

**Explanation of Requested Changes  
Pursuant to Title 1, California Code of Regulations, Section 100**

The Department of Health Care Services (Department) proposes amendments without regulatory effect that would add, revise, or delete language and legal citations in various sections of the California Code of Regulations (CCR), Title 9, Division 1.

Specifically, the proposed amendments fall under the provisions of Title 1, CCR, Sections:

- 100(a)(4), which allows for revision of structure, syntax, cross-reference, grammar, or punctuation of a regulatory provision.
- 100(a)(5), which allows for changing an “authority” or “reference” citation for a regulation.
- 100(a)(6), which allows for making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
  - (A) the regulatory provision is inconsistent with and superseded by a changed statute, and
  - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

The proposed amendments listed below are consistent with the provisions of Title 1, CCR, Section 100, subdivisions (a)(4) through (a)(6) and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.

**Background**

In 1973, the California Legislature attempted to more effectively administer physical and mental health by consolidating the Department of Mental Hygiene into the Department of Health. In 1978, the Legislature divided the Department of Health into several smaller departments, including the Department of Mental Health (DMH) and the Department of Health Services (DHS). Pursuant to Health and Safety Code Section 100100, under Senate Bill (SB) 162 (Ch. 241, Stats of 2006), operative July 1, 2007, DHS was renamed the Department of Health Care Services.

On July 1, 2012, Welfare and Institutions (W&I) Code Section 14700, added by Assembly Bill (AB) 102 (Ch. 29, Stats of 2011), transferred State administrative and applicable functions for Medi-Cal specialty mental health services provided through managed care and the related Early and Periodic Screening, Diagnosis and Treatment services from the former DMH to the Department. Then, SB 1009 (Ch. 34, Stats of 2012) transferred the administration of mental health services, including those related to mental health commitment procedures in California, found in the Lanterman-Petris-Short (LPS) Act (W&I Code Sections 5000-5550), to the Department. Title 9, CCR, Division 1, includes the regulatory provisions that implement, interpret, and make specific, these community mental health programs and services.

## Purpose

The proposed amendments to the specified Title 9, CCR, Division 1 regulations include the renaming of former California state departments to the Department of Health Care Services; making structural (syntax) and grammatical changes; updating cross-references; and updating authority and reference citations to reflect the transfer of the administration of community mental health services to the Department.

## Proposed Amendments

### Pursuant to Title 1, CCR, Section 100(a)(4):

The proposed amendments to the sections listed below are changes without regulatory effect because they change the structure, syntax, cross-reference or grammar of a regulatory provision:

- 1) In Sections 862(b) and 865(d) the word(s) “his”, “he”, “him” and “himself” which are used throughout, are not gender neutral. The proposed amendments to add “or her” and “or she” create appropriate arrangement of words (syntax), gender neutrality, and consistency without altering the substance of the provision. Also under Section 862(b) the term “a” is added for accurate grammar and sentence structure and under Section 865(d) the term “himself” is removed because it is not gender neutral and it is not necessary for sentence structure.
- 2) In Section 865.4(d) the acronyms “SNF and “ICF” are amended to show the full phrases “Skilled Nursing Facilities” and “Intermediate Care Facilities, respectively. Spelling out these acronyms improves sentence structure and is consistent with the full use of other phrases under this subsection that reference hospitals. These amendments have no impact to the substance of this provision.
- 3) In Sections 862(a), 865(b), and 865.4(c) the cross-reference to Section “861” is removed because this section was repealed in 1985 pursuant to Government Code Section 11349.7, Priority review of regulations; notice; repeal procedures. In Sections 865 and 865.4 the reference to Section “861” is replaced with Section 5325 of the W&I Code that contains the legal and civil rights of persons who are involuntarily detained. The rights enumerated in Section 861 remain in Section 5325. A reference to W&I Code Section 5325 already exists in Section 862(a).

### Pursuant to Title 1, CCR, Section 100(a)(5):

The proposed amendments to the sections listed below are changes without regulatory effect because they change an “authority” or “reference” citation for a regulation:

- 1) “Section 811. Department.”

Authority: W&I Code Section 4012 is removed because it does not expressly refer to the Department's authority to regulate. The Department has instead relied upon the express rulemaking authority set forth in W&I Code Section 5400. W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from the DMH to the Department pursuant to AB 102 (as described above).

Reference: W&I Code Section 14700 is added to the reference citation because it provides the interpretation of the regulation for the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above). Chapter 1252, Statutes of 1977 is removed from the reference citation because it is outdated and no longer an appropriate citation.

2) "Section 812. Shall and May."

Authority: The authority citations for this section are missing from the CCR. W&I Code Section 5400 is added to the authority citation because it grants the Director of the Department with express rulemaking authority to adopt rules and regulations as they relate to the Lanterman-Petris-Short Act. W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above).

Reference: The reference citation for this section is missing from the CCR. W&I Code Section 5400 is added to the reference citation because the regulation interprets the statute as it relates to the Lanterman-Petris-Short Act.

3) "Section 823. Attending Staff."

Authority: The authority citations for this section are missing from the CCR. W&I Code Section 5400 is added to the authority citation because it grants the Director of the Department with express rulemaking authority to adopt rules and regulations as they relate to the Lanterman-Petris-Short Act. W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above).

Reference: The reference citation for this section is missing from the CCR. W&I Code Section 5150 is added to the reference citation to further interpret the statute by defining the term "attending staff" in the regulation.

## 4) "Section 836.2. Facility: Definition."

Authority: W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above).

Reference: W&I Code Section 5326.15 is removed from the reference citation because it is not a current or appropriate reference citation specific to the definition of the term "Facility."

## 5) "Section 862. Notification of Rights."

Authority: The authority citations for this section are missing from the CCR. W&I Code Section 5325 is added to the authority citation because it provides the authority for the regulation relating to individuals involuntarily detained for psychiatric treatment or evaluation and their rights. W&I Code Section 5400 is added to the authority citation because it grants the Director of the Department express rulemaking authority to adopt rules and regulations as they relate to the Lanterman-Petris-Short Act. W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above).

Reference: The reference citation for this section is missing from the CCR. W&I Code Section 5325 is added to the reference citation because the regulation further specifies the statute relating to individuals involuntarily detained for psychiatric treatment or evaluation and their rights.

## 6) "Section 865. Authority of Denial of Rights."

Authority: The authority citations for this section are missing from the CCR. W&I Code Section 5326 is added to the authority citation because it grants the Director of the Department with the authority to adopt regulations related to the conditions under which a patient's rights may be denied. W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above).

Reference: The reference citation for this section is missing from the CCR. W&I Code Section 5326 is added to the reference citation because the regulation

further specifies and interprets this statute as it relates to facilities and the authority to deny a patient's rights.

7) "Section 865.4. Seclusion and Restraints."

Authority: The authority citations for this section are missing from the CCR. W&I Code Section 5400 is added to the authority citation because it grants the Department express rulemaking authority to adopt rules and regulations as they relate to the Lanterman-Petris-Short Act. W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above).

Reference: The reference citations for this section are missing from the CCR. W&I Code Sections 5325, 5325.1, 5326 are added to identify the statutes that the regulation is implementing, interpreting and making specific related to restraints and seclusions.

8) "Section 865.5. Restoration of Rights."

Authority: The authority citation for this section is missing from the CCR. W&I Code Section 5400 is added to the authority citation because it grants the Director of the Department express rulemaking authority to adopt rules and regulations as they relate to the Lanterman-Petris-Short Act. W&I Code Section 14700 is added to the authority citation because it provides the authority for the regulation and the transition of the administration of Medi-Cal specialty mental health services from DMH to the Department pursuant to AB 102 (as described above).

Reference: The reference citations for this section are missing from the CCR. W&I Code Sections 5325, 5325.1, and 5326 are added to the reference citation to identify the statutes that the regulation is implementing, interpreting and making specific related to the restoration of patient's restoration of rights.

Pursuant to Title 1, CCR, Section 100(a)(6):

The proposed amendments to the sections listed below are changes without regulatory effect because they make regulatory provisions consistent with a changed California statute under the following conditions:

(A) the regulatory provision is inconsistent with and superseded by a changed statute, and

(B) the adopting agency has no discretion to adopt a change that differs in substance from the one chosen.

In Section 811 the proposed amendments are changes without regulatory effect as they serve only to update the definition of Department from the State Department of Mental Health to the Department of Health Care Services pursuant to AB 102 (Chapter 29, Statutes of 2011), which transferred the State administrative functions and applicable functions for Medi-Cal related mental health services from DMH to the Department, effective July 1, 2012 (see W&I Code Section 14700).

In Sections 865(b) and 865.4(d) & (e) the phrase "California Administrative Code" is changed to "California Code of Regulations because the name of the official compilation and publication of the regulations adopted, amended or repealed by state agencies was changed pursuant to Government Code Section 11344; and Section 3.5, Chapter 1375, Statutes of 1987, AB 2540 in an effort to reduce confusion with the enacted statutory codes.