

State of California
Office of Administrative Law

NOTICE OF APPROVAL OF CHANGES WITHOUT REGULATORY EFFECT

California Code of Regulations, Title 1, Section 100

OAL Matter Number: 2022-0831-02

OAL Matter Type: Nonsubstantive (N)

In re:

Department of Health Care Services

Regulatory Action:

Title 22, California Code of Regulations

Amend sections: [53861]

Repeal sections: [53872]

This action by the Department of Health Care Services repeals California Code of Regulations, title 22, section 53872 regarding civil penalties and amends a related cross-reference as a change without regulatory effect.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: August 29, 2022

[Original Signed]

[BY]

Nicole C. Carrillo

Senior Attorney

For:

Kenneth J. Pogue

Director

Original: Jennifer Kent, Director

Copy: Erika Drayton-Jebali

[Stamp]
NONSUBSTANTIVE

**STATE OF CALIFORNIA – OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION**

STD. 400 (REV. 10/2019)
OAL FILE NUMBERS
NOTICE FILE NUMBER: Z- [Blank]
REGULATORY ACTION NUMBER: 2020-1019-02N
EMERGENCY NUMBER: [Blank]

For use by Office of Administrative Law (OAL) only
NOTICE: [Blank]

REGULATIONS: [Date Stamp]
2022 AUG 31 PM 2:47
OFFICE OF ADMINISTRATIVE LAW

For Use by Secretary of State only
[Date Stamp]
ENDORSED FILED in the office of the Secretary of State of the State of California
OCT 13 2022
1:55 PM

AGENCY WITH RULEMAKING AUTHORITY: Department of Health Care Services
AGENCY FILE NUMBER (if any): DHCS-20-002

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

1. SUBJECT OF NOTICE: [Blank]
TITLE(S): [Blank]
FIRST SECTION AFFECTED: [Blank]
2. REQUESTED PUBLICATION DATE: [Blank]
3. NOTICE TYPE
Notice re Proposed Regulatory Action: [Blank]
Other: [Blank]
4. AGENCY CONTACT PERSON: [Blank]
TELEPHONE NUMBER: [Blank]

OAL USE ONLY

ACTION ON PROPOSED NOTICE

Approved as Submitted: [Blank]
Approved as Modified: [Blank]
Disapproved/Withdrawn: [Blank]
NOTICE REGISTER NUMBER: [Blank]
PUBLICATION DATE: [Blank]

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Repeal of California Code of Regulations, title 22, section 53872

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S): [Blank]

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTIONS AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: [Blank]
AMEND: 53861
REPEAL: 53872
TITLE(S): 22

3. TYPE OF FILING

Regulatory Rulemaking (Gov. Code Section 11346): [Blank]
Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code Sections 11349.3, 11349.4): [Blank]
Emergency (Gov. Code, Section 11346.1(b)): [Blank]
Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code Sections 11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute: [Blank]
Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, Section 11346.1): [Blank]
Emergency Readopt (Gov. Code, Section 11346.1(h)): [Blank]
File & Print: [Blank]
Changes Without Regulatory Effect (Cal. Code Regs., title 1, Section 100): [Checked]
Print Only: [Blank]
Other (Specify): [Blank]

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

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

Effective January 1, April 1, July 1, or October 1 (Gov. Code Section 11343.4(a)):

[Blank]

Effective on filing with Secretary of State: [Blank]

Section 100 Changes Without Regulatory Effect: [Checked]

Effective other (Specify): [Blank]

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY Department of Finance (Form STD. 399) (SAM Section 6660): [Blank] Fair Political Practices Commission: [Blank]

State Fire Marshal: [Blank]

Other (Specify): [Blank]

7. CONTACT PERSON: Erika Drayton-Jebali

TELEPHONE NUMBER: 916-345-8404

FAX NUMBER (Optional): [Blank]

EMAIL ADDRESS (Optional): erika.drayton-jebali@dhcs.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE: [Original Signed]

TYPED NAME AND TITLE OF SIGNATORY: Michelle Baass, Director

DATE: 08/29/2022

For use by Office of Administrative Law (OAL) only

[Date Stamp]

Endorsed Approved

OCT 13 2022

Office of Administrative Law

METHOD OF INDICATING CHANGES

This Accessible PDF version of the approved Rule 100 regulation text includes the phrase [begin underline] at the beginning of each addition, [end underline] at the end of each addition, [begin strikeout] at the beginning of each deletion, and [end strikeout] at the end of each deletion.

A standard PDF version of this proposed regulation text is also available on the Department's Office of Regulations Internet site.

(1) Repeal Section 53872:

§ 53872. Civil Penalties.

~~[begin strikeout](a) The Director may, except as provided in section 53873, impose one or more of the civil penalties specified in (b) upon a plan which fails to comply with the provisions of Article 2.7 of Chapter 7, Part 3, of Division 9 of the Welfare and Institutions Code, the provisions of this Chapter, or the terms of the plan contract.~~

~~(b) Civil penalties imposed by the Director shall be in the amounts specified below with respect to violation of any provision of:~~

~~(1) Article 2, excluding section 53862.~~

~~(A) First violation: \$1,000.~~

~~(B) Second violation: \$5,000.~~

~~(C) Third and each subsequent violation: \$10,000.~~

~~(2) Article 3.~~

~~(A) First violation: \$5,000.~~

~~(B) Second and each subsequent violation: \$10,000.~~

~~(3) Section 53862.~~

~~(A) First violation: \$1,000, plus \$500 per day for each day that the item to be submitted is late, not to exceed \$10,000 total for each violation.~~

~~(B) Second and each subsequent violation: \$5,000, plus \$500 per day for each day that the item to be submitted is late, not to exceed \$10,000 total for each violation.~~

~~(4) The contract, which is not specifically governed by regulation in this Chapter.~~

~~(A) First violation: \$5,000.~~

~~(B) Second and each subsequent violation: \$10,000.~~

~~(5) Article 2.7, Chapter 7, Part 3, Division 9 of the Welfare and Institutions Code, which is not specifically addressed by regulations in this Chapter.~~

~~(A) First violation: \$5,000.~~

~~(B) Second and each subsequent violation: \$10,000.~~

~~(c) The counting of violations for the purposes of this section shall:~~

~~(1) Be done without regard to contract term.~~

~~(2) Commence with violations occurring on or after the effective date of this section.~~

~~(d) Imposition of penalties, under the provisions of subsection (a) shall follow administrative proceedings held in accordance with the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code.~~

~~(e) The department shall issue a letter of noncompliance to a plan found by the administrative proceedings addressed in subsection (d) to be in violation of any provision of law, regulation or the contract. The letter of noncompliance shall include the violation, sanctions to be imposed and corrective action to be taken within stated time limits. Failure to comply with corrective actions within the time limits given shall be deemed to be subsequent violation for the purposes of subsection (c).[end strikeout]~~

Note: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4 and 14304, Welfare and Institutions Code.

(2) Amend Section 53861 as follows:

§ 53861. Records.

(a) Each plan in a designated region shall maintain or cause to be maintained all records necessary to verify information and reports required by statute, regulation or contractual obligation for five years from the end of the fiscal year in which the plan contract expires or is terminated. Each plan shall make such records available for inspection or examination to the department, the United States Department of Health and Human Services, the States Department of Justice, or the Comptroller General of the United States or their duly authorized representatives upon request. Records and documents shall include but not be limited to:

(1) Working papers used in the preparation of reports to the department.

(2) Reports to the department, specified in section 538~~7~~6.

(3) Financial documents.

(4) Medical records.

(5) Quality assurance and improvement records.

(6) Prescription files.

(b) Each plan shall retain or cause to be retained all records pertaining to pending litigation or litigation in progress until the litigation is final.

Note: Authority cited: Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code. Reference: Sections 14087.3, 14087.4, 14308 and 14458, Welfare and Institutions Code.