*DHCS Logo, DAVID MAXWELL-JOLLY, Director

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

*The Great Seal of California, ARNOLD SCHWARZENEGGER, Governor

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

SUBJECT: Quality Assurance Fee (QAF) Program and the Medi-Cal Long-Term Care (LTC) Reimbursement Act, DHCS-06-012E

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 a public hearing commencing at 10 a.m. on September 27, 2010 in the auditorium, 1500 Capitol Avenue, Sacramento, CA, 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.

At the public hearing, attendees wishing to speak will be heard on a first-come, first- serve basis. Speakers may be limited to ten minutes or less, depending on the number of attendees requesting to speak. The hearing will close after all attendees present and wishing to speak have provided their testimony or at 5:00 pm, whichever comes first. Comments will not be discussed or debated by the Department, nor will speakers be cross-examined. A certified court reporter will be present to record the proceedings. Written comments of any length may be submitted for the record at the public hearing. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Title XIX of the Social Security Act provides for the federal Medicaid Program, administered in California by the California Department of Health Care Services (Department), as the California Medical Assistance (Medi-Cal) program. The Medi-Cal program provides qualified low-income persons (primarily families with children and the aged, blind, or disabled) with health care services. Under the authority of federal statutes, and regulations, and state law, each State adopts regulations: 1) establishing eligibility standards; 2) determining the type, amount, duration, and scope of services; 3) setting the rate of payment for services; and 4) administering the program.

Assembly Bill (AB) 1629 (Statutes of 2004, Chapter 875) added Health and Safety (H&S) Code, Sections 1324.20 through 1324.30, which establishes the Quality

Assurance Fee (QAF) Program that requires the Department collect funds from licensed skilled nursing facilities as means to enhance federal financial participation for the Medi- Cal program as well as to provide higher reimbursement to support quality improvement efforts in these facilities.

Also, AB 1629 added Welfare and Institutions (W&I) Code, Sections 14126 through 14126.035, the Medi-Cal Long-Term Care (LTC) Reimbursement Act for skilled nursing facilities, which mandates that the Department establish a facility-specific rate setting system that reflects the costs and staffing levels associated with quality care for residents in skilled nursing facilities. Establishing a facility-specific rate more effectively ensures individual access to appropriate LTC services, promotes quality resident care, advances wages and benefits for facility staff, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

The Department was granted authority to implement the provisions under AB 1629 through use of Provider Bulletins, which has been the practice.

AB 1183 (Chapter 758, Statutes of 2008) extended the Department's authority to implement the QAF Program and the Medi-Cal LTC Reimbursement Act through Provider Bulletins until July 31, 2010. The legislature directed that emergency regulations be adopted on or before July 31, 2010.

This regulatory action is set forth as an emergency as a result of the following: H&S Code Section 1324.23(b), which allows the Department to adopt emergency regulations to implement Article 7.6, Skilled Nursing Facility Quality Assurance Fee; W&I Code, Section 14105, which requires the Department adopt emergency regulations to set rates that reflect legislative budgeting decisions; and W&I Code, Section 14126.027(b)(1), which authorizes the adoption of regulations to implement Article 3.8, Medi-Cal LTC Reimbursement Act and specifies such an adoption is deemed necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action proposes to adopt Article 9, Sections 52000, 52100 through 52104, 52500 through 52516, and 52600 in Title 22, of the California Code of Regulations.

This emergency regulatory action will impact licensed Freestanding Nursing Facility, Level-Bs and Freestanding Subacute Nursing Facility, Level-Bs by establishing the QAF Program and the Medi-Cal LTC reimbursement methodology, and will specifically accomplish the following:

- Define terms relevant to the QAF Program and the Medi-Cal LTC reimbursement methodology.
- Set forth uniform requirements and procedures for the QAF Program including provisions pertaining to: the facilities affected and determination of the amount due; the payment process, including incorporation by reference of the Freestanding Nursing Facility, Level-B (FS/NF-B) and Freestanding Subacute

Nursing Facility, Level-B (FSSA/NF-B) Quality Assurance Fee Payment Invoice form DHCS 9116 (Rev. 03-10); the exemption qualification; and change of ownership.

- Set forth uniform standards, requirements and procedures for the Medi-Cal LTC reimbursement methodology including provisions pertaining to: the facilities affected; the facility-specific rate methodology (cost categories, peer groups and related data and calculations); rate setting for state-owned, newly certified and de-certified facilities; and audits and audit adjustments.

AUTHORITY:

Sections 20, 1324.20, 1324.21, and 1324.23, Health and Safety Code; and Sections 10725, 14105, 14124.5, 14126.027, 14170, and 14171 Welfare and Institutions Code.

REFERENCE:
Sections 14105, 14109.5, 14110.1, 14110.6, 14170, and 14171 Welfare and Institutions 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 October 1, 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-06-012E" 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 John McCraw of the Rate Development Branch, at (916) 552-9635.

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) 650-6827.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-06-012E.

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: Additional Cost of $59,192,000 GF in FY 2009-10 and $84,400,000 GF in FY 2010-11 would have resulted, however, the Budget Act of 2009 eliminated the increases. Both increases in costs and the corresponding elimination of the increase were included in the November 2009 Estimate. Costs for previous years are now included in the ongoing Medi-Cal base expenditures.

C. Fiscal Effect on Federal Funding of State Programs: Additional Cost of $94,915,000 FF in FY 2009-10 and $106,530,000 FF in FY 2010-11 would have

resulted, however, the Budget Act of 2009 eliminated the increases. Both increases in costs and the corresponding elimination of the increase were included in the November 2009 Estimate. Costs for previous years are now included in the ongoing Medi-Cal base expenditures.

D. All cost impacts, known to the agency 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 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 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 regulations would not affect small business because the regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

The Department has determined that the 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 emergency action was taken or would be as effective and less burdensome to affected private persons than the emergency action.

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-06-012E
Dated: June 3, 2010

Original Signed

David Maxwell-Jolly
Director

Office of Regulations/Office of Legal Services,
MS 0015, P.O. Box 997413,
Sacramento, CA ZIP 95899-7413
(916) 440-7695
FAX (916) 440-5748
Internet Address: www.dhcs.ca.gov