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

TOBY DOUGLAS
DIRECTOR

EDMUND G. BROWN JR.
GOVERNOR

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

SUBJECT: Upkeep & Repair Deduction for Persons in Long Term Care, DHCS-09-012

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:

Title XIX of the Social Security Act is a federal/state entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources. This program, known as Medicaid, became law in 1965 as a cooperative venture jointly funded by the federal and state governments to assist states in furnishing medical assistance to eligible needy persons. Medi-Cal is California's Medicaid program. It provides vital health and long-term care coverage to low-income children, their parents, elderly and disabled Californians. Medi-Cal is administered by the Department of Health Care Services (Department).

A Medi-Cal eligibility determination is made based on program rules, as to whether an individual qualifies for benefits under the program. An individual must not exceed the established property/asset limits in order to become Medi-Cal eligible. Income deductions are applied to an individual's gross income. The remainder, after deductions are subtracted, is the net nonexempt income. The deduction for home upkeep and repair is one of the deductions for long-term care patients. The appropriate maintenance need level is then subtracted from the net nonexempt income to determine whether an individual has a share of cost or not. The maintenance need level is the amount of monthly income, based upon federal law, that a person or family is deemed to need for food, clothing, housing, etc.

Title 42, Code of Federal Regulations (CFR) Section 435.725(d), sets forth an allowance for home maintenance (the individual can retain more countable income) if the amount is deducted for six months or less and a physician has certified the individual is likely to return home within this period.

This proposed regulatory action amends Title 22, California Code of Regulations Section 50605 that pertains to upkeep and repair needs for persons in long-term care, specifically the allowance for home maintenance under Subsections (b) and (c). Non-substantial grammatical changes are also proposed through this action.

AUTHORITY: Section 20, Health and Safety Code; and Sections 10725, 14005.13 and 14124.5, Welfare and Institutions Code.

REFERENCE: Title 42, Code of Federal Regulations, Section 435.725(d); and Sections 14005.7, 14005.12 and 14005.13, 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 March 25, 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-09-012” 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 Craig Yagi of the Medi-Cal Eligibility Division, at (916) 445-4062.

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-09-012.

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: Indeterminate.

C. Fiscal Effect on Federal Funding of State Programs: Indeterminate.

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 Department 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 proposed regulations would not affect small business. This proposed regulatory action aligns Title 22, CCR Section 50605(b) and (c) with federal regulation regarding the allowance for upkeep of a home for individuals on Medi-Cal in a long-term care facility. These proposed regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on 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.

DEPARTMENT OF HEALTH CARE SERVICES

Original Signed

DHCS-09-012

Dated: January 12, 2011

Toby Douglas
Director