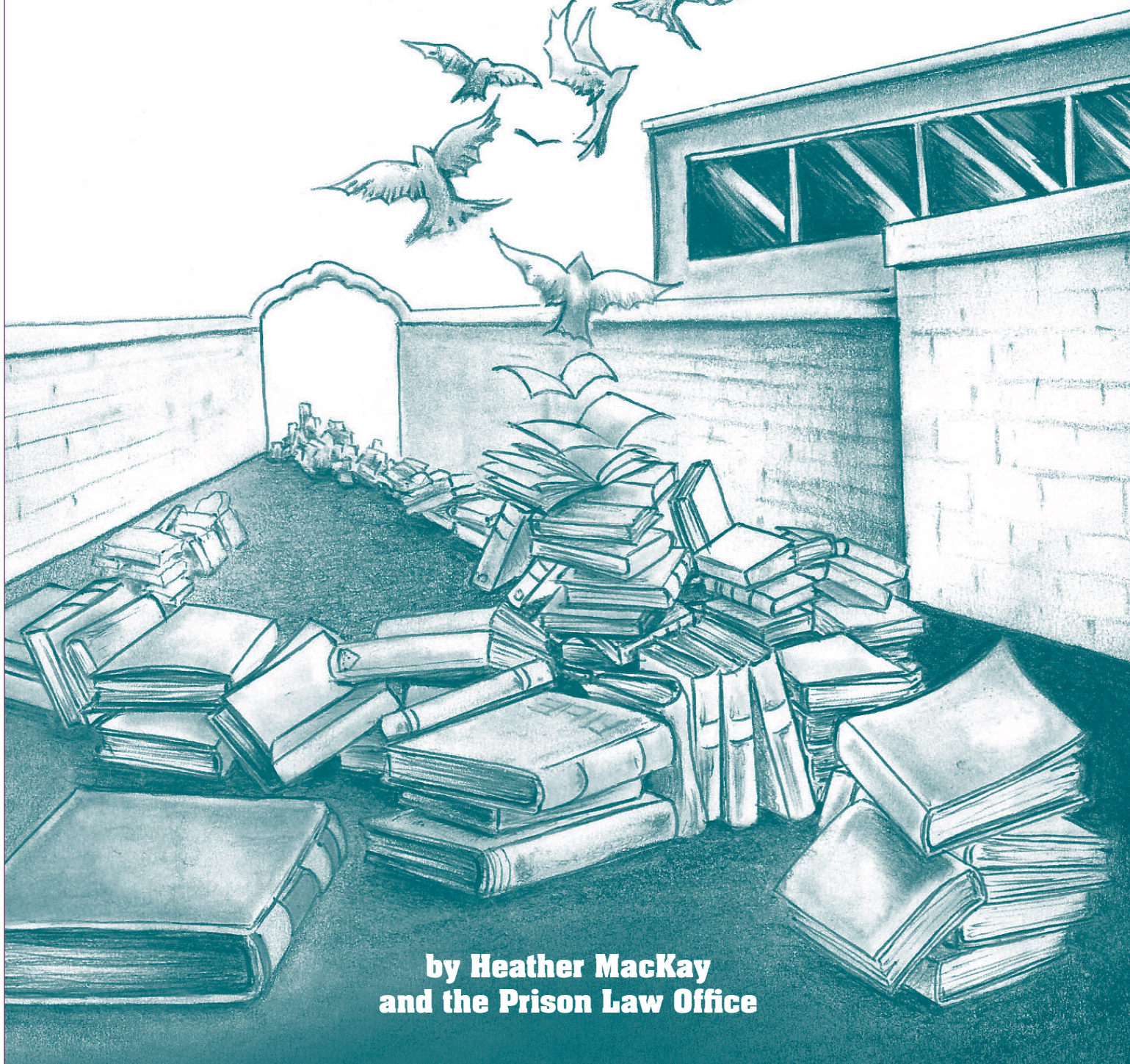


# The California Prison and Parole Law Handbook



by Heather MacKay  
and the Prison Law Office

# THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

BY HEATHER MACKAY  
&  
THE PRISON LAW OFFICE

ISBN: 978-0-692-95526-0

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The Prison Law Office is a non-profit public interest law firm that strives to protect the rights and improve the living conditions of people in state prisons, juvenile facilities, jails and immigration detention in California and elsewhere. The Prison Law Office represents individuals, engages in class actions and other impact litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country.

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## **YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK**

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in a prison law library or in a public county law library.

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## 7.1 Introduction

This chapter discusses the laws and policies that govern medical, mental health, and dental care for people in California prisons. The chapter describes the standards for whether inadequate health care violates the U.S. Constitution (§ 7.2) or state laws (§ 7.3). The chapter then discusses the California Department of Corrections and Rehabilitation (CDCR) policies regarding medical care (§§ 7.7-7.24), mental health care (§§ 7.25-7.37), and dental care (§§ 7.38-7.40). Finally, this chapter gives an overview of the administrative and court actions that people can use to seek adequate health care or money damages for harm caused by inadequate health care (§§ 7.41-7.44).

Since 2005, medical care in California prisons has been controlled by a federal court-appointed “Receiver.”<sup>1</sup> The Receiver has created medical care organization called California Correctional Health Care Services (CCHCS); all CCHCS staff are employed by CDCR. The CCHCS website has extensive information about current health care treatment policies and practices.<sup>2</sup> The plan is for the court

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<sup>1</sup> *Plata v. Schwarzenegger* (N.D. Cal. Oct. 3, 2005) No. C01-1351, Findings of Fact and Conclusions of Law re: Appointment of Receiver. The receiver was appointed to oversee medical care services in the prisons. However, to avoid duplication of effort, the receiver has oversight of certain areas that are common to dental and mental health care systems as well, such as information technology and pharmacy operations. *Coleman v. Schwarzenegger* (E.D. Cal. June 28, 2007) No. 90-0520, Order Approving Coordination Agreements in *Plata, Perez, and Coleman*.

<sup>2</sup> California Correctional Health Care Services website, [www.cchcs.ca.gov](http://www.cchcs.ca.gov).

eventually to transfer control of the health care system from the Receiver back to the CDCR piece-by-piece as reforms are made and sustained.<sup>3</sup>

## GENERAL LEGAL STANDARDS

### 7.2 Federal Constitutional Eighth Amendment Law

Poor health care in prison is cruel and unusual punishment in violation of the Eighth Amendment if prison officials act with deliberate indifference to serious medical, dental, or mental health needs.<sup>4</sup> A medical need is serious if failure to treat it will result in “significant injury or the unnecessary and wanton infliction of pain.”<sup>5</sup> A prison official is deliberately indifferent if they know of and disregard an excessive risk to a person’s health.<sup>6</sup>

The CDCR’s health care system has been the subject of Eighth Amendment lawsuits and monitoring by the courts. In the 1990s, federal courts found Eighth Amendment violations and issued injunctions to address systemic problems with medical and mental health care at Pelican Bay State Prison<sup>7</sup> and with mental health care in all CDCR prisons.<sup>8</sup> In 2002, the CDCR settled a federal class action lawsuit by admitting that the statewide prison medical care system was unconstitutionally deficient;<sup>9</sup> a few years later the court appointed a Receiver to take control of reforming the system.<sup>10</sup> As the result of another class action lawsuit, in 2006 a federal court ordered the CDCR to provide adequate dental care.<sup>11</sup> In 2009, a federal court found that overcrowding in California’s prisons was a main cause of unconstitutional medical and mental health care and ordered the state to develop a plan to reduce overcrowding.<sup>12</sup> In 2011, the U.S. Supreme Court upheld the population reduction order.<sup>13</sup>

People in prison can bring individual Eighth Amendment lawsuits to try to get adequate and timely health care or to get money damages for past inadequate or delayed health care; people have the right to file individual lawsuits even though there is an on-going federal class action case requiring

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<sup>3</sup> *Plata v. Brown* (N.D. Cal. Sept. 5, 2012) No. C01-1351, Order re: Receivership Transition Plan and Expert Evaluations; *Plata v. Brown* (N.D. Cal. Mar. 10, 2015) No. C01-1351, Order Modifying Receivership Transition Plan.

<sup>4</sup> *Estelle v. Gamble* (1976) 429 U.S. 97, 103-104 [97 S.Ct. 285; 50 L.Ed.2d 251]; *Hoptowit v. Ray* (9th Cir. 1982) 682 F.2d 1237, 1252-1253 (unconstitutional health care at Washington State Penitentiary); see also *Coleman v. Wilson* (E.D. Cal. 1995) 912 F.Supp. 1282, 1298-1299 (Eighth Amendment applied to mental health care); *Hunt v. Dental Dept.* (9th Cir. 1989) 865 F.2d 198, 200 (Eighth Amendment applied to dental care); see also *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1113 (conditions that might be medical malpractice are not necessarily cruel and unusual punishment).

<sup>5</sup> *Jett v. Penner* (9th Cir. 2006) 439 F.3d 1091, 1096.

<sup>6</sup> *Farmer v. Brennan* (1994) 511 U.S. 825, 837 [114 S.Ct. 1970; 128 L.Ed.2d 811].

<sup>7</sup> *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1255-1260.

<sup>8</sup> *Coleman v. Wilson* (E.D. Cal. 1995) 912 F.Supp. 1282.

<sup>9</sup> *Plata v. Davis* (N.D. Cal. June 13, 2002) No. C01-1351, Stipulation for Injunctive Relief.

<sup>10</sup> *Plata v. Schwarzenegger* (N.D. Cal. Feb. 14, 2006) No. C01-1351, Order Appointing Receiver.

<sup>11</sup> *Perez v. Tilton* (N.D. Cal. Aug. 21, 2006) No. C05-5241, Amended Stipulation and Order.

<sup>12</sup> *Coleman v. Schwarzenegger* (E.D. Cal. Aug. 4, 2009) No. S90-0520/*Plata v. Schwarzenegger* (N.D. Cal. Aug. 4, 2009) No. C01-1351, Three Judge Court Opinion and Order.

<sup>13</sup> *Brown v. Plata* (2011) 536 U.S. 493 [131 S.Ct. 1910; 179 L.Ed.2d 969].

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systemic improvements to the CDCR's health care system.<sup>14</sup> Whether individual cases are successful will likely depend on the degree of harm suffered by the person and the extent to which prison staff knew or should have known about the problem and then failed to provide competent treatment. There are numerous cases in which people in prison have filed lawsuits that at least set forth triable Eighth Amendment claims in a variety of circumstances.<sup>15</sup> There are also many cases in which courts have found that claims of delays or deficiencies in treatment did not amount to Eighth Amendment violations.<sup>16</sup>

In some situations, health care and prison security concerns may clash. Courts evaluating whether prison officials acted with deliberate indifference will defer to prison officials' reasonable efforts balance the health and safety of some people against concerns for the safety of others.<sup>17</sup> Also, in considering whether an individual prison dentist or doctor acts with deliberate indifference, courts may consider a lack of resources available to that dentist or doctor.<sup>18</sup>

The types of lawsuits that can be brought based on Eighth Amendment claims involving health care are discussed further in § 7.44.

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<sup>14</sup> *Pride v. Correa* (9th Cir. 2013) 719 F.3d 1130, 1137.

<sup>15</sup> *Cobwell v. Bannister* (9th Cir 2014) 763 F.3d 1060 (prison refused cataract surgery to person because they could see with the other eye); *Snow v. McDaniel* (9th Cir. 2012) 681 F.3d 978 (doctors ignored specialist's recommendation that a person have joint-replacement surgery, causing substantial harm); *Wilhelm v. Rotman* (9th Cir. 2012) 680 F.3d 1113 (doctor diagnosed a person as having a hernia needing surgery but failed to properly refer the person for surgery); *Graves v. Arpaio* (9th Cir. 2010) 623 F.3d 1043 (housing people in temperatures above 85 degrees while they were taking medications that greatly increased the risk of heat-related illness); *Long v. Los Angeles* (9th Cir. 2006) 442 F.3d 1178 (person's death from cardiac arrest could have been due to failure to adequately train jail medical staff); *Jett v. Penner* (9th Cir. 2006) 439 F.3d 1091, 1096-1099 (doctors failed to provide person with appropriate cast and setting for broken thumb); *Lolli v. County of Orange* (9th Cir. 2003) 351 F.3d 410, 418-421 (when prison staff failed to respond to medical needs of person with diabetes); *Clement v. Gomez* (9th Cir. 2002) 298 F.3d 898, 904 (failure to respond to medical needs of people exposed to pepper spray); *Jackson v. McIntosh* (9th Cir. 1996) 90 F.3d 330, 332 (refusal to provide person in prison with kidney transplant could have been due to personal dislike rather than medical judgment); *Carnell v. Grimm* (9th Cir. 1996) 74 F.3d 977, 755-756 (officer had reason to believe a woman in prison had been raped but did not seek medical and psychological treatment for her after taking her into custody); *McGuckin v. Smith* (9th Cir. 1992) 974 F.2d 1050, 1059-1060 (long delay in evaluating and performing surgery after person suffered serious back injury); *Ortiz v. City of Imperial* (9th Cir. 1989) 884 F.2d 1312, 1314 (inappropriate treatment could have resulted in death from skull fracture); see also *Lopez v. Smith* (9th Cir. 2000) 203 F.3d 1122, 1132 (person with broken, wired jaw was not seen by a doctor for six weeks and was not given adequate liquid nutrition); *Hunt v. Dental Dept.* (9th Cir. 1989) 865 F.2d 198, 200-201 (three-month delay where prison officials knew of repeated complaints involving bleeding gums and breaking teeth); *Tolbert v. Eyman* (9th Cir. 1970) 434 F.2d 625, 626 (prison officials may not overrule doctor's medical judgment regarding diabetes treatment).

<sup>16</sup> *Crowley v. Bannister* (9th Cir. 2013) 734 F.3d. 967 (distributing a person's Lithium doses twice a day instead of three times a day (with no change in overall amount) where there was no evidence that this change caused person's adverse reaction to the drug); *Ruvalcaba v. City of Los Angeles* (9th Cir. 1999) 167 F.3d 514, 524-525 (failing to take medical history and 36-hour delay in diagnosing and treating broken ribs); *Buckley v. Gomez* (S.D. Cal 1997) 36 F.Supp.2d 1216, 1225 (failing to promptly treat injured thumb); *Doty v. County of Lassen* (9th Cir. 1994) 37 F.3d 540, 546 (failure to respond promptly to mild stress-related ailments); *Berry v. Bunnell* (9th Cir. 1994) 39 F.3d 1056, 1057 (minor delays in treating bladder infection, which did not cause harm); *Wood v. Housewright* (9th Cir. 1990) 900 F.2d 1332, 1335 (delay in seeing specialist to fix broken pin in arm, which did not cause substantial harm); *Sanchez v. Vild* (9th Cir. 1989) 891 F.2d 240, 242 (difference of medical opinion over alternative treatment possibilities was not deliberate indifference).

<sup>17</sup> See *Chess v. Dovey* (9th Cir. 2015) 790 F.3d 961, 973-974.

<sup>18</sup> *Peralta v. Dillard* (9th Cir. 2013) 744 F.3d 1076.

### 7.3 Medical Malpractice and Other California Laws

The state has basic licensing requirements for health care facilities, including certain prison inpatient facilities. At times, the CDCR has been out of compliance with these requirements.<sup>19</sup>

California law permits people to file lawsuits for money damages against doctors and other health care staff for intentionally wrongful or negligent health care. Such lawsuits are commonly called “medical malpractice” cases. To prove medical malpractice, a person must show that the health care provider failed to use the degree of skill, knowledge, or care that is usual among medical professionals of good standing in the community (this usually requires testimony or a declaration by a medical expert) and that those acts or omissions were the “proximate cause” of an injury.<sup>20</sup> People in prison can bring medical malpractice lawsuits against health care staff who are CDCR employees or contractors.<sup>21</sup> There is one important limit in that a public employee cannot be held liable for failing to diagnose or prescribe treatment for mental illness or addiction; however, if a public employee does prescribe treatment for mental illness or addiction, they can be held liable if they prescribe or administer the treatment negligently.<sup>22</sup> The state is required to pay when malpractice judgments are issued against state health care employees.<sup>23</sup>

In addition, under California law, both public agencies and individual public employees can be sued for injuries that result when they know or had reason to know that a person in prison is in need of immediate health care for a serious condition and they do not take reasonable action to “summon” (get) care for the person.<sup>24</sup>

California law states that when a doctor employed by the CDCR states in writing that a particular medical treatment is required to prevent cruel and unusual punishment or serious and imminent harm to the health of a person, the treatment cannot be cancelled or modified without

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<sup>19</sup> *Budd v. Cambra* (San Francisco Superior Ct. Aug. 14, 2002) No. 319578, Order; see also Health & Safety Code § 1250 et seq. (licensing standards).

<sup>20</sup> For discussion of the difference between the standards for state law medical negligence and federal “deliberate indifference,” see *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, 287-288, 290 [54 Cal.Rptr.2d 655]. See also other cases involving medical malpractice. *Ashker v. California Dept. of Corrections* (9th Cir. 1997) 112 F.3d 392 (malpractice found where medical staff ignored repeated requests for treatment of aneurysm for two months); *Jameson v. Desta* (2013) 215 Cal.App.4th 1144 [155 Cal.Rptr.3d 755] (triable issues as to whether prison doctor failed to meet standard of care in treating hepatitis and whether this caused injury).

<sup>21</sup> Government Code § 844.6(d); Government Code § 845.6.

<sup>22</sup> Government Code § 855.8.

<sup>23</sup> Government Code § 844.6(d); see also *Ashker v. California Dept. of Corrections* (9th Cir. 1997) 112 F.3d 392, 394-395 (employee can be sued in personal capacity even though state is required to pay any resulting judgment).

<sup>24</sup> Government Code § 845.6; *Jett v. Penner* (9th Cir. 2006) 439 F.3d 1091, 1098-1099 (failure to provide medical treatment in accord with doctor’s order might violate § 845.6); *Castenda v. CDCR* (2013) 212 Cal.App.4th 1051 [151 Cal.Rptr.3d 648] (duty to summon care did not include ensuring that prison received further diagnosis or treatment by a specialist); *Watson v. California* (1993) 21 Cal.App.4th 836, 841 [26 Cal.Rptr.2d 262] (failure to summon medical care is not same as failing to provide adequate medical treatment); *Kinney v. County of Contra Costa* (1970) 8 Cal.App.3d 761 [87 Cal.Rptr. 638] (person’s request for medication for a headache does not show need to summon immediate medical care); *Sanders v. Yuba County* (1967) 247 Cal.App.2d 748 [55 Cal.Rptr. 852] (delay in summoning medical care person accidentally hit his head and injured his eye could be basis for lawsuit); see also *Flores v. Natividad Medical Center* (1987) 192 Cal.App.3d 1106 [238 Cal.Rptr. 24] (limits on non-economic damages for medical malpractice cases do not apply to claims of failing to summon medical care).



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approval of the Chief Medical Executive (CME) or the treating doctor. Exceptions may be made if (1) the person has a history of violent or disruptive behavior and the warden orders additional measures to protect safety and security or (2) immediate security needs require alternate or modified procedures. However, after any needed security measures are carried out, the medical treatment must be provided as soon as possible. The CDCR should discipline any employee who violates this law.<sup>25</sup>

The types of lawsuits that can be brought based on state law claims like medical malpractice or failure to summon health care are discussed further in § 7.44.

### 7.4 Rights to Refuse Health Care and to Give Informed Consent

People in prison have a constitutional right to refuse health care unless a compelling state interest such as prison safety and security needs overrides that right.<sup>26</sup> Accordingly, CDCR rules state that people who are mentally competent will not be forced to accept unwanted health treatment, including medication.<sup>27</sup> CDCR staff must obtain a person's informed consent in writing before doing any unusual, serious, or major treatment procedures, unless that is not possible under the circumstances.<sup>28</sup> When a person objects to a recommended treatment, their objections should be documented in writing in their medical record.<sup>29</sup>

When a person is mentally incompetent, medical decisions should be based on any advance directive for health care the person made while they were competent, including consent of anyone to whom the person granted a power of attorney for health care.<sup>30</sup> There are also procedures for a court to appoint a conservator to make decisions for an incompetent person or for interested people (including the person's doctor or someone acting on behalf of the health care institution) to petition a court to determine that a person lacks the capacity to make a health care decision concerning specified treatment and to authorize the petitioner to make a health care decision on behalf of the person.<sup>31</sup>

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<sup>25</sup> Penal Code § 2653.

<sup>26</sup> *Thor v. Superior Court* (1993) 5 Cal.4th 725, 745-746 [21 Cal.Rptr.2d 357].

<sup>27</sup> 15 CCR § 3351(e); 15 CCR § 3363 (right to refuse mental health diagnosis and treatment, with some exceptions). A person is able to give informed consent even if they have a mental illness, so long as they meet the following criteria: (1) are aware that there is a disorder for which treatment or medication is recommended, (2) are able to understand the nature and purpose of the recommended treatment and the alternatives to that treatment, and (3) are able to understand and reasonably discuss the possible side effects and hazards associated with the recommended treatment. 15 CCR § 3353.1. When a person is mentally incompetent, their legal guardian may object to treatment, and when a person is a minor, a responsible adult relative may object to treatment. 15 CCR § 3351(e).

<sup>28</sup> 15 CCR § 3353; see *Jameson v. Desta* (2013) 215 Cal.App.4th 1144 [155 Cal.Rptr.3d 755] (allowing person to proceed with claim that prison doctor failed to obtain informed consent for treatment).

<sup>29</sup> 15 CCR § 3353.

<sup>30</sup> 15 CCR § 3351(c)-(d); California Correctional Health Care Services, *IMSPe&P*, Vol. 1, Ch. 17.1; DOM §§ 91100-91100.16.7. See also Probate Code § 4600 et seq. The Prison Law Office has an information packet on Health Care Powers of Attorney, available by writing to Prison Law office, General Delivery, San Quentin, CA 94964 or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

<sup>31</sup> 15 CCR § 3351(e); DOM § 51080.3. See also Probate Code §§ 1800 et seq. (establishing a conservatorship); Probate Code §§ 3200 et seq. (health care decisions for person without conservator); *In re Conservatorship of Burton* (2009) 88 Cal.Rptr.3d 524 [170 Cal.App.4th 1016] (approving of court order allowing prison administrative to consent to treatment on behalf of delusional person).

There are some exceptions to the right to refuse treatment. Exceptions are permitted in sudden life-threatening situations or where treatment is necessary to avoid death or serious physical injury to the person or to others.<sup>32</sup> Another exception is for testing for HIV and, Hepatitis B or C in narrowly defined circumstances, and tuberculosis (TB) testing and treatment.<sup>33</sup> Also, some people with mental illness may be subject to forced treatment and forced medication; the criteria and procedures are discussed in §§ 7.34-7.36.<sup>34</sup>

## 7.5 Privacy Rights Regarding Health Care Information

Under California law, health care information, including conversations with health care professionals, usually is confidential.<sup>35</sup> The CDCR has detailed policies for protecting the confidentiality of health care information, which describe the limits on how such information may be used and disclosed.<sup>36</sup> Confidentiality of mental health information and communication with mental health providers is discussed in the CDCR’s Mental Health Services Delivery System Program Guide.<sup>37</sup>

However, people in prison or on parole should be aware that there are exceptions to the general rule of confidentiality, such that their health care records and statements to health care providers may sometimes be used in criminal, parole, or civil commitment proceedings.

First, the confidentiality privilege may not apply if a person talks to a health professional about their crime outside of their regular treatment setting.<sup>38</sup> In addition, a mental health professional may reveal information about a person’s mental health if the person is dangerous to themselves or to other people or to property, and disclosure is necessary to prevent that danger.<sup>39</sup> Furthermore, certain “mandated reporters” including mental health clinicians, must inform law enforcement whenever they learn about instances of child abuse, even if that information comes from a statement made by a patient to a health care provider.<sup>40</sup>

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<sup>32</sup> 15 CCR § 3351(a), (e).

<sup>33</sup> Penal Code § 1202.1; Penal Code §§ 7510-7516; Penal Code §§ 7572-7574; 15 CCR § 3351(e). Forced testing for HIV, Hepatitis B or C, and TB are discussed in §§ 7.20-7.22. Privacy concerns related to forced testing for medical care conditions like HIV or TB are discussed in § 2.37.

<sup>34</sup> See 15 CCR §§ 3363-3364.

<sup>35</sup> Civil Code § 56 et seq.; Evidence Code § 1010 et seq. (patient psychotherapist confidentiality); 15 CCR § 3361(c) (mental health confidentiality); Penal Code § 636 (illegal to eavesdrop on conversation between person in prison and their doctor); see also *People v. Gonzales* (2013) 56 Cal.4th 353 [154 Cal.Rptr.3d 38] (statements to psychotherapist at Parole Outpatient Clinic could not be used in SVP proceedings, where person had not waived privilege as a condition of parole); *Faunce v. Cate* (9th Cir. 2013) 222 Cal.App.4th 166 [166 Cal.Rptr.3d 61] (no reasonable expectation of privacy in conversation with doctor when officer present for safety reasons).

<sup>36</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 13, Chs. 1-12.

<sup>37</sup> CDCR, Mental Health Services Delivery System Program Guide, Ch. 1, § H and Attachment A.

<sup>38</sup> *Beaty v. Schriro* (9th Cir. 2007) 509 F.3d 994 (confession to a psychiatrist, made in a casual conversation after a group counseling session, fell outside the bounds of confidentiality agreement); compare with *Pens v. Bail* (9th Cir.1990) 902 F.2d 1464 (person’s self-incriminating statement made during court-ordered, confidential therapy could not be used to impose greater sentence).

<sup>39</sup> Evidence Code § 1024.

<sup>40</sup> Evidence Code § 11164, et seq.; *People v. Cannata* (2015) 233 Cal.App.4th 1113, 1123-1125 [183 Cal.Rptr.3d 351].

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Second, there is no right to confidentiality in many circumstances in which a person's mental health is a factor being considered in a legal proceeding. A person involved in a criminal case loses the confidentiality privilege if they bring up an issue about their mental state or condition, such as asserting that they are incompetent to stand trial or pleading not guilty by reason of insanity.<sup>41</sup> There is no right to confidentiality for information obtained by a mental health clinician who is appointed to examine or treat a person as part of a Mentally Disordered Offender (MDO) or Sexually Violent Predator (SVP) evaluation.<sup>42</sup> Mental health records, including a person's statements to clinicians, are routinely disclosed to and considered by the Board of Parole Hearings (BPH) in parole suitability hearings (see Chapter 9).

Third, in some circumstances a state can require a person to waive (give up) their rights to confidentiality. People participating in prison treatment programs for people convicted of sex-related crimes may be required to waive confidentiality as a condition of being in the program.<sup>43</sup> The CDCR also requires that a person subject to mental health treatment at a Parole Outpatient Clinic as a condition of parole must waive their right to be free of compelled self-incrimination and the privilege of confidentiality.<sup>44</sup>

### 7.6 Rights Regarding Biomedical and Behavioral Research

No biomedical research may be conducted on any person in prison in California.<sup>45</sup> However, people in prison can be given experimental or newly-developed drugs that have not yet been finally approved if they have a serious or life-threatening disease, the treating physician believes such medication to be in their best medical interest, and they give informed consent.<sup>46</sup>

People in prison may participate in behavioral research about the causes, effects, and processes of incarceration; informed consent is not required if the CDCR decides it is not necessary or would significantly hinder the research.<sup>47</sup> Otherwise, people must give informed consent and have the right

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<sup>41</sup> Evidence Code § 1016; Evidence Code § 1023; Evidence Code § 1025.

<sup>42</sup> Evidence Code § 1017 (MDOs); *People v. Martinez* (2001) 88 Cal.App.4th 465 [105 Cal.Rptr.2d 841] (information from treatment for prior MDO/SVP commitment could be used in later SVP case); *People v. Angulo* (2005) 129 Cal.App.4th 1349 [30 Cal.Rptr.3d 189] (no right to confidentiality when person facing SVP charges requests appointment of independent mental health evaluators). See Chapter 12 for more information about MDO and SVP commitments.

<sup>43</sup> *McKune v. Lile* (2002) 536 U.S. 24 [122 S.Ct. 2017; 153 L.Ed.2d 47]; also compare *Neal v. Shimoda* (9th Cir. 1997) 131 F.3d 818, 832-833 (Fifth Amendment not violated by requiring person to admit guilt of commitment offense as part of a treatment program that was required for parole eligibility, where there was no danger of additional prosecution) with *United States v. Antelope* (9th Cir. 2005) 395 F.3d 1128, 1137-1139 (Fifth Amendment violation where a person's release was conditioned on participation in treatment program that required him to disclose past un-charged sex offenses without a promise of immunity from prosecution on those charges).

<sup>44</sup> Penal Code § 3008(d)(4); *People v. Garcia* (2017) 2 Cal.5th 792 [216 Cal.Rptr. 75]. The state cannot require a person to waive these rights if they hire a therapist privately. *In re Corona* (2008) 160 Cal.App.4th 315 [72 Cal.Rptr.3d 736].

<sup>45</sup> Penal Code § 3502.

<sup>46</sup> Penal Code § 3502.5; see *Johnson v. Meltzer* (9th Cir. 1998) 134 F.3d 1393, 1397-1398 (triable issue as to whether person under arrest was given experimental drug without consent as medical treatment during emergency or for research purposes).

<sup>47</sup> Penal Code § 3516.

to refuse to participate in behavioral research projects.<sup>48</sup> Behavioral modification techniques may be used only if they are medically and socially acceptable and will not inflict permanent physical or psychological harm.<sup>49</sup>

## MEDICAL CARE

### 7.7 Overview of CDCR Medical Care Policies

The CDCR policy is to provide only those medical services that are necessary and supported by “outcome data” as being effective.<sup>50</sup> Medically necessary services are those that are reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain.<sup>51</sup> Health care services must continue even when a facility is on lockdown. Although services may be interrupted when there is an alarm or incident on the clinic yard, services must be resumed as soon as safely possible.<sup>52</sup>

People in prison who have money in their trust accounts are required to make co-payments for many health care services. Generally, people who have money must pay \$5 for each medical or dental visit they request.<sup>53</sup> If the person does not have enough money at the time of the visit and for 30 days afterward, they should not be charged for any remaining un-paid fee.<sup>54</sup> No co-payment is required for emergency care, diagnosis and treatment of communicable diseases, diagnosis and treatment of mental illness, follow-up services or appointments recommended, requested or ordered by health care staff, reception center medical screenings, and inpatient, extended care, or skilled nursing services.<sup>55</sup>

CCHCS (the organization run by the court-appointed Receiver which provides medical care to people incarcerated in the CDCR) has detailed multi-volume *Inmate Medical Services Policies and Procedures (IMSP&P)*. The IMSP&P includes general medical policies and some specific treatment protocols. CCHCS also has Care Guides for many common illnesses, chronic conditions, and injuries. The *IMSP&P* and Care Guides are supposed to be to be available in the prison law libraries and are available on the CCHCS website at [www.cchcs.ca.gov](http://www.cchcs.ca.gov). As of June 2018, CCHCS and CDCR were planning to incorporate all *IMSP&P* policies and procedures into either Title 15 regulations or Department Operations Manual (DOM) provisions. It was not known when this would happen.

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<sup>48</sup> Penal Code § 3501; Penal Code § 3521; see also Penal Code § 3504 (right to prompt and full treatment of injury from participation in behavioral research) and Penal Code § 3523 (right to payment for participation comparable to payments to people on the outside who volunteer for similar research).

<sup>49</sup> Penal Code § 3508.

<sup>50</sup> 15 CCR § 3350(a).

<sup>51</sup> 15 CCR § 3350(b). 15 CCR § 3350.1 lists some of the medical and dental conditions that the CDCR normally will not treat and some of the services the CDCR normally will not provide.

<sup>52</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, § VI.

<sup>53</sup> 15 CCR § 3354.2(a)-(c). Co-payment requirements have been upheld by the courts. *Gardner v. Wilson* (C.D. Cal. 1997) 959 F.Supp. 1224, 1228; see also *Shapley v. Nevada Board of State Prison Commissioners* (9th Cir. 1985) 766 F.2d 404, 408.

<sup>54</sup> 15 CCR § 3354.2(c)(3).

<sup>55</sup> 15 CCR § 3354.2(c)(4).

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Each CDCR prison has health care staff, including a Chief Executive Officer (CEO) Chief Medical Executive (CME), and Chief Nurse Executive (CNE).<sup>56</sup> Except for emergency first aid, all medical diagnosis, prescription of medication, and medical treatment may be done only by CDCR medical staff, professionals who contract with the CDCR to provide medical services, and outside medical consultants as authorized by CDCR health care officials.<sup>57</sup>

Each prison facility has an Institutional Utilization Management Committee (IUM) that reviews (and approves or denies) requests for medical services that are not normally provided under CDCR guidelines, referrals for “specialty” medical services, and placements in outside hospitals. There should be at least three physicians on an IUM, and only physicians may vote on approving or disapproving a request for services. The IUM should make a decision within 21 calendar days after it receives a request from a person’s treating physician. If the IUM approves the request, the case will then be sent to a Headquarters Utilization Management Committee (HUM), which consists of high level prison health care officials and other physicians. The HUM should make a decision within 60 days after the treating physician made the request for services; only licensed physicians may vote to approve or deny a service.<sup>58</sup>

CDCR staff health care staff must conduct a review and write a report whenever a person dies in CDCR custody. High level health care staff review all death reports and analyze whether the death could have been prevented by health care staff.<sup>59</sup> There are additional reporting and review requirements when a person commits suicide (see § 7.33). Also, when a person dies in prison, the CDCR must try to notify the next of kin or whoever the person has designated to get notification if they die or are seriously ill or injured. If no one takes responsibility for the body, then the CDCR will arrange for cremation or burial.<sup>60</sup>

### 7.8 Medical Screening in the Reception Center or Upon Transfer

Prison health care staff are supposed to screen every person who is arriving in the CDCR for contagious diseases and immediate health or medication needs within 24 hours after arrival. Staff should immediately refer people with urgent or emergent (likely to be urgent soon) needs for further evaluation and treatment. Also, health care staff should ensure that people who are taking prescription medications do not have their medication interrupted. Patients should then have a full health evaluation and physical examination by a doctor within seven calendar days.<sup>61</sup>

When a person is transferred – either within the same CDCR facility, to a different CDCR facility, or returning to a CDCR facility after being in a non-CDCR facility -- health care staff should ensure that a person has access to needed medication and medical supplies during transfer and

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<sup>56</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.2, § III, Attachment A.

<sup>57</sup> 15 CCR § 3354(a).

<sup>58</sup> 15 CCR §§ 3352-3352.1.

<sup>59</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 1, Ch. 29; see also, e.g., California Correctional Health Care Services, *Analysis of 2016 Inmate Death Reviews in the California Correctional Healthcare System* (Oct. 8, 2017)

<sup>60</sup> 15 CCR § 3354.2.

<sup>61</sup> 15 CCR § 3355(a); California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, § V, Attachment B; California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 12.1-12.2. California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 11.2 (medications).



layovers, and that necessary health care is not delayed or interrupted due to transfer. The person they should be screened by health care staff at a new CDCR facility within 24 hours of arrival for vital signs and to see if they need to continue previously prescribed medications or medical treatments. People who need urgent treatment should receive it. People with high risk or complex health management needs should get a medical evaluation within seven calendar days, people with chronic conditions that are not high risk and do not need complex management should be evaluated within 30 calendar days, and people with no known chronic conditions and who are clinically low risk shall be evaluated within 180 calendar days.<sup>62</sup>

## 7.9 Medical Classification System

CCHCS has a complex Medical Classification System to provide guidance to clinical and custody staff for considering medical factors in deciding where a person can be housed. People are categorized as either high, medium, or low medical risk, and many specific medical factors are noted. Some types of factors and risk levels will bar placement in certain facilities. A Medical Classification Chrono should be issued and placed in the CDCR's database when the person is examined in the reception center and whenever their medical condition changes in a way that affects their classification.<sup>63</sup>

The CDCR policy is to provide different levels of medical care at various facilities. Some special types of facilities -- such as Minimum Support Facilities, Conservation Camps, and Community Correctional Facilities -- accept only people who are low or medium medical risk and who do not have intense or complex medical factors. Regular CDCR institutions are divided into three main types depending on the degree of medical care available: basic institutions, intermediate institutions, and center institutions. Various facilities also have Specialized Medical Beds, where people can receive more intensive medical care on either a short-term or long-term basis; these include Correctional Treatment Centers (CTCs), Skilled Nursing Facilities (SNFs), Outpatient Housing Units (OHUs), and Specialized Outpatient beds (SOPs).<sup>64</sup>

If CDCR medical staff decide that a person cannot get appropriate health care where they are housed, staff can arrange to transfer the person to a different prison for medical treatment. This can be a permanent transfer or a temporary “medical and return” transfer. Conversely, medical staff can place a person on a “medical hold,” delaying transfers that might otherwise occur so that the person can remain at a facility for continuing medical care.<sup>65</sup>

## 7.10 Requesting Health Care – Urgent and Emergency Needs

Any person can request care for an urgent or emergency health care need by telling any staffperson at any time that there is such a need. This can include “man down” situations in which life is at stake but also lesser but still potentially life-threatening circumstances. In those situations, the

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<sup>62</sup> 15 CCR § 3355(b). California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, § V, Attachment B; California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 3.1-3.2; California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 11.2, 11.6 (medications).

<sup>63</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 29.1-29.2.

<sup>64</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 29.1-29.2, and Attachments A-B.

<sup>65</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 3.1-3.2.

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person should tell staff that there is an emergency or urgent healthcare need, describe the problem, and ask that health care staff be contacted. The staffperson should immediately contact health care staff, and either a registered nurse or primary care provider should promptly either conduct an in-person evaluation or talk to the patient by phone. Also, all staff have the authority to call 9-1-1.<sup>66</sup>

When a person becomes seriously ill or suffers a serious injury while away from an institution for authorized reasons, such as a camp assignment or transportation between prisons, the official in charge must get emergency medical attention for the person. If the person cannot be speedily returned to a CDCR medical facility, then the official must take the person to a community physician or hospital.<sup>67</sup>

### 7.11 Requesting Health Care – Non-Urgent Needs

Most requests for care for medical, dental, or mental health needs are done by filling out a CDCR Form 7362 Health Care Services Request (copy included as Appendix 7-A) and putting it in a designated drop-box or, in some lock-up units, giving it to staff. If a 7362 is submitted regarding a particular condition, the person should describe all of their symptoms. If a person cannot complete the Form 7362 themselves, health care staff should help the person fill out and submit the form.<sup>68</sup>

Form 7362s should be picked up by health care staff every day and those that raise medical concerns should be reviewed by a registered nurse (RN) that same day. Patients who report symptoms indicating an urgent condition should be seen in-person by a RN that same day. Form 7362s which report symptoms considered non-urgent should be seen by a RN within one business day. The RN will determine if the person should see a medical provider (doctor, nurse practitioner, or medical assistant) and how soon (it can be same day, the next day, or within two weeks). There are policies setting timeframes for various types of care.<sup>69</sup>

### 7.12 Health Care Appointments

When a person is scheduled for a health care appointment, they should receive a priority ducat issued by health care staff. The person is responsible for showing up at the health care appointment at the time and place indicated on the ducat.<sup>70</sup>

If a person does not appear, staff should contact the person's assigned housing or work/program staff to arrange for the person to come to the appointment. If there is a reason why the person cannot come to the appointment that is beyond their control, then custody staff should advise health care staff about this fact. If a person is refusing to go to the appointment, custody staff should escort the person to the health care area so that health care staff can discuss the health care treatment with them. If the person still refuses, health care staff should have the person sign a CDCR

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<sup>66</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 12.1-12.8.

<sup>67</sup> 15 CCR § 3354(d).

<sup>68</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, § V.

<sup>69</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, §§ V-VI, Attachment B.

<sup>70</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, §§ II, VI.

Form 7225 Refusal of Examination and Treatment and place the Form 7225 in the person's health care record.<sup>71</sup>

If a person is insistent about not going to a health care appointment, they should not be taken forcibly. Instead, health care staff should come to the person's housing unit to talk to the person. If the person still refuses the appointment, health care staff shall document the refusal in the health care record. Also, the person can be charged with a formal rule violation for the refusal, unless the refusal is for a mental health appointment.<sup>72</sup>

If a person misses a health care appointment (and is not refusing care), the appointment should be rescheduled.<sup>73</sup>

### 7.13 Medical Care by Outside Professionals or at Outside Facilities

Each prison must have contracts with outside medical care providers for necessary services that cannot be provided at the prison. Outside providers may conduct consultations by a video link (called "tele-medicine") or face-to-face at the prison, or people may be transported to outside facilities.<sup>74</sup>

Most orders for specialty services (for example, to see an orthopedist or neurosurgeon) must be reviewed and approved by higher level prison medical officials through the "utilization management review" (UMR) process. If there is an emergency or urgent need for specialty services, the UMR can be completed after the service is provided; otherwise the review process should be completed within 60 calendar days after the primary care provider submits the request for specialty services (see description of the Utilization Management Committees in § 7.7). If approved, specialty services should be provided either immediately (if emergency), within 14 days (if urgent), or within 90 days (if routine). Specialists can make recommendations about medical care but cannot actually order treatment. Prison medical providers should see patients within three days of an urgent or 14 days of a routine specialist appointment and at that time review the recommendations and decide what to do.<sup>75</sup>

In addition, CDCR rules allow a person in prison, or the person's guardian, relative, attorney, or advocate to submit a written request to the warden asking that the person be examined by an outside doctor. After consulting with the institution's CME, the warden should grant the request unless specific factors warrant denial. If the request is denied, the person making the request will be informed in writing of the reason for the denial. The person who requested the private consultation must pay the costs for it. Also, although the private doctor can offer opinions or recommendations, they cannot order any treatment.<sup>76</sup>

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<sup>71</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, § VI.

<sup>72</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, § VI.

<sup>73</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 1.3, § VI.

<sup>74</sup> 15 CCR § 3350.2.

<sup>75</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 8.

<sup>76</sup> 15 CCR § 3354(c); see also *Roberts v. Spalding* (9th Cir. 1986) 783 F.2d 867, 870 (no constitutional right to outside medical care, even where Washington prison regulations allowed people to request outside care at their own expense).

## 7.14 Medications

CCHCS policies require that health staff provide prescribed medications accurately and timely to people in in prison. Non-urgent new prescriptions should be provided to a person within three business days after the pharmacy receives the order. Non-urgent renewed prescriptions should be available on no less than one business day before the person's prior medication supply runs out. Urgent medication orders and renewals should be provided as soon as possible, even if outside of business hours.<sup>77</sup>

People should generally be allowed to keep their prescribed health care medications themselves (Keep-on-Person or KOP) unless staff believe the person cannot safely or properly take the medication by themselves or policy requires that the particular medication be given by a nurse (Nurse Administered or NA). However, mental health medications may not be prescribed KOP, except for some types of selective serotonin uptake inhibitors (SSRIs). In some cases, health care staff must carefully ensure that the person actually takes their medication (Directly Observed Therapy or DOT).<sup>78</sup>

When prescribing medication, staff can allow the patient to get refills for as long as the prescription allows; the prescription will note whether refills are automatic or must be requested by the patient. If the prescription does not include refills or the refill period runs out, further medication will be provided only when staff renew the medication by issuing a new prescription.<sup>79</sup>

CCHCS rules also provide that people in CDCR prisons should also have access to over-the-counter (OTC) medications at no cost and without needing to go through health care staff. OTC medications are products that are commonly available to the general public without a prescription, such as medications for headache, heartburn, seasonal allergies, dry eyes, and minor skin conditions. The CDCR has a list of the approved OTC medications. These OTC medications should be available through the facility canteen, free of charge. Access should be restricted only if there are documented health concerns or safety and security concerns involving the individual person's use or possession of the OTC medication.<sup>80</sup>

## 7.15 Medical Equipment and Assistive Devices

Some people need medical or dental appliances or assistive devices to alleviate painful conditions or to perform activities like getting around, hearing, or seeing. Such appliances include wheelchairs, prostheses, crutches, braces, hearing aids, or glasses. CDCR staff should provide, maintain, and repair medically needed appliances.<sup>81</sup> As of March 1, 2018, people in prison do not have to pay for medically-needed items like hearing aids, canes, wheelchairs, and glasses, that are considered

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<sup>77</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 11.2; see also California Correctional Health Care Services, *IMSP&P*, Vol. 9, Chs. 1-45 (pharmacy services).

<sup>78</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 11.2, 11.4-11.6.

<sup>79</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 11.2.

<sup>80</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 35.1-35.3.

<sup>81</sup> *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.F.

to be Durable Medical Equipment (DME); people still need to pay for some items the CDCR classifies as health care appliances (like dentures).<sup>82</sup>

A person may not be deprived of the use of their medical or dental appliance upon arrival in the CDCR or while in the CDCR unless a doctor or dentist decides the appliance is no longer medically needed or staff believe that the appliance must be taken away due to safety or security concerns. If custody staff have safety or security concerns about an appliance, they must consult with medical staff; in some cases, the appliance may be modified or a different appliance substituted. Only under exceptional circumstances may an appliance be denied; even then, staff must provide an alternate means of accommodating the person's needs.<sup>83</sup>

## 7.16 Medical Care Issues for People in Women's Prisons

People housed in CDCR's women's prisons have the right to a mental and physical examination as well as "care, treatment and training adapted to their "particular condition."<sup>84</sup> This includes access to personal hygiene material for menstruation.<sup>85</sup> It also includes over-the-counter and prescription birth control methods for any woman who is capable of becoming pregnant, as well as information and education regarding the availability of family planning services.<sup>86</sup>

Prison health staff must screen all people for pregnancy when they first arrive in a CDCR women's prison or are returned to a CDCR women's prison from an outside placement.<sup>87</sup>

People in CDCR custody have the same right to have an abortion as other people in California; the CDCR may not place additional restrictions on that right.<sup>88</sup> The CDCR is obligated to post notices in each women's prison explaining the rights regarding abortions.

California law prohibits sterilizing people in prison or jails for the purpose of birth control. Sterilization is allowed only when necessary to save a person's life in an emergency situation or when the procedure is medically necessary to treat a condition and steps are followed to determine whether

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<sup>82</sup> California Correctional Health Care Services, *Memorandum re: Discontinuation of Payment for Durable Medical Equipment* (Feb. 14, 2018); California Correctional Health Care Services, *Durable Medical Equipment and Medical Supply Formulary*, at [www.cchcs.ca.gov/policies](http://www.cchcs.ca.gov/policies). Under prior rules, some people had to pay for medical equipment; the new policy does not apply to medical equipment that was paid for before the new policy took effect.

<sup>83</sup> *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.F.2-3; Penal Code § 2656(d); 15 CCR § 3358(b).

<sup>84</sup> Penal Code § 3403.

<sup>85</sup> Penal Code § 3409.

<sup>86</sup> Penal Code § 3409; see also California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 24.1.

<sup>87</sup> 15 CCR § 3355(a).

<sup>88</sup> Penal Code § 3405; see Health & Safety Code § 123460 et seq. (general rights regarding abortion); see also *Monmouth County Correctional Institutional Inmates v. Lanzaro* (3d Cir. 1987) 834 F.2d 326, 337-338 (rule requiring people in women's jail to get court-ordered release to obtain abortions was unconstitutional, as was rule that jail would not pay for or obtain funding for abortions).



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there are less invasive treatments, obtain confirmation by an independent outside doctor, and obtain the patient's consent.<sup>89</sup>

Under state law and CDCR rules, people in prison who are pregnant will receive prenatal vitamins and extra daily rations of milk (or calcium supplements), fruits, and vegetables.<sup>90</sup> People also are to be provided with accommodations such as lower bunk and lower tier housing,<sup>91</sup> and larger shoes to accommodate foot swelling.<sup>92</sup>

People in prison who are pregnant should receive a dental examination, cleaning, and any needed follow-up care during the second trimester of their pregnancy.<sup>93</sup> They also should get regular visits with an obstetrics (OB) doctor or nurse practitioner.<sup>94</sup> A person in prison also has the right to hire an outside physician of their choice to determine if they are pregnant and to provide treatment recommendations and services; however, the person must pay for such services themselves.<sup>95</sup>

California law prohibits the use of leg irons, waist chains or handcuffs behind the body on people who are pregnant or recovering after delivery. No mechanical restraints may be placed on people during labor, delivery, and recovery except when necessary for safety and security, and any restraints must be removed when a medical professional determines that removal is medically necessary.<sup>96</sup>

People may be taken to outside hospitals for childbirth.<sup>97</sup> They may have a support person present during childbirth. The support person will be a CDCR staff person whose job includes helping people with pregnancy and delivery, unless the person who is pregnant requests that the support person be one of their approved visitors. Such a request must be approved by the warden. If the request is denied, the person should receive a written statement of the reasons for the denial.<sup>98</sup> Appropriate post-partum care should be provided when the person returns to a CDCR facility.<sup>99</sup>

People who are serving a prison sentence must remain in prison during their pregnancies and must give their babies to another family member, a guardian, or a foster parent after the baby's birth, unless they are among the few people eligible for a special community placement program for parents

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<sup>89</sup> Penal Code § 3440. This law was enacted in 2014 after an investigation and audit discovered that numerous women in prison had been sterilized under coercion or without consent. Johnson, *Female Prison Inmates Sterilized Illegally, California Audit Confirms*, [www.revealnews.org](http://www.revealnews.org) (June 19, 2014).

<sup>90</sup> Penal Code § 3424; 15 CCR § 3050(a)(3).

<sup>91</sup> 15 CCR § 3355.2(d).

<sup>92</sup> 15 CCR § 3030(b)(3)(I).

<sup>93</sup> Penal Code § 3424(d); 15 CCR § 3055.1(c); CDCR, *Inmate Dental Services Program*, Ch. 2.5.

<sup>94</sup> Penal Code § 3424(b); 15 CCR § 3055.2(b)-(c); see also California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 24.2-24.3.

<sup>95</sup> Penal Code § 3406.

<sup>96</sup> Penal Code § 3407; Penal Code § 3423; see also *Mendiola-Martinez v. Arpaio* (9th Cir. 2016) 836 F.3d 1239 (allowing person to proceed with claim that shackling during labor was cruel and unusual punishment in violation of the Eighth Amendment).

<sup>97</sup> Penal Code § 3423; 15 CCR § 3355.2(j).

<sup>98</sup> 15 CCR § 3355.2(k).

<sup>99</sup> 15 CCR § 3355.2(l).

(see § 4.53). CDCR staff must notify people who are pregnant about the program and provide them with applications.<sup>100</sup> Staff also must refer people who are pregnant to social workers to discuss the options for placement and care of the child.<sup>101</sup>

Legal Services for Prisoners with Children publishes a detailed manual for people who are pregnant in California prisons (*What to Plan for When You are Pregnant at California Institution for Women*), as well as an incarcerated parents' manual that addresses child custody, foster care, paternity, and child support (*Incarcerated Parents Manual*). These are available on the Resources page at [www.prisonerswithchildren.org](http://www.prisonerswithchildren.org) or by writing to Legal Services for Prisoners with Children, 1540 Market St., Suite 490, San Francisco, CA 94102.

## 7.17 Medical Care Issues for People Who are Transgender

The CDCR medical care guidelines provide for treatment of people who are transgender (described in the guidelines as treatment for gender dysphoria). Treatment can include hormone therapy, as well as mental health therapy. If a person asks for hormone therapy, medical staff will decide whether that would be an appropriate treatment.<sup>102</sup>

The CDCR medical care guidelines also allow for gender-affirming surgery (also called Sexual Assignment Surgery or SRS) for people with gender dysphoria. When a person requests gender-affirming surgery, their care provider must discuss surgery with them and refer the matter to the prison's IUM committee. The matter must then be sent to the HUM committee in Sacramento within 90 days following the person's request (see § 7.7 for a description of the IUM and HUM). There is a special subcommittee of the HUM that reviews gender-affirming surgery requests, which is called the Sex Reassignment Surgery Review Committee (SRSRC). If the SRSRC recommends surgery and the HUM approves it, the person should be referred to a surgeon specializing in gender-affirming surgery. If the SRSRC recommends gender-affirming surgery but the HUM disagrees, the matter will be referred to the statewide CME, who will make a final decision on whether gender-affirming surgery will be approved or denied.<sup>103</sup>

For information on policies allowing people who are transgender to have appropriate clothing and other property is in § 2.25. Information on classification and housing policies for people who are transgender is in § 4.26.

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<sup>100</sup> Penal Code § 3419; 15 CCR § 3355.2(g).

<sup>101</sup> 15 CCR § 3355.2(h).

<sup>102</sup> California Correctional Health Care Services, *Gender Dysphoria Care Guide*.

<sup>103</sup> California Correctional Health Care Services, *Gender Dysphoria Care Guide*; California Correctional Health Care Services, *Guidelines for Review of Requests for Sex Reassignment Surgery*; see also *Rosati v. Ighinoso* (9th Cir. 2015) 791 F.3d 1037 (person who is transgender was allowed to proceed with claim that CDCR's refusal to offer gender-affirming surgery was cruel and unusual punishment); *Norsworthy v. Beard* (N.D. Cal. 2015) 87 F. Supp.3d 1164 (person who is transgender was likely to succeed on claim that CDCR refusal to offer gender-affirming surgery was cruel and unusual punishment, granting preliminary injunction requiring CDCR to provide surgery).

## 7.18 Medical and Mental Health Care Following Sexual Assault

Prison medical staff should provide any emergency medical care needed by a person who has been sexually assaulted.<sup>104</sup> A person in prison who reports a rape or sexual assault should request a medical examination, at which immediate HIV/AIDS preventive measures should be provided, along with testing for sexually transmitted infections. A person who has been raped also should be offered a pregnancy test.<sup>105</sup> Even if an HIV test is negative, a person may want to request re-testing after six months have passed, since it may take that long for a detectable level of HIV antibodies to show up in the test. If a person tests positive for any sexually-transmitted infections, medical staff should provide appropriate medical treatment. If a person has become pregnant due to sexual assault, they should seek medical advice and counseling about their rights as discussed in § 7.16.

For some types of sexual abuse, CDCR policy requires that forensic medical exams (a “SART” exam or “rape kit”) be conducted on both the person who has been abused and the person suspected of committing the abuse. In some cases, forensic medical exams may be conducted if recommended by a sexual assault medical professional. Whether forensic medical exams are required or recommended will depend on when the abuse happened (usually whether it was less than or more than 72 hours prior), whether there was physical contact, and whether there were explicit sexual acts.<sup>106</sup> Any forensic medical examination will be conducted by a doctor or nurse, either at the prison or an outside hospital. The doctor will interview the person, do a physical exam, and take samples of hair, semen, and other fluids that may have been left by the person who committed the assault.<sup>107</sup> The person has the right to have a support person, such as a friend, family member, or advocate, present at the examination unless that would cause a problem such as delay or a security risk.<sup>108</sup>

Sexual abuse can cause serious emotional trauma. Prison mental health staff are supposed to evaluate people who are victims of sexual assault immediately for possible suicide risk. They are also supposed to be aware of warning signs of post-trauma mental health problems and provide ongoing mental health treatment and counseling as appropriate.<sup>109</sup> A person should be able to speak confidentially with a mental health counselor about sexual abuse. Prison staff are also supposed to provide a victim of sexual abuse with contact information for outside rape crisis services and victim advocacy organizations.<sup>110</sup>

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<sup>104</sup> DOM § 54040.8.3.

<sup>105</sup> Penal Code § 2638 (HIV prevention measures); DOM §§ 54040.7-54040.9.

<sup>106</sup> DOM §§ 54040.12.1-54040.12.2; see also DOM § 54040.11 (forensic medical exam procedures for person suspected of committing sexual harm).

<sup>107</sup> DOM § 54040.9.

<sup>108</sup> DOM § 54040.8.2.

<sup>109</sup> Penal Code § 2638(d); DOM § 54040.8; DOM § 54040.10.

<sup>110</sup> DOM § 54040.18. The non-profit organization Stop Prisoner Rape (SPR) also provides advice, support, and information for people in prison who are facing, or who are survivors of, sexual misconduct. People may contact SPR by writing to: Stop Prisoner Rape, 3325 Wilshire Blvd., Suite 340, Los Angeles, CA 90010. Many resources also are available at the Stop Prisoner Rape website at [www.spr.org](http://www.spr.org).

Medical and mental health treatment after sexual assault, forensic sexual assault examinations as also discussed in the CDCR health care policies.<sup>111</sup>

## 7.19 Medical Care Following Physical Assault or Use of Force

After any physical assault, cell extraction, or use of force, prison medical staff should evaluate the persons involved, document their findings on a Medical Report of Injury or Unusual Occurrence, and document comprehensive information in each person's medical record. Medical staff should also treat people who were injured as necessary, document that custody staff provided the required decontamination if chemicals like pepper spray were used, and, if chemicals like pepper spray were used, determine if non-involved persons were exposed and provide necessary care.<sup>112</sup>

## 7.20 HIV Testing and Treatment

Generally, people in prison cannot be tested for HIV unless they consent to be tested. Testing is offered to people just arriving in CDCR, people who have symptoms of acute HIV, people who report a history of HIV disease and people who request testing. However, in some circumstances, prison officials may force a person to give blood for HIV testing without the person's consent.<sup>113</sup>

Courts are required by law to order HIV testing when a person is convicted of some types of sex offenses. If the test is positive, further testing must be done to confirm the positive result before the result may be disclosed to the person who was tested and the victim of the offense.<sup>114</sup> Because this type of testing is pursuant to a court order, the proper way to challenge the order is through a direct appeal (see Chapter 14) or a state petition for writ of habeas corpus (Chapter 15).

A CME can order that a person in prison be tested for HIV (and/or for Hepatitis B or C) without their consent if the person shows clinical signs of the disease.<sup>115</sup> This type of testing can be appealed by filing a CDCR Form 602 HC Health Care Grievance (§ 1.25).

A CME can also order that a person in prison be tested for HIV (and/or for Hepatitis B or C) without consent in three types of circumstances where there is reason to believe that the person could have infected someone else:

- ◆ A CDCR employee requests testing because they believe that they came into contact with the bodily fluids of a person in prison, on parole, or on PRCS.<sup>116</sup>
- ◆ A CDCR employee requests testing because they observe or are informed about people in prison engaging in activity known to cause transmission of HIV. Such activities include sexual activity resulting in exchange of bodily fluids, IV drug use, violent incidents

<sup>111</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 1, Chs. 16.1-16.2.

<sup>112</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 17.1-17.2.

<sup>113</sup> Privacy issues concerning involuntary testing for HIV and other illnesses are discussed in § 2.37.

<sup>114</sup> Penal Code § 1202.1.

<sup>115</sup> Penal Code § 7512.5.

<sup>116</sup> Penal Code § 7510.

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involving exchange of bodily fluids, tattooing, or tampering with medical or food supplies or equipment.<sup>117</sup>

- ◆ A person in prison requests testing because they believe that they have had contact with the bodily fluids of another person in prison.<sup>118</sup>

The procedures are similar for all of these types of requests. The person requesting testing must file a report within two calendar days of the incident, although the CME can allow later filing if there is good cause. Within 24 hours of receiving a request, the CME must investigate the matter and decide whether or not to order testing. In reaching the decision, the CME must consider (1) whether an exchange of bodily fluids occurred that could have resulted in HIV or Hepatitis B or C infection, (2) whether the person who is the subject of the request shows symptoms consistent with infection; and (2) and whether the health of other people may have been endangered by possible infection due to the incident. The written decision must state the reasons for the decision, and copies must be provided to the person who made the request and the person who was the subject of the request.<sup>119</sup> If testing is ordered, the person who is the subject of the testing orders should be counseled about HIV or Hepatitis B or C and should be notified of their right to appeal the testing order.<sup>120</sup> Within three calendar days after the CME's decision, the person who is the subject of the testing order or the person who requested testing may submit a request to appeal the CMO's decision. The appeal will be heard by a three-person panel consisting of the CME, another CDCR physician, and a non-CDCR physician appointed by the State Department of Health Services. The panel must hold a hearing at which the interested parties have the right to attend, speak, and call witnesses. The hearing must take place within seven calendar days after the appeal request is filed. The subject of the testing order and the person who requested testing each may appoint a representative to attend the hearing to assist them. The panel must make a decision within two days after the hearing; a unanimous vote of all three panel members is required to uphold an order for HIV or Hepatitis B or C testing.<sup>121</sup> The panel's decision may be appealed to a county superior court by the person who is the subject of the testing order or the person who requested testing. The court must hold a hearing and will uphold the panel's decision if it was based on substantial evidence.<sup>122</sup>

CCCHS has a detailed Care Guide for testing and treating HIV, including providing medication.<sup>123</sup> The CDCR is supposed to provide all people in prison with information about how to avoid contracting the HIV virus.<sup>124</sup> The requirement of a co-payment (see § 7.7) does not apply to the diagnosis and treatment of communicable diseases such as HIV.<sup>125</sup> In addition, the CDCR must

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<sup>117</sup> Penal Code § 7516.

<sup>118</sup> Penal Code § 7512.

<sup>119</sup> Penal Code §§ 7510-7516.

<sup>120</sup> Penal Code § 7513.

<sup>121</sup> Penal Code § 7515.

<sup>122</sup> Penal Code § 7516.5.

<sup>123</sup> California Correctional Health Care Services, *HIV Care Guide*; see also California Correctional Health Care Services, *IMSP&P*, Vol. 10, Chs. 8.1-8.2.

<sup>124</sup> Penal Code § 5008.1.

<sup>125</sup> 15 CCR § 3354.2(c).



provide all people who are within one month of parole or discharge with information about agencies and facilities that provide testing, counseling, medical care, and support services for HIV patients.<sup>126</sup>

## 7.21 Hepatitis C (HCV) Testing and Treatment

Hepatitis C is a serious disease caused by infection with the Hepatitis C virus (HCV), which is transmitted mainly through exchange of infected blood. HCV is a very slow-moving disease and many people who have HCV can live 20 or 30 years without experiencing any negative effects or even realizing that they are infected. It has been recognized that a large percentage of people in California prisons have HCV, and the state legislature has directed the CDCR to offer people in prison, testing, and up-to date treatments. The legislature also directed the CDCR to work with the Department of Health Services to provide risk counseling and treatment options for people with HCV who are being released back into the community.<sup>127</sup>

As with HIV, people can request testing for HCV and usually cannot be tested without consent. However, some of the exceptions allowing prison medical staff to order non-consensual testing for HIV also apply to HCV and to Hepatitis B. These exceptions are discussed in § 7.20.

CCHCS has a detailed HCV Care Guide, as well as education materials about HCV. One recent development is that CCHCS is starting to offer treatment with direct acting anti-viral medication to all HCV patients who haven't been treated before, with priority given to patients who are at the highest risk of getting sick from HCV.<sup>128</sup>

## 7.22 Tuberculosis Testing and Treatment

Tuberculosis (TB) is another contagious and dangerous disease that can be spread particularly easily in prisons, where people are confined in close quarters for extended periods of time.<sup>129</sup> TB attacks the lungs and is spread through the air by tiny bacteria. A person with TB is contagious only if they have an “active” case of the disease.

Under California law, CDCR staff are required to test people for TB when they arrive in CDCR custody and at least once a year thereafter. The CME also may order testing at other times when there is reasonable suspicion to believe that a person has been exposed to or is infected with active TB. People who refuse TB testing or treatment may be involuntarily tested or treated; they also may be charged with rule violations.<sup>130</sup> (See § 2.37 for discussion of privacy issues related to involuntary TB testing.)

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<sup>126</sup> Penal Code § 5008.1.

<sup>127</sup> See Health & Safety Code §§ 122410-122420.

<sup>128</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Chs. 31.1-31.2; California Correctional Health Care Services, *Care Guide: Hepatitis C*.

<sup>129</sup> See *Jeffries v. Block* (C.D. Cal. 1996) 940 F.Supp. 1509, 1514-1515 (no Eighth Amendment violation where person in jail got TB, but jail had taken steps to abate the spread of TB).

<sup>130</sup> Penal Code §§ 7572-7574.

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The CDCR has detailed Care Guides for diagnosing, treating, and preventing the spread of TB.<sup>131</sup>

### 7.23 Valley Fever Housing Policies and Treatment

Valley Fever (coccidioidomycosis or cocci) is a type of pneumonia caused by breathing in the spores of a fungus. The fungus is more common in some parts of California, particularly the southern part of the Central Valley. The disease does not pass from person to person. In most people, symptoms of the disease are a flu-like illness; however, some people develop severe lung disease and other problems that may in some cases be fatal.

All people in men's prisons who are age 18 to 64 are to be offered a cocci skin test when they enter or re-enter CDCR custody; people who decline the test may request or agree to be tested at a later time. A negative test result indicates the person has never been infected with cocci before, so has not built up an immunity and is at greater risk of getting sick with Valley Fever. A positive test indicates the person has immunity and is at a lower risk of getting sick due to cocci exposure.<sup>132</sup>

CCHCS and CDCR policy prohibit housing some people who are particularly vulnerable to Valley Fever in the eight prisons where the Valley Fever fungus is most common -- Avenal State Prison (ASP), California Correctional Institution (CCI), CSP–Corcoran (COR), California Substance Abuse Facility (SATF), North Kern State Prison (NKSP), Kern Valley State Prison (KVSP), Pleasant Valley State Prison (PVSP) and Wasco State Prison (WSP); the policy also applies to community correctional facilities and modified community correctional facilities near these prisons. People may not be housed in these institutions if they do not have a history of Valley Fever and they have specific medical histories or conditions involving reduced immune system functioning.<sup>133</sup>

Additional restrictions apply to ASP and PVSP and nearby community correctional facilities, because those prisons are located in an area with an especially high risk for Valley Fever. People absolutely cannot be housed at PVSP and ASP if they are medically classified as “high risk,” or if they have a negative cocci test or have not been tested, unless they have a history of Valley Fever. People who are diabetic, African-American, or Filipino cannot be housed at ASP or PVSP unless they have a history of Valley Fever or test positive with a cocci skin test; however, these groups may opt to waive the housing restriction if they want to be placed at ASP or PVSP.<sup>134</sup>

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<sup>131</sup> California Correctional Health Care Services, *Tuberculosis – Surveillance Care Guide*; California Correctional Health Care Services, *Tuberculosis Diagnosis and Isolation Care Guide*; California Correctional Health Care Services, *Tuberculosis Infection Management Care Guide*; California Correctional Health Care Services, *Tuberculosis Disease Care Guide*; see also California Correctional Health Care Services, *IMSP&P*, Vol. 10, Chs. 3-3.2.

<sup>132</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 10, Ch. 10.1-10.2.

<sup>133</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 29.2, Attachment A.

<sup>134</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 29.2, Attachment A; California Correctional Health Care Services, *IMSP&P*, Vol. 10, Chs. 10, 11.1-11.2; see also *Plata v. Brown* (N.D. Cal. June 24, 2013) No. C01-1351, Order Granting Plaintiffs' Motion for Relief re: Valley Fever at Pleasant Valley and Avenal State Prisons.

The CDCR has diagnosis and treatment guidelines and an education sheet about Valley Fever.<sup>135</sup>

## 7.24 Medical Care Upon Parole or Release

Prison medical staff must screen all people who are being paroled or otherwise released from prison, alert the parole agent to any significant medical problems, and provide the person with a 30-day supply of any needed medications.<sup>136</sup> A person should be allowed to take their prescribed health care appliances with them.<sup>137</sup>

After a person is paroled, they generally must obtain and pay for their own medical, dental, and mental health care.<sup>138</sup> However, in some cases, people on parole may be required to receive mental health treatment at CDCR Parole Outpatient Clinics (POCs) (see § 7.37).

## MENTAL HEALTH CARE

### 7.25 Overview of CDCR Mental Health Care Policies

In 1995, a federal court ordered California prison officials to create a mental health program to provide adequate care to every person in prison with a serious mental health condition. The court also appointed a special master to monitor mental health care at each of the prisons; over two decades later, a special master continues to oversee mental health care.<sup>139</sup> As of mid-2018, over 37,000 people in CDCR custody were receiving some level of mental health treatment.<sup>140</sup>

The CDCR has rules concerning mental health services.<sup>141</sup> It also has an extensive *Mental Health Services Delivery System Program Guide*, available in prison law libraries and on the CDCR website.<sup>142</sup> To receive mental health treatment, a person must meet at least one of the following criteria:

- ◆ The person has current symptoms and/or require treatment for certain serious mental health conditions, including all major depressive disorders, bipolar disorders (manic depression), schizophrenia, delusional disorders, and all psychotic disorders; OR

<sup>135</sup> California Correctional Health Care Services, *Care Guide: Coccidioidomycosis*; California Correctional Health Care Services, *Coccidioidomycosis Quick Sheet*; see also California Correctional Health Care Services, *IMSP&P*, Vol. 10, Chs. 10.1-11.2.

<sup>136</sup> 15 CCR § 3355(d); California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 11.6; see *Wakefield v. Thompson* (9th Cir. 1999) 177 F.3d 1160, 1164 (state must provide person leaving prison with enough medication to last until they can obtain a new prescription).

<sup>137</sup> *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.F.3.

<sup>138</sup> 15 CCR § 3356.

<sup>139</sup> *Coleman v. Wilson* (E.D. Cal. 1995) 912 F.Supp. 1282.

<sup>140</sup> California Correctional Health Care Services, Mental Health Services Delivery System (MHSDS) Management Information Summary (MIS) Report (June 25, 2018).

<sup>141</sup> 15 CCR §§ 3360-3369.1.

<sup>142</sup> CDCR, *Mental Health Services Delivery System Program Guide*, available at [www.cchs.ca.gov](http://www.cchs.ca.gov) and [www.cdcr.ca.gov/DHCS](http://www.cdcr.ca.gov/DHCS).

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- ◆ Mental health treatment is “necessary to protect life and/or treat significant disability [or] dysfunctionality in an individual diagnosis with or suspected of having a mental disorder;” OR
- ◆ The person has had at least one episode of indecent exposure in the prior six months, and is either diagnosed with exhibitionism or meets all the criteria for exhibitionism except that the victim was known to the person rather than being an “unsuspecting stranger.”<sup>143</sup>

CDCR rules state that necessary and appropriate mental health services are to be provided to people in prison and on parole, and that the CDCR must have adequate staff and facilities to provide such services.<sup>144</sup> Prisons may also have contracts with outside mental health care providers for necessary services that cannot be provided by CDCR staff; outside mental health consultants usually come to the prison to provide treatment.<sup>145</sup> All mental health treatment is to be provided under the supervision of either a licensed psychiatrist or a licensed psychologist who holds a doctoral degree and has at least two years of experience.<sup>146</sup> Treatment should be accord with sound principles of practice, respectful of a person’s dignity and privacy, and not for the purpose of punishment.<sup>147</sup>

If a person in prison is receiving mental health treatment, mental health staff should fill out a Mental Health Placement Chrono for the person’s central file and health care file. The chrono should state the level of mental health care that the person should receive, medication status, and information about the person’s behavior and level of functioning.<sup>148</sup> The specific levels of mental health care available in the CDCR are discussed in §§ 7.28-7.30. These levels can change over time as a person’s mental health improves or deteriorates.

The CDCR also operates units for those who need inpatient mental health care, and some who require inpatient care can be temporarily transferred to the Department of State Hospitals (DSH) or the Department of Developmental Services (DDS) (see § 7.31).<sup>149</sup>

For special rules regarding housing people with mental illnesses in segregation units, see §§ 6.5, 6.10-6.11. For rules on staff use of force against people with mental illness, see § 3.6. For rules regarding consideration of mental health issues in prison disciplinary actions, see § 5.4.

### 7.26 Mental Health Screening in the Reception Center

The regular health care screening for people entering CDCR custody, done within 24 hours of arriving in the reception center, includes questions about whether they need to continue with

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<sup>143</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § D. The CDCR’s position is that it is not required to provide mental health care for people who are diagnosed solely with substance abuse disorders. However, the CDCR does offer some substance abuse programs, as discussed in § 4.46.

<sup>144</sup> 15 CCR § 3360(a).

<sup>145</sup> 15 CCR § 3350.2.

<sup>146</sup> 15 CCR § 3361(a).

<sup>147</sup> 15 CCR § 3361(c).

<sup>148</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § L.

<sup>149</sup> 15 CCR § 3360(b).

currently prescribed psychiatric medications or need crisis care or other mental health intervention. Then, within seven calendar days of arrival, all people should get a mental health screening to identify whether they have mental health treatment needs.<sup>150</sup>

People who are identified in the mental health screening as having possible symptoms of a mental disorder or being a suicide risk should get a full mental health evaluation by a psychiatrist or psychologist within 18 calendar days of arrival to diagnose whether they have a serious mental disorder, assess their level of functioning, and determine the appropriate level of care. This should include reviewing any CDCR central file and health records for the person and trying to obtain any outside mental health records. The evaluation and any diagnosis should be documented on a Mental Health Evaluation form. If the psychiatrist or psychologist decides the person needs mental health treatment, they will indicate the level of care that is needed on a CDCR 128-MH3 Mental Health Placement Chrono. An initial treatment plan should be provided, along with orders for any needed psychiatric medications.<sup>151</sup>

When a person in the reception center is deemed to need mental health care, they should be put up for transfer to a prison that has can treat them at the correct level of care. People should receive basic mental health services to meet their needs while they are waiting to be transferred out of the reception center; the CDCR policies include some specific guidelines for treatment, including periodic evaluations by mental health staff, medication as needed. People at the Enhanced Outpatient (EOP level of care (see § 7.29) should also get structured therapy activities.<sup>152</sup>

CDCR policy sets deadlines on when people who are placed in mental health treatment should be transferred out of the reception center. The deadlines for transfer are 90 days for most patients (those at the CCCMS level of care, see § 7.28) and 60 days for those who need more intensive outpatient treatment (EOP level of care, see § 7.29); health care staff can order speedier transfer based on individual case factors. Also, people needing crisis placement or inpatient care must be transferred more speedily.<sup>153</sup>

## 7.27 Requesting Mental Health Care

The CDCR must inform all people in prison about the mental health services that are available to them and how they can request those services.<sup>154</sup> People in prison, including in reception centers, can request emergency or urgent mental health care by telling any staff member at any time.

For routine matters, a mental health interview, or other attention to mental health needs by filling out a CDCR Form 7362 Health Care Services Request (see Appendix 7-A) and giving it to staff

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<sup>150</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2, §§ A-C.

<sup>151</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2, §§ A-C.

<sup>152</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2, §§ B-C.

<sup>153</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § M.

<sup>154</sup> 15 CCR § 3362.

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or putting it in a health care request drop-box. If a person cannot complete the Form 7362 themselves, health care staff should help the person fill out and submit the form.<sup>155</sup>

Prison staff such as correctional officers or correctional counselors may also refer a person for a mental health interview if the person is showing possible signs or symptoms of a serious mental disorder.<sup>156</sup>

Access to mental health screening, monitoring, and treatment should be provided to people who are placed in Administrative Segregation Units (ASUs) and Security Housing Units (SHUs).<sup>157</sup> Mental health staff must do daily rounds in every administrative segregation or other restrictive housing facility.<sup>158</sup> In addition, staff should make a mental health referral for anyone who persists in disruptive, destructive, or dangerous behavior while in segregation.<sup>159</sup>

Timelines for responding to mental health requests are five business days for regular requests, 24 hours for urgent cases, and immediately for emergency issues.<sup>160</sup>

### 7.28 CDCR Mental Health Levels of Care: CCCMS

The Correctional Clinical Case Management System (CCCMS) is CDCR's lowest level of mental health care and is the level of care provided to most people with mental health conditions. People in the CCCMS program are able to function in a general population and have symptoms that are controlled or partially in remission due to treatment. When their ability to function is evaluated using a standard test called the Global Assessment of Functioning (GAF), they ordinarily should have scores of 50 and above.<sup>161</sup> As of June 2018, there were approximately 28,700 CCCMS patients in the CDCR.<sup>162</sup>

CCCMS consists of outpatient services, generally provided in a regular general population setting. CCCMS care is provided at all prisons except California Conservation Center (CCC), Calipatria State Prison (CAL), Centinela State Prison (CEN), Chuckawalla Valley State Prison (CVSP), and Ironwood State Prison (ISP).<sup>163</sup>

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<sup>155</sup> See, e.g., CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2, §§ B-C (reception center); CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 3.D (CCCMS referral).

<sup>156</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2, §§ B-C (reception center) CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 3.D (CCCMS referral).

<sup>157</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Chs. 7-8.

<sup>158</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 7;

<sup>159</sup> 15 CCR § 3343(m).

<sup>160</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § C (reception center); CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2, §§ B-C (reception center).

<sup>161</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § D; CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 3, § C.

<sup>162</sup> California Correctional Health Care Services, *Mental Health Services Delivery System (MHSDS) Management Information Summary (MIS) Report* (June 25, 2018).

<sup>163</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § D; CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 3.

If placed in administrative segregation, CCCMS patients must within 30 days be transferred to Short Term Restricted Housing (STRH) Unit, which provide more treatment and out of cell time than available in regular segregation units. CCCMS patients who require a Security Housing Unit (SHU) placement are housed in a Long Term Restricted Housing (LTRH) Unit.<sup>164</sup> (See §§ 6.5 and 6.10 for further information about these units.)

Every person in CCCMS is assigned a primary mental health clinician, who must meet with the person at least once every 90 days. Each person must also have a treatment plan that sets treatment goals and objectives and includes activities and programs according to the person's needs. Treatment plans are developed at Inter-Disciplinary Treatment Team (IDTT) meetings, which should take place at least once a year, and which the person should be allowed to attend. The IDTT should include the person's assigned mental health care providers and their correctional counselor; other staff who have information about the person can also attend the IDTT meetings. People who receive medication should have their medication monitored by a psychiatrist at least every 90 days. CCCMS patients receive individual or group therapy if a part of the IDTT approved treatment plan, or if otherwise available.<sup>165</sup>

## 7.29 CDCR Mental Health Levels of Care: EOP

The Enhanced Outpatient Program (EOP) is CDCR's higher level of outpatient mental health care. EOP is for people who are acutely ill or decompensating with a serious mental disorder and/or are unable to function or care for themselves in a regular general population or segregation setting. People in EOP will usually have a GAF less than 50.<sup>166</sup> As of June 2018, there were approximately 7,300 EOP patients in the CDCR.<sup>167</sup>

People in EOP ordinarily are housed in designated housing units that should provide increased clinical and custody staffing and limit contact with those who are not EOP.<sup>168</sup> EOP patients placed in administrative segregation should be transferred within 30 days to an administrative segregation hub designated to provide EOP level of care.<sup>169</sup> People who need both EOP level care and security similar to a Security Housing Unit (SHU) are housed in Psychiatric Services Units (PSUs); located as of June 2018 at CSP–Sacramento (SAC), and California Institution for Women (CIW).<sup>170</sup> EOP administrative segregation hubs are discussed further in § 6.5 and PSUs are discussed at § 6.11.

<sup>164</sup> See CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 7, § G; CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 8.

<sup>165</sup> CDCR, *Memorandum Re: Creation of Corrections Clinical Case Management System Short Term and Long Term Restricted Housing* (Jan. 15, 2015); CDCR, *Mental Health Services Policy*, Vol. 12, Ch. 6, § 12.06.801; CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 3, §§ D-E.

<sup>166</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § D; CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 4, § C.

<sup>167</sup> California Correctional Health Care Services, *Mental Health Services Delivery System (MHSDS) Management Information Summary (MIS) Report* (June 25, 2018).

<sup>168</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 4.

<sup>169</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 7 § H.

<sup>170</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Chs. 8-9.

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People in EOP should have a meeting with their primary mental health clinician at least once a week in either individual or group therapy; they should have an individual meeting at least once every other week. Every person in EOP should be offered at least 10 hours per week of structured therapy activities. People who receive medication should have their medication monitored by a psychiatrist at least every month.<sup>171</sup>

Each person in EOP must also have a treatment plan that sets treatment goals and objectives and includes activities and programs according to the person's needs. Treatment plans are developed at Inter-Disciplinary Treatment Team (IDTT) meetings, which should take place at least every 90 days, and which the person should be allowed to attend. The IDTT should include the person's assigned mental health care providers and their correctional counselor; other staff who have information about the person can also attend the IDTT meetings. EOP patients should participate in an IDTT review of their case once every 90 days.<sup>172</sup>

### 7.30 CDCR Mental Health Levels of Care: Mental Health Crisis Bed (MHCB)

The CDCR has Mental Health Crisis Beds (MHCBs) for people who require 24-hour nursing care due to great impairment in most areas of functioning and/or being dangerous to themselves or others. A person in a MHCB usually will have a GAF of less than 30. Housing should be provided in one a CDCR Correctional Treatment Center (CTC), or Skilled Nursing Facility (SNF). If an MHCB is not available at the prison where the person is housed they should be transferred to an MHCB within 24 hours. During their stay in an MHCB, the person should be monitored daily by their treating psychiatrist or psychologist. A treatment plan should be developed by an IDTT within 72 hours after the person's admission to an MHCB and at least weekly thereafter; the person should be allowed to attend the IDTT if clinical and custody staff decide that is appropriate. Any person who still needs crisis bed placement beyond 10 days should be transferred to in-patient care in a CDCR or DSH facility, unless a Chief Psychiatrist (or a clinician designated by the Chief Psychiatrist) grants an exception to authorize a longer stay. A person who is released from a MHCB back to general population or an EOP should be seen once a day by mental health staff for the first five days after release.<sup>173</sup>

CDCR policy is that people receiving mental health care normally should not be subject to restraints or seclusion as part of mental health treatment. Exceptions are allowed for people who are in or being transferred to an MHCB, but only under orders by a mental health clinician as a last resort in response to emergency need to protect the person and others.<sup>174</sup>

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<sup>171</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 4, §§ D-E, G.

<sup>172</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 4, §§ D-E, G.

<sup>173</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § D; CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 5. As of June 2018, there are approximately 300 people in MHCBs. California Correctional Health Care Services, *Mental Health Services Delivery System (MHSDS) Management Information Summary (MIS) Report* (June 25, 2018).

<sup>174</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 5, § H; see also *Anderson v. County of Kern* (9th Cir. 1995) 45 F.3d 1310, 1314 (upholding use of a safety cell for mentally disturbed or suicidal people as constitutional).



### 7.31 CDCR Mental Health Levels of Care: Psychiatric Inpatient Program (PIP) or Placement in the Department of State Hospitals (DSH)

If a person needs inpatient mental health care at an “intermediate” or “acute” level, they should be placed in either a CDCR-operated Psychiatric Inpatient Program (PIP) or a Department of State Hospitals (DSH) mental health facility. As of June 2018, there are approximately 1,200 people in PIPs and DSH facilities.<sup>175</sup>

The CDCR operates Psychiatric Inpatient Programs (PIPs) at Salinas Valley State Prison (SVSP), California Health Care Facility (CHCF), California Medical Facility (CMF), California Institution for Women (CIW), and San Quentin State Prison (SQ). Some of these PIPs were previously operated by the Department of State Hospitals (DSH).<sup>176</sup>

When a person requires mental health care not available within the CDCR, they may be transferred to a psychiatric hospital run by the Department of State Hospitals (DSH). People in men’s prisons may be placed in Atascadero State Hospital or Coalinga State Hospital, and people in women’s prisons may be sent to Patton State Hospital. Transfers to DSH may be for short periods of up to 30 or 45 days for acute care due to severe inability to function in any other setting or a significant risk that the person will harm themselves or others. Transfers to DSH may also be for longer term intermediate care programs.<sup>177</sup>

### 7.32 Transfers for Mental Health Care

People in CDCR custody may be transferred to a different facility or prison to accommodate their mental health needs, so that they receive the appropriate level of care.<sup>178</sup> CDCR policies set timelines within which mental health transfers should be carried out. For example, a person who is being transferred to a MHCBC should be moved within 24 hours of the MHCBC referral, as an emergency medical transfer.<sup>179</sup> The timelines for other types of mental health transfers range between 21 days and 90 days, depending where the person is currently housed and their new mental health level of care.<sup>180</sup>

When people who are receiving mental health care are transferred, staff should ensure that they continue to receive their psychiatric medications without interruption, just as with other types of medications (see § 7.14).

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<sup>175</sup> California Correctional Health Care Services, *Mental Health Services Delivery System (MHSDS) Management Information Summary (MIS) Report* (June 25, 2018).

<sup>176</sup> CDCR website, [www.cdcr.ca.gov/DHCS](http://www.cdcr.ca.gov/DHCS) (information on Mental Health Care Program).

<sup>177</sup> Penal Code §§ 2684-2685; 15 CCR § 3360(b). CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 6. Note that facilities on the grounds of CDCR prisons that were formerly run by the DSH are being run by the CDCR as of July 1, 2017. CDCR website at [www.cdcr.ca.gov/DHCS](http://www.cdcr.ca.gov/DHCS) (information on Mental Health Care Program). Note that the Department of State Hospitals was previously called the Department of Mental Health (DMH).

<sup>178</sup> See, e.g., CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 4, § D (transfers of people for EOP placement).

<sup>179</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 5, § D.

<sup>180</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 1, § M.

### 7.33 Suicide Prevention

Suicide prevention in prisons and jails is a special concern. A 2017 report by the California State Auditor described the CDCR's poor record in preventing and responding to suicides and concluded that the CDCR must increase its efforts in this area.<sup>181</sup> There have also been lawsuits about the issue in prisons and jails.<sup>182</sup>

CDCR rules require that staff who work with people in prison be trained to recognize the signs of suicide risk. The rules also require that each prison have a Suicide Prevention Program, including placing people on suicide watch in an appropriate health care facility, immediately summoning emergency medical care when a suicide attempt is discovered in progress, and providing follow-up treatment.<sup>183</sup>

The CDCR also has detailed mental health policies on suicide prevention and response. If any CDCR staffperson believes that a person may be a suicide risk, they should immediately notify mental health staff. The person should be placed under direct observation until a mental health worker trained in suicide risk assessment does a face-to-face evaluation of the person. The mental health staff person should then determine how to respond. Possibilities include placing the person in an outpatient housing unit or an MHCB. A person in an MHCB may also be placed on suicide prevention or suicide watch status in a safety cell with limited clothing and furniture, and frequent staff checks.<sup>184</sup>

The CDCR policies also include procedures for attempting to preserve a person's life when they are physically harming themselves.<sup>185</sup>

The CDCR has a process for reporting suicides, reviewing whether staff acted appropriately, and making recommendations for better responses to prevent and respond to suicide attempts.<sup>186</sup>

### 7.34 Barred or Restricted Mental Health Treatments

CDCR rules prohibit or restrict certain types of mental health treatment.

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<sup>181</sup> California State Auditor, *CDCR: It Must Increase Its Efforts to Prevent and Respond to Inmate Suicides*, Report 2016-131 (Aug. 2017).

<sup>182</sup> See, e.g., *LeMire v. California Dept. of Corrections* (9th Cir. 2013) 726 F.3d 1062 (allowing person to proceed with claim that upper level prison officials might be liable for suicide that happened when they held a staff meeting that left people completely unsupervised for several hours); *Conn v. City of Reno* (9th Cir. 2011) 658 F.3d. 897 (police officers might be deliberately indifferent if they ignored signs that a person in jail was suicidal, but city could not be found liable for failure to train the officers or implement suicide prevention policies because the need for such training or policies was not obvious); *Clouthier v. County of Contra Costa* (9th Cir. 2010) 591 F.3d 1232 (person allowed to proceed with a suit claiming that mental health specialist acted unreasonably in removing suicide prevention measures put in place by another staff member; however, jail deputies and the county were not liable because it was not shown that the deputies knew of the danger of moving the person to the general population or that the problem stemmed from systemic policy or staffing deficiency).

<sup>183</sup> 15 CCR § 3365.

<sup>184</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 10; CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2., § C (reception center).

<sup>185</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 10.

<sup>186</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 10, §§ E-F.

Psychosurgery -- including lobotomy, stereotactic surgery, chemical or other destruction of brain tissue, or implanting electrodes into brain tissue -- cannot be performed on people in CDCR custody.<sup>187</sup>

The CDCR is prohibited from using any drug, electronic stimulation of the brain, or infliction of physical pain for the purpose of aversive, classical, or operant conditioning.<sup>188</sup>

Shock therapy treatment is the only form of organic therapy that may be used on people in CDCR custody. However, there are rules limiting its use:

- ◆ Shock therapy may be used as an emergency lifesaving measure if the person is competent and gives informed consent, or without consent if the person is incompetent. The CDCR does not have to obtain a court order first, but it must provide information about the emergency and the treatment to a court for review within 10 days after the start of the treatment. Emergency shock therapy treatment can be used for no more than seven days in any three-month period.
- ◆ Shock therapy cannot be used in non-emergency situations unless a committee of doctors reviews the person's treatment record and unanimously agrees that shock therapy is appropriate; at least one of the doctors on the committee must not be a full-time CDCR employee. If the person is competent, they must give informed consent; they may withdraw consent at any time and, if they withdraw consent, shock therapy must stop immediately. If the person is not competent, shock therapy can be administered without informed consent. In addition, before using shock therapy for non-emergency treatment, the CDCR must obtain authorization from a superior court. The person in prison or the person's attorney, guardian, or conservator may file a petition asking the court to prohibit shock therapy. Shock therapy may not be used for more than three months in any 12-month period.<sup>189</sup>

### 7.35 Involuntary Mental Health Treatment

If a person refuses to participate in the reception center psychological interview, mental health staff should document how they think the matter should be handled and what information has been considered. The recommendation must be reviewed by the prison's Chief of Mental Health.<sup>190</sup>

Under CDCR regulations, a person in prison or on parole must be informed when they are diagnosed with a mental illness or receive mental health treatment.<sup>191</sup> People generally have the right to refuse treatment or assignment to a treatment program and should not be punished for refusing treatment (see § 7.4). However, there are exceptions to this rule. A person may be required to undergo treatment or placement in a mental health program without their consent in the following situations:

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<sup>187</sup> 15 CCR § 3367.

<sup>188</sup> 15 CCR § 3368.

<sup>189</sup> Penal Code §§ 2670-2680; 15 CCR § 3369.

<sup>190</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 2, § C.

<sup>191</sup> 15 CCR § 3363.

## § 7.36

- ◆ a mental health evaluation is required by law or ordered by a court; or
- ◆ the person is diagnosed with a mental illness that makes them dangerous to themselves or others or makes them gravely disabled; or
- ◆ a classification committee places a person for evaluation based on a reasonable cause to believe the person has a mental illness that makes them dangerous to themselves or others or makes them gravely disabled; or
- ◆ in an emergency, a licensed medical clinician places a person in segregation for observation and treatment for up to five working days pending action by a classification committee; or
- ◆ a special condition of parole is imposed that requires the person to get treatment at a parole outpatient clinic; the parolee may be required to meet with mental health staff but cannot be required to take medication without giving informed consent.<sup>192</sup>

The related issue of forcing a person to take psychiatric medication without their consent is discussed in § 7.36.

### 7.36 Involuntary Psychiatric Medication

The CDCR can force a person in prison to take psychiatric medication for a short period of time in an emergency situation without a hearing or court order. However, people in prison otherwise have a right to have an administrative law judge (ALJ) from the California Office of Administrative Hearings (OAH) decide whether or not they can be forced to take psychiatric medications.<sup>193</sup>

People in prison may be forced to take psychiatric medication against their will for up to 72 hours without approval by a judge, but only in an emergency situation in which the medication is needed to control a mental health disorder that causes the person to be a danger to themselves or others or that results in a grave disability and medication is immediately necessary to preserve life or prevent serious bodily harm to the person or others.<sup>194</sup>

If the CDCR wants to force a person to take medication for more than 72 hours after an emergency, it must seek court approval; the procedures are now governed by a statute, but they are often referred to as “*Keybea*” proceedings after the case that first established the rights. Within 72 hours of starting the forced medication, the CDCR must send an “*ex parte*” request to the OAH to continue forced medication until a full hearing is held. The request must be supported by a declaration from a psychiatrist and must show that without continued medication the emergency conditions are likely to happen again. The person should be notified of the request and will be appointed a lawyer.

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<sup>192</sup> 15 CCR § 3363.

<sup>193</sup> *Keybea v. Rushen* (1986) 178 Cal.App.3d 526, 542 [223 Cal.Rptr. 746]; Penal Code § 2602; 15 CCR §§ 3364-3364.2; DOM 91090.1-91090.15. See also 53 Cal.App.4th 780; *Washington v. Harper* (1990) 494 U.S. 210 [110 S.Ct. 1028; 108 L.Ed.2d 178] (federal due process standards for forced medication); *United States v. Rivera-Guerrero* (9th Cir. 2005) 426 F.3d 1130, 1141 (person with criminal case has right to a court hearing if they are incompetent to stand trial and the government wants to force them to take medication to become competent).

<sup>194</sup> 15 CCR § 3364(a); 15 CCR § 3351(a) (definition of emergency); CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 5, § G.

The person and their lawyer will have two business days to file a written opposition to continued forced drugging. The ALJ will have three business days to review the request and decide whether to issue an order to allow continued forced medication. If forced medication is continued, the case must be scheduled for a full *Keybea* hearing to be held within 21 days after the date the CDCR made its request to continue forced medication, unless the attorney for the person agrees to have the hearing on a later date.<sup>195</sup>

In a non-emergency situation, the CDCR must get approval from an ALJ before starting any forced medication. The CDCR may seek forced medication in non-emergency circumstances if a psychiatrist (a) has diagnosed the person with a serious mental disorder, (b) decided that the disorder makes the person gravely disabled or a danger to themselves or others, (c) prescribed psychiatric medication and has decided that treatments other than forced medication are not likely to need the person's needs, and (d) advised the person of the risks and benefits of the medication and alternative treatments and the person refused to consent or is incompetent to consent. The CDCR must file a notice with the OAH requesting a *Keybea* hearing and must give the person and their appointed lawyer at least 21 days notice of the hearing and the reasons why the CDCR is seeking to force the person to take medication. The hearing should be held within 30 days after the CDCR files the notice, unless the lawyer for the person agrees to have the hearing on a later date.<sup>196</sup>

The *Keybea* hearing will be held in front of an ALJ. The person has the right to be present at the hearing and to be represented by a lawyer; a lawyer will be appointed at the state's expense if the person cannot hire one. ALJ can also appoint an independent psychiatrist to assist the lawyer. The lawyer should be allowed access to all of the person's files and medical records, except for confidential information that is not related to medical treatment. At the hearing, the person has the rights to present evidence and to cross-examine the witnesses. After the hearing, the ALJ can issue an order allowing forced medication if the ALJ finds by clear and convincing evidence that the person has a mental illness or disorder that causes the person to be gravely disabled and incompetent to refuse medication or to be a danger to themselves or others; the judge must also find that there is no less intrusive alternative to involuntary medication and that the medication is in the person's best interests.<sup>197</sup>

An ALJ's order for forced medication is valid for one year from the date of the order.<sup>198</sup> If the CDCR wants to continue the medication for longer than a year, then either the person must consent to take the medication or the CDCR must file a request with the OAH to renew the medication and there must be another full *Keybea* hearing and decision by an ALJ. To renew the forced medication order, the ALJ must find by clear and convincing evidence that the person has a serious mental disorder that requires treatment with medication, that without the medication the person would return to the behavior that was the basis for the prior forced medication order, and that the person lacks insight as to the need for medication and would not be able to manage their own medication. The

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<sup>195</sup> Penal Code § 2602(d).

<sup>196</sup> Penal Code § 2602(c).

<sup>197</sup> Penal Code § 2602(c)-(d); *Department of Corrections v. Office of Administrative Hearings (Anthony)* (1997) 53 Cal.App.4th 780 [61 Cal.Rptr.2d 903] (authority to appoint psychiatrist to assist person's lawyer).

<sup>198</sup> Penal Code § 2602(e).

## § 7.37

CDCR does not have to show that the person made any new threats or did any new dangerous acts in the prior year.<sup>199</sup>

A person can challenge an ALJ's order for forced medication by filing a motion for reconsideration. If there is new evidence and there is good cause, the person can ask for a new hearing.<sup>200</sup> A person can also ask a superior court to review of the ALJ's decision by filing either a petition for a writ of habeas corpus or a petition for writ of mandate (see Chapter 15).<sup>201</sup>

### 7.37 Mental Health Care on Parole or Release

Any person who is receiving psychiatric medications in CDCR should get a 30-day supply of the medications when they are paroled or otherwise released from prison.<sup>202</sup>

The CDCR has Parole Outpatient Clinics (POCs) to provide mental health care for people on parole. The CDCR can also contract with other care providers for mental health services for people on parole. A parole agent can refer a person on parole to a POC for a mental health evaluation at any time. The agent must refer to a POC anyone (a) who is in a prison mental health program when they are paroled, (b) whose past or present behavior indicates that mental health evaluation may help them successfully re-enter the community, (c) whose crime was a violent offense or sex-related offense for which a mental disorder may have been a factor, or (d) who is showing symptoms of mental illness. If mental health staff decide that a person should receive treatment at a POC, the parole agent will impose a special condition of parole requiring the person to undergo that treatment. If the person misses a POC appointment without a good reason, they may be found to have violated a condition of parole.<sup>203</sup> (See Chapter 11 for discussion of parole conditions, violations, and revocations.)

If a person is placed on post-release community supervision (PRCS) or discharged entirely from their prison term, the CDCR does not provide continuing mental health care. People on PRCS might be able to get referrals for mental health care through their probation offices. Otherwise, people who are not on parole will have to obtain treatment in the community. When people who are in EOP are nearing their release dates, prison mental health staff should provide planning, support, and education to help them transition to the community.<sup>204</sup>

In some cases, the CDCR may start one of the processes to ask a court to commit the person to the custody of the DSH for mental health care at the end of their prison term. The criteria and procedures for Mentally Disordered Offender (MDO) commitments and Sexually Violent Offender

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<sup>199</sup> Penal Code § 2602(f)-(g); *Department of Corrections v. Office of Administrative Hearings (Holmes)* (1998) 66 Cal.App.4th 1100 [78 Cal.Rptr.2d 473] (involuntary medication may be renewed without showing that person made any new threats).

<sup>200</sup> Penal Code § 2602(c).

<sup>201</sup> Penal Code § 2602(c).

<sup>202</sup> 15 CCR § 3355(d); California Correctional Health Care Services, *IMSP&P*, Vol. 4, Ch. 11.6; see *Wakefield v. Thompson* (9th Cir. 1999) 177 F.3d 1160, 1164 (state must provide person leaving prison with enough medication to last until they can obtain a new prescription).

<sup>203</sup> 15 CCR § 3360(c); 15 CCR § 3610.

<sup>204</sup> CDCR, *Mental Health Services Delivery System Program Guide*, Ch. 4, § E.

commitments are discussed in Chapter 12.<sup>205</sup> There are also other types of mental health civil commitments that can be done in some circumstances.

Some mental health conditions may be so serious that failure by prison staff to arrange for mental health care upon release could support a legal claim for failing to summon necessary health care.<sup>206</sup>

## DENTAL CARE

### 7.38 Dental Examinations

CDCR health care staff should screen people who are arriving at a CDCR reception centers to see whether they have any urgent dental needs. Then, within 60 days after a person arrives at the reception center, a dentist should do a dental screening. Dental treatment at reception centers is limited to emergency and urgent care dental conditions, such as conditions causing serious pain. However, people who remain in a reception center for more than 90 days may submit a CDCR Form 7362 Health Services Request Form to request dentures or treatment of cavities or periodontal problems.<sup>207</sup>

Upon arriving at their assigned prison, a person should be notified that they can ask for an initial full dental exam by submitting a CDCR Form 7362 Health Care Services Request for Treatment. After the initial dental exam, people can ask for periodic dental exams every two years until age of 50, and every year after the age of 50 or if they have diabetes, HIV, or a seizure disorder. These exams should be scheduled within 90 calendar days after the person's request is received by the dental clinic. There is no co-pay for these services.<sup>208</sup>

At their first comprehensive dental examination at their assigned prison, patients will receive oral health hygiene instructions. All people in prison must be allowed to brush their teeth and to use dental floss or flossers at least once per day.<sup>209</sup>

### 7.39 Dental Treatment

People in prison can also request dental treatment at other times by submitting a CDCR Form 7362 Health Care Services Request for Treatment. When people request dental treatment, they are charged a co-pay for any appointment at which treatment is provided. However, most types of follow-up services after treatment do not require a co-pay.<sup>210</sup>

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<sup>205</sup> See also Penal Code §§ 2960-2981 (MDO commitments); Welfare & Institutions Code §§ 6600-6609.3 (SVP commitments).

<sup>206</sup> *Johnson v. County of Los Angeles* (1983) 143 Cal.App.3d 298, 316-317 [191 Cal.Rptr. 704] (case allowed to proceed where person known to be at risk of suicide was released from jail without any notice to family or arrangement for mental health care, and then committed suicide).

<sup>207</sup> 15 CCR § 3355.1(a).

<sup>208</sup> 15 CCR § 3355.1(b)-(d); CDCR, *Inmate Dental Services Program*, Ch. 2.3, available at [www.cchcs.ca.gov](http://www.cchcs.ca.gov).

<sup>209</sup> CDCR, *Inmate Dental Services Program*, Ch. 2.13.

<sup>210</sup> CDCR, *Inmate Dental Services Program*, Ch. 5.1.

## § 7.40

People who request dental treatment are evaluated and prioritized based on the urgency of their needs. Treatment shall be provided immediately for emergency needs and within one to 60 calendar days for various types of urgent needs. Other dental needs should be treated within 120 calendar days or one year.<sup>211</sup> (For additional dental care provided to people who are pregnant, see § 7.16.)

The CDCR has a list of dental services that are not provided, unless special approval is granted.<sup>212</sup> Also, people who do not accept oral hygiene instruction or have a plaque index score above 20% are limited to only emergency, urgent, interceptive, or special needs care.<sup>213</sup>

Each prison has a Dental Authorization Review (DAR) committee that reviews requests for otherwise-excluded dental services, treatment not within ordinary treatment policies, or treatment by an outside specialist (either at the prison or off-site). The DAR committee has two CDCR dentists plus the CDCR dentist(s) who are providing the person's dental services. The DAR should notify the person about the DAR's decision.<sup>214</sup>

If the DAR approves treatment for otherwise excluded dental services, the matter will be reviewed by the Dental Program Health Care Review Committee (DPH-CRC). The DPH-CRC must make a decision within 15 business days after receiving a request from the DAR. The DPH-CRC consists of three CDCR Chief Dentists plus at least two other dentists. Decisions to approve or deny treatment must be made at a meeting at which there are at least three dentists including at least one Chief Dentist present. The decision will be by a majority vote of the DPH-CDC members at the meeting. The person should be notified of the DPH-CRC decision.<sup>215</sup>

The CDCR has very detailed treatment policies covering all aspects of dental care.<sup>216</sup>

### 7.40 Dental Appliances

CDCR staff should provide, maintain, and repair needed dental appliances such as dentures.<sup>217</sup> A person may not be deprived of the use of their dental appliance upon arrival in the CDCR or while in the CDCR unless a dentist decides the appliance is no longer medically needed or staff believe that the appliance must be taken away due to safety or security concerns. If custody staff have safety or security concerns about a dental appliance, they must consult with dental staff; in some cases, the appliance may be modified or a different appliance substituted. Only under exceptional circumstances may an appliance be denied; even then, staff must provide an alternate means of accommodating the person's needs.<sup>218</sup>

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<sup>211</sup> 15 CCR § 3354(f).

<sup>212</sup> 15 CCR § 3350.1.

<sup>213</sup> 15 CCR § 3355.1(b)(3).

<sup>214</sup> 15 CCR § 3352.2.

<sup>215</sup> 15 CCR § 3352.3.

<sup>216</sup> CDCR, *Inmate Dental Services Program*, available at [www.cchcs.ca.gov](http://www.cchcs.ca.gov).

<sup>217</sup> *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.F.

<sup>218</sup> *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.F.2-3; Penal Code § 2656(d); 15 CCR § 3358(b).



If a person is totally without funds, the CDCR will pay for their prescribed dental appliances. A person who has funds in their trust account either may be charged for an appliance furnished by the prison (up to the amount they have in their trust account when the appliance is delivered) or may be permitted to buy an appliance at their own expense through an approved outside vendor.<sup>219</sup>

The CDCR dental policies further discuss when and how dentures will be provided.<sup>220</sup>

## CHALLENGING INADEQUATE HEALTH CARE

### 7.41 Health Care Grievances

A person should make their health care needs known to staff through the sick call and health care request processes (see §§ 7.7, 7.10, 7.11, 7.27, 7.39). If a person does not receive timely or adequate health care, they should try to get attention to the problem by filing a CDCR Form 602 HC Health Care Grievance and pursuing it to the highest level necessary.<sup>221</sup> Furthermore, filing an administrative appeal like a Form 602 HC is almost always required before a person can bring any type of court action seeking either proper health care or money damages for injuries caused by improper health care (see §§ 1.2-1.6). The CDCR's administrative appeal processes are described in Chapter 1, and the special rules for filing and processing Form 602 HC are discussed in § 1.25. Note that there is a different administrative appeal process for getting accommodations for disabilities, which is discussed in § 1.26.

Health care grievances should be completed and returned to the grievant within 45 business days. Health care grievance appeals (health care grievances on their second level of review) should be completed and returned to the grievant within 60 business days. To find out what has happened to an appeal or what level the appeal has reached, people can write to the medical appeals coordinator at their prison and request a copy of the appeal form and its status. People can also send appeals directly to the medical appeals coordinator via institutional mail if they want to avoid having the appeal seen by a member of their unit staff.

A person who might want to file a state tort lawsuit to get money damages for harm they have suffered due to delayed or poor medical care will need to file a Government Claim form, in addition to filing a CDCR 602 HC. The process for filing a Government Claim form is discussed in §§ 18.4-18.6.

### 7.42 Other Resources for Assistance with Health Care Problems

People who are dissatisfied with the responses to their file health care grievances or who do not get timely responses to their grievances may be able to get assistance from the attorneys who are monitoring the class actions cases regarding medical and mental health care. Prison Law Office monitors medical care issues; people can contact them by writing to Prison Law Office, General Delivery, San Quentin, CA 94964. Prison Law Office also monitors mental health care, as does the law firm of Rosen, Bien, Galvan & Grunfeld, P.O. Box 390, San Francisco, CA 94104.

<sup>219</sup> 15 CCR § 3358(c), 15 CCR § 3190(j).

<sup>220</sup> CDCR, *Inmate Dental Services Program*, Ch. 2.6, available at [www.cchcs.ca.gov](http://www.cchcs.ca.gov).

<sup>221</sup> The rules for the CDCR Form 602 HC are in 15 CCR §§ 3087-3087.12.

## § 7.43

In addition, CCHCS has an Inmate Health Care Inquiry Line that people on the outside can use to raise concerns about a person's health care, if they have tried to bring the problem to the attention of the prison warden or CME and have not gotten a satisfactory response. CCHCS can be contacted in the following ways:

California Correctional Health Care Services  
Health Care Correspondence and Appeals Branch  
P.O. Box 588500,  
Elk Grove, CA 95758  
Telephone: (916) 691-1404  
Fax: (916) 691-2406,  
Email: [CPHCSCCUWeb@cdcr.ca.gov](mailto:CPHCSCCUWeb@cdcr.ca.gov)

### 7.43 Obtaining Health Care Records

A person who is concerned about their health care can get copies of their CDCR health records. These records can be helpful in documenting the person's attempts to seek treatment, the nature of their medical condition, and the treatment that was ordered and provided.

The CDCR has a health care file with medical, dental, and mental health records for each person in prison. This file is separate from the "central file" the CDCR has for each person. The records in the health care file should document all contacts between a person and CDCR medical, dental, or mental health personnel and contain records of any examinations, surgeries, and doctors' orders.

A person in prison may review their own health care file. A person also may give authorization for other people, such as a lawyer, to examine their health care file; prison officials will not allow someone else to look at the file unless the person authorizes the disclosure. A person can request their own records or authorize someone else to get their records by filling out and signing a CDCR Form 7385 Authorization for Release of Information (sample attached as Appendix 7-B). The person should send the Form 7385 to the prison health records office. The person should state which documents they want to see or have someone else see. If a person is not sure which documents to request, or if someone requests the entire record, health records staff will meet with the person and discuss what documents should be produced. Copies of the documents should be provided within 15 days after the Form 7385 is accepted by the health care records staff.<sup>222</sup> A person should file a CDCR 602 HC Health Care Grievance (see § 1.25) if staff do not act upon a request to review records.

If a person in prison asks for their entire health file and/or does not have money in their trust account, they should not be charged for copies of the health care documents. If a person has money in their trust account and is provided with selected documents, they will be charged \$0.10 per page.<sup>223</sup>

Ordinarily, a person in prison or someone who is authorized to view the person's health records should be allowed to view any documents in the file. However, occasionally a document might be deemed confidential and not disclosed. Health records may be classified as confidential if there is

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<sup>222</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 6, Ch. 4.2, F.

<sup>223</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 6, Ch. 4.2, B, F.

a substantial risk of significant adverse or detrimental consequences in the patient seeing or receiving a copy of their records. Records may also be deemed confidential if their disclosure would create an undue risk of harm to prison security or the safety of others.<sup>224</sup>

When a person dies in prison, prison staff must write a report and notify various local and state officials about the death.<sup>225</sup> The prison staff must also notify anyone that the person listed in their records as someone who should be notified if they die or have a serious illness or injury.<sup>226</sup>

Sometimes people want to get copies of their CDCR health care records after they have paroled or discharged. The health care records for people on parole are stored at the regional parole office for the area where the person is on parole (addresses of the regional parole offices can be found in Appendix 11-A). Records of people who have discharged their CDCR terms are sent to the CDCR Health Records Center (P.O. Box 58850, Elk Grove, CA 95758), as are the health records of people on who die while on parole. Records are kept for 10 years after a person is discharged from their prison term.<sup>227</sup>

## 7.44 Court Actions

Although a court-appointed Receiver controls California's prison medical care system, people who are incarcerated in the CDCR can still bring individual lawsuits about their health care.<sup>228</sup>

Deciding whether to file a formal legal action regarding a health care problem, and what kind of action should be filed, depends on several factors. The person must decide whether they want to ask for a court order requiring the CDCR to provide a particular treatment (injunctive relief), money damages as compensation for harm suffered as a result of inadequate care, or both injunctive relief and money damages. The person must also consider the different legal standards that must be met to win different types of legal claims, and the laws that make some government agencies, officials, and employees immune from some types of lawsuits. The person must also take into account the procedural hurdles they must meet to litigate various types of actions, and whether or not they are likely to be able to get a lawyer to assist them with their case.

The three type of court actions that are used to address health care issues are:

- ◆ a *state court petition for writ of habeas corpus* – can be used only to request injunctive relief. A state court petition may be based on violations of either federal or state law. State habeas corpus is by far the easiest and quickest type of legal action for a person in prison, and there is a better likelihood that the court will appoint an attorney to represent the person after they file their initial petition.

<sup>224</sup> California Correctional Health Care Services, *IMSPe&P*, Vol. 6, Ch. 4.2, G.

<sup>225</sup> Penal Code § 5021.

<sup>226</sup> Penal Code § 5022; 15 CCR §§ 3357(e)-(f).

<sup>227</sup> California Correctional Health Care Services, *IMSPe&P*, Vol. 6, Chs. 9.2, 11.

<sup>228</sup> *In re Estevez* (2008) 165 Cal.App.4th 1445 [83 Cal.Rptr.3d 479] (California courts still have jurisdiction to decide habeas corpus cases on individual claims of inadequate medical care); *Pride v. Correa* (9th Cir. 2013) 719 F.3d 1130 (people in prison may bring individual federal civil rights cases about medical care problems even though there is an on-going federal class action case requiring systemic improvements to the CDCR's medical system).

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- ◆ a *federal civil rights (§ 1983) action* – can be used to request injunctive relief or money damages. A federal civil rights case must be based on a violation of federal law (like the Eighth Amendment), though sometimes related state law claims may also be raised.
- ◆ a *state tort lawsuit* -- can be used to request injunctive relief or money damages. A state tort lawsuit can be based on a violation of federal or state law.

More detailed discussion state habeas corpus cases can be found in Chapter 15. Chapter 17 discusses federal civil rights cases and Chapter 18 discusses state tort law cases. Those chapters discuss the legal standards and procedures for such cases, including various steps that people in prison must take promptly in order to protect their rights to sue. An overview of the structure of the legal system is in Chapter 19 and a chart summarizing the requirements for different types of legal action is in § 19.30.

## HEALTH CARE SERVICES REQUEST FORM

<b>PART I: TO BE COMPLETED BY THE PATIENT</b>			
<i>A fee of \$5.00 may be charged to your trust account for each health care visit.</i>			
<b>If you believe this is an urgent/emergent health care need, contact the correctional officer on duty.</b>			
REQUEST FOR:    MEDICAL <input type="checkbox"/> MENTAL HEALTH <input type="checkbox"/> DENTAL <input type="checkbox"/> MEDICATION REFILL <input type="checkbox"/>			
NAME		CDC NUMBER	HOUSING
PATIENT SIGNATURE			DATE
REASON YOU ARE REQUESTING HEALTH CARE SERVICES. (Describe Your Health Problem And How Long You Have Had The Problem) _____			
NOTE: IF THE PATIENT IS UNABLE TO COMPLETE THE FORM, A HEALTH CARE STAFF MEMBER SHALL COMPLETE THE FORM ON BEHALF OF THE PATIENT AND DATE AND SIGN THE FORM			
<b>PART III: TO BE COMPLETED AFTER PATIENT'S APPOINTMENT</b>			
<input type="checkbox"/> Visit is not exempt from \$5.00 copayment. (Send pink copy to Inmate Trust Office.)			
<b>PART II: TO BE COMPLETED BY THE TRIAGE REGISTERED NURSE</b>			
Date / Time Received:		Received by:	
Date / Time Reviewed by RN:		Reviewed by:	
S:		Pain Scale: 1 2 3 4 5 6 7 8 9 10	
O:	T:	P:	R:    BP:    WEIGHT:
A:			
P:			
<input type="checkbox"/> See Nursing Encounter Form			
E:			
APPOINTMENT SCHEDULED AS:	EMERGENCY (IMMEDIATELY) <input type="checkbox"/>	URGENT (WITHIN 24 HOURS) <input type="checkbox"/>	ROUTINE (WITHIN 14 CALENDAR DAYS) <input type="checkbox"/>
REFERRED TO PCP:	DATE OF APPOINTMENT:		
COMPLETED BY	NAME OF INSTITUTION		
PRINT / STAMP NAME	SIGNATURE / TITLE		DATE/TIME COMPLETED

### HEALTH CARE SERVICES REQUEST FORM

<b>PART I: TO BE COMPLETED BY THE PATIENT</b>		
<i>A fee of \$5.00 may be charged to your trust account for each health care visit.</i>		
<b>If you believe this is an urgent/emergent health care need, contact the correctional officer on duty.</b>		
REQUEST FOR:	MEDICAL <input type="checkbox"/>	MENTAL HEALTH <input type="checkbox"/> DENTAL <input type="checkbox"/> MEDICATION REFILL <input type="checkbox"/>
NAME	CDC NUMBER	HOUSING
PATIENT SIGNATURE		DATE
REASON YOU ARE REQUESTING HEALTH CARE SERVICES. (Describe Your Health Problem And How Long You Have Had The Problem) _____		
NOTE: IF THE PATIENT IS UNABLE TO COMPLETE THE FORM, A HEALTH CARE STAFF MEMBER SHALL COMPLETE THE FORM ON BEHALF OF THE PATIENT AND DATE AND SIGN THE FORM		
<b>PART III: TO BE COMPLETED AFTER PATIENT'S APPOINTMENT</b>		
<input type="checkbox"/> Visit is not exempt from \$5.00 copayment. (Send pink copy to Inmate Trust Office.)		

## IMPORTANT INFORMATION ABOUT YOUR HEALTH CARE VISIT

### WHEN DO YOU HAVE TO PAY FOR A HEALTH CARE VISIT?

On July 9, 1994, a California State law was passed. That law gave the Department of Corrections permission to charge inmates a fee when they request a health care visit. The California Code of Regulations, Title 15, Div 3, has also been changed because of this law.

With some exceptions, **YOU WILL BE CHARGED** a five dollar (\$5.00) copayment fee for each health care visit that you request. This includes requests made for you by departmental staff, other inmates, your family or your attorney. If you request services that require more than one doctor, you will be charged for each initial visit with each doctor. This means if you request dental services and medical services, you will be charged for the visit with the dentist and the doctor/nurse.

The copayment fee will be charged to your trust account. If there is not enough money in your trust account over a period of 30 days, you will not be charged.

The copayment of \$5.00 for this visit will cover your visit with a doctor, nurse, or dentist. It will also cover prescribed medicines, laboratory tests, and referrals to other doctors.

**YOU WILL NOT BE CHARGED** for health care visits that are for:

- an emergency.
- a communicable disease (such as HIV, AIDS, and TB).
- mental health services.
- follow up health care services recommended by a doctor, nurse, or dentist.
- health care services necessary to comply with State law and regulations (e.g., annual TB testing).
- reception center screening and evaluation.
- inpatient services, extended care, or skilled nursing services.

**YOU WILL NOT BE DENIED HEALTH CARE IF YOU DO NOT HAVE MONEY IN YOUR TRUST ACCOUNT TO PAY THE FEE.**

## AUTHORIZATION FOR RELEASE OF INFORMATION

YOUR INFORMATION			
Last Name:	First Name:	Middle Name:	Date of Birth:
Address:	City/State/Zip:		CDC/YA Number:

Person/Organization Providing the Information	Person/Organization to Receive the Information
Name: _____	Name: _____
Address: _____	Address: _____
City/State/Zip: _____	City/State/Zip: _____
Phone #: (____) _____	Phone #: (____) _____
Fax Number: (____) _____	Fax Number: (____) _____
[45 C.F.R. § 164.508(c)(1) (iii) & Civ. Code § 56.11(e), (f)]	

Description of the Information to be Released (Provide a detailed description of the specific information to be released) <small>[45 C.F.R. § 164.508(c)(1)(i) &amp; Civ. Code §§ 56.11(d) &amp; (g)]</small>		
<input type="checkbox"/> Medical	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Genetic Testing
<input type="checkbox"/> Dental	<input type="checkbox"/> Substance Abuse/Alcohol	<input type="checkbox"/> Communicable Disease
<input type="checkbox"/> HIV	<input type="checkbox"/> Psychotherapy Notes	<input type="checkbox"/> Other (Please Specify)
For the following period of time: From _____ (date) to _____ (date)		

Description of Each Purpose for the Use or Release of the Information (Indicate how the information will be used) <small>[45 C.F.R. § 164.508(c)(1)(iv)]</small>		
<input type="checkbox"/> Health Care	<input type="checkbox"/> Personal Use	<input type="checkbox"/> Legal
<input type="checkbox"/> Other (please specify) _____		



**Will the health care provider receive money for the release of this information?**

[45 C.F.R. § 164.524 (c) (4) (i), (ii)]

Reasonable fees may be charged to cover the cost of copying and postage.

This authorization for release of the above information to the above-named persons/organizations will expire on: \_\_\_\_\_ (date). [45 C.F.R. § 164.508(c)(1)(v) & Civ. Code § 56.11(h)]

**I understand:**

- I authorize the use or disclosure of my individually identifiable health information as described above for the purpose listed. I understand that this authorization is voluntary. [45 C.F.R. § 164.508(c)(2)(i)]
- I have the right to revoke this authorization by sending a signed notice stopping this authorization to the health Records department at my current institution. The authorization will stop further release of my health information on the date my valid revocation request is received in the Health Records department. [45 C.F.R. § 164.508(c)(2)(i) & Civ. Code § 56.11(h)]
- I am signing this authorization voluntarily and that my treatment will not be affected if I do not sign this authorization. [45 C.F.R. § 164.508(c)(2)(ii)]
- Under California law, the recipient of the protected health information under the authorization is prohibited from re-disclosing the information, except with a written authorization or as specifically required or permitted by law. If the organization or person I have authorized to receive the information is not a health plan or health care provider, the released information may no longer be protected by federal privacy regulations. [45 C.F.R. 164.508(c)(2)(ii)]
- I understand I have the right to receive a copy of this authorization. [Civ. Code § 164.508 (c)(4) and Civ. Code § 56.11(i)]

Signature:	CDC/YA Number:	Date:
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[45 C.F.R. § 164.508(c)(1)(vi) & Civ. Code § 56.11(c)(1)]

Representative:	Relationship:	Date:
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[45 C.F.R. § 164.508(g)(1) & Civ. Code § 56.11(c)(2)]