

1 these regulations to essentially replace three chapters of the Program Guide. *See, e.g.*, ECF No.
2 8217-7 at 2.³ Plaintiffs contend defendants must notify the court of the proposed regulatory
3 changes. ECF No. 8217 at 11–12. Defendants disagree, citing the disputed paragraph in this
4 court’s February 2022 Order. *Id.* at 16.

5 A short review of the history behind the Program Guide and the now-discontinued update
6 process will explain the court’s decision below. The court gave final approval to most provisions
7 of the Program Guide in 2006. Mar. 3, 2006 Order at 2, ECF No. 1773. It ordered defendants “to
8 immediately implement” those provisions, including the three chapters defendants now propose
9 to replace. *Compare* ECF Nos. 1753-7, 1753-8, 1753-9 *with* ECF No. 7333-1 at 126-167.
10 Several years later, in late 2017, the court directed the parties to file “a current consolidated
11 Program Guide incorporating all modifications required by court orders” since March 2006 “for
12 ease of reference and to ensure the parties and the court all agree on the contents of the Program
13 Guide.” Dec. 15, 2017 Order at 2, ECF No. 5750. The court described the task as
14 “administrative,” one that “should not invoke relitigation of any question previously decided.”
15 *Id.* In the years that followed, the court emphasized similarly that the time to “materially alter”
16 the Program Guide had long passed. July 9, 2019 Order at 14, ECF No. 6214 (quoting
17 Oct. 10, 2017 Order at 17–18, ECF No. 5710). Periodic modifications and updates, though
18 “essential,” would not “work substantive changes to the approved remedy in this case.” *Id.* at 15.
19 Any change effecting “a material or substantive alteration to the approved remedy” would require
20 the court’s approval. *Id.* As the Supreme Court has said, “persons subject to an injunctive order
21 issued by a court with jurisdiction are expected to obey that decree until it is modified or
22 reversed, even if they have proper grounds to object to the order.” *Id.* (quoting *Celotex Corp. v.*
23 *Edwards*, 514 U.S. 300, 306 (1995)).

24 This court’s decision to discontinue the requirement that annual updates be filed with the
25 court came about following an attempt to formalize that process. *See* Aug. 3, 2020 Order at

³ In this order citations to page numbers in documents filed in the Court’s Electronic Case Filing (ECF) system are to the page numbers assigned by ECF and located in the upper right hand corner of each page.

1 15-18, ECF No. 6806. In August 2020, the court provisionally approved a detailed updating
2 process, which included a method for resolving disputes about whether a proposed change
3 “would if adopted, be a material modification of the court-approved remedy in this action.” *Id.* at
4 16. The court directed the parties to follow the updating process for one year and later file “a
5 joint submission . . . on the efficacy of [that] process.” *Id.* at 18. Separately, the court reiterated
6 its previous instruction that defendants should not “rely solely on state law to take unilateral
7 action that undermines” the remedies in this action. *Id.* at 10 (quoting Apr. 24, 2020 Order at 7,
8 ECF No. 6639).

9 The parties eventually filed a joint submission and annual update. ECF Nos. 7332, 7333.
10 The court approved the update in the order the parties now ask the court to clarify. *See*
11 Feb. 7, 2022 Order at 3, ECF No. 7456. By late 2021, it was unclear to the court whether the
12 parties had ever followed the provisionally approved update process, but in any event, the court
13 noted it had become “apparent some time ago the process was unworkable.” *Id.* at 1 (citing
14 Reporter’s Transcript of Proceedings at 13:19-22, ECF No. 7345). The court also had
15 provisionally approved “a list of CQIT key indicators,” i.e., the “continuous quality improvement
16 tool,” which, “once finalized, defendants will use as part of a process to self-monitor the key
17 components of the remedy in this action.” *Id.* at 2 (alterations omitted) (quoting ECF No. 6846 at
18 10). The court found that “[m]aintaining the focus on these indicators” would be most efficient,
19 *id.* at 3, and it anticipated the approved “CQIT indicators will replace the need for annual updates
20 to the Program Guide and the Compendium,” *id.* at 4. The court therefore confirmed the limited
21 test period for the updating process had ended and therefore also any requirement that the parties
22 file annual updates to the Program Guide and the Compendium. *Id.*

23 About six months later, in the summer of 2023, defendants’ counsel notified the Special
24 Master and plaintiffs’ counsel that CDCR had undertaken a project to change state regulations
25 and policy for RHUs. ECF No. 8217-1 at 2. Defense counsel wrote that CDCR had begun this
26 project “in response to the Governor’s veto of AB2632,” *id.*, a state legislative bill that, among
27 other things, would have imposed limits on “segregated confinement” in prisons, jails, and other
28 facilities within California, *see* Legislative Counsel’s Digest, 2021–2022 Cal. Assem. Bill No.

1 2632 (Feb. 18, 2022). The legislation defined “segregated confinement” as “the confinement of
2 an individual, in a cell or similarly confined holding or living space, alone or with other
3 individuals, with severely restricted activity, movement, or minimal or no contact with persons
4 other than correctional staff for more than 17 hours per day.” *Id.* According to the governor’s
5 veto message, he was returning the bill without his signature because it “would categorically
6 prohibit the placement of large portions of the incarcerated population in segregated housing—
7 even if such a placement is to protect the safety of all incarcerated individuals in the institution.”
8 Statement of Gov. Gavin Newsom on AB 2632 (Sept. 29, 2022).⁴ The governor nevertheless
9 wrote that he was directing CDCR “to develop regulations that would restrict the use of
10 segregated confinement except in limited situations, such as where the individual has been found
11 to have engaged in violence in the prison.” *Id.*

12 Defense counsel informed the Special Master and plaintiffs’ counsel that new regulations
13 would “result in changes to several components of the Coleman Compendium,” and counsel
14 summarized those changes, including some related to Enhanced Outpatient Program (EOP)
15 patients. *Id.* at 4–5. The parties and the Special Master then discussed the proposed RHU
16 regulations and policy. *See* Appendices 2 through 14 to Joint Response to April 2, 2024 Order,
17 ECF Nos. 8217 to 8217-14. As part of that discussion, defendants made clear their intention is
18 for the RHU regulations and policies to essentially replace three chapters of the Program Guide
19 and several parts of the Compendium. ECF No. 8217-7 at 2.

20 The court and parties discussed the proposed RHU regulations and policy and defendants’
21 reporting obligations at a status conference on March 28, 2024. *See* Reporter’s Transcript of
22 Proceedings at 18:8-20:4, ECF No. 8193. The court directed the parties to “take all steps
23 necessary to file a joint motion for clarification of the February 7, 2022 order setting forth their
24 respective positions, accompanied by a stipulation of counsel setting forth their agreements with
25 respect to the substantive provisions of the RHU regulations.” ECF No. 8181 at 7. The parties
26 filed a timely response. ECF No. 8217. They report they “are in general agreement with the

⁴ <https://www.gov.ca.gov/wp-content/uploads/2022/09/AB-2632-VETO.pdf?emrc=ccbc61> (visited May 13, 2024)

1 overwhelming majority of substantive provisions of the RHU regulations and policies.” *Id.* at 3.
2 They describe three remaining disputes. The first and the only dispute the court resolves in this
3 order is whether defendants must “inform the Court of the changes being made to the Program
4 Guide remedy by implementing their new RHU Policies and Regulations.” *Id.* at 5. With the
5 relevant case history and this court’s previous orders in mind, the answer is straightforward and
6 has two parts.

7 First, the court has discontinued the parties’ obligations to file annual updates to the
8 Program Guide and Compendium. The court also relieved defendants of their obligation to notify
9 the court of administrative updates to these two remedial plans. And so, to the extent defendants
10 would previously have been required to include administrative changes related to the RHU
11 regulations and policy in an annual update to the Program Guide or Compendium, the court
12 clarifies defendants have been and continue to be relieved of that obligation.

13 But second, nothing in this court’s February 2022 order relieves defendants of their
14 longstanding obligation to “immediately implement” the Program Guide, Mar. 3, 2006 Order at 2,
15 ECF No. 1773, and to comply with the Program Guide “until it is modified or reversed,” *Celotex*,
16 514 U.S. at 306. The parties’ joint request for clarification reveals they dispute whether the new
17 RHU regulations conflict with defendants’ court-ordered obligations. *See* ECF No. 8217 at
18 10-16, 18-21. If the new RHU regulations would substantively or materially conflict with
19 defendants’ obligations under Chapters 7, 8, and 9 of the Program Guide, defendants could move
20 to modify the Program Guide and this court’s previous orders to eliminate the conflict. By the
21 same token, if the new state regulations will conflict with this court’s remedial orders, plaintiffs
22 could move to compel compliance with this court’s previous orders notwithstanding the new state
23 laws or regulations. If a new regulation does not conflict, materially or substantively, with
24 defendants’ obligations under the Program Guide and Compendium, then presumably no party
25 would need to seek modification or compelled compliance with this court’s remedial orders,
26 which remain fully enforceable. In other words, if the parties have an actual dispute, it must be
27 resolved in the context of either a motion to modify or enforce this court’s previous orders.

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1 For these reasons, IT IS HEREBY ORDERED that any motion to modify or enforce the
2 court's previous orders in connection with the disputed RHU regulations and policies must be
3 filed within fourteen days from the date of this order. Any motion filed in accordance with this
4 order will be briefed under the provisions of Local Rule 230 and submitted for decision upon the
5 completion of that briefing without oral argument. Alternatively or in addition to any such
6 motion, the parties may file a stipulated request to modify this court's previous orders to the
7 extent a modification is necessary to conform those orders to specific RHU regulations and
8 policies. Unless or until the court grants such a motion or approves a stipulation, the court's
9 previous orders and the Program Guide and the Compendium remain in full force and effect.
10 DATED: May 16, 2024.



CHIEF UNITED STATES DISTRICT JUDGE