

FINDING OF EMERGENCY

This regulatory action adopts a quality assurance fee and reimbursement rate methodology for specific facilities providing long-term care. These regulations must be adopted as an emergency and will provide for the official regulatory publication of the methodology for the fee and rates for specific facilities.

Health and Safety (H&S) Code Section 1324.23(b) provides, in part, that:

The Director may adopt regulations as are necessary to implement this article. These regulations may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this article, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Pursuant to H&S Code Section 1324.23(b), the adoption of these regulatory changes is “deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.”

In addition, Welfare and Institutions (W&I) Code Section 14126.027(b)(1) provides that:

The director may adopt regulations as are necessary to implement this article. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for the purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action.

Pursuant to W&I Code Section 14126.027(b)(1) the adoption of these regulatory changes is “deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare” and the Department is exempted from the requirement that it describe specific facts showing the need for immediate action.

Further, W&I Code Section 14105(a), provides as follows:

The director shall prescribe the policies to be followed in the administration of this chapter, may limit the rates of payment for health care services, and shall adopt any rules and regulations as are necessary for carrying out, but are not inconsistent with, the provisions thereof.

The policies and regulations shall include rates for payment for services not rendered under a contract pursuant to Chapter 8 (commencing with Section 14200). In order to implement expeditiously the budgeting decisions of the Legislature, the director shall, to the extent permitted by federal law, adopt regulations setting rates that reflect these budgeting decisions within one month after the enactment of the Budget Act and of any other appropriation that changes the level of funding for Medi-Cal services. With the written approval of the Department of Finance, the director shall adopt the regulations as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 commencing with Section 11340, Part 1, Division 3, Title 2 of the Government Code). For purposes of that Act, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

Pursuant to W&I Code Section 14105(a), the adoption of these regulatory changes is “deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.”

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title XIX of the Social Security Act provides for the federal Medicaid Program, administered in California by the California Department of Health Care Services (Department), as the California Medical Assistance (Medi-Cal) program. The Medi-Cal program provides qualified low-income persons (primarily families with children and the aged, blind, or disabled) with health care services. Under the authority of federal statutes, and regulations, and state law, each State adopts regulations: 1) establishing eligibility standards; 2) determining the type, amount, duration, and scope of services; 3) setting the rate of payment for services; and 4) administering the program.

Assembly Bill (AB) 1629 (Statutes of 2004, Chapter 875) added Health and Safety (H&S) Code, Sections 1324.20 through 1324.30, which establishes the Quality Assurance Fee (QAF) Program that requires the Department collect funds from licensed skilled nursing facilities as means to enhance federal financial participation for the Medi-Cal program as well as to provide higher reimbursement to support quality improvement efforts in these facilities.

Also, AB 1629 added Welfare and Institutions (W&I) Code, Sections 14126 through 14126.035, the Medi-Cal Long-Term Care (LTC) Reimbursement Act for skilled nursing facilities, which mandates that the Department establish a facility-specific rate setting system that reflects the costs and staffing levels associated with quality care for residents in skilled nursing facilities. Establishing a facility-specific rate more effectively ensures individual access to appropriate LTC

services, promotes quality resident care, advances wages and benefits for facility staff, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

The Department was granted authority to implement the provisions under AB 1629 through use of Provider Bulletins, which has been the practice.

AB 1183 (Chapter 758, Statutes of 2008) extended the Department's authority to implement the QAF Program and the Medi-Cal LTC Reimbursement Act through Provider Bulletins until July 31, 2010. The legislature directed that emergency regulations be adopted on or before July 31, 2010.

This regulatory action is set forth as an emergency as a result of the following: H&S Code Section 1324.23(b), which allows the Department to adopt emergency regulations to implement Article 7.6, Skilled Nursing Facility Quality Assurance Fee; W&I Code, Section 14105, which requires the Department adopt emergency regulations to set rates that reflect legislative budgeting decisions; and W&I Code, Section 14126.027(b)(1), which authorizes the adoption of regulations to implement Article 3.8, Medi-Cal LTC Reimbursement Act and specifies such an adoption is deemed necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action proposes to adopt Article 9, Sections 52000, 52100 through 52104, 52500 through 52516, and 52600 in Title 22, of the California Code of Regulations.

This emergency regulatory action will impact licensed Freestanding Nursing Facility, Level-Bs and Freestanding Subacute Nursing Facility, Level-Bs by establishing the QAF Program and the Medi-Cal LTC reimbursement methodology, and will specifically accomplish the following:

- Define terms relevant to the QAF Program and the Medi-Cal LTC reimbursement methodology.
- Set forth uniform requirements and procedures for the QAF Program including provisions pertaining to: the facilities affected and determination of the amount due; the payment process, including incorporation by reference the Freestanding Nursing Facility, Level-B (FS/NF-B) and Freestanding Subacute Nursing Facility, Level-B (FSSA/NF-B) Quality Assurance Fee Payment Invoice form DHCS 9116 (Rev. 03-10); the exemption qualification; and change of ownership.
- Set forth uniform standards, requirements and procedures for the Medi-Cal LTC reimbursement methodology including provisions pertaining to: the facilities affected; the facility specific rate methodology (cost categories, peer groups and related data and calculations); rate setting for state-owned, newly certified and de-certified facilities; and audits and audit adjustments.

AUTHORITY:

Sections 20, 1324.20, 1324.21 and 1324.23, Health and Safety Code; and Sections 10725, 14105, 14124.5, 14126.027, 14170, and 14171 Welfare and Institutions Code.

REFERENCE:

Sections 14105, 14109.5, 14110.1, 14110.6, 14170, and 14171 Welfare and Institutions Code.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: Additional Cost of \$59,192,000 GF in FY 2009-10 and \$84,400,000 GF in FY 2010-11 would have resulted, however, the Budget Act of 2009 eliminated the increases. Both increases in costs and the corresponding elimination of the increase were included in the November 2009 Estimate. Costs for previous years are now included in the ongoing Medi-Cal base expenditures.
- C. Fiscal Effect on Federal Funding of State Programs: Additional Cost of \$94,915,000 FF in FY 2009-10 and \$106,530,000 FF in FY 2010-11 would have resulted, however, the Budget Act of 2009 eliminated the increases. Both increases in costs and the corresponding elimination of the increase were included in the November 2009 Estimate. Costs for previous years are now included in the ongoing Medi-Cal base expenditures.
- D. All cost impacts, known to the agency 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.

The Department has determined that the regulations would not affect small business because the regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

The Department has made the determination that the emergency regulations would have no impact on housing costs.