



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



EDMUND G. BROWN JR.
GOVERNOR

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

SUBJECT: Reimbursement Rates for Emergency and Post-Stabilization Services in
Nonplan Hospitals, DHCS-08-015

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:

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 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 clearly establish uniform reimbursement rates for all emergency outpatient, emergency inpatient and post-stabilization services following an emergency admission provided to Medi-Cal beneficiaries by a nonplan provider, thus precluding inequity in reimbursement. This action will specifically accomplish the following:

1. Amend Section 53216 to include a cross reference to proposed Section 53623 related to reimbursement for emergency services to nonplan providers.
2. Amend the title of Article 7 of Chapter 4 of Division 3 of Title 22 of the CCR, to reflect changes proposed through this regulatory action related to reimbursement for emergency outpatient, emergency inpatient and post-stabilization services following an emergency admission.
3. Adopt Section 53623 to set forth uniform reimbursement rates for the provision of emergency outpatient and emergency inpatient services to Medi-Cal beneficiaries by nonplan providers.
4. Adopt Section 53623.5 to set forth uniform reimbursement rates for the provision of post-stabilization services following an emergency admission to Medi-Cal beneficiaries by nonplan providers.
5. Amend Section 53698 to establish language that is consistent with Section 53623, related to reimbursement for emergency outpatient and emergency inpatient services and with Section 53623.5 related to reimbursement for post-stabilization services following an emergency admission.

6. Amend Section 53855 to establish language that is consistent with Section 53623, related to reimbursement for emergency outpatient and emergency inpatient services.
7. Amend Section 53912.5 to establish language that is consistent with Section 53623, related to reimbursement for emergency outpatient and emergency inpatient services.
8. Amend Section 56216 to include a cross reference to proposed Section 53623 related to reimbursement for emergency outpatient and emergency inpatient services to nonplan providers.

AUTHORITY: Section 20, Health and Safety Code; and Sections 10725, 14089.7, 14105, 14124.5, 14203, 14312 and 14454, Welfare and Institutions Code.

REFERENCE: Section 6254(q), Government Code; Sections 1317.2a, 1797.1 and 127800, Health and Safety Code; Sections 10727, 14087.3, 14087.4, 14088, 14088.2, 14088.4, 14088.16, 14089, 14091.3, 14166.245 and 14454 Welfare and Institutions Code; and 42 USC 1396u-2(b)(2)(D).

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 April 1, 2011, 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-08-015" 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 Tony Teresi of Medi-Cal Managed Care Division at (916) 449-5076.

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-08-015.

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: Savings of approximately \$9,200,000 beginning in the State Fiscal Year 2008-09, excluding the impact of the American Reinvestment & Recovery Act (ARRA).
- C. Fiscal Effect on Federal Funding of State Programs: Savings of approximately \$9,200,000 beginning in the State Fiscal Year 2008-09, excluding the impact of the American Reinvestment & Recovery Act (ARRA).

- 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 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.

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 regulations would affect 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.

DHCS-08-015

Dated: January 12, 2011

DEPARTMENT OF HEALTH CARE SERVICES

Originally Signed

Toby Douglas
Director