FINAL STATEMENT OF REASONS

As authorized by Government Code Section 11346.9(d), the Department of Health Care Services (Department) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

The regulation text was made available for public comment for at least 45 days, from July 18, 2014 through September 8, 2014, and five individuals submitted comments.

A public hearing was held at 10:00 a.m. on September 5, 2014, in the Auditorium of the East End Complex located at 1500 Capitol Avenue in Sacramento, California. One person commented during the public hearing.

SUMMARY AND RESPONSE TO 45-DAY PUBLIC COMMENTS

The Department received comments during the 45-day comment period. A summary of the comments and the Department's responses are set forth on Addendum I.

AMENDMENTS TO THE INITIAL STATEMENT OF REASONS

As a result of comments the Department received during the 45-day comment period regarding the recently approved California State Plan Amendment, (SPA) 13-038, the Department proposed changes to the regulation text and added documentation to the rulemaking file. Both the proposed changes to the regulation text and the additional documentation were made available for public comment for at least 15 days, from December 26, 2014 through January 9, 2015. The Department received no comments during this 15-Day Public Comment period.

Therefore, the Department amended the Initial Statement of Reasons to reflect the proposed changes to the regulation text and the documents added to the rulemaking file. The amendments to the Initial Statement of Reasons are shown below by using underline for additions (underline for additions) and strikethrough for deletions (~~strikethrough for deletions~~.) The explanations for the changes are further discussed below.

Statement of Purpose/Problem to be Addressed

This regulatory action amends Title 22, CCR, Section 51341.1 to address abusive and fraudulent practices identified during the targeted field reviews and PSPP reviews conducted by the Department. The regulations also implement some of the recommendations contained in the "Drug Medi-Cal Program Limited Scope Review" and remove ambiguities from the regulations that have inhibited Department enforcement efforts in the past. Additionally, the amendments implement, interpret and make specific the DMC services, which are defined in WIC Section 14124.24(a) and (b) and described in the California State Medicaid Plan, State Plan Amendments 13-038~~12-005~~ and 11-037b.

This change was necessary to identify the new State Plan Amendment that was approved during the rulemaking process.

Subsection (b) - Paragraph (10)

"Face-to-Face" is not defined in the existing regulations. This definition is necessary to clarify the meaning of the term as used in the regulations and to be consistent with "SPA 13-038~~12-005~~, Supplement 3 to Attachment 3.1-A, page~~s~~ 6a~~3, 3a~~ and Supplement 3 to Attachment 3.1-B, pages 4a~~1, 1a~~." The definition further specifies that this meeting shall occur at a certified facility in order to qualify as a reimbursable service. This is necessary since some providers have in the past billed for services at non-certified locations (i.e. hospital visits).

This change was necessary to identify the correct page numbers of the recently approved SPA 13-038 that contained the information the Department relied upon for this definition.

Subsection (b) - Paragraph (29)

"Therapist" is not defined in the existing regulations. Although the term is understood by the substance use disorder community, it is defined to specify which individuals can perform the role of a therapist, and is consistent with "SPA 13-038~~12-005~~, Supplement 3 to Attachment 3.1-A, pages 5, 6 and Supplement 3 to Attachment 3.1-B, pages 3, 4."

This change was necessary to identify the recently approved SPA 13-038 that contained the information the Department relied upon for this definition.

Subsection (h) - Paragraph (4)(A)

This amendment replaces the term "provider" with the term "physician." This amendment is necessary to clarify that a "physician", rather than the "provider," must determine whether fewer than two counseling sessions per thirty day period are clinically appropriate for a beneficiary. This amendment is also consistent with the "SPA 13-038~~12-005~~, Supplement 3 to Attachment 3.1-A, Page 6a~~3~~. and Supplement 3 to Attachment 3.1-B, page 4a~~1~~," since the treatment plan, which includes the number of counseling sessions, shall be approved by the physician.

This change was necessary to identify the correct page numbers of the recently approved SPA 13-038 that contained the information the Department relied upon for this requirement.

Subsection (h) – Paragraph (1)(A)(v)

The Department proposes amending Subsection (h) – Paragraph (1)(A)(v) in response to a comment pertaining to the recently approved California State Plan Amendment (SPA) 13-038, dated September 5, 2014. SPA 13-038 authorizes licensed practitioners of the healing arts to diagnose a beneficiary. The SUD Services Chart (Supplement 3 to Attachment 3.1-A, Page 6a and Supplement 3 to Attachment 3.1-B, Page 4a of SPA 13-038) indicates that in addition to a physician, a physician assistant, a nurse practitioner, a psychologist licensed by the California Board of Psychology, a clinical social worker licensed by the California Board of Behavioral Sciences, a marriage and family therapist licensed by the California Board of Behavioral Sciences, and an intern

registered with the California Board of Psychology or the California Board of Behavioral Sciences can also diagnose a beneficiary with a substance use disorder. (The definition of a therapist as specified under Subsection (b)(29), includes a psychologist licensed by the California Board of Psychology, a clinical social worker licensed by the California Board of Behavioral Sciences, a marriage and family therapist licensed by the California Board of Behavioral Sciences and an intern registered with the California Board of Psychology or the California Board of Behavioral Sciences, who are all considered licensed practitioners of the healing arts.) Therefore, the following amendments to the regulations are proposed:

The Department proposes amending Paragraph (1)(A)(v) to read "Diagnosis requirements," which now includes Paragraphs (1)(A)(v)(a) and (b). This amendment is necessary to distinguish between the diagnosis requirements for a physician and the diagnosis requirements for a therapist, physician assistant, or nurse practitioner.

The Department proposes re-designating Paragraph (1)(A)(v) as Paragraph (1)(A)(v)(a) with no proposed changes to the regulation text.

The Department proposes adding Paragraph (1)(A)(v)(b) as an alternative to meeting the requirements specified in Paragraph (1)(A)(v)(a) above. This proposed amendment authorizes a therapist (as defined in Subsection (b)(29)) a physician assistant or a nurse practitioner to diagnose a beneficiary instead of a physician. Paragraph (1)(A)(v)(b) requires the individual performing the diagnosis to meet the same requirements as a physician in Paragraph (1)(A)(v)(a). However, the physician shall sign and date the beneficiary's treatment plan, as required by Subsection (h)(2), which demonstrates approval of this diagnosis.

These additions were necessary to explain the proposed changes to the regulation text under Subsection (h) – Paragraph (1)(A)(v).

MATERIALS RELIED UPON

The Department added documentation from SPA 13-038 that superceded SPA 12-005:

4. California State Plan Amendment (SPA 13-038~~12-005~~), available at ~~http://www.dhcs.ca.gov/formsandpubs/laws/Documents/Recent%20State%20Plan%20Amendment%2012-005.pdf.~~ http://www.dhcs.ca.gov/formsandpubs/laws/Documents/CA_SPA_13-038_Approved_Package_Redacted.pdf
   - Supplement 3 to Attachment 3.1-A page~~s~~ 6a~~3, 3a~~
   - Supplement 3 to Attachment 3.1-A, pages 5, 6
   - Supplement 3 to Attachment 3.1-B, page~~s~~ 4a~~1, 1a~~
   - Supplement 3 to Attachment 3.1-B, pages 3, 4

LOCAL MANDATE DETERMINATION

The Department has determined that the proposed regulations would not impose a new 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.

ALTERNATIVES CONSIDERED

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

Existing regulations related to the DMC program (substance use disorder services) are located in Title 22, CCR, Section 51341.1. Using this regulatory proposal to make amendments to existing requirements and standards of the DMC program is the most effective and convenient way to provide (current/updated) information directly to those impacted (providers, physicians, beneficiaries).

This regulatory action is necessary pursuant to WIC Section 14124.26, which requires the Department to adopt emergency regulations. This action also implements WIC Section 14124.24, which requires the Department administer delivery of specified substance use disorder services. Additionally, this action is necessary to implement WIC Section 14043.75, by taking steps to prevent fraud and abuse related to substance use disorder services, under the Medi-Cal program. Specifically, this regulatory action will address abusive and fraudulent practices as identified in the targeted field reviews and PSPP reviews conducted by the Department, and will remove ambiguities from the existing regulations that have inhibited Department enforcement efforts in the past.