FINDING OF EMERGENCY

This emergency regulatory action amends Section 51516.1, Title 22, California Code of Regulations (CCR), by updating Medi-Cal reimbursement rates for substance abuse (Drug Medi-Cal) services for Fiscal Year (FY) 2003-2004 through FY 2009-2010 in accordance with Welfare and Institutions Code (WIC) Sections 14021.5, 14021.6 and 14105, and Health and Safety Code (HSC) Section 11758.42.

Pursuant to WIC Section 14021.5, the Department of Health Care Services (Department) shall promulgate emergency regulations to establish rates to determine reimbursement of drug services allowable under the Medi-Cal Program. WIC Section 14105 states that the Department shall adopt Medi-Cal rate regulations on an emergency basis. Both statutes state that the adoption of such regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The deeming of the regulations as an emergency by the Legislature implies the need for immediate action to effectuate the statutes being implemented through this action. WIC Section 14021.6 states that the Department may adopt Medi-Cal rate regulations on an emergency basis.

This regulatory action is being adopted by the Department rather than by the Department of Alcohol and Drug Programs because the Department is the single state agency authorized by the federal government to administer the Medi-Cal program.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This emergency regulatory action amends Title 22, 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 WIC Sections 14021.5, 14021.6 and 14105, and HSC Section 11758.42. These provisions require the Department of Alcohol and Drug Programs (ADP), in consultation with the Department of Health Care Services (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, 14021.6 and 14021.9 and HSC Sections 11758.42 and 11758.46. WIC Section 14021.5 specifies that rates for DMC 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 DMC 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.

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.