

INITIAL STATEMENT OF REASONS

PROPOSED AMENDMENT OF REGULATIONS ADOPTED PURSUANT TO CORPORATIONS CODE SECTIONS 5918 AND 5925

I. GENERAL PURPOSE OF PROPOSED REGULATIONS

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. (Government Code section 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 Attorney General's consent prior to entering into any agreement or transaction to do any of the following: (1) sell, transfer, lease exchange, option, convey, or otherwise dispose of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity 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 to any for-profit corporation or entity or to any mutual benefit corporation or entity. Under Corporations Code section 5920, a nonprofit corporation that operates or controls a health facility must provide written notice to and obtain the Attorney General's consent prior to entering into any agreement or transaction to do any of the following: (1) sell, transfer, lease exchange, option, convey, or otherwise dispose of its assets to another nonprofit corporation or entity 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 to another nonprofit corporation or entity. Under both Corporations Code sections 5914 and 5920, health facilities are required to provide specific information in their notice to assist in the Attorney General's review of the transaction. Based in part on the information supplied in the notice, the Attorney General will evaluate and determine whether to approve a transaction, with or without conditions, or to deny the transaction.

The proposed amendments identify information to be provided by the health facility to allow the Attorney General to make an informed decision whether to consent the proposed transaction. The amendments also make the information related to the proposed transaction more accessible to the public to ensure the public receives adequate notice and has an opportunity to meaningfully participate in the process.

II. PROBLEM INTENDED TO ADDRESS

The proposed amendments are intended to assist the Attorney General in better understanding the potential effects on the communities served by the health facility proposing to be transferred. The proposed amendments are also intended to assure that members of the public are informed about the transaction and the health care services that might be impacted so that the public may participate in the process in a meaningful way. The proposed amendments will ensure that the Attorney General will be provided with sufficient information to allow the Attorney General to

make an informed decision and to increase public access to information regarding the proposed transaction.

III. ECONOMIC IMPACT ASSESSMENT (EIA)

Nonprofit health facilities 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 an applicant. Additionally, fewer than six facilities request consent to transfer a health care facility in a typical year. As a result, the Attorney General has determined that there will be no economic impact.

Pursuant to Corporations Code sections 5914 and 5920, nonprofit health facilities must obtain the Attorney General's approval prior to transferring ownership or control to a for-profit entity. Section 999.5 currently requires the health facility to provide specific information to assist the Attorney General's review of the transaction.

The proposed amendments identify information to be provided by the health facility to allow the Attorney General to make an informed decision whether to consent the proposed transaction. The amendments also make the information related to the proposed transaction more accessible to the public to ensure the public receives adequate notice and has an opportunity to meaningfully participate in the process.

Creation or Elimination of Jobs within the State of California

The regulations are designed to clarify the information that must be included in the health facility's initial notice to the Attorney General and increase public access to information about the transaction. These types of transactions do not occur frequently. In a typical year, the Attorney General receives fewer than six notices. Typically, the health facilities involved will retain outside counsel experienced in such transactions to assist with the process. Therefore, the Attorney General's Office has no reason to believe that jobs in California will be created or eliminated as a result of the proposed amendments.

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

The regulations are designed to clarify the information that must be included in the health facility's initial notice to the Attorney General and increase public access to information about the transaction. The regulation only applies to existing nonprofit health facilities seeking to transfer ownership or control to a for-profit entity. These types of transactions do not occur frequently. In a typical year, the Attorney General receives fewer than six notices. Typically, the health facilities involved will retain outside counsel experienced in such transactions to assist with the process. Therefore, the Attorney General's Office has no reason to believe that new businesses in California will be created or existing businesses eliminated as a result of the proposed amendments.

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

The regulations are designed to clarify the information that must be included in the health facility's initial notice to the Attorney General and increase public access to information about the transaction. These types of transactions do not occur frequently. In a typical year, the Attorney General receives fewer than six notices. Typically, the health facilities involved will retain outside counsel experienced in such transactions to assist with the process. Therefore, the Attorney General's Office has no reason to believe that existing businesses in California will be expanded or eliminated as a result of the proposed amendments.

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 assist the Attorney General in understanding the potential effects on the communities served by the health facility proposing to be transferred. The proposed amendments are also intended to ensure that members of the public are informed about the transaction and the health care services that might be impacted so that the public may participate in the process in a meaningful way.

The additional information will ensure that the Attorney General will be informed of the significant effects of the transfer and will be able to make an informed and fair decision in approving, denying or imposing appropriate conditions on the transfer to protect the public interest. These regulations will not directly benefit worker safety and the state's environment.

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

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

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

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

VI. MANDATES OR PRESCRIPTIVE STANDARDS

Currently, the applicant must provide the transaction notice to the Attorney General on a CD-ROM and make a physical copy available for inspection in a reading room at the applicant's facility. The notice and supporting documentation typically consists of thousands of pages. The proposed amendments require the applicant to post the notice on its website. Because the notice is already in electronic format, this will not impose any significant burden on the applicant, yet it will facilitate and improve public access. The requirement to post information online will also apply to the independent health care impact statement.

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

The proposed amendments only impact nonprofit health facilities seeking the Attorney General's approval to transfer a health facility pursuant to Corporations Code sections 5914 and 5920. In a typical year, this includes fewer than six facilities. Existing law requires the facilities to provide notice to the Attorney General and provide information sufficient to allow the Attorney General to evaluate and decide whether to consent to the proposed transaction. The proposed amendments primarily address the specific information to be provided to the Attorney General. Much of this information is routinely requested during the existing approval process. The Attorney General is not aware of any adverse economic impact which will result by including the information requested.

VIII. PROPOSED REGULATIONS

1. Proposed Amendment 1:

§ 999.5 is amended as follows:

- Subsection (a)(8) – The word “health” is added in between the words “similar care.”
- Subsection (d)(5)(B) - The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (d)(5)(C) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (d)(5)(D) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (d)(5)(E) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (d)(5)(F) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (d)(10) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (d)(11)(A) – The phrase “or facilities that provide similar health care services” is added after “health facilities.”
- Subsection (d)(11)(B) – The phrase “or facilities that provide similar health care services” is added after “health facilities.”

- Subsection (d)(11)(E) – The phrase “or facilities that provide similar health care services” is added after “health facilities.”
- Subsection (e)(3)(A) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (f)(5) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (f)(13) – The phrase “or facility that provides similar health care services” is added after “health facility.”
- Subsection (h)(4) – The phrase “or facility that provides similar health care services” is added after “health facility.”

Specific purpose and rationale:

These changes are being made for purposes of clarification and consistency. By its terms, the regulation applies both to nonprofit health facilities and nonprofit facilities that provide similar health care services, however, the terms are not used consistently in the current regulation. This is not a policy or procedural change.

Enumeration of Benefits:

1. These changes make the regulation internally consistent.
2. These changes remove the potential for confusion about the application of the regulation to a nonprofit health facility that provides similar health care services, as currently defined in the regulation.
3. These changes remove the potential for ambiguity or confusion by making the language consistent throughout the regulation.

2. Proposed Amendment 2:

§ 999.5 is amended as follows:

- Subsection (c)(5) is amended to add: “Within 24 hours of submission to the Attorney General, the applicant shall prominently post this information on its website that is available to the public and any website available to the applicant’s employees. Any changes or additions to the original submission shall be posted by the applicant in the same manner within 24 hours of submission to the Attorney General.”

Specific purpose and rationale:

Currently, applicants are required to provide the notice and supporting documents to the Attorney General in hard copy and on a CD-ROM. Additionally, the applicant must make a hard copy of the notice available to the public in a reading room at its facility. The Attorney General’s Office provides copies of the CD-ROM to the public upon request. The amendment will require the applicant to post the same material currently provided to the Attorney General on CD-ROM on its websites available both to the public and to its employees. This will facilitate public access and awareness of the

proposed transaction so that any person with access to the internet can obtain the information without having to request it from the Attorney General or to physically travel to the facility reading room to review it. Because this information already exists in digital format there should be no additional cost or burden to the applicant in posting this information on its website(s).

Enumeration of Benefits:

1. Increased and improved public access to information about the proposed transaction which will allow greater public participation in the process.
2. Posting notice of changes to the terms of the transaction on the applicant's website increases the likelihood that the public will become aware of such changes and can provide comments to the Attorney General in a timely manner.

3. Proposed Amendment 3:

§ 999.5 is amended as follows:

- Subsection (d)(5)(C) is amended to add "A description of the policies for providing health care services to Medi-Cal patients, together with copies of any written policies, including but not limited to admission policies."

Specific purpose and rationale:

Currently, applicants must provide statistical information regarding Medi-Cal patients served by the health care facility. The proposed amendments require the applicant to provide information describing the applicant's current policies regarding treatment of Medi-Cal patients. This information will allow the Attorney General to determine if the proposed transaction will adversely impact availability of health care services or treatment options for Medi-Cal patients currently being served by the facility.

Enumeration of Benefits:

1. Increased public access to information about the proposed transaction which will allow greater public participation in the Attorney General's review process.
2. The information is important to assist the Attorney General in understanding and evaluating the potential effects of the transaction on the delivery of health care services to Medi-Cal patients in the course of making a determination to either approve or deny the proposed transaction.

4. Proposed Amendment 4:

§ 999.5 is amended as follows:

- Current subsection (d)(5)(G) is renumbered to (d)(5)(H) due to the insertion of a new subsection.
- The word “material” is deleted.
- The words “delivery of” and “to the communities served” are deleted.
- The word “provided” is added.
- The comma after the word “transferred” is deleted and the phrase “ including, but not limited to, any changes in the types or levels of medical services that may be provided at the health facility or facility that provides similar health care services” is added.

Specific purpose and rationale:

Currently, applicants must disclose in the transaction notice to the Attorney General all “material effects” that the transaction will have on the delivery of health care services. Because the language suggests that the applicant may determine what if any effects are “material,” this language has the potential for depriving the Attorney General and the public of information regarding all effects of the proposed transaction. By requiring applicants to disclose all effects of the proposed transaction, the Attorney General, with input from the public, can determine what effects are significant in deciding whether to consent to the transaction and whether such effects necessitate the imposition of conditions as part of approving a transaction.

Expressly requiring applicants to disclose any changes in the types or levels of medical services that will result from the transaction will ensure that both the Attorney General and the public will have an understanding of the consequences to delivery of, and access to health care services if consent is given to the transaction. While this information should be provided under the existing regulations, the addition of this language removes any ambiguity.

Enumeration of Benefits:

1. Increased and improved information to the public about the consequences of the proposed transaction which will allow greater public participation in the Attorney General’s review process.
2. Clarification of the information required to be provided by applicants to the Attorney General to avoid confusion or delay in the notice to, and subsequent review by the Attorney General.
3. Ensuring that the Attorney General has access to information needed to determine whether to consent to a proposed transaction.

5. Proposed Amendment 5:

§ 999.5 is amended as follows:

- Current subsection (d)(5)(H) is renumbered to (d)(5)(K) to allow for the insertion of additional subdivisions.

- The word “significant” is replaced with “potential.”

Specific purpose and rationale:

Currently, applicants in the transaction notice to the Attorney General must include a description of each measure proposed by the applicant to mitigate or eliminate any “significant” adverse effect on the availability or accessibility of health care services to the affected community that may result from the agreement or transaction. Because the language suggests that the applicant may determine which adverse effects are “significant,” this has the potential for depriving the Attorney General and the public of information regarding all effects of the proposed transaction. By requiring applicants to propose mitigation for all potential adverse effects of the proposed transaction, the Attorney General, with input from the public, can determine what mitigation measures are most appropriate to address the adverse effects of the transaction in deciding whether to consent to the transaction or whether to impose conditions on the approval.

Enumeration of Benefits:

1. Increased and improved information to the public about the consequences of the proposed transaction which will allow greater public participation in the Attorney General’s review process.
2. Clarification of the information required to be provided by applicants to the Attorney General to avoid confusion or delay in the notice to, and subsequent review by the Attorney General.
4. Ensuring that the Attorney General has access to information needed to determine whether to consent to the proposed transaction.

6. Proposed Amendment 6:

§ 999.5 is amended as follows:

- A new subsection (d)(5)(G) is added which states:
“A description of all reproductive health services provided in the last five years by each facility that is the subject of the agreement or transaction. This description shall include the types and levels of reproductive services including, but not limited to, information about the number of pregnancy terminations and tubal ligations. This description shall include, but not be limited to, the type and volume of services provided, the payors for the services provided, the demographic characteristics of and zip code data for the patients served by the health facility, the costs and revenues for the services provided, and a description of how this information was compiled.
- A new subsection (d)(5)(I) is added which states:
“A description and copy of all current contracts between the applicant and the city in which the applicant is located and current contracts between the applicant and the county

in which the applicant is located for each health facility or facility that provides similar health care services that is the subject of the agreement or transaction.”

- A new subsection Section (d)(5)(J) is added which states:
“A description of compliance with the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act (Health & Saf. Code, § 129675-130070) for each health facility or facility that provides similar health care that is the subject of the agreement or transaction and a copy of all correspondence between the applicant and the Office of Statewide Health Planning and Development relating to the compliance with this law by the health facility or facility that provides similar health care services.”

Specific purpose and rationale:

Currently, as part of the notice to the Attorney General of a proposed transaction of a health care facility, applicants must submit information about health care services provided by the health care facility that is the subject of the application as well as the effects of the transaction. This amendment requires applicants to disclose specific information regarding reproductive services provided by the health care facility so that the Attorney General may understand the effects of the proposed transaction on the delivery of reproductive services. This information is necessary for the preparation of the independent health care impact statement as well as for the Attorney General to consider in making a decision whether to consent to the proposed transaction.

Additionally, the amendment requires applicants to disclose information about contracts between the applicant and the city and county in which the applicant is located. This information is already routinely requested and considered by the Attorney General and is necessary for the Attorney General to understand the effects of the proposed transaction on the delivery of health care services before making a decision whether to consent to a transaction. Requiring applicants to provide this information in the initial notice to the Attorney General avoids ambiguity and potential delays in obtaining this information and issuing a decision on the proposed transaction.

Finally, the amendment requires applicants to disclose information about the health care facility’s seismic safety. This information is already routinely requested and considered by the Attorney General and is necessary for the Attorney General to understand the effects of the proposed transaction on the delivery of health care services before making a decision whether to consent to a transaction. Requiring applicants to provide this information in the initial notice to the Attorney General avoids ambiguity and potential delays in obtaining this information and issuing a decision on the proposed transaction.

Enumeration of Benefits:

1. Increased and improved information to the public about the consequences of the proposed transaction which will allow greater public participation in the Attorney General’s review process.

2. Clarification of the information required to be provided by applicants to the Attorney General to avoid confusion or delay in the notice to, and subsequent review by the Attorney General.
3. Ensuring that the Attorney General has access to information needed to determine whether to consent to a proposed transaction.

7. Proposed Amendment 7:

§ 999.5 is amended as follows:

- Subsection (d)(9) is amended to include the phrase “the transferee’s governance documents, such as the articles of incorporation and bylaws, and a description of the transferee’s policies, procedures, and eligibility requirements for the provision of charity care.”
- Minor grammatical and punctuation changes are made to the previous language due to the addition.

Specific purpose and rationale:

Currently, as part of the notice to the Attorney General of a proposed transfer of a health care facility, applicants must provide a list of the officers and directors of the transferee and the most recent audited financial statements for the transferee. The amendment clarifies additional information about the transferee which is needed by the Attorney General to properly consider the potential effects of the transaction on the delivery of health care services to the community. This includes the corporation’s governing documents and information related to the provision of charity care. Expressly requiring applicants to disclose this information in the notice to the Attorney General will ensure that both the Attorney General and the public will have an understanding of the consequences to delivery of, and access to health care services if consent is given to the transaction.

Enumeration of Benefits:

1. Increased and improved information to the public about the consequences of the proposed transaction which will allow greater public participation in the Attorney General’s review process.
2. Clarification of the information required to be provided by applicants to the Attorney General to avoid confusion or delay in the notice to, and subsequent review by the Attorney General.
3. Ensuring that the Attorney General has access to information needed to determine whether to consent to a proposed transaction.

8. Proposed Amendment 8:

§ 999.5 is amended as follows:

- Subsection (e)(1) replaces “60” with “90.”
- Subsection (e)(1)(A) deletes the word “substantially.”
- Subsection (e)(2) replaces “60” with “90.”

Specific purpose and rationale:

Currently, the Attorney General must issue a written decision approving or denying the proposed transfer of a health care facility within 60 days of receipt of the notice. The Attorney General may obtain a 45-day extension under certain circumstances. As a result of the complexity of these transactions, as well as the time required to complete the independent health care impact statement, it is not possible for the Attorney General to complete the review within 60 days. The Attorney General routinely seeks a 45-day extension for transactions in which an independent health care impact statement is required. In order to allow sufficient time to obtain the necessary information, the independent health care impact statement, hold a public hearing and obtain comments from the public, it is necessary to extend the time for the Attorney General to issue the decision to 90 days.

The 60-day approval period is codified in Corporations Code sections 5915 and 5921. As a result, the changes to the time for review by the Attorney General cannot take effect until the statutes are amended.

Subsection (e)(1)(A) currently provides that the notice shall be deemed received by the Attorney General when substantially all of the information required by section 999.5(d) has been submitted to the Attorney General. The amendment removes the word “substantially” so that the notice is not deemed received until all of the required information is submitted to the Attorney General. As a result, the Attorney General’s time to consider the application starts running before the Attorney General receives all of the information required by law. This will ensure that the Attorney General receives a complete notice with all the information required by law before the Attorney General’s time to review begins.

Enumeration of Benefits:

1. Additional time will allow greater awareness and involvement by the public in the review of the proposed transaction.
2. Additional time will increase the Attorney General’s ability to properly review the information relevant to the proposed transaction and to carefully consider input from the public before deciding whether to consent to the transaction.

9. Proposed Amendment 9:

§ 999.5 is amended as follows:

- Subsection (e)(3)(A) deletes the comma and adds the word “and” after “affected county” in the first sentence. It replaces the comma with a period after the phrase “to any person

who has requested such notice in writing.” It adds the phrase “At least 14 days prior to the public meeting, the applicant shall provide notice of the time and place of the meeting” prior to the phrase “through publication in a newspaper of general circulation in the affected community” and replaces a period with a comma after the words “affected community.” It further adds the phrase “on the bulletin boards of any health facility or facility that provides similar health care services that is affected by the agreement or transaction, on the website available to the public of any health facility or facility that provides similar health care services that is affected by the agreement or transaction, and the website available to the employees of any health facility or facility that provides similar health care services that is affected by the agreement or transaction.”

- Subsection (e)(3)(D) adds to the end of the section “by the Attorney General. The applicant shall post a copy of the independent health care impact statement on its website available to the public and any website available to the applicant’s employees.”
- Subsection (e)(6)(F) replaces “significant” with “potential.”
- Subsection (e)(7) deletes: “The written comments shall be addressed to the Attorney General, Charitable Trusts Section, 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550, Attn: Hospital Conversion.”

Specific purpose and rationale:

As part of the review process of a proposed transaction, the Attorney General must conduct a public meeting. Currently, under Subsection (e)(3)(A), the Attorney General must post the notice in a local newspaper at least 14 days prior to the meeting. The amendment also requires the applicant to provide notice of the time and place of the meeting, on both the bulletin boards and websites of any health facility that is affected by the transaction. This will increase the likelihood that interested members of the public will receive notice of the public hearing.

Currently, the Attorney General posts the independent health care impact statement on the Attorney General’s website upon receipt from the health care consultant. The amendment requires the applicant to post the independent health care impact statement on the applicant’s website, as well. This will increase and improve timely public access to the independent health care impact statement and will allow greater public participation in the review process.

Currently, the independent health care impact statement must provide an assessment of the effectiveness of any mitigation measures proposed by the applicant to reduce any “significant” potential adverse effect on health care services identified in the impact statement. The amendment requires that the independent health care impact statement provide an assessment of the mitigation measures proposed by the applicant to reduce all potential adverse effects on health care services identified in the impact statement. This will ensure that both the Attorney General and the public understand and address the measures the applicant is proposing to mitigate the adverse effects of the transaction.

Subsection (e)(7) currently lists the Sacramento address of the Attorney General’s office as the designated address to receive comments regarding a proposed transaction.

Currently, the name and contact information of the employee(s) of the Attorney General's Office assigned to a particular transaction are provided to the public, both in the public notices and in other communications related to the transaction. In practice, this results in the comments being directed to the person involved in the review of the proposed transaction. Use of the Sacramento address results in an unnecessary delay in the receipt of the information by the appropriate employee.

Enumeration of Benefits:

1. Posting notice of the public meeting on the website of the affected health care facility increases the likelihood that the public will receive timely notice of the public meeting.
2. Posting the independent health care impact statement on the website of the affected health care facility increases the likelihood that the public will receive timely notice of the public meeting.
3. Review of the mitigation measures proposed for all of the potential adverse effects on health care services resulting from the transfer will increase the likelihood that any adverse effects have been properly considered and mitigated.
4. Removal of the Attorney General's Sacramento address will result in comments being delivered directly to the appropriate employee without unnecessary delay.

10. Proposed Amendment 10:

§ 999.5 is amended as follows:

- Subsection (f)(3)(B) deletes "This requirement shall not apply if the written notice and consent is required by the provisions of Corporations Code section 5920."
- Subsection (f)(8)(A) adds the sentence "The Attorney General will closely scrutinize any agreement or transaction that restricts the type or level of medical services that may be provided at the health facility or facility that provides similar health care services."

Specific purpose and rationale:

Subsection (f) identifies factors to be considered by the Attorney General in reviewing the proposed transfer of a nonprofit health care facility. Subsection (f)(3)(B) requires the Attorney General to consider whether the transaction is at fair market value. The amendment deletes the exemption which purports to exempt transactions that are subject to Corporations Code section 5920. The exemption language is not consistent with Corporations Code section 5923, subdivision (c), which requires the Attorney General to consider the fair market value of the transaction. A regulation which conflicts with a statute is not valid. (Gov. Code, § 11342.2.)

The amendment to subsection (f)(8)(A) reflects the Attorney General's concern about transfers which may result in the reduction of health care services to the community and that transactions will be closely scrutinized to ensure that the community served by the health care facility is adequately protected.

Enumeration of Benefits:

1. Makes the regulation consistent with the related statutory requirements.
2. Formalizes the Attorney General’s intention to closely scrutinize transfers of health facilities which have the potential to reduce health care services to the community served by the facility.

11. Proposed Amendment 11:

§ 999.5 is amended as follows:

- Current subsection (i) is renumbered (j).
- A new subsection (i) is inserted which states:

“Enforcement of Conditions

The Attorney General reserves the right to enforce all conditions imposed on the Attorney General’s approval of an agreement or transaction. The Attorney General further reserves the right to require the transferee to fulfill all representations made during the application process, including those regarding types or levels of medical services. If, subsequent to the issuance of the Attorney General’s decision, the Attorney General receives information indicating that (a) the parties to the transaction or agreement made material misrepresentations to the Attorney General’s Office, (b) a change in circumstances has occurred that could not have reasonably been foreseen at the time of the Attorney General’s action, or (c) the parties to the transaction or agreement have violated the conditions set forth in the Attorney General’s decision, the Attorney General may amend the conditions or add new conditions to address the circumstances set forth in subsections (a) through (c) above. Nothing in this subdivision precludes the Attorney General from pursuing any other available legal remedies.”

Specific purpose and rationale:

In deciding whether to consent to the transfer of a nonprofit health care facility, the Attorney General necessarily relies on the information, representations and documents provided by the applicant. Typically, the Attorney General will place specific conditions on the consent to transfer a facility. The amendment codifies the Attorney General’s existing authority to enforce all such conditions. Further, the Attorney General may require the parties to fulfill the representations they made to the Attorney General to obtain consent to the transaction. This regulation codifies the Attorney General’s authority to enforce the terms of these agreements. This is not a change in policy or procedure.

Currently, the Attorney General may only amend conditions when one of the parties makes a request to the Attorney General as a result of a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General’s decision. (Cal. Code Regs., tit.11, § 999.5, subd. (h).) This amendment provides that the Attorney General has the right to amend the existing conditions or impose new conditions on the

transaction if the parties made material misrepresentations to the Attorney General to obtain consent to the transaction, have violated the conditions imposed on the transaction, or if there is a change in circumstances that that could not have reasonably been foreseen at the time of the Attorney General's action.

Enumeration of Benefits:

1. Clarification of the Attorney General's ability to enforce conditions imposed on a transaction.
2. Clarification of the Attorney General's authority to hold parties to the representations made to obtain consent to a transaction.
3. Authorizing the Attorney General to amend conditions or impose new conditions when necessary to protect the public interest.

IX. REGULATIONS MANDATED BY FEDERAL LAW

There are no corresponding federal regulations.