

## **INITIAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitations (CDCR or the Department) proposes to amend Sections 3341.5, 3375.2 and 3377.1 of the California Code of Regulations, Title 15, Division 3, Subchapter 4, concerning the suspension and reinstatement of Segregated Housing Unit (SHU) terms, emergent medical and psychiatric inmate transfers, and the provisions of a new inmate custody designation for inmates in need of specified medical or mental health care.

The purpose of these proposed revisions is to provide regulatory language which supports the provision of in-patient care to Inmate-Patients (I/Ps) who are otherwise prohibited for placement in a medical/mental health in-patient hospitalization setting due to standardized housing restrictions outlined in current regulations. The Department has determined that the amended sections are necessary to comply with the *Coleman* and *Plata* Court Orders and direction by the Federal Health Care Receiver to ensure I/Ps receive constitutionally mandated medical and mental health care.

Effective October 23, 2009, the Office of Administrative Law approved the Department of Mental Health (DMH) Intermediate Care Facility (ICF) Pilot Program for referring I/Ps who are identified as needing placement in a DMH ICF program. The goal of this statewide pilot program was to arrive at a sustainable CDCR DMH referral process that effectively provides for access to DMH ICF level of care, consistent with I/P, staff, and public safety and security requirements based on custody criteria developed specifically for the DMH ICF placement determination. This DMH ICF Pilot Program lapses by operation of law on October 23, 2011. Since the implementation of this program, approximately 377 referrals have been made to the ICF dormitories of inmates who were not otherwise eligible for such placement. Absent the DMH ICF Pilot Program, these placements would have not been possible due to current regulations. Since CDCR has only one ICF program that has a celled environment in a high security setting, the care of these I/Ps would have been delayed due to a longer waitlist for acceptance into the program.

The CDCR has very specific housing policies based upon current regulations that are designed to ensure safety and security of inmates, staff and the public. Restrictions placed on an inmate due to custody designation require the inmate be under direct and constant supervision, live in a celled environment, prohibit programming when it is dark, or restrict their work assignments to areas within the facility with gun coverage. The close custody restrictions are placed on inmates whose case factors generally pose a risk of public safety through harm to others or risk of escape. An in-patient medical or mental health program may require an inmate to live in a dormitory environment, thereby limiting a close custody inmate's ability to participate. These regulations expand the opportunities for these inmates to participate by allowing a classification committee which includes a mental health clinician or physician to assess an individual's specific case factors and mental health needs to determine whether they can have the celled housing restriction removed for the purpose of provision of care. Other existing security precautions such as programming during daylight hours or restrictions from work assignments or additional security checks would continue to be required to ensure the safety of the staff, inmates and public.

The proposed changes to the regulations will ensure male I/Ps who have custody designations indicating they are a security risk and who require ICF level of care will be housed in the most appropriate DMH ICF program, consistent with safety and security requirements.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons, than the action proposed.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lessen any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

#### **SPECIFIC PURPOSE OF EACH SECTION PER GOVERNMENT CODE 11346.2(b)(1)**

##### **Section 3341.5. Segregated Program Housing Units**

**Section 3341.5 through Subsection 3341.5(b) are unchanged.**

**New Subsection 3341.5(c)(2)(A)3 is adopted** to ensure CDCR has the ability to remand I/Ps back into a secure environment upon completion of provision of any in-patient medical or mental health care for which the SHU term was suspended, if a classification committee determines the inmate continues to pose a security risk to the safety and security of the institution, inmates or staff. This is required to ensure the safety of the inmate, staff, and the public.

**Subsections 3341.5(c)(2)(B) through 3341.5(c)(2)(B)7 remain unchanged.**

**Existing Subsection 3341.5(c)(2)(B)8 has been renumbered to 3341.5(c)(2)(B)10** to accommodate new adopted subsections and for better flow of information within the regulation text.

**New Subsection 3341.5(c)(2)(B)8 is adopted** to establish that an inmate's SHU term may be reimposed if the inmate is placed in the Administrative Segregation Unit (ASU), is found guilty of a serious rule violation, and the Institution Classification Committee (ICC) concludes the inmate poses a threat to the security of the institution. This provision is necessary to ensure that inmates who are an ongoing threat to safety, security, and institution management are returned to SHU housing for placement in the strictest level of control and custody based upon their demonstrated behavior or potential to disrupt facility operations.

**New Subsection 3341.5(c)(2)(B)9 is adopted** to ensure CDCR has the ability to remand I/Ps back into a secure environment upon their return to the institution from medical or mental health facilities. If the inmate's determinate SHU term was suspended based solely on medical necessity and the inmate continues to pose a security risk to the general public or the institution, CDCR must have the ability to reimpose the SHU term. This provision is necessary to ensure that inmates who are an ongoing threat to safety, security, and institution management are returned to SHU housing for placement in

the strictest level of control and custody based upon their demonstrated behavior or potential to disrupt facility operations.

**New Subsection 3341.5(c)(2)(C) is adopted** to require the ICC to record the basis of their decision anytime a SHU term is reimposed, and to clearly articulate the reason the inmate is considered to pose a threat to the safety of others or the institution. This provision is necessary both to ensure documentation of ICC decisions and to provide a clear explanation to the inmate as to the reason the SHU term has been reimposed. Additionally, this information must be recorded so that other classification committees and staff have a complete understanding of any danger an inmate may pose.

This text is also necessary to provide direction to institution staff regarding procedures that must be followed when a SHU term is reimposed.

This subsection incorporates by reference CDC Form 128-G, Classification Chrono (Rev. 10/89). This form is already well established in Title 15 regulations, however for convenience a copy of this form has been made available for public review. The Classification Chrono is a largely blank form used to document any relevant information regarding an inmate's classification status.

**Subsections 3341.5(c)(3) through 3341.5(c)(6) remain unchanged.**

**Subsection 3341.5(c)(7) is amended** to add indeterminate SHU terms to the text, and to add new text which will allow SHU terms to be served in the ASU under specific circumstances. These circumstances include inmates serving a determinate SHU term of less than 120 days or inmates with complex medical or mental health conditions or disability accommodations that cannot be treated or accommodated at a designated SHU facility. It is necessary to allow SHU terms to be served in ASU under these circumstances because it is impractical to transfer an inmate serving a short SHU term to a designated SHU facility. In addition, inmates with multiple-complex medical or mental health needs may be receiving the required level of care where they are housed and the transfer should only be effected if the inmate's health care can be provided for at the SHU facility.

Additionally, new text will allow both determinate and indeterminate SHU terms to be served in secure in-patient medical or mental health settings when determined to be clinically necessary. This provision is necessary to allow the transfer of inmates who are serving SHU terms to medical or mental health facilities when health care staff determine that needed care cannot be provided within the SHU or ASU.

The term "only" is removed from the text for clarity, as some SHU terms may now be served in ASU or medical/mental health settings.

**Subsections 3341.5(c)(8) through 3341.5(c)(10)(B) remain unchanged.**

## **Article 10. Classification**

### **Section 3375.2 Administrative Determinants**

**Subsection 3375.2(a)(6) is amended** to add text authorizing the transfer of inmates serving sentences of life without the possibility of parole to a celled in-patient medical or mental health bed when clinically necessary, pending approval by the Departmental Review Board (DRB). The DRB is the entity authorized to provide final review and resolution of classification issues within the institution, as described in Section 3376.1. This provision is necessary to ensure that inmates serving sentences of life without the possibility of parole have access to adequate levels of care for both medical and mental health conditions.

Additional text requires the DRB to review all cases within 30 days of the transfer of the inmate to the celled in-patient bed. Thirty days was selected as a reasonable timeframe to ensure timely review of all cases in order to avoid delaying the provision of required medical or mental health care.

### **Section 3377.1. Inmate Custody Designations.**

**Subsections 3377.1(a) through 3377.1(c) remain unchanged.**

**New Subsection 3377.1(d) is adopted** to establish a “D” suffix as an identifier that an inmate who otherwise has Close Custody designation may live in a dormitory setting for the purpose of provision of in-patient medical or mental health care.

This subsection establishes that an ICC may affix a “D” suffix to the custody designation of a male inmate who has an existing Close Custody designation as described in Section 3377.2. Inmates designated Close Custody are required to be housed in cells. The purpose of this new custody designation is to allow these inmates to be transferred into a dormitory environment when it is determined to be clinically necessary to provide care that cannot be provided in a celled environment. A mental health clinician or physician shall be present during ICC hearings regarding “D” suffix designations in order to ensure the ICC understands the inmate’s current medical or psychiatric level of care, and to attest to the fact that the provision of care is not otherwise available in a celled environment and, therefore, the adjustment of security precautions is necessary to ensure the provision of care.

These provisions are necessary to ensure I/Ps are able to have access to a constitutionally mandated level of medical and/or mental health care while also safeguarding the security of the institution, staff and inmates.

**New Subsections 3377.1(d)(1), 3377.1(d)(1)(A) and 3377.1(d)(1)(B) are adopted** to make specific the criteria under which a “D” suffix may be affixed to an inmate’s custody designation. The ICC must determine that the inmate can be housed safely in a dormitory environment based on a review of the inmate’s case factors. This provision is necessary to ensure inmates are thoroughly vetted before being placed into a dormitory environment. Some inmates may be too dangerous or assaultive, or have other disqualifying factors such as gang influence, to be housed in a dormitory environment without compromising the safety and security of the institution. The ICC is the institution body with the authority and experience to evaluate an inmate’s case factors and make a determination about suitability for placement into a dormitory.

Subsections 3377.1(d)(1)(A) and 3377.1(d)(1)(B) define the criteria under which an inmate deemed suitable to be housed in a dormitory environment by the ICC may have a “D” suffix affixed to their custody designation. If the I/P requires in-patient mental health treatment and/or placement in a specialized medical bed, and institution health care staff, or Health Care Placement Oversight Program (HC-POP) staff, who have responsibility of population management of medical beds, have determined that required care cannot be provided in a celled environment, the I/P may have the “D” suffix affixed to his custody designation in order to allow a transfer to the designated medical/mental health facility. These provisions are necessary to establish criteria and make specific the process by which a “D” suffix will be affixed to an I/Ps custody designation.

**New Subsection 3377.1(d)(2) is adopted** to establish that inmates given a “D” suffix shall remain subject to the Close Custody security requirements as described in subsections 3377.1(a)(2) and 3377.1(a)(4), which outline restrictions on movement and work assignments and provide for direct and constant supervision to ensure institution and public safety. This provision is necessary to ensure that inmates who have been identified as potentially posing a risk of harm to others or escape continue to be closely supervised.

Close Custody designations are given to inmates who are at risk to escape or pose a threat to the safety and security of other inmates, staff and the institution. This provision makes clear to custody staff that although these inmates are allowed to be housed in a dormitory setting for the provision of medical or mental health care, they continue to require direct and constant supervision

**New Subsections 3377.1(d)(3), 3377.1(d)(3)(A) and 3377.1(d)(3)(B) are adopted** to make specific the situations in which an I/P will have the “D” suffix removed from his custody designation. If health care staff, or HC-POP, have made a determination that in-patient mental health or medical treatment is no longer necessary, or can be provided within a celled environment, the I/P will have his “D” suffix removed and will be moved from dormitory housing. These provisions are necessary to ensure inmates who were allowed special housing considerations for the provision of care are returned to the most appropriate environment consistent with their clinical needs and safety and security concerns.