

## **INITIAL STATEMENT OF REASONS**

**PROPOSED AMENDMENT OF REGULATION ADOPTED PURSUANT TO AB 651 THAT MADE AMENDMENTS TO CORPORATIONS CODE SECTIONS 5914, 5915, 5916, 5917, 5920, 5921, 5922, 5923 AND ADDED CORPORATIONS CODE SECTION 5926**

### **I. GENERAL PURPOSE OF PROPOSED REGULATION**

The Attorney General has the primary responsibility for supervising charitable trusts in California, for ensuring compliance with trusts and articles of incorporation, and for protection of assets held by charitable trustees and public benefit corporations. (Gov. Code, § 12598.) This primary responsibility to supervise and protect charitable assets includes oversight over nonprofit corporations that operate or control health facilities.

Under Corporations Code section 5914, a nonprofit corporation that operates or controls a health facility must provide written notice to, and obtain the approval of, the Attorney General prior to entering into any agreement or transaction with a for-profit corporation or entity or a mutual benefit corporation or entity to do any of the following: (1) sell, transfer, lease, exchange, option, convey, or otherwise dispose of its assets when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction, or (2) transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation.

Under Corporations Code section 5920, a nonprofit corporation that operates or controls a health facility must provide written notice to, and obtain the approval of, the Attorney General prior to entering into any agreement or transaction with another nonprofit corporation or entity to do any of the following: (1) sell, transfer, lease exchange, option, convey, or otherwise dispose of its assets when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction, or (2) transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation.

AB 651 made amendments to Corporations Code sections 5914, 5915, 5916, 5917, 5920, 5921, 5922, 5923, and added Corporations Code section 5926. The proposed amendments to California Code of Regulations, title 11, section 999.5 incorporate these statutory changes made by AB 651 chaptered on October 14, 2017.

### **II. PROBLEM INTENDED TO ADDRESS**

California Code of Regulations, title 11, section 999.5 implements the process for Attorney General review of certain health facility transactions described in Corporations Code sections 5914 through 5925. The regulation does not include the AB 651 revisions. The proposed amendments are intended to make California Code of Regulations, title 11, section 999.5 consistent with the statutory changes made by AB 651 by restating the AB 651 revisions where applicable.

### **III. ECONOMIC IMPACT ASSESSMENT (EIA)**

Nonprofit health facilities are already subject to the notice and consent requirements set forth in California Code of Regulations, title 11, section 999.5 and Corporations Code sections 5914 through 5926. The proposed amendments should not create any significant increase in the costs already incurred by an applicant.

The proposed amendments are intended to make California Code of Regulations, title 11, section 999.5 consistent with the statutory changes made by AB 651. The AB 651 revisions do not require a regulation to give them legal effect, and the proposed amendments do not further clarify or interpret the AB 651 revisions.

#### Creation or Elimination of Jobs within the State of California

Typically, the nonprofit corporation submitting notice to the Attorney General for consent under Corporations Code sections 5914 through 5926, retains outside counsel and consultants experienced in such transactions to assist with the process. Therefore, the Attorney General has no reason to believe that jobs in California will be eliminated as a result of the proposed amendments. AB 651 requires additional translation services for notices of public meetings, but it is doubtful that these additional translation services will lead to the creation of new translation related jobs.

Regardless, any effect on jobs within the state would be as a result of the AB 651 revisions, and not the proposed amendments to the regulation that simply restate the new statutory revisions where applicable.

#### Creation of New or Elimination of Existing Businesses Within the State of California

Typically, the nonprofit corporation involved will retain outside counsel experienced in such transactions to assist with the process. Therefore, the Attorney General has no reason to believe that new businesses in California will be created or existing businesses eliminated as a result of the proposed amendments.

Regardless, any effect on the creation or elimination of businesses in the state would be as a result of the AB 651 revisions, and not the proposed amendments to the regulation that simply restate the new statutory revisions where applicable.

#### Expansion of Businesses or Elimination of Existing Businesses Within the State of California

Typically, the nonprofit corporation involved will retain outside counsel experienced in such transactions to assist with the process. Therefore, the Attorney General has no reason to believe that existing businesses in California will be expanded or eliminated as a result of the proposed amendments.

Regardless, any effect on the creation or elimination of businesses in the state would be as a result of the AB 651 revisions, and not the proposed amendments to the regulation that simply restate the new statutory revisions where applicable.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment.

The proposed amendments are intended to make California Code of Regulations, title 11, section 999.5 consistent with the statutory changes made by AB 651 by restating the AB 651 revisions where applicable. These regulations will not directly benefit worker safety and the state's environment.

**IV. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS**

The Attorney General did not rely upon any technical, theoretical, or empirical study, report, or other similar documents in proposing these amendments.

**V. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.**

The Attorney General does not believe the proposed amendments will have an adverse impact on small business. The Attorney General has not identified any reasonable alternatives that would lessen any adverse impact on small businesses, and none has been proposed.

**VI. REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

Pursuant to Government Code section 11346.2, subdivision (b)(4)(B), the Attorney General finds that no other reasonable alternatives were presented to, or considered, that would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome.

**VII. MANDATES OR PRESCRIPTIVE STANDARDS**

None.

**VIII. EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS.**

The proposed amendments only impact nonprofit corporations seeking the Attorney General's approval pursuant to Corporations Code sections 5914 and 5920. Therefore, the Attorney General has no reason to believe that there is any significant statewide adverse economic impact directly affecting business.

## **IX. NECESSITY OF PROPOSED REGULATION AMENDMENTS**

### **Subsection (a)**

Subsection (a)(1) – The phrase “regardless of whether it is currently operating or providing health care services or has a suspended license,” is added in between the words “care” and “shall.” The proposed change to the regulation is necessary to make it consistent with the AB 651 revisions to subdivision (a)(1) of Corporations Code sections 5914 and 5920.

Subsection (a)(6) – The phrase “regardless of whether it is currently operating or providing health care services or has a suspended license” is added after the word “care.” The proposed change to the regulation is necessary to make it consistent with the AB 651 revisions to subdivision (d) of Corporations Code sections 5914 and 5920.

### **Subsection (b)**

Subsection (b)(3) – The word “operated” is deleted and the word “located” is added between the word “facility” and “in.” This clarifying change to the definition of “facility that provides similar health care” is necessary because such a facility is subject to the regulation under AB 651 even if it is no longer operating as long as it is located in the state. The change also makes the definition internally consistent with subsection (b)(4) that includes “any facility located in California” as part of the definition of “health facility.”

Subsection (b)(3) – The phrase “regardless of whether it is currently operating or providing health care services or has a suspended license” is added after the number “1250.” This change to the regulation is necessary to make it consistent with the AB 651 revisions to subdivision (a)(1) of Corporations Code sections 5914 and 5920.

Subsection (b)(4) – The phrase “regardless of whether it is currently operating or providing health care services or has a suspended license” is added after the word “Code.” This change to the regulation is necessary to make it consistent with the AB 651 revisions to subdivision (a)(1) of Corporations Code sections 5914 and 5920.

### **Subsection (c)**

Subsection (c)(1) is amended to add: “The Attorney General may require the nonprofit corporation to provide certain components of the notice in any of the primary languages spoken at the health facility or facility that provides similar health care and in any of the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services for the county in which the health facility or facility that provides similar health care is located.” This change to the regulation is necessary to make it consistent with the AB 651 revisions to subdivision (b) of Corporations Code sections 5914 and 5920. This change simply restates the statute. Any discretion exercised under the statute will be done on a case-by-case basis.

Subsection (c)(2) – The letter “d” after the number 5923 is replaced with the letter “g.” This change is being made for purposes of correction. By its terms, the regulation refers to a failure to

provide the Attorney General with sufficient information and data. Subsection (g) of Corporations Code section 5923 refers to whether the Attorney General has been provided sufficient information and data. Whereas subsection (d) of Corporations Code refers to whether the market value has been manipulated by the action the parties. This is not a policy or procedural change.

#### **Subsection (d)**

Multiple Provisions – Delete the word “services” after the phrase “facility that provides similar health care.” This change is made to made for purposes of consistency with subsection (b)(3) that defines the phrase “facility that provides similar health care” and subdivisions (a)(1) of Corporations Code sections 5914 and 5920.

A new subsection (d)(5)(L) is added that states:

“A list of the primary languages spoken at the health facility or facility that provides similar health care and the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services for the county in which the health facility or facility that provides similar health care is located.”

This change to the regulation is necessary to make it consistent with the AB 651 revisions to subdivision (b) of Corporations Code sections 5914 and 5920.

Subsection (d)(6)(A) and (d)(6)(B) – The word “Improvement” is being replaced with the word “Improvements.” This change is being made for purposes of correction.

#### **Subsection (e)**

Subsection (e)(3) – The phrase “or giving a written waiver” is added after the word “decision.” This change to the regulation is necessary to make it consistent with the AB 651 revisions to Corporations Code sections 5916 and 5922. As reflected in its legislative history, the intent of AB 651 is to apply the requirement that the Attorney General conduct one or more public meetings when the Attorney General is giving a written waiver of the review requirements. (Sen. Committee on Health, Review of AB 651 (as amended June 27, 2017), dated July 5, 2017.)

Subsection (e)(3) – The word “facility” is added between the words “health” and “or.” The word “similar” is deleted between the words “or” and “facility. The phrase “that provides similar health care services” is added between the words “facility” and “that.” This change to the regulation is necessary because the regulation does not define “similar facility.” Instead the regulation defines “facility that provides similar health care” in subsection (b)(3) and this change is consistent with several other subsections including, but not limited to, those in subsection (e)(3)(A). This change also corrects any ambiguity created by use of a non-defined term, but it does not substantively change the regulation requirements.

Subsection (e)(3)(A) – Delete the word “services” after the phrase “facility that provides similar health care” in three places. These changes are made for purposes of consistency with

subsection (b)(3) that defines the phrase “facility that provides similar health care” and subdivisions (a)(1) of Corporations Code sections 5914 and 5920.

Subsection (e)(3)(A) is amended to add: “The notice of the time and place of the meeting shall be provided in English and in the primary languages spoken at the health facility or facility that provides similar health care and the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services for the county in which the health facility or facility that provides similar health care is located.” The change to the regulation is necessary to make it consistent with the AB 651 revisions to Corporations Code sections 5916 and 5922.

Subsection (e)(3)(B) – The word “hearings” is replaced with the word “meetings.” This change to the regulation is necessary to make it consistent with the language used in Corporations Code sections 5916 and 5922 that uses the term “meeting”, not “hearing” and is consistent with subsection (e)(3)(A).

### **Subsection (f)**

Multiple Provisions – Delete the word “services” after the phrase “facility that provides similar health care.” This change is made to made for purposes of consistency with subsection (b)(3) that defines the phrase “facility that provides similar health care” and subdivisions (a)(1) of Corporations Code sections 5914 and 5920.

A new subsection (f)(14) is added that states: “In making a determination on whether to consent to any agreement or transaction for which written consent is required by section 999.5(a)(1) of these regulations, the Attorney General shall consider whether the agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility to the affected community.” This change is necessary to make it consistent with the AB 651 revisions to subdivision (j) of Corporations Code sections 5917 and 5923.

### **Subsection (g)**

A new subsection (g)(6) is added that states: “The Attorney General may enforce conditions imposed on the Attorney General’s consent to an agreement or transaction to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies a court deems appropriate for breach of any of the conditions and shall be entitled to recover its attorney’s fees and costs incurred in remedying each violation.” This change is necessary to make it consistent with Corporations Code section 5926, a new provision added by AB 651.

## **Subsection (h)**

Subsection (h)(4) – Delete the word “services” after the phrase “facility that provides similar health care.” This change is made to made for purposes of consistency with subsection (b)(3) that defines the phrase “facility that provides similar health care” and subdivisions (a)(1) of Corporations Code sections 5914 and 5920.

## **Authority and Reference**

Corporations Code section 5926 is added to the reference section. The new statute is restated in subdivision (g)(6) of the regulation.

Corporations Code section 5924(d) is deleted in the reference section because it concerns the Attorney General’s ability to contract with experts and consultants for monitoring ongoing compliance with the terms and conditions of any sale or transfer of assets and reimbursement of actual, reasonable, and direct costs for such monitoring. Whereas, the already cited Corporations Code sections 5918 and 5925 provide the Attorney General’s authority to adopt regulations and Corporations Code sections 5914(b) and 5920(b) provide the Attorney General’s authority to determine what information shall be contacted in the written notice to the Attorney General.