

INITIAL STATEMENT OF REASONS

In California, the federal Medicaid Program is known as the California Medical Assistance Program, or Medi-Cal Program. This program provides health care services to welfare recipients and other qualified low-income persons, primarily families with children and the aged, blind, and disabled. Federal law requires the Medi-Cal Program to provide core health care services including: hospital inpatient and outpatient care, nursing services, physician services, and laboratory services.

The Department of Health Care Services (Department) operates the Medi-Cal Managed Care Program under multiple federal 1915(b) waivers approving variations in the single comprehensive medical care program for eligible low-income individuals required by Title XIX of the Social Security Act in the following sections:

(a)	1902(a)(1)	Statewideness
(b)	1902(a)(5)	Single State Agency
(c)	1902(a)(10)(B)	Comparability of Services
(d)	1902(a)(23)	Freedom of Choice
(e)	1902(a)(30)	Basis for Payment

Articles 2.7 (commencing with Section 14087.3), 2.8 (commencing with Section 14087.5), 2.81 (commencing with Section 14087.96), 2.9 (commencing with Section 14088), and 2.91 (commencing with Section 14089) of Chapter 7 and Articles 1 (commencing with Section 14200) and 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions (W&I) Code establish the statutory authority for the Department to contract with managed care plans to provide Medi-Cal services and case management. Title 22, California Code of Regulations (CCR), Division 3, Chapters 4 (commencing with Section 53800), 4.1 (commencing with Section 53800), 4.5 (commencing with Section 53900), and 6 (commencing with Section 56000), contain the regulations that specifically implement the Medi-Cal managed care program.

This proposed rulemaking action will make specific the reimbursement provisions set forth under W&I Code Section 14091.3 that pertain specifically to emergency outpatient services, emergency inpatient services and post-stabilization services following an emergency admission, as provided to a Medi-Cal beneficiary, by a provider that does not have in effect a contract with a Medi-Cal managed care entity (hereafter referred to as a nonplan provider).

While implementing the provisions of W&I Code Section 14091.3, this rulemaking also addresses provisions of Section 6085 of the Federal Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) (United States Code (USC) Section 1396u-2(b)(2)(D)) also known as the "Rogers Amendment" that establishes reimbursement rates for the provision of emergency services and inpatient

hospital services associated with the emergency to Medicaid beneficiaries by a nonplan provider.

Currently, all Medi-Cal managed care program plans, Prepaid Health Plans (PHPs), Two-Plan Model (TPM) plans, Geographic Managed Care (GMC) plans, County Organized Health System (COHS) plans, and Primary Care Case Management (PCCM) plans, reimburse nonplan providers of emergency outpatient, emergency inpatient and post-stabilization services at different rates. This rulemaking action will establish uniform reimbursement rates and related provisions for all emergency outpatient, emergency inpatient and post-stabilization services provided to Medi-Cal beneficiaries by a nonplan provider, thus precluding inequity in reimbursement.

Any perceived duplication of statute within the regulations, as described below, is an effort to provide all of these requirements in a cohesive manner and in a central location for the affected parties.

The administrative necessity of the proposed adoptions and amendments in each affected section of Title 22 is presented below:

Section 53216 (Under Chapter 4, Prepaid Health Plans)

Section 53216, is amended to make this section consistent with proposed Section 53623, pertaining to reimbursement for emergency services provided by a nonplan provider.

Subsection (b)(5) is added for consistency with proposed Section 53623, specifically by including a cross reference to proposed Section 53623, which is proposed to be adopted under Chapter 4., to make specific the reimbursement provisions from W&I Code Section 14091.3 pertaining to emergency outpatient services and emergency inpatient services as provided to a Medi-Cal beneficiary, by a nonplan provider. The addition of Section 53216(b)(5), sets forth in regulation and as one of a plan's written procedures that reimbursement to nonplan emergency care providers shall be in accordance with Section 53623.

The proposed amendment under this section will establish uniform reimbursement rates provided by PHPs for all nonplan emergency services provided to Medi-Cal beneficiaries by a nonplan provider, thus precluding inequity in reimbursement.

Article 7 (Under Chapter 4, Prepaid Health Plans)

The title of Article 7 is amended to reflect the inclusion of Sections 53623 and 53623.5, which are proposed to be adopted under this article. By amending the title of this article, the affected public will readily be able to locate these proposed sections that pertain to reimbursement for emergency outpatient services, emergency inpatient services and post-stabilization services following an

emergency admission, as provided to a Medi-Cal beneficiary, by a nonplan provider.

Section 53623 (Under Chapter 4, Prepaid Health Plans)

Section 53623 is adopted to make specific the reimbursement provisions from W&I Code Section 14091.3 pertaining to emergency outpatient services and emergency inpatient services as provided to a Medi-Cal beneficiary, by a nonplan provider and is consistent with Title 42, USC Section 1396u-2(b)(2)(D). Establishing these reimbursement provisions under this section will make the Medi-Cal Managed Care Program's regulations clear and comprehensive and emphasize that these uniform reimbursement rates apply to every plan in the Medi-Cal managed care program.

Subsection (a) is adopted to establish the hospitals to which the provisions under this section will apply and is in accordance with conditions set forth under W&I Code Section 14091.3 and is consistent with Title 42, USC Section 1396u-2(b)(2)(D), which became effective January 1, 2007.

Subsection (b) is adopted to establish that hospitals, including hospitals that contract with the Medi-Cal Selective Provider Contracting Program (SPCP), shall be subject to the reimbursement provisions set forth in this section and is in accordance with W&I Code Section 14091.3(c)(2). SPCP, as described in W&I Code Section 14081 et seq., operates through a waiver under Section 1915(b) of the Social Security Act. Approved in 1982, the 1915(b) waiver allows the California Medical Assistance Commission to negotiate Medi-Cal rates with hospitals and to contract with a select number of hospitals.

Subsection (c) is adopted to specify that emergency outpatient services shall be reimbursed at the Medi-Cal Fee-For-Service (FFS) rate and is in accordance with W&I Code Section 14091.3(c)(1).

Subsection (d) is adopted to specify that emergency inpatient services shall be reimbursed at the average SPCP contract rate depending on the type of facility providing the service in the geographic region where the facility is located and is in accordance with W&I Code Sections 14091.3(c)(2) and 14166.245 (b)(2)(C)(iii). Two types of facilities are distinguished under Subsection (d): tertiary and non tertiary hospitals. Tertiary hospitals include children's hospitals as defined in Section 10727 of the W&I Code or Level I or Level II trauma centers established by Section 1797.1 of the Health and Safety (H&S) Code. Non tertiary hospitals are all other hospitals that are not a children's hospital or do not have a Level I or Level II trauma center.

Subsection (e) is adopted to specify that the Department shall adopt and publish average SPCP regional contract rates for reimbursement and is in accordance with W&I Code Section 14166.245(b)(2)(C)(i). Average SPCP regional contract rates are adopted since current average hospital rates in northern California are

significantly higher than average hospital rates in southern California. By adopting average SPCP regional rates, there is no financial incentive for southern California hospitals to terminate contracts with health plans.

Subsection (f) is adopted to establish that rates for contracted hospitals under the SPCP shall remain confidential for 4 years and is in accordance with Government Code Section 6254(q).

Subsection (g) is adopted to specify that health plans shall make reconciliations and adjustments for all hospital payments made to nonplan providers that were not based upon the Department's published emergency inpatient rates. This language is in accordance with W&I Code Section 14091.3(d), as indicated within Subsection (g). These reconciliations and adjustments shall be made for all hospital payments made to nonplan providers and furnished since January 1, 2007, the effective date of USC Section 1396u-2(b)(2)(D).

Section 53623.5 (Under Chapter 4, Prepaid Health Plans)

Section 53623.5 is adopted to make specific the reimbursement provisions from W&I Code Section 14091.3(c)(3) pertaining to post-stabilization services following an emergency admission as provided to a Medi-Cal beneficiary, by a nonplan provider. Establishing these reimbursement provisions under this section will make the Medi-Cal Managed Care Program's regulations clear and comprehensive and emphasize that these uniform reimbursement rates apply to every plan in the Medi-Cal managed care program.

Subsection (a) is adopted to establish the nonplan hospitals to which the provisions under this section will apply and is consistent with W&I Code Section 14091.3(c)(3). However, Subsections (a) (and (b) below) narrow the description of these hospitals to "general acute care" hospitals, as specified under H&S Code Section 1250(a), to provide further clarity, since only those hospitals that provide post-stabilization services would be affected by this section (i.e. acute psychiatric hospitals would be excluded – and are not considered "general acute care hospitals"). W&I Code Section 14091.3 was effective as of September 30, 2008, however due to the late passing of the budget in October 2008, and to allow adequate time for the Department to notify all the affected parties, a November 1, 2008 effective date was established for initiating reimbursement in accordance with Section 53523.5.

Subsection (b) is adopted to implement rates for inpatient hospital services and is consistent with related post-stabilization provisions under W&I Code Section 14091.3(c)(3).

Section 53698 (Under Chapter 4, Prepaid Health Plans)

Section 53698 is amended to make it consistent with proposed Sections 53623(c) and (d) pertaining to reimbursement for emergency outpatient and inpatient services furnished by a nonplan provider and with Section 53623.5(b)

pertaining to reimbursement for post-stabilization services following an emergency admission. Specifically, Subsections (a)(1) through (3) are amended and reorganized, to clearly distinguish a plan's financial liability to the nonplan provider for these three distinct services, as mentioned above.

Subsection (a) is amended to establish a clear lead into paragraphs (1) through (3) that are further amended by service type for consistency with Sections 53623(c) and (d), and 53623.5(b) when the service is furnished by a nonplan provider. Thus the existing phrase "not exceed the lower.....by the provider" is no longer necessary and is removed and replaced with the phrase "be as follows."

Subsection (a)(1) is amended to include that emergency outpatient services provided (reimbursed) in conjunction with a contract between a plan and provider shall be provided in accordance with that contract. This provision is included under this subsection to simply establish, in one location in the regulations, the plan's financial liability when there is or is not a contract between a plan and a provider. Subsection (a)(1) is also amended to make it consistent with proposed Section 53623, specifically by including a cross reference to proposed Section 53623(c) that specifies that emergency outpatient services furnished by a nonplan provider shall be reimbursed at the Medi-Cal FFS rate and is in accordance with W&I Code Section 14091.3(c)(1).

Subsection (a)(2) is amended to include that emergency inpatient services provided (reimbursed) in conjunction with a contract between a plan and provider shall be provided in accordance with that contract. This provision is included under this subsection to simply establish, in one location in the regulations, the plan's financial liability when there is or is not a contract between a plan and a provider. Subsection (a)(2) is also amended to make it consistent with proposed Section 53623, specifically by including a cross reference to proposed Section 53623(d), that specifies that emergency inpatient services furnished by a nonplan provider shall be reimbursed at the average SPCP contract rate depending on the type of facility providing the service in the geographic region where the facility is located and is in accordance with W&I Code Sections 14091.3(c)(2) and 14166.245(b)(2)(C)(iii).

Subsection (a)(3) is added to include that post-stabilization services following an emergency admission provided (reimbursed) in conjunction with a contract between a plan and provider shall be provided in accordance with that contract. This provision is added to simply establish, in one location in the regulations, the plan's financial liability when there is or is not a contract between a plan and a provider. Subsection (a)(3) also adds a provision to make this section consistent with proposed Section 53623.5, specifically a cross reference to proposed Section 53623.5(b) is included.

The proposed amendments and additions under this section will establish uniform reimbursement rates provided by PHPs for all emergency outpatient and inpatient and post-stabilization services following an emergency admission provided to Medi-Cal beneficiaries and furnished by a nonplan provider, thus precluding inequity in reimbursement.

Section 53855 (Under Chapter 4.1, Two-Plan Model Managed Care Program)

Section 53855 is amended to make a non-substantive change and to make this section consistent with proposed Sections 53623(c) and (d) pertaining to reimbursement for emergency outpatient and inpatient services furnished by a nonplan provider.

Subsection (c) includes a non-substantive amendment; specifically the term "noncontracted" is replaced with "nonplan" for consistency throughout the regulations.

Subsection (d) is amended to include that emergency outpatient services provided (reimbursed) in conjunction with a contract between a plan and provider shall be provided in accordance with that contract. This provision is included under this subsection to simply establish, in one location in the regulations, the reimbursement provisions when there is or is not a contract between a plan and a provider and is consistent with proposed amendments under Sections 53698(a)(1),(2), and (3); 53855(e); and 53912.5(b) and (c). Subsection (d) is also amended to make it consistent with proposed Section 53623, specifically by including a cross reference to proposed Section 53623(c), that specifies that emergency outpatient services furnished by a nonplan provider shall be reimbursed at the Medi-Cal FFS rate and is in accordance with W&I Code Section 14091.3(c)(1). Subsection (d) includes a non-substantive amendment; specifically the phrase "arrange and" is deleted as it is assumed that when a plan makes a payment for services, the plan has arranged to make such a payment. This phrase is unnecessary.

As a result of the amendments noted in Subsection (d) above, the phrase "emergency department, emergency physician and emergency transportation services" is removed and replaced with the general phrase "emergency outpatient services" for accuracy and consistency with the use of this phrase throughout the regulations. In addition, existing subsections (d)(1) through (3) are no longer applicable and thus are removed and replaced with the amendments under Subsection (d) as noted and for the reasons described above.

Subsection (e) simply amends the existing phrase that specifies that emergency inpatient services provided (reimbursed) in conjunction with a contract between a plan and provider shall be provided in accordance with that contract. The phrase "inpatient hospital" is removed since it is not necessary, and the term "department" is replaced with the accurate term "provider" (the plan contracts with the provider not the Department). This provision is amended to clearly

establish, in one location in the regulations, the reimbursement provisions when there is or is not a contract between a plan and a provider and is consistent with proposed amendments under Sections 53698(a)(1),(2), and (3); 53855(d); and 53912.5(b) and (c).

Subsection (e) is also amended to make it consistent with proposed Section 53623, specifically by including a cross reference to proposed Section 53623(d), that specifies that emergency inpatient services furnished by a nonplan provider shall be reimbursed at the average SPCP contract rate depending on the type of facility providing the service in the managed care region where the facility is located and is in accordance with W&I Code Sections 14091.3(c)(2) and 14166.245(b)(2)(C)(iii).

The proposed amendments under this section will establish uniform reimbursement rates provided by TPM plans for all emergency outpatient and inpatient services provided to Medi-Cal beneficiaries and furnished by a nonplan provider, thus precluding inequity in reimbursement.

Subsection (f), includes a non-substantive change to correct a capitalization error.

Section 53912.5 (Under Chapter 4.5, Geographic Managed Care Program)

Section 53912.5 is amended to 1) provide a cross reference to the requirements under Section 53855 and 2) make this section consistent with proposed Sections 53623(c) and (d) pertaining to reimbursement for nonplan emergency outpatient and inpatient services.

Subsection (a) is amended to replace the reference to Section 53216 with Section 53855. Section 53216 refers to PHPs and Section 53855 refers to TPM plans. At Medi-Cal Managed Care's inception, PHPs were the foundation, but now TPM and GMC plan counties are the major plan models. Currently there is one PHP, twelve TPM plan counties, and two GMC plan counties in Medi-Cal Managed Care. By referring to Section 53855, this regulation provision will be updated to reflect the Department's current plan to expand with TPM and GMC plan models and mirror the Department's contracts with TPM and GMC contracts, which have parallel responsibilities.

Subsection (b) is amended to include that emergency outpatient services provided (reimbursed) in conjunction with a contract between a plan and provider shall be provided in accordance with that contract. This provision is included under this subsection to simply establish, in one location in the regulations, the reimbursement provisions when there is or is not a contract between a plan and a provider and is consistent with proposed amendments under Sections 53698(a)(1),(2), and (3); 53855(e); and 53912.5(c). Subsection (b) is also amended to make it consistent with proposed Section 53623, specifically by including a cross reference to proposed Section 53623(c), that specifies that

emergency outpatient services furnished by a nonplan provider shall be reimbursed at the Medi-Cal FFS rate and is in accordance with W&I Code Section 14091.3(c)(1).

As a result of the amendments and reasons for these amendments noted in Subsection (b) above, the phrase, "at the lowest of the Medi-Cal fee for service rate.....defined in Section 51056" is no longer applicable and is thus removed. Subsection (b) includes a non-substantive amendment; specifically the phrase "arrange for and" is deleted as it is assumed that when a plan makes a payment for services, the plan has arranged to make such a payment. This phrase is unnecessary.

A new Subsection (c) is added to specify that emergency inpatient services provided (reimbursed) in conjunction with a contract between a plan and provider shall be provided in accordance with that contract. This provision is added to simply establish, in one location in the regulations, the reimbursement provisions when there is or is not a contract between a plan and a provider. Subsection (c) is also added for consistency with proposed Section 53623, specifically by adding a cross reference to proposed Section 53623(d), that specifies that emergency inpatient services furnished by a nonplan provider shall be reimbursed at the average SPCP contract rate depending on the type of facility providing the service in the managed care region where the facility is located and is in accordance with W&I Code Sections 14091.3(c)(2) and 14166.245 (b)(2)(C)(iii).

As a result of the addition of a new Subsection (c), existing Subsection (c) is redesignated as (d) to maintain the sequential designations under this section.

Redesignated Subsection (d), which pertains to diagnostic services (an outpatient service) is amended to remove the phrase "at the lowest of the Medi-Cal fee for service rate or the plan negotiated rate," which is no longer applicable. Subsection (d) is instead proposed to be amended to make it consistent with proposed Section 53623, specifically by including a cross reference to proposed Section 53623(c), that specifies that emergency outpatient services (including diagnostic services) furnished by a nonplan provider shall be reimbursed at the Medi-Cal FFS rate and is in accordance with W&I Code Section 14091.3(c)(1).

The proposed amendments under this section will establish uniform reimbursement rates provided by GMC plans for all emergency outpatient and inpatient services provided to Medi-Cal beneficiaries and furnished by a nonplan provider, thus precluding inequity in reimbursement.

Existing Subsection (d) is subsequently redesignated as (e) to maintain the sequential designations under this section.

Section 56216 (Under Chapter 6, Primary Care Case Management Plans)

Section 56216 is amended to make non-substantive capitalization changes and to make this section consistent with proposed Section 53623(c) pertaining to reimbursement for emergency outpatient services furnished by a nonplan provider.

Subsection (b)(5) is added for consistency with proposed Section 53623, specifically by adding a cross reference to proposed Section 53623(c), that specifies that emergency outpatient services furnished by a nonplan provider shall be reimbursed at the Medi-Cal FFS rate and is in accordance with W&I Code Section 14091.3(c)(1).

The proposed amendment under this section will establish uniform reimbursement rates provided by PCCM plans for all emergency outpatient services provided to Medi-Cal beneficiaries and furnished by a nonplan provider, thus precluding inequity in reimbursement.

Subsections (a) and (b)(4)(B), include non-substantive changes to correct capitalization errors.

STATEMENTS OF DETERMINATION

(a) ALTERNATIVES CONSIDERED

The Department has determined 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 this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

(b) LOCAL MANDATE DETERMINATION

The Department has determined that the proposed 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.

(c) ECONOMIC IMPACT STATEMENT

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, 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.

(d) EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations would affect small businesses.

(e) HOUSING COSTS DETERMINATION

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