

**State of California
Office of Administrative Law**

In re:
Department of Health Care Services

Regulatory Action:

Title 22, California Code of Regulations

Amend section: 53861
Repeal section: 53872

**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)

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.

Original Signature

Date: October 13, 2022

Nicole C. Carrillo
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Jennifer Kent, Director
Copy: Erika Drayton-Jebali

NONSUBSTANTIVE

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW NOTICE PUBLICATION/REGULATIONS SUBMISSION

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2022-0831-02N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

OFFICE OF ADMIN. LAW
2022 AUG 31 PM 2:47

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

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 Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

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)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	53861
TITLE(S)	REPEAL
22	53872

3. TYPE OF FILING	<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only
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4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Erika Drayton-Jebali	TELEPHONE NUMBER (916) 345-8404	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) erika.drayton-jebali@dhcs.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

Original Signature Michelle Baass, Director	DATE 8-29-22
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For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 13 2022

Office of Administrative Law

(1) Repeal Section 53872:

§ 53872. Civil Penalties.

~~(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).~~

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 538762.
- (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.