State of California—Health and Human Services Agency
Department of Health Care Services

DAVID MAXWELL-JOLLY
Director

ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Health Insurance Premium Payment Program, DHCS-07-004

PUBLIC PROCEEDINGS: Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

California Welfare and Institutions (W & I) Code Sections 10725 and 14124.5 authorize the director of the Department to adopt, amend, or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal program.

The Health Insurance Premium Payment (HIPP) program operates under Section 14124.91 of the W & I Code, Title 22, Section 50778 of the California Code of Regulations (CCR), as well as the California State Plan, Attachment 4.22-C (SPA), which provide the bases for establishing program enrollment, eligibility, and cost-effective criteria.

Assembly Bill (AB) 3328 (Margolin, Chapter 940, Statutes of 1986) enacted the state statute requiring payment of premiums for third-party coverage. The provisions of AB 3328 are codified in W & I Code Section 14124.91. This statute provides a description of a cost-effective payment plan for maintaining third-party health coverage for persons who are Medi-Cal beneficiaries.

Title 22, CCR, Section 50778 mandates the Department, through the HIPP program as part of the Medi-Cal program, to pay the premiums for persons who are Medi-Cal eligible and who have access to group or private health insurance plans – third-party health coverage -- whenever it is cost-effective.

The Department received federal approval to change the cost-savings percentage for the HIPP program in its State Plan effective January 1, 2008. Using a lower cost savings percentage that requires the estimated savings to the Medi-Cal Program to be 110% of the premium costs is less difficult for applicants to meet than the current

percentage requirement of 200%, and will increase the potential net program savings. This change is warranted because an increase in HIPP enrollment will increase yearly Medi-Cal savings. Allowing larger numbers of potential Medi-Cal beneficiaries to maintain their current health insurance and providers ensures continuity of care, which may maintain or improve individuals' health status, and avoid increased Medi-Cal expenditures.

This proposed regulatory action would assure conformance with the State Plan, as approved by the federal Centers for Medicare & Medicaid Services and affect Title 22, CCR, by amending Section 50778 to specifically accomplish the following:

1. Delete the current (a) at the beginning of the section.

2. Add a comma after "Department" in the first paragraph.

3. Change the basic description of what constitutes "cost-effectiveness" to comply with the SPA and read, "when the estimated savings to the Medi-Cal program is 110% or greater than the premium costs."

4. Delete the words "cost of Medical benefits," and insert the word "savings."

5. Change the numerical designations to alphabetical designations.

6. Add Section 20, Heath and Safety Code as an Authority, because it authorizes the name change from the Department of Health Services to the Department of Health Care Services.

7. Change, under the Reference, the colon to a semicolon after "Code," eliminate the space after "1396," and change the (A) to (a).

AUTHORITY: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code.

REFERENCE: Sections 14124.91, Welfare and Institutions Code; and 42 USC 1396 b(a)(1).

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on January 8, 2010, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or

2. By fax transmission: (916) 440-5748; or

3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-07-004" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael Marchello of Health Insurance Premium Payment Program at (916) 650-6488.

All other inquiries concerning the action described in this notice may be directed to Ben Carranco of the Office of Regulations at (916) 440-7766, or to the designated backup contact person, Lynette Cordell, at (916) 440-7695.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-07-004.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of

Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

A. Fiscal Effect on Local Government: None

B. Fiscal Effect on State Government: Additional cost of $736,000 in Fiscal Year 2009-10. This amount has been included in the May 2009 Medi-Cal Estimate.

C. Fiscal Effect on Federal Funding of State Programs: Additional cost of $1,180,000 in Fiscal Year 2009-10. This amount has been included in the 2009 Medi-Cal Estimate.

D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

(1) The creation or elimination of jobs within the State of California.

(2) The creation of new businesses or the elimination of existing businesses within the State of California.

(3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations would not affect small businesses. These regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No public hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7695 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

DEPARTMENT OF HEALTH CARE SERVICES

DHCS-07-004

Dated: October 8, 2009

David Maxwell-Jolly
Director