

FINAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated by reference.

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3351 and 3364 and to adopt new sections 3364.1 and 3364.2 of the California Code of Regulations, Title 15, Division 3, concerning Involuntary Psychiatric Medication.

UPDATES TO THE INITIAL STATEMENT OF REASONS

On July 18, 2014 the Notice of Proposed Regulations (NCR) for Involuntary Psychiatric Medication was published, which began the public comment period. The Department's NCR# 14-07 was mailed the same day, in addition to being posted on the Department's internet and intranet websites. The public hearing was held on September 8, 2014. No individuals provided verbal comments. During the 45-day public comment period, five written comments were received.

A Notice of Change to Text as Originally Adopted (15-Day Renotice), which included revisions to the text and forms, was distributed on November 20, 2014 to all persons whose comments were received during the public comment period and all persons who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found under the heading "*Changes to Proposed Text that was Originally Noticed to the Public.*"

During the 15-day renote comment period, no comments were received.

CDCR FORMS IN THE CALIFORNIA CODE OF REGULATIONS (CCR)

This note explains the Department's justification for incorporating forms by reference rather than printing them in the CCR text itself. The CDCR uses over 1,500 forms, most of which are regulatory. It would be unduly cumbersome, expensive and impractical to print all these forms in the Title 15, therefore the CDCR has always incorporated forms by reference, except in specific circumstances which no longer apply in the case of these regulations.

DOCUMENTS AVAILABLE TO THE PUBLIC

All of the forms relating to this proposed regulation, which were incorporated by reference, were available upon request, and were made available on the CDCR website.

DETERMINATION

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Department's attention that will alter the Department's decision.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT

The Department has determined that this action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

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

The Department has determined that this action imposes no mandates on local agencies or school districts or a mandate which requires reimbursement pursuant to Government Code Sections 17500 - 17630, and no fiscal impact on State or local government, or Federal funding to the State, or private persons.

The Department has determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons.

The Department has determined that the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

CHANGES TO PROPOSED TEXT THAT WAS ORIGINALLY NOTICED TO THE PUBLIC (FIRST 15-DAY RENOTICE):

Subsection 3351(e) is amended to establish the acronym for Penal Code (PC) as the first occurrence throughout the proposed text.

Subsection 3364(a) is amended to delete the phrase, “and shall be provided in ways that are least restrictive of the personal liberty of the inmate.” New language regarding the use of less restrictive alternatives is added under subsection 3364.1(a)(8). These changes are made as a result of public comment.

Subsection 3364(b) is amended to remove the words “provided that” and replace them with the words “as follows.” This change is intended to make the sentence read clearly and correctly.

Subsection 3364(b)(1) is amended to delete the entire portion of text which was originally noticed to the public. New language is added to clarify who should alert custody staff that an order for involuntary medication is being implemented. In addition, the new language provides clarification on the process to be followed in the event that an inmate-patient develops side effects from the medication. This subsection has been scrutinized by the California Department of Corrections and Rehabilitation (CDCR) Mental Health Division as well as California Correctional Healthcare Services, and represents an operational procedure that reflects how their respective management structures would like the two units to work together at the institutional level.

Subsection 3364(b)(3) is amended to delete the reference to “Triage and Treatment Area (TTA)” in response to public comment on portions of this subsection. This subsection has been scrutinized by CDCR Mental Health Division and California Correctional Healthcare Services, and represents an operational procedure that reflects how their respective management structures would like the two units to work together at the institutional level.

Subsection 3364(c) is amended to restore language which refers to the requirement that clinicians record the reason for administration of medication. This is in response to public comment and was reviewed with California Correctional Healthcare Services, including nursing executives, who supported the language to include the reason for administration of medication as good clinical practice. In addition, “medical and mental health executives” is added to replace the named executive titles, as those are

subject to change over time. These changes are made as a result of public comment.

Subsection 3364.1(a)(2) is amended to delete references to “substantial” before the words “physical harm.” This was a drafting error in the text which was originally noticed to the public.

Subsections 3364.1(a)(5)(A), 3364.1(a)(5)(E) and 3364.1(a)(5)(H) related to “informed consent” are amended to delete language in subsections 3364.1(a)(5)(A) and 3364.1(a)(5)(E) which pertains to “an inmate’s rational thought process,” since this language points towards the definition of capacity. Also, deleted from subsection 3364.1(a)(5)(H) was language pertaining to “consistency of choice,” since this language points towards the definition of capacity. These changes are made as a result of public comment.

Subsection 3364.1(a)(5)(I) is adopted to include language to clarify that one component of the definition of “informed consent” is capacity to consent to treatment.

Subsection 3364.1(a)(7) is amended to change the heading from “Incapacity to Refuse Medication” to “Capacity or Lack of Capacity.” In addition, the language has been revised to provide clarification as to the four elements needed for capacity, in response to public comment received. The four elements comprising capacity are taken directly from an American Psychological Association research study, as cited below. That study reports on a project designed to develop reliable and valid information with which to address clinical and policy questions regarding mentally ill persons' abilities to make decisions about psychiatric treatment.

Four legal standards for determining decision-making competence are described in the relied-upon study: 1) the abilities to communicate a choice, 2) understand relevant information, 3) appreciate the nature of the situation and its likely consequences, and 4) rationally manipulate information. Research related to mentally ill persons' capacities regarding these matters is reviewed. Principles underlying the design of the MacArthur Treatment Competence Study are described. The MacArthur Treatment Competence Study I: Mental illness and competence to consent to treatment. *Law and Human Behavior*, 19(2), 105-126. doi:10.1007/BF01499321. Copyright © 1995 by the American Psychological Association. Reproduced with permission. (<http://dx.doi.org/10.1007/BF01499321>). These factors have been recognized in *Riese v. St. Mary's Hospital and Medical Center* (1987) 209 Cal.App.3d 1303 and *In re Conservatorship of Burton* (2009) 170 Cal.App.4th 1016. This study will be incorporated into the proposed regulations as a report relied upon.

Subsection 3364.1(a)(8) is amended to delete the words “is incompetent” and replace with “lacks capacity.” Also deleted is the portion of the sentence that reads, “or lacks the capacity to accept or refuse medication as defined herein.” These changes are made for added clarity. In addition, language was added in response to comments received, to clarify that involuntary medication should be used after less restrictive alternatives have been evaluated and found clinically inappropriate.

Subsection 3364.1(a)(10) is adopted to add language to provide a definition for “elevated chronic risk” in response to public comment which stated that the definitions for “danger to others” and “danger to self,” as defined in subsections 3364.1(a)(2) and (3), should apply only in the event of immediate danger. The Department has determined that the Legislature intended to create a two-track process (emergency and non-emergency petitions) that differs from the precedent stated by the commenter. As such, the Department needs to identify, with as much specificity as possible, the criteria for identifying and

routing a case for immediate intervention (emergency petition), or for more measured intervention (non-emergency petition) which considers the level of risk presented by the patient.

Subsection 3364.1(a)(11) is adopted to add language to provide a definition for “imminent risk” in response to public comment which stated that the definitions for “danger to others” and “danger to self,” as defined in subsections 3364.1(a)(2) and (3), should apply only in the event of immediate danger. The Department has determined that the Legislature intended to create a two-track process (emergency and non-emergency petitions) that differs from the precedent stated by the commenter. As such, the Department needs to identify, with as much specificity as possible, the criteria for identifying and routing a case for immediate intervention (emergency petition), or for more measured intervention (non-emergency petition) which considers the level of risk presented by the patient.

Subsections 3364.2(a) and (b) are amended to update revision dates on forms used by the involuntary medication program. In addition, reference is made to two newly-created forms: Involuntary Medication Notice: ADD-A-PAGE, CDCR MH-7363-B (01/15) and Renewal of Involuntary Medication Notice: ADD-A-PAGE, CDCR MH-7368-B (01/15). These forms are being incorporated by reference into these regulations. This is a clerical change to reflect that these new forms have been created after the proposed regulations were originally published, and were created due to limitations on space on the existing form and the way that PDF forms accept typed input.

Subsection 3364.2(g) is amended to add language to clarify the role of the Office of Administrative Hearings and management of appointed and retained counsel. This language was also added to provide clarification of the role of the appointed ALJ in the involuntary medication hearing process.

Subsection 3364.2(i) is amended to remove the term “Administrative Law Judge” and replace it with “ALJ,” as this acronym has been defined in previous text. Language was added to the day-of-hearing procedures for inmates. The Department is adding language to this subsection based upon input from ALJs and inmate attorneys. This is necessary in order to ensure a uniform practice statewide to have the ALJ deputize a suitable person under oath to interview an inmate for a knowing and intelligent waiver of presence at a hearing.

Subsection 3364.2(j) is amended to remove the portion of language that reads, “where the inmate is located” and replace it with “or facility designated in the petition that has been served on the inmate.” The Department received feedback from ALJs and inmate attorneys indicating that some inmates may have a hearing held at a local community hospital or a county jail, and that the proposed language was too restrictive. Accordingly, the subsection was changed to note that the hearing will be held at the facility noticed in the petition.

Subsection 3364.2(k)(1) is amended to revise language to insert the phrase “medical doctor” which was inadvertently left out of the original text due to a drafting error. The Department received feedback from a variety of sources that inmates may go out to the hospital for any medical reason, and in the event the Department needs to establish the reason for the inmate’s non-appearance at a hearing, a medical internist (as opposed to a mental health specialist) may be best suited to provide that information. Accordingly, the subsection was changed to broaden the type of witness who can attest to the reason for an inmate’s medical absence.

Subsection 3364.2(k)(2) is amended to revise the portion of text which makes reference to use of a “neutral” CDCR employee and replaces it with the use of a “sworn” person, as delegated by the ALJ. In

addition, the word “impartial” is removed. The Department received feedback from ALJs and inmate attorneys that the use of a sworn person was a better practice to use when making an inquiry into an inmate’s competence or taking a knowing or intelligent waiver in regard to attending a hearing.

Subsection 3364.2(l) is adopted to add language directing the ALJ to put testimony on the record from the person who contacted the inmate at their cell regarding any refusal or inability to attend a hearing. This language and procedure was inadvertently omitted from the original draft, but critically important after creating all the other procedural due process protections in order to make a record of what has transpired.

Existing subsection 3364.2(o) is amended to renumber existing text language and to relocate it under 3364.2(q), in order to accommodate the new text language under 3364.2(o) and 3364.2(p).

New subsection 3364.2(o) is adopted to add language addressing the desired protocol for renewal interviews between the patient and the doctor. This subsection is added to address the issue of how and when telepsychiatry (video conference) might be used in the renewal process for involuntary medication. The Department has received feedback from ALJs and inmate attorneys indicating a general disfavor for the use of telepsychiatry to interview a patient, thus this subsection suggests that renewal interviews be conducted in person, but allows for use of telepsychiatry if not feasible to interview in person.

New subsection 3364.2(p) is adopted to add language which includes the creation of new form CDCR MH-7369 (01/15), Penal Code 2602 Reconsideration, which is incorporated by reference into the regulation text. This new form is necessary for use as an inmate’s application for the reconsideration process, under PC 2602(c)(10). In addition, instructions are included on how to process the form, and the timeframe for submittal. This subsection is added in response to a public comment.

PUBLIC HEARING COMMENTS

Public Hearing: September 8, 2014

No verbal comments were received at the public hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

COMMENTER #1

Comment 1: Commenter provides several pieces of information regarding their own individual commitment and sentence calculation circumstances that are unrelated to the proposed regulations. Commenter states their belief that inmates have no say regarding forced medication once they have submitted to it. Commenter suggests that there is a deceptive part to being medicated, as this does not provide the necessary help. Commenter states their belief that the medical process has obstructed their intelligence and right to due process.

Accommodation: None.

Response 1: The proposed regulations deal with establishing appropriate procedural due process procedures to bring inmates to hearing in order to evaluate the necessity for psychiatric medication. Although the commenter alleges specific wrongs tied to involuntary medication, the proposed language

does not have any impact on an inmate's individual release date or sentence calculation, as alleged by the commenter.

COMMENTS #2

Comment 2A: Commenter states their objection to the removal of language from subsection 3364(a) regarding the need to use the “least restrictive alternative.” Commenter is requesting duplication of language that is already set forth in PC Section 2602(c)(8). This language refers to the ALJ finding that the inmate has serious mental illness and that there is no less intrusive alternative to psychiatric medication available. Commenter is also requesting duplication of language already set forth in PC 2602(d) which provides that “if psychiatric medication is administered during an emergency, the medication shall only be that required to treat the emergency condition and shall be administered for only so long as the emergency continues to exist. Previous language found in subsection 3364(a) provided that “if medication used in the treatment of mental disease, disorder or defect is administered in an emergency, such medication shall only be that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the inmate.”

Accommodation: Partial accommodation.

Response 2A: The concept set forth in the former version of section 3364(a) was codified as PC 2602(d). The language appears again under the new subsection 3364.1(a)(8). This is consistent with PC Section 2602(c)(8), which requires a judicial finding in every case that there is no less intrusive alternative to involuntary medication. The language under subsection 3364(a)(8) now references both the “least restrictive” component for emergency situations as well as a component of the judicial finding for each case brought to hearing.

Comment 2B: Commenter states that the proposed regulations are inadequate in providing a way for inmate-patients to exercise their right to file a motion for reconsideration of a determination that he or she may receive involuntary medication.

Accommodation: Partial accommodation.

Response 2B: Inmate-patients may seek reconsideration of their case on form CDCR MH-7369 (01/15), Penal Code 2602 Reconsideration, which is incorporated by reference into the regulations, and developed in conjunction between CDCR and the Office of Administrative Hearings. Language and information regarding this new form has been added in subsection 3364.2(p). Inmate-patients are advised of their right to seek reconsideration at the time they are served with either initial or renewal paperwork via this inmate rights form. There is currently a uniform, statewide process in place for reconsideration.

Comment 2C: Commenter states that the definition of “incapacity to refuse medication” is overbroad.

Accommodation: Partial accommodation.

Response 2C: The definition of capacity or lack of capacity has been modified to track verbatim the four sub-components of legal competency in mental health patients as discussed in Law and Human Behavior, American Psychological Association, Vol. 19, No. 2, 1995, The MacArthur Treatment Competence Study, “Mental Illness and Competence to Consent to Treatment,” which factors have been recognized in *Riese v. St. Mary's Hospital and Medical Center* (1987) 209 Cal.App.3d 1303 and *In re Conservatorship of Burton* (2009) 170 Cal.App.4th 1016.). In addition, the definition of “incapacity to refuse medication” was modified, under subsection 3364.1(a)(7).

COMMENTER #3

Comment 3A: Commenter states their objection to the removal of language from subsection 3364(a), regarding the need to use the “least restrictive alternative.” Commenter objects to removal of language under subsection 3364(a) which requires that emergency medication be provided in ways that are least restrictive to the personal liberty of the inmate. Previous language found in subsection 3364(a) provided that “if medication used in the treatment of mental disease, disorder or defect is administered in an emergency, such medication shall only be that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the inmate.” Commenter also suggests promulgation of guidelines regarding type, dosage, and duration of medication to prevent improper usage of medication for such purposes as discipline, retaliation, coercion, or convenience, and suggests that these guidelines be incorporated into training materials provided to Departmental staff.

Accommodation: Partial accommodation.

Response 3A: Specifically, in regard to language requiring that emergency medication be provided in ways that are least restrictive to the personal liberty of the inmate, that language was codified into PC Section 2602(d). The concept of “least restrictive alternative” appears again under new subsection 3364.1(a)(8). With regard to what the Department should or should not provide in terms of staff training and guidelines, the comment is irrelevant to this regulatory package.

Comment 3B: Commenter states their objection to removal of language requiring maintenance of a separate log, name of the ordering physician and the reason for medication to be recorded in every instance of involuntary medication, and a review by the institution’s Chief Psychiatrist or Chief Medical Officer at least monthly. The language removed from subsection 3364(c) specified that each institution’s Chief Psychiatrist or Chief Medical Officer shall ensure that a log is maintained in which each occasion of involuntary treatment of any inmate is recorded. The log entries identify the inmate by name and number, and include the name of the ordering physician, the reason for medication, and the time/date of the medication. The log shall be reviewed by the institution’s Chief Psychiatrist, or Chief Medical Officer at least monthly. Logs shall be made available for review by the departmental Medical Director upon request.

Accommodation: Partial accommodation.

Response 3B: Language has been restored to subsection 3364(c) which refers to the requirement that clinicians record the reason for administration of medication. For example, the Medication Administration Record identifies the name of the prescribing doctor, the medication, and the time of administration, and pharmacy databases contain prescriber information. The following information is available electronically: name of the inmate, name of the medication, reason for the medication, date and time of administration, the dose, and the place of administration. Edits to this subsection were intended to reduce duplicative tasks and to reflect current practices and the movement toward electronic charting, and as a regular and ongoing practice, nursing and psychiatry management do reviews of these records.

Comment 3C: The definitions for “danger to self” and “danger to others” should follow precedent by specifying “immediate” danger.

Accommodation: None.

Response 3C: The commenter cites precedent from Title 22 for Federal hospitals and State nursing facilities. These are inappropriate for use in a correctional setting. PC Section 2602 provides for both non-emergency as well as emergent petitions, which represents a change in the law starting January 1,

2012. In response to this comment, the Department has added definitions for “elevated chronic risk” and “imminent risk” shown at subsections 3364.1(a)(10) and 3364.1(a)(11).

Comment 3D: Commenter states that the definition of “incapacity to refuse medication” is overbroad.

Accommodation: Partial accommodation.

Response 3D: See Response 2C.

Comment 4A: The commenter is concerned that many due process procedures are being eroded.

Accommodation: None.

Response 4A: Lacking further clarification as to what the areas of concern are, the Department cannot respond to this.

Comment 4B: The commenter expresses concern that the definition of ‘grave disability’ is too broad and unclear.

Accommodation: None.

Response 4B: The Department is adopting definitions that lead to constitutionally-adequate mental health care which equates to timely intervention before an inmate with serious mental illness deteriorates to the point of uncontrollable mania, delusions, paranoia, catatonia, or severe depression. As noted in the documentation “Elements of an Ideal Statutory Scheme” (Stetin and Lamb, February 2014), grave disability is applicable to a seriously mentally ill person with a need-for-treatment if he or she suffers profoundly, even if he or she meets basic survival needs and exhibits no violent or suicidal tendencies. (Id. at pg. 3.) Civil definitions requiring clinicians to wait for imminent disaster or actual florid decompensation are inadequate in a correctional setting.

Comment 4C: The commenter is concerned that psychiatric medications have serious side effects.

Accommodation: None.

Response 4C: PC Section 2602 requires the physician to review and evaluate the risk(s) and benefit(s) of each medication with the patient. The statute already has a requirement to utilize least restrictive alternatives.

Comment 4D: The commenter believes that language from the *Keyhea* injunction should be used and that these regulations will lead to lengthy and costly litigation.

Accommodation: None.

Response 4D: The comment is speculative.

Comment 5A: Commenter states their objection to the removal of language under subsection 3364(a) regarding the need to use the “least restrictive alternative.” Specifically, commenter objects to removal of language stating that emergency medication “shall be provided in ways that are least restrictive of the personal liberty of the inmate” and states a concern that medication could be used as a chemical or physical restraint. Previous language found in subsection 3364(a) provided that “if medication used in the treatment of mental disease, disorder or defect is administered in an emergency, such medication

shall only be that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the inmate.”

Accommodation: Partial accommodation.

Response 5A: See Response 3A.

Comment 5B: Commenter objects to the term “medically-suitable triage area” under subsection 3364(b) as a permissible location for involuntary medication.

Accommodation: Full accommodation.

Response 5B: The reference to “Triage and Treatment Area” was removed during the 15-day renote for modified text. Subsection 3364(b)(1) has been revised to reflect the institutional operating procedures agreed on by CDCR Mental Health Division and the California Correctional Healthcare Services. The term “medically suitable triage area” was removed during the Office of Administrative Law (OAL) review.

Comment 5C: Commenter notes that 3364(b)(3) changes the observation time of an inmate from once per day to twice per day, but commenter thinks that the observation should be even more frequent.

Accommodation: None.

Response 5C: Commenter fails to note the context of the sentence: “if the inmate is not already housed in a Correctional Treatment Center, Acute Psychiatric Program, Intermediate Care Facility,” etc. These settings offer 24-hour nursing care and there is staff available around the clock. The twice-per-day change noted by commenter represents a doubling of what the Department did previously, and this scenario will be infrequent since most inmate-patients are already housed in inpatient units.

Comment 5D: Commenter states their objection to removal of language in subsection 3364(c) requiring the name of the ordering physician and reason for medication to be recorded and logged in every instance of involuntary medication to ensure that medication is not being used for discipline, coercion. In addition, commenter suggests the language may be used to record whether a specific inmate has previously been involuntarily medicated, and as a tool for finding alternative approaches in the event medication is repeatedly not working with a specific inmate, or as a training tool in general. Commenter suggests documentation be maintained to ensure that medication is not used to educate patients about “socially acceptable behavior,” and/or to prevent the disruption of the therapeutic setting.

Accommodation: Partial accommodation.

Response 5D: See Response 3B. In addition, inmate behavior and/or decompensation are documented on physician and/or nursing notes, all recorded in the normal course of business, and also on the CDCR MH-7363 form. Behavior that aligns with PC 2602 criteria will justify the initiation of involuntary medication. The physician and/or nursing notes show the name of the physician, the time and date of initiation, and the factors that support the basis for initiation.

Comment 5E: Commenter alleges that the Department is creating a “mandatory” monitoring of medication levels that amounts to a new chemical restraint in 3364(d).

Accommodation: None.

Response 5E: As written, the proposed regulations state “when deemed necessary and clinically indicated by the treating psychiatrist [. . .].” This subsection was specifically drafted so that it would be applied to clinical factors based upon the inmate’s entire presentation, which may include age, weight, genetics, and other prescribed medications.

Comment 5F: Commenter states that the definitions for “danger to self” and “danger to others” should follow precedent by specifying that the danger must be “immediate” or “imminent,” based on the inmate’s *present behavior* in order to protect the patient from abuses.

Accommodation: None.

Response 5F: See Response 3C.

Comment 5G: Commenter states that the definition for “informed consent” should not contain the phrase which relates to use of a “rational thought process.”

Accommodation: Full accommodation.

Response 5G: Use of the phrase “by means of a rational thought process” has been removed from 3364.1(a)(5)(A) and 3364.1(a)(5)(E). Subsection 3364.1(a)(5)(H) was edited to remove the last 18 words that dealt with capacity. Subsection 3364.1(a)(5)(I) was added to specify that in order to give informed consent, an inmate must have capacity. Subsection 3364.1(a)(7) was re-titled from “Incapacity to Refuse” to a more general topic detailing how to evaluate “Capacity or Lack of Capacity.”

NON-SUBSTANTIVE CHANGES MADE TO PROPOSED REGULATION TEXT DURING OAL REVIEW:

Subsection 3364(b) is amended to remove the phrase “medically-suitable triage area” in response to comment. This change is considered non-substantive because this was newly-proposed text and the Department made a decision not to go forward with it.

Subsection 3364.1(a)(8) is amended to add language taken from PC 2602(d), and adding it to the end of the paragraph under this subsection. This change is considered a non-substantive because it is a restatement of language under PC 2602(d). This additional language duplicates a provision of statute under PC 2602(d), but such duplication is necessary to satisfy the clarity standard of Government Code Section 11349.1(a)(3) and to accommodate several public comments.

Subsection 3364.2(l) is amended to remove the phrase “at the cell” because the proposed regulations also allow for an inmate to be treated at other locations rather than the inmate’s cell, such as a medical setting. This change is considered non-substantive because it provides consistency in the regulation language.

Subsection 3364.2 is amended to renumber subsections following 3364.2(k)(2)(E). This change was done in order to provide for a more logical sequencing of the provisions and for added clarity, and is considered non-substantive for this purpose.

Non-substantive changes are made to each of the six forms that are a part of this proposed regulation package. For consistency and clarity, the word “court” was replaced with “hearing” or “PC 2602.” This change was made in order to clarify that hearings required under PC Section 2602, which are considered administrative hearings, are different than hearings held in a court of law, which are not required by PC

Section 2602. These changes are considered non-substantive because they make the forms consistent with PC Section 2602.

Additional non-substantive changes have been made throughout the text document during the OAL review. These changes to text are made to ensure clarity, consistency, proper grammar, punctuation and renumbering.