

Memorandum 2018-54

California Public Records Act Clean-Up: Part 5. Specific Types of Public Records (Chapter 5)

As directed by the Legislature, the Commission¹ is preparing a nonsubstantive recodification of the California Public Records Act (“CPRA”).² For purposes of a tentative recommendation, the Commission has decided to recodify the CPRA in a new division (Division 10) in Title 1 of the Government Code. That division would be split into six parts (Parts 1-6), as detailed in the Commission’s tentative outline.³ This memorandum presents a staff draft of Chapter 5 of Part 5, which would be entitled “Health Care.”

The attached draft incorporates legislation enacted in 2018, as detailed within the draft. Most of the new legislation will not officially become law until January 1, 2019. That is immaterial for the Commission’s purposes, because the Commission’s proposed recodification will not be ready for introduction in the Legislature until 2020.

Staff Notes in the attached draft provide some background information and raise a few issues for consideration. **Commissioners and other interested persons should review the attached draft and determine whether any revisions are needed.** Comments on any aspect of the draft would be helpful.⁴

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Gov’t Code §§ 6250-6276.48.

3. The current version of the tentative outline is attached to Memorandum 2018-23. For the most recent cumulative draft of material tentatively approved by the Commission, see Memorandum 2018-53.

4. Written comments can be in any form. They should be directed to bgaal@clrc.ca.gov. Comments may also be made orally at the Commission’s upcoming meeting, which will be open to the public. The agenda is available at http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

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DRAFT LEGISLATION

1 **Staff Note.** This is a work in progress. The material shown below may be changed. For the
2 current tentative outline of proposed Division 10 of Title 1 of the Government Code, see
3 Memorandum 2018-23.

4 A draft of an official Commission “Comment” follows each proposed code section in the
5 proposed recodification. Such Comments will be included in any final recommendation. The
6 Comments indicate the source of each recodified code section (or provision within the code section)
7 and describe how the recodified code section (or provision) compares with prior law. Courts have
8 routinely held that the Commission’s Comments are evidence of legislative intent with regard to
9 any legislation that implements a Commission recommendation.

10 There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular
11 form, the disposition of every provision of the existing code that has been included in this proposed
12 recodification.

13 There is also a “derivation table” at the end of the proposed recodification. It summarizes, in
14 tabular form, the statutory derivation of every new code provision in this proposed recodification.

15 Some provisions in this draft are followed by a “Staff Note.” Most of the Staff Notes are intended
16 to be temporary and will not be part of the Commission’s final recommendation. In general, the
17 Staff Notes serve to flag issues requiring special attention or treatment.

18 Some provisions in this draft contain a bracketed reference to one or more existing code sections.
19 As new Division 10 is drafted, these references will be conformed to the new numbering scheme.

20 In some places, it is necessary to refer to a section that has not yet been drafted. That is done by
21 referring to “Section 79xx.xxx.” The Commission will fill in these references as it drafts the
22 proposed recodification.

23 All of the proposed provisions would be located in the Government Code. All references are to
24 the Government Code unless otherwise indicated.

25 The Commission welcomes public comment on any issue relating to the content of this draft or
26 any other aspect of its ongoing CPRA Clean-Up study. Comments should be directed to Barbara
27 Gaal (bgaal@clrc.ca.gov).

28 **Gov’t Code §§ 7920.000-79xx.xxx (added). California Public Records Act**

29 SEC. _____. Division 10 (commencing with Section 7920.000) is added to Title 1
30 of the Government Code, to read:

31 **DIVISION 10. ACCESS TO PUBLIC RECORDS**

32

1 **§ 7926.205. Specified records of health plan licensed under Knox-Keene Act and governed**
2 **by board of supervisors**

3 7926.205. (a) Nothing in this division or any other provision of law requires
4 disclosure of records of a health plan that is licensed pursuant to the Knox-Keene
5 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
6 of Division 2 of the Health and Safety Code) and that is governed by a county board
7 of supervisors, whether paper records, records maintained in the management
8 information system, or records in any other form, that relate to provider rate or
9 payment determinations, allocation or distribution methodologies for provider
10 payments, formulae or calculations for these payments, and contract negotiations
11 with providers of health care for alternative rates for a period of three years after the
12 contract is fully executed.

13 (b) Transmission of the records described in subdivision (a), or the information
14 contained therein in an alternative form, to the board of supervisors is not a waiver
15 of exemption from disclosure. The records and information once transmitted to the
16 board of supervisors remain subject to the exemption described in subdivision (a).

17 (c)(1) This section does not prevent the Joint Legislative Audit Committee from
18 accessing any records in the exercise of its powers pursuant to Article 1
19 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2.

20 (2) This section does not prevent the Department of Managed Health Care from
21 accessing any records in the exercise of its powers pursuant to Article 1
22 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and
23 Safety Code.

24 **Comment.** Subdivision (a) of Section 7926.205 continues the first sentence of former Section
25 6254.22 without substantive change.

26 Subdivision (b) continues the second sentence of former Section 6254.22 without substantive
27 change.

28 Subdivision (c) continues the third and fourth sentences of former Section 6254.22 without
29 substantive change.

30 **§ 7926.210. Records of municipal hospital or local hospital district that relate to contract**
31 **with insurer or nonprofit hospital service plan for alternative rates**

32 7926.210. (a) Except as provided in subdivision (b) or Sections [6254.13],
33 7924.510, and 7924.700, this division does not require disclosure of any records of
34 a local hospital district, formed pursuant to Division 23 (commencing with Section
35 32000) of the Health and Safety Code, or a municipal hospital, formed pursuant to
36 Article 7 (commencing with Section 37600) or Article 8 (commencing with Section
37 37650) of Chapter 5 of Part 2 of Division 3 of Title 4, that relate to a contract with
38 an insurer or a nonprofit hospital service plan for inpatient or outpatient services for
39 alternative rates pursuant to Section 10133 of the Insurance Code.

40 (b) A record described in subdivision (a) shall be open to inspection within one
41 year after the contract is fully executed.

42 **Comment.** Section 7926.210 continues former Section 6254(t) without substantive change.

1 **§ 7926.215. Records relating to contracts for health care services for Department of**
2 **Corrections and Rehabilitation**

3 7926.215. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700,
4 this division does not require disclosure of records of the Department of Corrections
5 and Rehabilitation that relate to health care services contract negotiations, and that
6 reveal the deliberative processes, discussions, communications, or any other portion
7 of the negotiations, including, but not limited to, records related to those
8 negotiations such as meeting minutes, research, work product, theories, or strategy
9 of the department, or its staff, or members of the California Medical Assistance
10 Commission, or its staff, who act in consultation with, or on behalf of, the
11 department.

12 (b)(1) Except for the portion that contains the rates of payment, a contract for
13 health services entered into by the Department of Corrections and Rehabilitation or
14 the California Medical Assistance Commission on or after July 1, 1993, shall be
15 open to inspection one year after it is fully executed.

16 (2) If a contract for health services was entered into before July 1, 1993, and
17 amended on or after July 1, 1993, the amendment, except for any portion containing
18 rates of payment, shall be open to inspection one year after it is fully executed.

19 (c) Three years after a contract or amendment is open to inspection under this
20 section, the portion of the contract or amendment containing the rates of payment
21 shall be open to inspection.

22 (d)(1) Notwithstanding any other provision of law, including, but not limited to,
23 Section 1060 of the Evidence Code, the entire contract or amendment shall be open
24 to inspection by the California State Auditor’s Office, the Joint Legislative Audit
25 Committee, and the Legislative Analyst’s Office.

26 (2) The California State Auditor’s Office, the Joint Legislative Audit Committee,
27 and the Legislative Analyst’s Office shall maintain the confidentiality of each
28 contract or amendment until the contract or amendment is fully open to inspection
29 by the public.

30 (e) It is the intent of the Legislature that the confidentiality of health care provider
31 contracts, and of the contracting process as provided in this section, shall protect the
32 competitive nature of the negotiation process, and shall not affect public access to
33 other information relating to the delivery of health care services.

34 **Comment.** Subdivision (a) of Section 7926.215 continues former Section 6254.14(a)(1) without
35 substantive change.

36 Subdivision (b) continues former Section 6254.14(a)(2) without substantive change.

37 Subdivision (c) continues former Section 6254.14(a)(3) without substantive change.

38 Subdivision (d) continues former Section 6254.14(a)(4) without substantive change.

39 Subdivision (e) continues former Section 6254.14(a)(5) without substantive change.

40 **§ 7926.220. Specified records of state agency relating to selective provider contracts, county**
41 **health systems, or Geographic Managed Care Pilot Project**

42 7926.220. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700,
43 this division does not require disclosure of records of a state agency related to

1 activities governed by Article 2.6 (commencing with Section 14081), Article 2.8
2 (commencing with Section 14087.5), or Article 2.91 (commencing with Section
3 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code,
4 that reveal the special negotiator’s deliberative processes, discussions,
5 communications, or any other portion of the negotiations with providers of health
6 care services, impressions, opinions, recommendations, meeting minutes, research,
7 work product, theories, or strategy, or that provide instruction, advice, or training to
8 employees.

9 (b)(1) Except for the portion containing the rates of payment, a contract for
10 inpatient services entered into pursuant to one of these articles, on or after April 1,
11 1984, shall be open to inspection one year after it is fully executed.

12 (2) If a contract for inpatient services was entered into before April 1, 1984, and
13 amended on or after April 1, 1984, the amendment, except for any portion
14 containing the rates of payment, shall be open to inspection one year after it is fully
15 executed.

16 (3) If the California Medical Assistance Commission enters into a contract with a
17 health care provider for other than inpatient hospital services, the contract shall be
18 open to inspection one year after it is fully executed.

19 (c) Three years after a contract or amendment is open to inspection under this
20 section, the portion of the contract or amendment containing the rates of payment
21 shall be open to inspection.

22 (d)(1) Notwithstanding any other law, the entire contract or amendment shall be
23 open to inspection by the California State Auditor’s Office, the Joint Legislative
24 Audit Committee, and the Legislative Analyst’s Office.

25 (2) The California State Auditor’s Office, the Joint Legislative Audit Committee,
26 and the Legislative Analyst’s Office shall maintain the confidentiality of each
27 contract or amendment until the contract or amendment is fully open to inspection
28 by the public.

29 **Comment.** Subdivision (a) of Section 7926.220 continues former Section 6254(q)(1) without
30 substantive change.

31 Subdivision (b) continues former Section 6254(q)(2) without substantive change.

32 Subdivision (c) continues former Section 6254(q)(3) without substantive change.

33 Subdivision (d) continues former Section 6254(q)(4) without substantive change. Subdivision
34 (d) also continues former Section 6254.14(b) to the extent it applied to former Section 6254(q).

35 See Section 7920.535 (“state agency”).

36 **Staff Note.** Existing Section 6254(a)(1) refers to “[r]ecords of state agencies related to activities
37 governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section
38 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9
39 of the Welfare and Institutions Code” (Emphasis added.) The specified articles are entitled
40 “Selective Provider Contracts” (Article 2.6), “County Health Systems” (Article 2.8), and
41 “Geographic Managed Care Pilot Project” (Article 2.91).

42 The wording of Section 6254(q)(1) is potentially confusing; it could create the impression that
43 a record must relate to activities governed by *all three* of the specified articles to fall within the
44 scope of the exemption. Such a requirement seems illogical; it cannot be what the Legislature
45 intended. To prevent such confusion, proposed Section 7926.220 would refer to “records of a state
46 agency related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8

(commencing with Section 14087.5), or Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code” (Emphasis added.)

Comments on this approach would be helpful.

§ 7926.225. Specified records of Managed Risk Medical Insurance Board and State Department of Health Care Services

7926.225. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700, this division does not require disclosure of records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services that relate to activities governed by former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:

(1) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.

(2) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.

(b)(1) Except for the portion that contains the rates of payment, a contract entered into pursuant to former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991, shall be open to inspection one year after its effective date.

(2) If a contract was entered into before July 1, 1991, and amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(c) Three years after a contract or amendment is open to inspection pursuant to this section, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d)(1) Notwithstanding any other law, the entire contract or amendment to a contract shall be open to inspection by the California State Auditor’s Office, the Joint Legislative Audit Committee, and the Legislative Analyst’s Office.

(2) The California State Auditor’s Office, the Joint Legislative Audit Committee, and the Legislative Analyst’s Office shall maintain the confidentiality of each

1 contract or amendment until the contract or amendment is open to inspection
2 pursuant to subdivision (c).

3 **Comment.** Subdivision (a) of Section 7926.225 continues former Section 6254(v)(1) without
4 substantive change.

5 Subdivision (b) continues former Section 6254(v)(2) without substantive change.

6 Subdivision (c) continues former Section 6254(v)(3) without substantive change.

7 Subdivision (d) continues former Section 6254(v)(4) without substantive change. Subdivision
8 (d) also continues former Section 6254.14(b) to the extent it applied to former Section 6254(v).

9 **Staff Note.** The text shown above incorporates revisions to Section 6254(v) made by 2018 Cal.
10 Stat. ch. 960, § 1 (AB 748 (Ting)). Those revisions corrected the cross-references to Parts 6.3 and
11 6.5 of Division 2 of the Insurance Code, which have been repealed.

12 The staff had previously pointed out that such corrections were needed, and the Commission had
13 decided to include them in its proposed recodification. See Memorandum 2017-50, pp. 4-7;
14 Minutes (Dec. 2017), p. 7. Because the corrections were made by AB 748 (Ting), it will not be
15 necessary for the Commission to mention them in the list of corrected cross-references at the end
16 of its proposed recodification.

17 **§ 7926.230. Additional records of Managed Risk Medical Insurance Board and State**
18 **Department of Health Care Services**

19 7926.230. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700,
20 this division does not require disclosure of records of the Managed Risk Medical
21 Insurance Board and the State Department of Health Care Services related to
22 activities governed by Part 6.2 (commencing with Section 12693) or former Part 6.4
23 (commencing with Section 12699.50) of Division 2 of the Insurance Code or
24 Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850)
25 of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal
26 any of the following:

27 (1) The deliberative processes, discussions, communications, or any other portion
28 of the negotiations with entities contracting or seeking to contract with the board or
29 the department, entities with which the board or department is considering a
30 contract, or entities with which the board or department is considering or enters into
31 any other arrangement under which the board or department provides, receives, or
32 arranges services or reimbursement.

33 (2) The impressions, opinions, recommendations, meeting minutes, research,
34 work product, theories, or strategy of the board or its staff, or the department or its
35 staff, or records that provide instructions, advice, or training to employees.

36 (b)(1) Except for the portion that contains the rates of payment, a contract entered
37 into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4
38 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or
39 after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3
40 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and
41 Institutions Code shall be open to inspection one year after its effective date.

42 (2) If a contract entered into pursuant to Part 6.2 (commencing with Section
43 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the
44 Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing

1 with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code,
2 is amended, the amendment shall be open to inspection one year after the effective
3 date of the amendment.

4 (c) Three years after a contract or amendment is open to inspection pursuant to
5 this section, the portion of the contract or amendment containing the rates of
6 payment shall be open to inspection.

7 (d)(1) Notwithstanding any other law, the entire contract or amendments to a
8 contract shall be open to inspection by the California State Auditor’s Office, the
9 Joint Legislative Audit Committee, and the Legislative Analyst’s Office.

10 (2) The California State Auditor’s Office, the Joint Legislative Audit Committee,
11 and the Legislative Analyst’s Office shall maintain the confidentiality of each
12 contract or amendment until the contract or amendment is open to inspection
13 pursuant to subdivision (b) or (c).

14 (e) The exemption from disclosure provided pursuant to this section for the
15 contracts, deliberative processes, discussions, communications, negotiations,
16 impressions, opinions, recommendations, meeting minutes, research, work product,
17 theories, or strategy of the board or its staff, or the department or its staff, shall also
18 apply to the contracts, deliberative processes, discussions, communications,
19 negotiations, impressions, opinions, recommendations, meeting minutes, research,
20 work product, theories, or strategy of applicants pursuant to former Part 6.4
21 (commencing with Section 12699.50) of Division 2 of the Insurance Code or
22 Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare
23 and Institutions Code.

24 **Comment.** Subdivision (a) of Section 7926.230 continues former Section 6254(y)(1) without
25 substantive change.

26 Subdivision (b) continues former Section 6254(y)(2) without substantive change.

27 Subdivision (c) continues former Section 6254(y)(3) without substantive change.

28 Subdivision (d) continues former Section 6254(y)(4) without substantive change. Subdivision
29 (d) also continues former Section 6254.14(b) to the extent it applied to former Section 6254(y).

30 Subdivision (e) continues former Section 6254(y)(5) without substantive change. The cross-
31 reference to “Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code”
32 has been updated to reflect the repeal of Part 6.4. See 2014 Cal. Stat. ch. 31, § 37 (former Ins. Code
33 § 12699.64), a sunset provision that operated on Jan. 1, 2016.

34 **Staff Notes.**

35 (1) The text shown above incorporates revisions to Section 6254(y)(1)-(2) made by 2018 Cal.
36 Stat. ch. 960, § 1 (AB 748 (Ting)). Those revisions corrected cross-references to Part 6.4 of
37 Division 2 of the Insurance Code, which has been repealed.

38 The staff had previously pointed out that such corrections were needed, and the Commission had
39 decided to include them in its proposed recodification. See Memorandum 2017-50, pp. 4-7;
40 Minutes (Dec. 2017), p. 7. Because the corrections were made by AB 748 (Ting), it will not be
41 necessary for the Commission to mention them in the list of corrected cross-references at the end
42 of its proposed recodification.

43 (2) Existing Section 6254(y)(5) also cross-refers to Part 6.4 of Division 2 of the Insurance Code,
44 but AB 748 (Ting) did not correct that cross-reference. As the Commission previously directed, the
45 staff made the correction in the provision that would continue existing Section 6254(y)(5)
46 (proposed Section 7926.230(e)). The accompanying Comment explains this revision. The staff will

1 also add it to the list of corrected cross-references at the end of the Commission's proposed
2 recodification.

3 **§ 7926.235. Records of Managed Risk Medical Insurance Board relating to Small Employer**
4 **Health Insurance**

5 7926.235. (a) Except as provided in Sections [6254.13], 7924.510, and 7924.700,
6 this division does not require disclosure of records of the Managed Risk Medical
7 Insurance Board that relate to activities governed by Chapter 8 (commencing with
8 Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the
9 deliberative processes, discussions, communications, or any other portion of the
10 negotiations with health plans, or the impressions, opinions, recommendations,
11 meeting minutes, research, work product, theories, or strategy of the board or its
12 staff, or records that provide instructions, advice, or training to employees.

13 (b) Except for the portion that contains the rates of payment, a contract for health
14 coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of
15 Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open
16 to inspection one year after it has been fully executed.

17 (c)(1) Notwithstanding any other law, the entire contract or amendment to a
18 contract shall be open to inspection by the Joint Legislative Audit Committee.

19 (2) The committee shall maintain the confidentiality of each contract or
20 amendment until the contract or amendment is open to inspection pursuant to
21 subdivision (b).

22 **Comment.** Subdivision (a) of Section 7926.235 continues former Section 6254(w)(1) without
23 substantive change.

24 Subdivision (b) continues former Section 6254(w)(2) without substantive change.

25 Subdivision (c) continues former Section 6254(w)(3) without substantive change.

26 **Article 4. In-Home Supportive Services and Personal Care Services**

27 **§ 7926.300. Information regarding persons paid by state to provide in-home supportive**
28 **services or personal care services**

29 7926.300. (a) Notwithstanding any other provision of this division, information
30 regarding persons paid by the state to provide in-home supportive services pursuant
31 to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9
32 of the Welfare and Institutions Code or personal care services pursuant to Section
33 14132.95, 14132.952, 14132.956, or 14132.97 of the Welfare and Institutions Code,
34 is not subject to public disclosure pursuant to this division, except as provided in
35 subdivision (b).

36 (b) Copies of names, addresses, home telephone numbers, personal cellular
37 telephone numbers, and personal email addresses of persons described in
38 subdivision (a) shall be made available, upon request, to an exclusive bargaining
39 agent and to any labor organization seeking representation rights pursuant to
40 subdivision (c) of Section 12301.6, or Section 12302.5, of the Welfare and
41 Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4 of

1 Title 1. This information shall not be used by the receiving entity for any purpose
2 other than the employee organizing, representation, and assistance activities of the
3 labor organization.

4 (c) This section applies solely to individuals who provide services under the In-
5 Home Supportive Services Program (Article 7 (commencing with Section 12300)
6 of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) or the
7 Personal Care Services Program pursuant to Section 14132.95 of the Welfare and
8 Institutions Code, the In-Home Supportive Services Plus Option Program pursuant
9 to Section 14132.952 of the Welfare and Institutions Code, the Community First
10 Choice Option Program pursuant to Section 14132.956 of the Welfare and
11 Institutions Code, or the Waiver Personal Care Services Program pursuant to
12 Section 14132.97 of the Welfare and Institutions Code.

13 (d) This section does not alter the rights of parties under the Meyers-Milias-Brown
14 Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor
15 relations law.

16 **Comment.** Section 7926.300 continues former Section 6253.2 without substantive change. An
17 erroneous cross-reference to Section 12302.25 (instead of Section 12302.5) of the Welfare and
18 Institutions Code has been corrected.

19 See Section 7920.515 (“person”).

20 **Staff Note.** Proposed Section 7926.300 incorporates revisions to subdivisions (a), (c), and (d)
21 of existing Section 6253.2 that were made by 2018 Cal. Stat. ch. 35, § 4 (AB 1811 (Committee on
22 Budget)), an urgency measure.

23 Proposed Section 7926.300 also incorporates a cross-reference correction (replacement of
24 “12302.25” with “12302.5”) that was made by 2018 Cal. Stat. ch. 92, § 87 (SB 1289 (Committee
25 on Judiciary) (maintenance of the codes)). That cross-reference correction will not go into effect
26 because it is subordinate to the revisions made by AB 1811. See 2018 Cal. Stat. ch. 92, § 246
27 (subordination clause); Gov’t Code § 9605 (bill conflict rules).

28 Although SB 1289’s cross-reference correction will not become law, the correction should still
29 be made. Proposed Section 7926.300 would accomplish as much.

30 Unless the Commission otherwise directs, the staff will add this correction to the list of
31 corrected cross-references at the end of the Commission’s proposed recodification. If the correction
32 is successfully made by another bill before the Commission’s proposal is introduced, we will adjust
33 the Commission’s proposal accordingly.

34 Article 5. Reproductive Health Services Facility

35 § 7926.400. Definitions

36 7926.400. For purposes of this article, the following terms have the following
37 meanings:

38 (a) “Contractor” means an individual or entity that contracts with a reproductive
39 health services facility for services related to patient care.

40 (b) “Personal information” means any of the following information related to an
41 individual that is maintained by a public agency:

42 (1) Social security number.

43 (2) Physical description.

- 1 (3) Home address.
- 2 (4) Home telephone number.
- 3 (5) Statements of personal worth or personal financial data filed pursuant to
- 4 Section 7925.005.
- 5 (6) Personal medical history.
- 6 (7) Employment history.
- 7 (8) Electronic mail address.
- 8 (9) Information that reveals any electronic network location or identity.
- 9 (c) “Public agency” means all of the following:
- 10 (1) The Department of Consumer Affairs.
- 11 (2) The Department of Managed Health Care.
- 12 (3) The State Department of Health Care Services.
- 13 (4) The State Department of Public Health.
- 14 (d) “Reproductive health services facility” means the office of a licensed
- 15 physician and surgeon whose specialty is family practice, obstetrics, or gynecology,
- 16 or a licensed clinic, where at least 50 percent of the patients of the physician or the
- 17 clinic are provided with family planning or abortion services.
- 18 **Comment.** Subdivision (a) of Section 7926.400 continues former Section 6254.18(b)(1) without
- 19 substantive change.
- 20 Subdivision (b) continues former Section 6254.18(b)(2) without substantive change.
- 21 Subdivision (c) continues former Section 6254.18(b)(3) without substantive change. For another
- 22 definition of “public agency,” see Section 7920.520(a).
- 23 Subdivision (d) continues former Section 6254.18(b)(4) without substantive change.

24 **Staff Notes.**

25 (1) The definitions of “contractor,” “personal information,” “public agency,” and “reproductive

26 health services facility” in existing Section 6254.18 apply only for purposes of that section. In

27 recodifying those definitions, the Commission needs to decide whether to keep them in close

28 proximity to the substantive material to which they pertain, or place them in “Chapter 2.

29 Definitions.”

30 Three of the four definitions — “contractor,” “public agency,” and “reproductive health services

31 facility” — are geared specifically to the context of reproductive health services. It seems unlikely

32 that they would be used elsewhere in the CPRA in the future. There may not be much to gain from

33 placing them in “Chapter 2. Definitions.” It is probably better to keep them in close proximity to

34 the pertinent substantive material, where they are readily accessible to readers. Proposed Section

35 7926.400 follows that approach.

36 Section 6254.18’s definition of “personal information” is more generic than the other three

37 definitions. It is conceivable that the Legislature might want to use the same definition elsewhere

38 in the CPRA in the future. Nonetheless, proposed Section 7926.400 includes that definition. In the

39 staff’s estimation, the potential benefits of keeping the definition in close proximity to the pertinent

40 substantive material still outweigh the potential benefits of placing it in “Chapter 2. Definitions.”

41 **Is the Commission comfortable with the proposed treatment of the four definitions in**

42 **existing Section 6254.18? Would it be helpful to include a “signpost” provision in “Chapter**

43 **2. Definitions,” alerting readers to the definition of “personal information” in proposed**

44 **Section 7926.400? Comments on these drafting issues would be helpful.**

45 (2) In addition to Section 6254.18’s special definition of “public agency,” the CPRA includes

46 another definition of “public agency,” which applies to the entire CPRA. See existing Section

47 6252(d).

1 That broadly applicable definition of “public agency” would be recodified in subdivision (a) of
2 proposed Section 7920.520. As previously directed by the Commission, subdivision (b) of that
3 section would be a “signpost” provision, alerting readers to the special definition of “public agency”
4 in proposed Section 7926.400. See page 8 of the cumulative draft attached to Memorandum 2018-
5 53.

6 **Is the Commission still satisfied with that approach, now that we have drafted a provision**
7 **that would continue Section 6254.18’s special definition of “public agency”?** The staff thinks
8 the signpost provision might be useful, given the two different definitions of “public agency” in the
9 CPRA.

10 **§ 7926.405. Personal information regarding employees or specified other persons associated**
11 **with reproductive health services facility**

12 7926.405. Nothing in this division requires disclosure of any personal information
13 received, collected, or compiled by a public agency regarding the employees,
14 volunteers, board members, owners, partners, officers, or contractors of a
15 reproductive health services facility who have notified the public agency pursuant
16 to Section 7926.415 if the personal information is contained in a document that
17 relates to the facility.

18 **Comment.** Section 7926.405 continues former Section 6254.18(a) without substantive change.

19 See Section 7926.400 (defining “contractor,” “personal information,” “public agency,” and
20 “reproductive health services facility”). See also Sections 7926.410 (proceeding for access to
21 employment history information), 7926.415 (notification requirement for individual), 7926.420
22 (duration of privacy protections), 7926.425 (notice of separation), and 7926.430 (disclosure of data
23 regarding age, race, ethnicity, national origin, or gender, without individually identifiable
24 information).

25 **§ 7926.410. Proceeding for access to employment history information**

26 7926.410. (a) Any person may institute proceedings for injunctive or declarative
27 relief or writ of mandate in any court of competent jurisdiction to obtain access to
28 employment history information pursuant to Part 4 (commencing with Section
29 7923.000).

30 (b) If the court finds, based on the facts of a particular case, that the public interest
31 served by disclosure of employment history information clearly outweighs the
32 public interest served by not disclosing the information, the court shall order the
33 officer or person charged with withholding the information to disclose employment
34 history information or show cause why that officer or person should not do so
35 pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4.

36 **Comment.** Section 7926.410 continues former Section 6254.18(c) without substantive change.

37 See Section 7920.515 (“person”).

38 **§ 7926.415. Notification requirement for individual**

39 7926.415. (a) In order for this article to apply to an individual who is an employee,
40 volunteer, board member, officer, or contractor of a reproductive health services
41 facility, the individual shall notify the public agency to which the individual’s
42 personal information is being submitted or has been submitted that the individual
43 falls within the application of this article.

1 (b) Notification pursuant to subdivision (a) is valid if it complies with all of the
2 following:

3 (1) It is on the official letterhead of the facility.

4 (2) It is clearly separate from any other language present on the same page and is
5 executed by a signature that serves no other purpose than to execute the notification.

6 (3) It is signed and dated by both of the following:

7 (A) The individual whose information is being submitted.

8 (B) The executive officer of the reproductive health services facility or designee
9 of the executive officer.

10 (c) A reproductive health services facility shall retain a copy of all notifications
11 submitted pursuant to this article.

12 **Comment.** Subdivision (a) of Section 7926.415 continues the first sentence of former Section
13 6254.18(d) without substantive change.

14 Subdivision (b) continues the third sentence of former Section 6254.18(d) without substantive
15 change.

16 Subdivision (c) continues the second sentence of former Section 6254.18(d) without substantive
17 change.

18 See Section 7926.400 (defining “contractor,” “personal information,” “public agency,” and
19 “reproductive health services facility”). See also Sections 7926.420 (duration of privacy
20 protections) and 7926.425 (notice of separation).

21 **§ 7926.420. Duration of privacy protections**

22 7926.420. The privacy protections for personal information authorized pursuant
23 to this article are effective from the time of notification pursuant to Section
24 7926.415 until either one of the following occurs:

25 (a) Six months after the date of separation from a reproductive health services
26 facility for an individual who has served for not more than one year as an employee,
27 contractor, volunteer, board member, or officer of the reproductive health services
28 facility.

29 (b) One year after the date of separation from a reproductive health services
30 facility for an individual who has served for more than one year as an employee,
31 contractor, volunteer, board member, or officer of the reproductive health services
32 facility.

33 **Comment.** Section 7926.420 continues former Section 6254.18(e) without substantive change.

34 See Section 7926.400 (defining “contractor,” “personal information,” and “reproductive health
35 services facility”). See also Sections 7926.405 (personal information regarding employees or
36 specified other persons associated with reproductive health services facility), 7926.410 (proceeding
37 for access to employment history information), 7926.425 (notice of separation), and 7926.430
38 (disclosure of data regarding age, race, ethnicity, national origin, or gender, without individually
39 identifiable information).

40 **§ 7926.425. Notice of separation**

41 7926.425. Within 90 days of separation of an employee, contractor, volunteer,
42 board member, or officer of the reproductive health services facility who has
43 provided notice to a public agency pursuant to Section 7926.415, the facility shall
44 provide notice of the separation to the relevant agency or agencies.

1 **Comment.** Section 7926.425 continues former Section 6254.18(f) without substantive change.
2 An erroneous cross-reference to former Section 6254.18(c) (instead of former Section 6254.18(d))
3 has been corrected.

4 See Section 7926.400 (defining “contractor,” “public agency,” and “reproductive health services
5 facility”). See also Section 7926.420 (duration of privacy protections).

6 **Staff Note.** Existing Section 6254.18(f) says: “Within 90 days of separation of an employee,
7 contractor, volunteer, board member, or officer of the reproductive health services facility who has
8 *provided notice to a public agency pursuant to subdivision (c)*, the facility shall provide notice of
9 the separation to the relevant agency or agencies.” (Emphasis added.) The notification requirement
10 is currently located in subdivision (d), not in subdivision (c).

11 As noted in the Comment, proposed Section 7926.425 would correct this erroneous cross-
12 reference. Unless the Commission otherwise directs, the staff will add this correction to the list of
13 corrected cross-references at the end of the Commission’s proposed recodification.

14 **§ 7926.430. Disclosure of data regarding age, race, ethnicity, national origin, or gender,**
15 **without individually identifiable information**

16 7926.430. Nothing in this article prevents a government agency from disclosing
17 data regarding the age, race, ethnicity, national origin, or gender of individuals
18 whose personal information is protected pursuant to this article, so long as the data
19 contains no individually identifiable information.

20 **Comment.** Section 7926.430 continues former Section 6254.18(g) without substantive change.
21 See Section 7926.400 (defining “personal information”).

22 Article 6. Web Sites and Related Matters

23 **§ 7926.500. Implementation of CPRA by health care district**

24 7926.500. In implementing this division, each health care district shall maintain
25 an Internet Web site in accordance with subdivision (b) of Section 32139 of the
26 Health and Safety Code.

27 **Comment.** Section 7926.500 continues former Section 6270.7 without substantive change.

28 **Staff Note.** Section 6270.7 was just added to the codes by 2018 Cal. Stat. ch. 257, § 1 (AB 2019
29 (Aguiar-Curry)). Because it is new, it is not included in the Commission’s tentative outline (see
30 Memorandum 2018-23).

31 **The substance of Section 6270.7 seems to fit best in this chapter entitled “Health Care.” If**
32 **anyone thinks it should go elsewhere, please notify the Commission.**

DISPOSITION OF FORMER LAW

Note. This table shows the proposed disposition of the following provisions of the California Public Records Act (Gov't Code §§ 6250-6276.48). Unless otherwise indicated, all statutory references are to the Government Code.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
6253.2	7926.300	6254.14(a)(2)	7926.215(b)
6254(q)(1)	7926.220(a)	6254.14(a)(3)	7926.215(c)
6254(q)(2)	7926.220(b)	6254.14(a)(4)	7926.215(d)
6254(q)(3)	7926.220(c)	6254.14(a)(5)	7926.215(e)
6254(q)(4)	7926.220(d)	6254.14(b)	7926.220(d), 7926.225(d), 7926.230(d)
6254(s)	7926.000	6254.18(a)	7926.405
6254(t)	7926.210	6254.18(b)(1)	7926.400(a)
6254(v)(1)	7926.225(a)	6254.18(b)(2)	7926.400(b)
6254(v)(2)	7926.225(b)	6254.18(b)(3)	7926.400(c)
6254(v)(3)	7926.225(c)	6254.18(b)(4)	7926.400(d)
6254(v)(4)	7926.225(d)	6254.18(c)	7926.410
6254(w)(1)	7926.235(a)	6254.18(d) 1st sent	7926.415(a)
6254(w)(2)	7926.235(b)	6254.18(d) 2d sent	7926.415(c)
6254(w)(3)	7926.235(c)	6254.18(d) 3d sent	7926.415(b)
6254(y)(1)	7926.230(a)	6254.18(e)	7926.420
6254(y)(2)	7926.230(b)	6254.18(f)	7926.425
6254(y)(3)	7926.230(c)	6254.18(g)	7926.430
6254(y)(4)	7926.230(d)	6254.22 1st sent	7926.205(a)
6254(y)(5)	7926.230(e)	6254.22 2d sent	7926.205(b)
6254(ac)	7926.100	6254.22 3d & 4th sent	7926.205(c)
6254 last ¶ (unlabeled)	7926.200	6270.7	7926.500
6254.14(a)(1)	7926.215(a)		

DERIVATION OF NEW LAW

Note. This table shows the derivation of each proposed provision in this draft. Unless otherwise indicated, all statutory references are to the Government Code.

Proposed Provision	Existing Provision(s)	Proposed Provision	Existing Provision(s)
7926.000	6254(s)	7926.230(b)	6254(y)(2)
7926.100	6254(ac)	7926.230(c)	6254(y)(3)
7926.200	6254 last ¶ (unlabeled)	7926.230(d)	6254(y)(4),
7926.205(a)	6254.22 1st sent6254.14(b)(re 6254(y))	
7926.205(b)	6254.22 2d sent	7926.230(e)	6254(y)(5)
7926.205(c)	6254.22 3d & 4th sent	7926.235(a)	6254(w)(1)
7926.210	6254(t)	7926.235(b)	6254(w)(2)
7926.215(a)	6254.14(a)(1)	7926.235(c)	6254(w)(3)
7926.215(b)	6254.14(a)(2)	7926.300	6253.2
7926.215(c)	6254.14(a)(3)	7926.400(a)	6254.18(b)(1)
7926.215(d)	6254.14(a)(4)	7926.400(b)	6254.18(b)(2)
7926.215(e)	6254.14(a)(5)	7926.400(c)	6254.18(b)(3)
7926.220(a)	6254(q)(1)	7926.400(d)	6254.18(b)(4)
7926.220(b)	6254(q)(2)	7926.405	6254.18(a)
7926.220(c)	6254(q)(3)	7926.410	6254.18(c)
7926.220(d)	6254(q)(4),	7926.415(a)	6254.18(d) 1st sent
.....6254.14(b) (re 6254(q))		7926.415(b)	6254.18(d) 3d sent
7926.225(a)	6254(v)(1)	7926.415(c)	6254.18(d) 2d sent
7926.225(b)	6254(v)(2)	7926.420	6254.18(e)
7926.225(c)	6254(v)(3)	7926.425	6254.18(f)
7926.225(d)	6254(v)(4),	7926.430	6254.18(g)
.....6254.14(b) (re 6254(v))		7926.500	6270.7
7926.230(a)	6254(y)(1)		