
**PROPOSED AMENDMENTS TO TITLE 11, DIVISION 1,
CHAPTER 15
DEPARTMENT OF JUSTICE
Notice published October 11, 2019**

NOTICE OF PROPOSED RULEMAKING ACTION

Notice is hereby given that the Department of Justice (DOJ) proposes to amend California Code of Regulations, title 11, section 999.5 regarding the Attorney General's review of proposals to transfer health facilities under Corporations Code sections 5914 *et seq.* and 5920 *et seq.*

PUBLIC HEARING

No public hearing has been scheduled for the proposed regulatory action; however, any interested person, or his or her duly authorized representative, may request, no later than 15 days before the close of the written comment period, a public hearing pursuant to Government Code section 11346.8.

WRITTEN COMMENT PERIOD

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on **November 26, 2019** at 5:00 p.m. Only comments received by that time shall be reviewed and considered by DOJ before it amends the regulation. Written comments may be sent to:

Wendi A. Horwitz, Deputy Attorney General
California Department of Justice
Charitable Trusts Section
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Fax: (916) 731-2145
Email: Wendi.Horwitz@doj.ca.gov

AUTHORITY and REFERENCE

Authority: 5914, 5918, 5920, and 5925, Corporations Code

Reference: 5914 - 5926, Corporations Code

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Nonprofit corporations that operate or control a health facility are required to provide written notice to, and obtain the approval of, the Attorney General prior to entering into any agreement or transaction to sell, transfer, lease, exchange, option, convey or otherwise dispose of a material

amount of its assets, or transfer control, responsibility, or governance of a material amount of its assets. (Corp. Code §§ 5914 through 5926.) Corporations Code sections 5914 through 5926 address both procedural and substantive aspects of the review and approval process including the contents of the written notice submitted to the Attorney General, the health care impact statement, public notice and participation in the process, and timing of the Attorney General's decision.

California Code of Regulations, title 11, section 999.5 implements the review and approval process by specifying the requirements of the written notice, the review procedures, the factors to be considered by the Attorney General, and the procedures to enforce compliance with the terms and conditions of the Attorney General's approval.

Effect of the Proposed Rulemaking:

AB 651 made amendments to the review and approval process described in Corporations Code sections 5914, 5915, 5916, 5917, 5920, 5921, 5922, and 5923 and added Corporations Code section 5926. The new law gives discretion to the Attorney General to require certain components of the written notice to be in languages other than English, if applicable. The new law specifies that the approval process applies regardless of whether a health facility is currently operating or providing health care services or has a suspended license. The new law requires the notice of the public meetings be in languages other than English, if applicable. In addition to other factors, the new law requires the Attorney General to consider whether the proposed transaction will significantly affect cultural interests provided by the facility in the affected community. It requires the Attorney General to conduct a public meeting before granting a waiver to the approval requirements and permits the Attorney General to enforce conditional approvals through specific performance, injunction, and other equitable remedies a court deems appropriate, and to recover attorney's fees.

The proposed amendments to California Code of Regulations, title 11, section 999.5 incorporate these statutory changes made by AB 651. In addition, a few of the proposed amendments provide clarification and consistency. One proposed amendment is a correction.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to the proposed regulation.

Policy Statement Overview and Anticipated Benefits of the Proposed Regulation:

The proposed amendments to California Code of Regulations, title 11, section 999.5 incorporate the statutory changes by AB 651 chaptered on October 14, 2017. In addition, a few of the proposed amendments provide clarification and consistency, and one proposed amendment is a correction.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has conducted an evaluation for any regulations relating to this area and has concluded that this is the only regulation dealing with notice to, and approval by, the Attorney General of these agreements and transactions. Therefore, the proposed regulation is not inconsistent or incompatible with existing state regulations.

Forms Incorporated by Reference:

None.

Mandated by Federal Law or Regulations:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

DOJ has made the following initial determinations:

Mandate on Local Agencies and School Districts: None.

Cost to any Local Agency or School District: None.

Cost or Savings to any State Agency: None.

Other Non-Discretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Significant Effect on Housing Costs: None.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including Ability to Compete:

DOJ initially determines that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. DOJ is not aware of any significant cost impacts that a business would necessarily incur in reasonable compliance with the proposed action. Nonprofit health corporations are already subject to the notice and consent requirements set forth with California Code of Regulations, title 11, section 999.5. The proposed amendments should not create any significant increase in the costs incurred by the nonprofit corporation.

Results of the Economic Impact Analysis/Assessment:

Adoption of these regulation amendments will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California;
- (3) Affect the expansion of businesses currently doing business within California; or
- (4) Adversely affect the health and welfare of California residents, worker safety, or the state's environment.

The benefit of the proposed amendments is to avoid confusion by making the regulation consistent with the statutory changes made by AB 651.

Cost Impacts on Representative Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Business Report:

None.

Small Business Determination:

Pursuant to Government Code section 11342.610, subdivision (b)(6), a "small business" does not include an entity organized as a nonprofit corporation. Because the regulation only applies to nonprofit corporations, DOJ has determined that the proposed regulation does not affect small businesses. There is no adverse economic impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DOJ must determine that no reasonable alternative to the proposed regulation that would be more effective in carrying out the purpose for which the action is proposed, would be as effective or less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. DOJ invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Wendi. A. Horwitz, Deputy Attorney General
California Department of Justice
Charitable Trusts Section
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Fax: (916) 731-2145
Email: Wendi.Horwitz@doj.ca.gov

James Toma, Supervising Deputy Attorney General
California Department of Justice
Charitable Trusts Section
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Fax: (916) 731-2145
Email: James.Toma@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. Please direct requests for copies of the proposed text of the regulation, the Initial Statement or Reasons, the modified text of the regulation, or other information upon which the rulemaking is based to the above contact person at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

DOJ will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at California Department of Justice, Charitable Trusts Section, 300 S. Spring Street, Suite 1702, Los Angeles, CA 90013, Fax: (916) 731-2145, and on the DOJ website at <https://oag.ca.gov/charities>.

As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the express terms of the regulation, the Initial Statement of Reasons, any information upon which the proposed rulemaking is based, and an economic impact assessment contained in the Initial Statement of Reasons. Copies may be obtained by contacting the above contact person at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, DOJ may adopt the proposed regulation substantially as described in this notice. If DOJ makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before DOJ adopts the

regulations as revised. Please send requests for copies of any modified regulation to the attention of the person at the address indicated above. DOJ will accept written comments on the modified regulation for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Deputy Attorney General Wendi A. Horwitz at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed on the Attorney General's website at <https://oag.ca.gov/charities>.