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

DAVID MAXWELL-JOLLY
Director

ARNOLD SCHWARZENEGGER
Governor

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

SUBJECT: Drug Medi-Cal Rates, DHCS-09-011E

The Department of Health Care Services (Department) has adopted the regulations described in this notice on an emergency basis and they are now in effect.

PUBLIC PROCEEDINGS: Notice is hereby given that the 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

This emergency regulatory action amends Title 22, California Code of Regulations (CCR), Section 51516.1, by updating Medi-Cal reimbursement rates for substance abuse (Drug Medi-Cal) services for FY 2003-2004 through FY 2009-2010. This emergency action implements, interprets, and makes specific the provisions of Welfare and Institutions Code (WIC) Sections 14021.5, 14021.6 and 14105, and Health and Safety Code (HSC) Section 11758.42. These provisions require the Department of Alcohol and Drug Programs (ADP), in consultation with the Department, to establish rates for Drug Medi-Cal (DMC) services, establish a dosing fee for Methadone and Levoalphacetylmethadol (LAAM), and establish a per capita uniform statewide reimbursement rate for ancillary services.

This emergency regulatory action is necessary to implement WIC Sections 14021.5 and 14021.6 and HSC Sections 11758.42 and 11758.46. WIC Section 14021.5 specifies that rates for Drug Medi-Cal services shall be effective July 1 through June 30 of the fiscal year in which the rates are established. WIC Section 14021.6 and HSC Section 11758.42 specify how rates for Drug Medi-Cal services shall be determined. HSC Section 11758.42 requires ADP to establish rates for the use of the narcotic replacement drugs Methadone and LAAM. HSC Section 11758.46 specifies Drug Medi-Cal services which are reimbursable through the Medi-Cal program.

Specific changes are described below:

- Section 51516.1(a): Revised to reflect that Senate Bill (SB) 1838, Chapter 862, Statutes of 2004, Section 36 renamed Day Care Habilitative to Day Care Rehabilitative.

- Section 51516.1(a)(2): Replaced “rendering” with the more common term “providing” based on its use in HSC Section 11848.5. Replaced the term “defined” with the more accurate term “specified” since HSC Section 11848.5 specifies information, it does not provide definitions. Replaced Section 11987.5 with Section 11848.5 of the HSC as the appropriate reference. Section 11848.5 replaced Section 11987.5 in January 2005 due to SB 1838, Statutes of 2004, Chapter 862, Sections 120 and 134.

- Section 51516.1(a)(3): The fiscal years were updated to FY 2003-2004 through FY 2009-2010. This clarifies the fiscal year scope of the regulations.

- The statewide maximum allowances (SMAs) for FY 2003-2004 through FY 2009-2010 have been revised and are indicated below in the sequence of how each Budget Act impacted rate development. ADP established the rates in accordance with WIC Section 14021.6 and each fiscal Year’s Budget Act. The SMAs are based on the median rates from the most recently completed cost data for each modality as reported by county-operated providers and county-contracted providers.

  - The proposed FY 2003-2004, DMC reimbursement rates are based on cost report data from FY 2001-2002.

  - The FY 2004-2005 Budget Act (SB 1113, Statutes of 2004, Ch. 208, Item 4200-102-0001, Provision 5 and Item 4200-103-0001 Provision 5) approved the FY 2004-2005 DMC rates at the FY 2002-2003 rate levels, which are based on cost report data from FY 2000-2001.

  - The FY 2005-2006 Budget Act (SB 77, Statutes of 2005, Ch. 38, Item 4200-102-0001, Provision 4 and Item 4200-103-0001, Provision 5) authorized the FY 2005-2006 DMC reimbursement rates at the FY 2002-2003 rate levels with an augmentation of $1,104,000 General Fund monies.

  - The FY 2006-2007 Budget Act (AB 1801, Statutes of 2006, Ch. 47, Governor’s Objections Section) indicated that of the combined amounts appropriated in Items 4200-102-0001 and 4200-103-0001, $1,000 additional was appropriated to increase the FY 2006-2007 rates above the FY 2005-2006 rates. Because of this small amount, FY 2006-2007 used the FY 2005-2006 rates.

  - The rates for FYs 2003-2004, 2007-2008 and 2008-2009 were developed in accordance with the established rate-setting methodologies, since there was no reduced Governor’s Budget for ADP as occurred in other FYs.

- The specific methodology used to calculate Drug Medi-Cal SMAs is described in the document entitled "Drug Medi-Cal Rate Setting Methodology, For Non-Narcotic Treatment Programs, For Fiscal Year 2003-2004 through FY 2009-2010." This document is included in the Department's rulemaking file, which is maintained by the Department's Office of Regulations.

- The FY 2004-2005 Budget Act approved the Drug Medi-Cal rates at the FY 2002-03 levels. Therefore there was no Drug Medi-Cal Rate Setting Methodology for FY 2004-2005 published.

- The FY 2005-2006 Budget Act approved the DMC rates at the FY 2002-2003 levels but also provided $1,104,000 in General Funds to augment above the FY 2002-2003 levels. After calculation of the FY 2005-2006 rates based on the regular methodology, calculation of the FY 2005-2006 augmented rates is described in the document entitled "FY 2005-2006 Drug Medi-Cal Augmented Rate Methodology For Narcotic and Non-Narcotic Treatment Programs," and is included in the Department's rulemaking file, which is maintained by the Department's Office of Regulations.

- The FY 2009-10 Budget Act contained a 10 percent rate reduction to the reimbursement rates developed under the customary rate-development methodologies (see ABX4 4, Chapter 4, Statutes of 2009, Section 31).

- Section 51516.1(a)(3)(A) was revised to add "treatment" between "outpatient drug free" and "services" for accuracy.

- Section 51516.1(a)(3)(A)1. was revised to make a grammatical correction.

- Section 51516.1(a)(3)(A)2. was revised to make a grammatical correction.

- Section 51516.1(b)(1) was revised to delete the reference to the "monthly" reimbursement rate. AB 1279, Statutes of 2008, Ch. 759, revised HSC Section 11758.42(c) to specify that reimbursement for narcotic replacement therapy. . . shall be based on a per capita statewide daily reimbursement rate. Therefore, Sections 51516.1(b), (c), (d), (f) and (g) were revised to replace "Uniform Statewide Monthly Reimbursement (USMR)" rate with "Uniform Statewide Reimbursement (USR)" rate.

- Section 51516.1(g) was revised to update the uniform statewide reimbursement rates (USRs) for narcotic treatment program services for FY 2003-2004 through FY 2009-2010. The specific methodology used to calculate narcotic treatment USRs are described in the document entitled "Narcotic Treatment Program – Uniform Statewide Reimbursement Rates and Methodology, FY 2003-2004 Through FY 2009-2010." This document is included in the Department's rulemaking file, which is maintained by the Department's Office of Regulations.

- The FY 2004-2005 Budget Act approved the Drug Medi-Cal rates at the FY 2002-2003 levels. Therefore, there was no Narcotic Treatment Program – Uniform Statewide Reimbursement Rates and Methodology for FY 2004-2005 published.

- The FY 2005-2006 Budget Act approved the DMC rates at the FY 2002-2003 levels but also provided $1,104,000 in General Funds to augment above the FY 2002-2003 levels. After calculation of the FY 2005-2006 rates based on the regular methodology, calculation of the FY 2005-2006 augmented rates is described in the document entitled "FY 2005-2006 Drug Medi-Cal Augmented Rate Methodology For Narcotic and Non-Narcotic Treatment Programs," and is included in the Department's rulemaking file, which is maintained by the Department's Office of Regulations.

- For FY 2006-2007 and FY 2007-2008, LAAM was deleted from the narcotic treatment program rate tables. LAAM was discontinued from the United States market in August 2003 because of reports of adverse cardiac-related events.

- The FY 2009-10 Budget Act contained a 10 percent rate reduction to the reimbursement rates developed under the customary rate-development methodologies (see ABX4 4, Chapter 4, Statutes of 2009, Section 31).

AUTHORITY: Sections 10725, 14021.3, 14021.5, 14021.6, 14105 and 14124.5, Welfare and Institutions Code; and Sections 20 and 11758.42, Health and Safety Code.

REFERENCE: Sections 5705, 5715, 14021.5, 14021.6, 14021.9 and 14132.90, Welfare and Institutions Code; and Sections 11758.42 and 11758.46, Health and Safety Code.

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 August 27, 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; 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-09-011E" 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 emergency regulations described in this notice may be directed to Linda Machado of the Rate Development Branch, at (916) 552-9638.

All other inquiries concerning the action described in this notice may be directed to Lori Manieri of the Office of Regulations at (916) 650-6825, 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-09-011E.

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 emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency 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 emergency 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 emergency 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: State General Funds for this program are budgeted by ADP and the federal funding is budgeted by the Department.

C. Fiscal Effect on Federal Funding of State Programs: $10,297,000 (savings) in Federal Financial Participation for FY 2009-10.

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 Governments: None.

DETERMINATIONS: The Department has determined that the emergency 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 emergency 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 emergency 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 emergency regulations would only affect small businesses that voluntarily provide Drug Medi-Cal services.

The Department has determined that the emergency 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-09-011E

Dated: May 5, 2010

David Maxwell-Jolly
Director