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

TOBY DOUGLAS
Director

EDMUND G. BROWN JR.
Governor

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

SUBJECT: Drug Medi-Cal Rates (2010-2011), DHCS-11-002E

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 Drug Medi-Cal (DMC) reimbursement rates for substance abuse services for fiscal year (FY) 2010-2011. This emergency action implements, interprets, and makes specific the provisions of Welfare and Institutions Code (WIC) Sections 14021.5, 14021.6, 14021.9, and 14105, and Health and Safety Code (HSC) Sections 11758.42 and 11758.46. 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 DMC, and establish a per capita uniform statewide reimbursement (USR) rate for ancillary services.

This emergency regulatory action benefits Drug Medi-Cal service providers through the provision of the recent (2010/2011 FY) reimbursement rates while updating past rates, which in turn facilitates the continued delivery of these vital services. These emergency regulations not only meet the goals of the authorizing statutes, as specified above, but the regulations ensure the proper and efficient administration of the Medi-Cal Program, in accordance with the federal and state laws that govern the Program's rules of participation and funding.

The Department has conducted an evaluation of the related existing state regulations in CCR, title 22, Division 3 and title 9, Division 4 and has determined that the emergency regulations are consistent and compatible with those regulations.

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, as specified below.

- WIC Section 14021.5(e) 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.
- WIC Section 14105(a) authorizes adoption of regulations to set rates for Medi-Cal services on an emergency basis.
- HSC Section 11758.42 requires ADP to establish rates for the use of the narcotic replacement drugs Methadone and LAAM.
- HSC Section 11758.46(b) specifies DMC services that are reimbursable through the Medi-Cal program.
- WIC Section 14021.9(b) states that for FY 2010-2011, and each fiscal year thereafter, rates for DMC services shall be the lower of the following:
  1. The rates developed by ADP under its normal rate-setting methodologies; or
  2. The rates applicable in FY 2009-2010 adjusted for the cumulative growth in the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as reported by the Department of Finance.

Proposed changes to Title 22, CCR Section 51516.1 include the following:

Section 51516.1(a)(3):

- Revisions to this subsection will add the statewide maximum allowances (SMAs) for DMC substance abuse program services for FY 2010-2011. The specific methodology used to calculate DMC SMAs are described in the document entitled “Drug Medi-Cal Rate Setting Methodology for Non-Narcotic Treatment Programs for Fiscal Year 2010-2011.” This document is included in the rulemaking file, which is maintained by the Department’s Office of Regulations.

Section 51516.1(g):

- Revisions to this subsection will add the USR rates for narcotic treatment program services for FY 2010-2011. The specific methodology used to calculate narcotic treatment USR rates is described in the document entitled “Narcotic Treatment Program, Uniform Statewide Reimbursement Rates and Methodology, Fiscal Year (FY) 2010-2011.” This document is included in the rulemaking file, which is maintained by the Department’s Office of Regulations.

AUTHORITY: Sections 10725, 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, 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 May 4, 2012, 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 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 hand-delivery to the Office of Regulations, Department of Health Care Services, 1501 Capitol Avenue, Suite 5084, Sacramento, CA 95814; or

3. By fax transmission: (916) 440-5748; or

4. 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-11-002E" in the subject line to facilitate timely identification and review of the comment).

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

INQUIRIES: Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Arlene Sakazaki, of the Provider Rates Section, 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: For any inquiries or written comments, please identify the action by using the Department regulation package identifier,DHCS-11-002E.

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, which includes 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, 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; Federal Funding is budgeted by the Department.

C. Fiscal Effect on Federal Funding of State Programs: The federal financial participation impact of the rate is an additional expenditure of $1,666,000 in FY 2011-2012.

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 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.

Medi-Cal is a voluntary program for both service providers and beneficiaries. These emergency regulations affect Medi-Cal providers and beneficiaries who are offered substance abuse services through Medi-Cal.

The Department has determined that the emergency regulations would not affect worker safety or the state's environment. However, the emergency regulations will benefit the health and welfare of California residents by maintaining the continuity of the Medi-Cal Program through the provision of quality health care services, including the delivery of substance abuse services. These emergency regulations ensure the proper and efficient administration of the Medi-Cal Program, in accordance with the federal and state laws that govern the Program's rules of participation and funding.

This emergency regulatory action will benefit Drug Medi-Cal service providers through the provision of the recent (2010/2011 FY) reimbursement rates for these services, which in turn facilitates the delivery of these vital services to beneficiaries.

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 emergency action was taken, would be as effective and less burdensome to affected private persons than the emergency action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, or computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please write or call: Harry Cockcroft, 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-11-002E

Dated: February 9, 2012

Toby Douglas
Director