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: Dental Services, DHCS-11-003

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. California's Medicaid program is called the Medi-Cal Program and is administered by the Department.

Welfare and Institutions (W&I) Code, Sections 10725 and 14124.5 authorizes the Director of the Department to adopt, amend or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal Program. W&I Code Section 14132 sets forth the Medi-Cal schedule of benefits that includes dental services. The Department's Medi-Cal Dental Services Program (Program) is responsible for the delivery of dental services to eligible Medi-Cal beneficiaries.

California State Senate Bill 456 (Chapter 635, Statutes of 2001) added Division 110 (commencing with Section 130300) to the Health and Safety (H&S) Code and is known as the Health Insurance Portability and Accountability Act (HIPAA) of 2001. H&S Code Section 130301(f) provides that federal HIPAA rules directly apply to state and county departments that provide health coverage, health care, mental health services, and alcohol and drug treatment programs. Additionally, H&S Code Section 130301(h) provides that the implementation of HIPAA shall be accomplished as required by federal law and regulations. H&S Code Section 130301(c) further provides that "administrative simplification is a key feature of HIPAA" requiring the development of uniform standards for the coding and transmission of claims. These provisions of the H&S Code subject the Department to federal HIPAA rules and regulations for the implementation of uniform standard code sets.

The federal Health Insurance Portability and Accountability Act of 1996, specifically 45 Code of Federal Regulations (CFR), Subpart J, Section 162.1002 adopted as the standard medical data code set, the Code on Dental Procedures and Nomenclature, as maintained and distributed by the American Dental Association (ADA), for dental services. This provision required the Program to convert from the use of three-digit local procedure codes, which are unique to California, to the national standard Current Dental Terminology (CDT) procedure codes as approved by the ADA. The current version of these codes is called CDT 2011-2012 which this regulation package will update from the CDT 4 version. These procedure codes shall be used by the Program, Delta Dental of California (the fiscal intermediary for the Program) and dental providers for the identification and billing of dental services provided to Medi-Cal beneficiaries.

The revisions to the dental criteria include new CDT 2011-2012 procedure codes, changes in the existing title of procedures, updated frequency and/or time limitations for dental procedures and documentation requirements that providers shall meet in order to obtain prior authorization and/or payment for dental procedures. The goal of these and other changes to the dental criteria is to conform to the current version of CDT 2011-2012.

W&I Code, Section 14133.9 requires the Department to publicize and continue to develop its list of objective medical criteria that guide the professional judgment of Department consultants in their decisions as to whether a service is medically necessary and should be authorized. The Manual of Criteria for Medi-Cal Authorization (MOC), last revised January 1, 2006, which is incorporated by reference into Title 22, California Code of Regulations (CCR), Section 51003, is the method by which the Department has met this requirement. Chapter 8.1 of the MOC is dedicated to the dental criteria.

This proposed regulatory action will: implement the new updated 2011-2012 national standard CDT codes as mandated by HIPAA, update the dental criteria associated with the national standard CDT procedure codes and assure the Program meets current standards of dental practice.

This regulatory action specifically accomplishes the following:

- Amends CCR Section 51003(e) with a revision date for the MOC,
- Amends Chapter 8.1 of the MOC, which is incorporated by reference in CCR Section 51003(e) and includes revised criteria for the 12 major dental procedure categories,
- Amends the Handicapping Labio-Lingual Deviation (HLD) Index California Modification Score Sheet Form, DC016 (10/05).

AUTHORITY: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Sections 20 and 1267.7, Health and Safety Code.

REFERENCE: 14053, 14064, 14081, 14087, 14088, 14088.16, 14088.2, 14103.6, 14105.12, 14132, 14132.22, 14132.25, 14132.42, 14132.8, 14133, 14133.05, 14133.1, 14133.25 and 14133.3, Welfare and Institutions Code; *Jeneski v. Meyers* (1984) 163 Cal. App. 3d 18, 209 Cal. Rptr. 178; *Duran v. Belshé*, San Diego County Superior Court

Case No. 674204, (1995); and *Fresno Community Hospital and Medical Center v. State of California, et al.*, Fresno County, Superior Court Case No. 555694-9, (1996).

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 September 16, 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 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-11-003" 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 Dr. Brian Kennedy of Medi-Cal Dental Services at (916) 464-1206.

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) 440-7695.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-11-003.

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: None

C. Fiscal Effect on Federal Funding of State Programs: None

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 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 since many Medi-Cal dental providers meet the criteria for small business. Medi-Cal is a voluntary program for both service providers and beneficiaries. Therefore, only those businesses that choose to be Medi-Cal providers for Dental Services would be affected by these regulations.

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 write or call: 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-11-003
Dated: July 8, 2011

DEPARTMENT OF HEALTH CARE SERVICES

Originally Signed

Toby Douglas
Director