



# California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**DEPARTMENT OF HEALTH CARE SERVICES**

**NOTICE OF GENERAL PUBLIC INTEREST**

**THE DEPARTMENT OF HEALTH CARE SERVICES TO IMPLEMENT A PROVIDER PAYMENT REDUCTION AND ADJUSTMENT UP TO 10 PERCENT FOR LONG-TERM CARE PROVIDERS**

This notice provides information of public interest about proposed payment reductions that may be implemented for Medi-Cal Long-Term Care providers.

The California Department of Health Care Services (DHCS) will implement the payment reductions only to the extent authorized in Assembly Bill 97 (Chapter 3, Statutes of 2011) which added sections 14105.07 and 14105.192, and amends section 14126.033 to the Welfare and Institutions Code. That section provides for a provider payment reduction up to 10 percent for various services, effective for dates of service on or after June 1, 2011. Sections 14105.07, 14105.192, and 14126.033 authorizes DHCS to implement payment reductions set forth in these statutes only if it determines that such reductions will comply with applicable federal law, including 42 United States Code section 1396a(a)(30)(A), and that federal financial participation will be available. Moreover, the statutes also provide that DHCS may not implement any reduction authorized by these statutes, until it obtains federal approval.

When implemented, the reductions pursuant to sections 14105.07, 14105.192, and 14126.033 (which would become effective on June 1, 2011) would replace the current five percent provider payment reductions that were effective beginning March 1, 2009, pursuant to Welfare and Institutions Code section 14105.191, for certain Long-Term Care providers. The reduction will apply to the reimbursement rates applicable for these providers, except freestanding skilled nursing facilities and freestanding adult subacute care facilities, in the 2008-09 rate year, as described in subdivision (f) of Section 14105.191. The reduction for freestanding skilled nursing facilities and freestanding adult subacute care facilities will apply to the final reimbursement rates applicable in the 2010-11 rate year.

Thus, in this public notice, DHCS is announcing the possibility of payment reductions for Long-Term Care providers of up to 10 percent. DHCS intends to submit a State Plan amendment to the federal Centers for Medicare & Medicaid Services (CMS), on or before June 30,

2011, incorporating the reductions it intends to implement.

DHCS is evaluating the impact of the specific payment reductions to determine whether they will comply with applicable federal Medicaid law, including section 1396a(a)(30)(A) of Title 42 of the United States Code. DHCS will consider public comments submitted in response to this notice as part of its evaluation, which will be presented to the Director of DHCS.

To the extent that the Director determines that a payment reduction authorized by sections 14105.07, 14105.192, and 14126.033 does not comply with the federal Medicaid requirements or that federal financial participation is not available with respect to that reduction, the Director has the discretion to not implement that particular reduction, as well as the discretion to implement a different payment reduction. For example, if the Director determines that a 10 percent payment reduction for some Long-Term Care providers does not comply with federal requirements, but that a 5 percent payment reduction does, the Director has discretion under sections 14105.07, 14105.192, and 14126.033 to implement only a 5 percent payment reduction for those providers.

Although any payment reduction pursuant to sections 14105.07, 14105.192, and 14126.033 will be effective for services rendered on or after June 1, 2011, application of the reductions will not occur until sometime after June 2011 when CMS approves a state plan amendment for the reductions.

The five percent payment reductions that are currently being implemented in accordance with Welfare and Institutions Code section 14105.191 are intended to continue until CMS approves a different payment reduction authorized by sections 14105.07, 14105.192, and 14126.033. At that time, DHCS will recover any overpayments made to Medi-Cal providers, for services rendered on and after June 1, 2011, which is the effective date of the reduction.

In accordance with its authority under sections 14105.07, 14105.192, and 14126.033, the payment reductions would reduce the state General Fund expenditures by approximately \$253.6 million annually.

Payment reductions implemented pursuant to sections 14105.07, 14105.192, and 14126.033 would apply to Long-Term Care providers that are authorized to bill for the services, including, but not limited to, the following providers:

- Freestanding skilled nursing facilities
- Freestanding adult subacute care nursing facilities

- Intermediate care facilities, as defined in Section 51118 of Title 22 of the California Code of Regulations
- Intermediate care facilities for the developmentally disabled (ICF--DD), including ICF/DD — Nursing and ICF/DD--Habilitative facilities
- Skilled nursing facilities that are distinct parts of general acute care hospitals
- Rural swing-bed facilities
- Subacute care units that are, or are parts of, distinct parts of general acute care hospitals
- Pediatric subacute care units that are, or are parts of, distinct parts of general acute care hospitals
- Freestanding pediatric subacute care units, as defined in Section 51215.8 of Title 22 of the California Code of Regulations

The reductions described above will not apply to payments for services paid with funds appropriated to other departments or agencies.

Payments to facilities owned or operated by the state will be exempt from the provider payment reductions pursuant to sections 14105.07 and 14126.033 of the Welfare and Institutions Code.

DHCS is currently evaluating the impact of the proposed payment reductions so that the Director will be able to determine what specific payment reductions will be implemented pursuant to sections 14105.07, 14105.192, and 14126.033. However, federal regulations require public notice prior to the effective date of the payment reductions. In order to insure that a notice was published in the Notice Register before June 1, 2011, the effective date of the reductions, DHCS submitted this notice to the Office of Administrative Law on or before May 17, 2011.

DHCS intends to notify the public of any actions required by AB 97 by use of the DHCS website. The following includes some of the information that will be posted:

- A State Plan Amendment that includes language regarding the provider payment reductions and adjustments.
- The Director's decision concerning what payment reductions will be implemented in accordance with sections 14105.07, 14105.192, and 14126.033. Provider bulletins notifying providers impacted by the provider payment reductions of the implementation timeframes.
- Information relating to the provider payment reductions and adjustments that can be accessed at the County Welfare offices.

DHCS is considering submitting additional legislation that may further impact reimbursement rates to Medi-Cal Long-Term Care providers as follows:

- Extend the sunset date by one additional year to July 31, 2013, for the AB 1629 Quality Assurance fee (QAF) and the rate-setting methodology.
- End the 10 percent payment reductions on August 1, 2012 for AB 1629 SNFs and give providers a one-time payment adjustment for the 2012-13 Rate Year that is the same as the reduction in the 2011-12 Rate Year as compared to the 2010-11 Rate Year.
- Include pediatric subacute care facilities (both Distinct Part and Freestanding) in the QAF beginning August 1, 2011.
- Adjust the payment reduction for the pediatric subacute care facilities so that rate reductions are cost neutral to the Department for the 2011-12 Rate Year after accounting for the QAF revenue and federal matching funds.
- Delay implementation of the Quality and Accountability Supplemental Payment System (QASP) for one year.
- Delay until Rate Year 2012-13 the set-aside to the QASP of one percent of the AB1629 facilities reimbursement rate.

#### PUBLIC REVIEW AND COMMENTS

The California statutes discussed above are available for public review at welfare offices in every county of the State. Written comments (or requests for copies of the statutes and/or copies of the written comments) may be submitted to: Grant Gassman, Chief, Long Term Care Section; Medi-Cal Benefits, Waiver Analysis, and Rates Division; Department of Health Care Services; MS 4612; P.O. Box 997413; Sacramento, CA 95899-7413.

#### DEPARTMENT OF HEALTH CARE SERVICES

#### NOTICE OF GENERAL PUBLIC INTEREST

#### THE DEPARTMENT OF HEALTH CARE SERVICES TO IMPLEMENT A PROVIDER PAYMENT REDUCTION AND ADJUSTMENT UP TO 10 PERCENT FOR OUTPATIENT SERVICES

This notice provides information of public interest about proposed payment reductions that may be implemented for Medi-Cal covered outpatient services pro-

vided on a fee-for-service basis and payments for the same services provided under non-Medi-Cal programs that use rates that are identical to Medi-Cal rates.

The California Department of Health Care Services (DHCS) will implement the payment reductions only to the extent authorized in Assembly Bill 97 (Chapter 3, Statutes of 2011) which added section 14105.192 to the Welfare and Institutions Code. That section provides for a provider payment reduction up to 10 percent for various services, effective for dates of service on or after June 1, 2011. Section 14105.192 authorizes DHCS to implement payment reductions set forth in this statute only if it determines that such reductions will comply with applicable federal law, including 42 United States Code section 1396a(a)(30)(A), and that federal financial participation will be available. Moreover, the statute also provides that DHCS may not implement any reduction authorized by this statute, until it obtains federal approval.

When implemented, the reductions pursuant to section 14105.192 (which would become effective on June 1, 2011) would replace the current one and five percent provider payment reductions that were effective beginning March 1, 2009, pursuant to Welfare and Institutions Code section 14105.191.

Thus, in this public notice, DHCS is announcing the possibility of payment reductions for outpatient services of up to 10 percent. DHCS intends to submit a State Plan amendment to the federal Centers for Medicare & Medicaid Services (CMS), on or before June 30, 2011, incorporating the reductions it intends to implement.

DHCS is evaluating the impact of the specific payment reductions to determine whether they will comply with applicable federal Medicaid law, including section 1396a(a)(30)(A) of Title 42 of the United States Code. DHCS will consider public comments submitted in response to this notice as part of its evaluation, which will be presented to the Director of DHCS.

To the extent that the Director determines that a payment reduction authorized by section 14105.192 does not comply with the federal Medicaid requirements or that federal financial participation is not available with respect to that reduction, the Director has the discretion to not implement that particular reduction, as well as the discretion to implement a different payment reduction. For example, if the Director determines that a 10 percent payment reduction for some services does not comply with federal requirements, but that a 5 percent payment reduction does, the Director has discretion under section 14105.192 to implement only a 5 percent payment reduction for those services.

Although any payment reduction pursuant to section 14105.192 will be effective for services rendered on or after June 1, 2011, application of the reductions will not

occur until sometime after June 2011 when CMS approves a state plan amendment for the reductions.

The one and five percent payment reductions that are currently being implemented in accordance with Welfare and Institutions Code section 14105.191 are intended to continue until CMS approves a different payment reduction authorized by section 14105.192. At that time, DHCS will recover any overpayments made to Medi-Cal providers, for services rendered on and after June 1, 2011, which is the effective date of the reduction.

If DHCS were to implement a ten percent provider payment reduction for all Medi-Cal covered outpatient services in accordance with its authority under section 14105.192, it would reduce state General Fund expenditures for these services by approximately \$220 million annually.

Those payment reductions implemented pursuant to section 14105.192 would apply to outpatient services provided on a fee-for-service basis rendered by any provider authorized to bill for the services, including, but not limited to, the following providers:

- Physicians
- Podiatrists
- Nurse Practitioners
- Certified Nurse Midwives
- Nurse Anesthetists
- Organized Outpatient Clinics
- Hospital Outpatient Departments
- Allied Health Providers
- Dentists
- Vision Care
- Pharmacies
- Adult Day Health Care Centers

In addition, payments for services provided under the non-Medi-Cal programs listed below would be reduced by the same percentage reduction implemented in the Medi-Cal program pursuant to section 14105.192.

- California Children's Services
- Genetically Handicapped Persons Program
- State Only Family Planning Program
- Child Health and Disability Program

Services, facilities, and payments exempted from the provider payment reductions for outpatient services pursuant to Section 14105.192 of the Welfare and Institutions Code, are as follows:

- Federally Qualified Health Center services
- Rural Health Clinic Services
- Facilities owned or operated by the State Department of Mental Health or the State Department of Developmental Services
- Hospice services

- Contract services designated by the Director of DHCS
- Payments to providers to the extent the payments are funded by means of a certified public expenditure or intergovernmental transfer
- Services pursuant to local assistance contracts and interagency agreements to the extent the funding is not included in the funds appropriated to DHCS
- Breast and Cervical Cancer Treatment Program and Cancer Detection Programs: Every Woman Counts
- Family Planning: Access, Care, and Treatment (Family PACT) Program

The reductions described above will not apply to payments for services paid with funds appropriated to other departments or agencies.

DHCS is currently evaluating the impact of the proposed payment reductions so that the Director will be able to determine what specific payment reductions will be implemented pursuant to section 14105.192. However, federal regulations require public notice prior to the effective date of the payment reductions. In order to insure that a notice was published in the Notice Register before June 1, 2011, the effective date of the reductions, DHCS submitted this notice to the Office of Administrative Law on or before May 17, 2011.

DHCS intends to notify the public of any actions required by AB 97 by use of the DHCS website. The following includes some of the information that will be posted:

- A State Plan Amendment that includes language regarding the provider payment reductions.
- The Director's decision concerning what payment reductions will be implemented for specific services in accordance with section 14105.192. Provider bulletins notifying providers impacted by the provider payment reductions of the implementation timeframes.
- Information relating to the provider payment reductions and adjustments that can be accessed at the County Welfare offices.

#### PUBLIC REVIEW AND COMMENTS

The California statutes discussed above are available for public review at welfare offices in every county of the State. Written comments (or requests for copies of the statutes and/or copies of the written comments) may be submitted to: Linda Machado, Chief, Provider Rate Section; Medi-Cal Benefits, Waiver Analysis, and Rates Division; Department of Health Care Services; MS 4600; P.O. Box 997417; Sacramento, CA 95899-7417.

## FISH AND GAME COMMISSION

### NOTICE OF RECEIPT OF AMENDED PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.7 of the Fish and Game Code, the California Fish and Game Commission, at its May 4, 2011, meeting in Ontario, determined that a 43-page letter dated March 31, 2011, from the Center for Biological Diversity amounted to a substantive amendment of the petition submitted to list the American pika (*Ochotona princeps*) as a threatened species.

The American pika inhabits talus fields fringed by suitable vegetation on rocky slopes of alpine areas throughout western North America.

Pursuant to Section 2073.7 of the Fish and Game Code, the Commission transmitted the amended petition to the Department of Fish and Game for review pursuant to Section 2073.5 of said code. Interested parties may contact Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, 1812 Ninth Street, Sacramento, CA 95811, or telephone (916) 445-3555 for information on the petition or to submit information to the Department relating to the petitioned species.

### PROPOSITION 65

#### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

#### CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

#### SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

#### NOTICE OF INTENT TO LIST ALPHA-METHYL STYRENE BY THE LABOR CODE MECHANISM

MAY 27, 2011

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) intends to list the chemical identified in the table below as known to the State to cause reproductive