

INITIAL STATEMENT OF REASONS

The Department of Health Care Services' (Department) mission is to provide Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services and long-term care. In support of this mission, the Department administers many health care programs including California's State Medicaid program, which is known as the Medi-Cal program.

The Clinical Assurance and Administrative Support Division (CAASD) provides utilization review and post claims oversight for services provided to Fee-For-Service Medi-Cal beneficiaries (beneficiaries) through its network of medical, pharmacy, and administrative units located throughout the state. CAASD aims to provide cost-effective utilization controls by reviewing and adjudicating Treatment Authorization Requests (TARs) for certain medical procedures, services and drugs for beneficiaries prior to payment for services. CAASD responds to all TAR appeals and designated public hospitals and diagnostic related group disputes submitted by Fee-For-Service Medi-Cal providers (providers).

In September 2014, Senate Bill 1457 amended Section 14133.01 of the Welfare and Institutions (W&I) Code. This proposed regulatory action implements this legislation by establishing specific requirements that providers must follow regarding the electronic submission of TARs and TAR appeals to the Department. This legislation requires that the Department adopt an electronic system for TAR submissions by July 1, 2017. The Department has already established this system, which is known as the Medi-Cal eTAR web portal system (eTAR system), through which providers submit electronic TARs (e-TARs). The majority of these providers are currently using this system to submit their TARs and TAR appeals.

STATEMENT OF PURPOSE (PROBLEM TO BE ADDRESSED)

This regulatory action is necessary to address the matter of establishing a process by which these providers can submit TARs and TAR appeals to the Department through an eTAR system. This regulatory action is consistent with the mandate in W&I Code Section 14133.01 for the Department to promulgate regulations in this area and it will support the accurate and timely submission of TARs and TAR appeals through this eTAR system.

ANTICIPATED BENEFITS OR GOALS OF THE REGULATIONS

This regulatory proposal supports the purpose and intent of the Medi-Cal program as specified under W&I Code Section 14000, et seq., Chapter 7, Basic Health Care, to afford qualifying individuals (such as the aged or disabled) covered health care services in a manner equitable to the general public and without duplication of benefits available under other federal or state laws.

Within Chapter 7, Section 14124.5 further specifies that the Director may promulgate regulations as are necessary or proper to carry out the purpose and intent of this Chapter, which includes implementation of the uniform schedule of health care benefits under the Medi-Cal program, as described under Section 14131 et seq., including benefits under Article 4 and Section 14021.

The amendments proposed through this regulatory action will benefit providers through the establishment of a clear and streamlined submission process for TARs and TAR appeals through the eTAR system, which in turn will facilitate the delivery of vital health care services to beneficiaries. Use of the eTAR system, instead of the submission of paper TARs and TAR appeals, is also beneficial for providers who experience a reduction in bookkeeping, processing and mailing expenses related to the paper TAR and TAR appeal processes. These providers will also realize an accelerated timeframe for reimbursement.

In addition to meeting the goals of the authorizing statutes, these proposed regulations ensure the proper and efficient administration of the Medi-Cal program in accordance with the federal and state laws that govern the Medi-Cal program's rules of participation, funding and the authorized schedule of benefits. The eTAR system is a modern and streamlined approach to TAR processing that yields administrative and cost efficiencies for providers, the Department and the state.

AUTHORITY STATEMENT

Sections 10725 and 14124.5 of the W&I Code authorize the Director of the Department to adopt, amend or repeal regulations as necessary and proper to carry out the purpose and intent of the statutes governing the Medi-Cal program.

Proposed changes to CCR, Title 22, are as follows:

Section 51002.5

This new section is proposed to be adopted to establish provisions related to the submission of eTARs.

- Subsection (a)
This subsection is adopted to establish that the Department shall consider the ability of a provider to comply with the requirements of W&I Code Section 14133.01. This subsection provides the Department the discretion to allow a provider, such as an out-of-state provider, small independent provider or rural provider, who may submit a minimal amount of TARs, to continue to submit paper TARs. This proposed provision is consistent with W&I Code Section 14133.01(c)(2), which requires the Department to consider the capacity of a provider to comply with the eTAR submission requirements. This provision also takes into consideration providers who may not have the resources to establish the necessary infrastructure to submit eTARs.

- Subsection (a)(1)
This subsection is adopted to allow a provider a reasonable amount of time to establish the infrastructure necessary to support the submission of eTARs, as provided in W&I Code Section 14133.01(c)(2)(A). This provision is necessary to afford providers flexibility with the implementation of eTAR submission requirements. The Department is committed to supporting the provider community with the transition to eTAR submissions.
- Subsection (a)(2)
This subsection is adopted to specify that the Department offers education and training to providers regarding the use of the eTAR system, as provided in W&I Code Section 14133.01(c)(2)(B). This provision is necessary to establish a means to provide guidance during this transition to the use of eTARs. It is the Department's intent to support providers through this transition, in an effort to continually augment the submission of eTARs.
- Subsection (b)
This subsection is necessary to establish that providers must utilize the Medi-Cal eTAR web portal system when submitting TARs (as eTARs.) The majority of providers currently use the e-TAR system, which is a convenient and streamlined method to submit TARs to the Department. This provision is necessary to be consistent with W&I Code Section 14133.01(c)(1), which requires that the Department establish a format for electronic TAR submissions.
- Subsection (c)
This subsection is necessary to describe that there is an exception to the submission of an eTAR. This alternative method to the submission of an eTAR will allow providers the option of a paper TAR submission when necessary due to a disruption in the eTAR system. This alternate format is available after a 72-hour consecutive period of disruption. This timeframe is consistent with the Department's overall operational recovery plan, which seeks to restore services within this timeframe. The processing of TARs is considered an essential function and the Department makes it a top priority to ensure the continued processing of TARs even during a disruption. Accordingly, the Department would seek to restore TAR processing well within 72 hours. However, if there was a circumstance that prevented restoration within this timeframe, as a contingency plan to resume business operations, providers would have the option to submit paper TARs. If this timeframe were to lapse the Department would direct providers to this alternate format for TAR submissions. This provision is consistent with W&I Code Section 14133.01(c)(3), which directs the Department to designate an alternate format of TAR submission in case of system disruption.

Section 51003.1

This section is proposed to be amended. The existing language covers the appeal process for paper TARs only. This section is proposed to be amended to also include the appeal process for eTARs. For ease of reading and for clarity, all of the language

under Section 51003.1 is shown in ~~strikeout~~ and new language is shown in underline. Much of the language is simply being relocated, as specified below.

- Subsection (a)
This subsection continues to provide a heading sentence that introduces specific appeal requirements for TARs which are to follow in further subsections. The language remains the same with the existing text.
- Subsection (a)(1)
This subsection includes the requirement that a provider must submit a TAR appeal within a 180 calendar day period from the date of the decision on the original TAR. The term “written” has been changed to “TAR” because the requirement pertains to both paper TARs and eTARs. The reference to the “Medi-Cal Operations Division Headquarters in Sacramento” has been removed due to reorganization within the Department. A specific reference to the Department is not necessary because providers are aware of where to submit TARs. The last phrase has been abbreviated and excludes the language, “on the TAR, which is the date a decision on the TAR is made by the Medi-Cal consultant” and replaces it with “date of the decision on the original TAR.” The reference to the “decision of the Medi-Cal consultant” is already covered in subsection (a) so it is not necessary in subsection (a)(1).
- Subsection (a)(2)
The existing text in subsection (a)(1)(B) has been moved to subsection (a)(2). The term “TAR” is included in front of the term “appeal” for consistent use of this phrase throughout the regulation text. This provision was moved up in the regulation text to immediately follow the other provision related to the timing of the submission for TAR appeals. This was necessary to bridge this gap for improved conceptual clarity.
- Subsection (b)
The existing text in subsection (a)(2), which provides a header sentence for the enumerated requirements covering what must be included in a TAR appeal has been moved to subsection (b). This provision was moved up in the regulation text to immediately follow subsection (a) which also pertains to both paper and eTAR appeals. The phrase “regardless of submission method” has been included to stress that all of the criteria under paragraphs (1) through (4) apply to both paper and eTAR appeals. This was necessary to bridge this gap for improved conceptual clarity. The term “written” has been changed to “TAR” to apply the subsequent requirements to both paper and eTAR appeals.
- Subsection (b)(1)
The requirement that a TAR appeal shall include the original TAR number and service type requested has been moved from subsection (a)(2)(A) in the existing regulation text to subsection (b)(1). The term “The” was added for grammatical accuracy.

- Subsection (b)(2)
The requirement that a TAR appeal shall include the date(s) or service(s) in dispute has been moved from subsection (a)(2)(B) in the existing regulation text to subsection (b)(2). The term “The” was added for grammatical accuracy.
- Subsection (b)(3)
The requirement that a TAR appeal shall include the reason the appeal should be granted has been moved from subsection (a)(2)(C) in the existing regulation text to subsection (b)(3). The term “The” was added for grammatical accuracy and “and” was included here (from existing subsection (a)(2)(D)) to lead into subsection (b)(4).
- Subsection (b)(4)
The requirement that a TAR appeal shall include any additional documentation that a provider chooses to submit which supports the basis for the conclusion that the services are medically necessary has been moved from subsection (a)(2)(D) in the existing regulation text to subsection (b)(4).
- Subsection (c)
This subsection provides a heading statement for subsections (c)(1) and (c)(2), which set forth specific requirements that apply to eTAR appeals.
- Subsection (c)(1)
This subsection provides that an eTAR appeal must be submitted through the Medi-Cal eTAR web portal system. This subsection complies with the W&I Code Section 14133.01(c), which requires that TARs be submitted in an electronic format, which is to be determined by the Department. The majority of providers currently use the e-TAR system, which is a convenient and streamlined method to submit TARs to the Department.
- Subsection (c)(2)
This subsection requires that providers use the special handling indicator for appeals within the eTAR system. This is necessary to clearly distinguish for the Department that the submission pertains to an appeal. This distinction will allow an appeal to be directed to the appropriate staff person for review in a timely manner. Use of the special handling indicator will support a more efficient adjudication process and a faster turn-around time for appeals.
- Subsection (d)
This subsection is necessary to describe that there is an exception to the submission of an eTAR appeal. This alternative method to the submission of an eTAR appeal will allow providers the option of a paper TAR appeal submission when necessary due to a disruption in the eTAR system. This alternate format is available after a 72-hour consecutive period of disruption. This timeframe is consistent with the Department’s overall operational recovery plan, which seeks to restore services within this timeframe. The processing of TAR appeals is considered an essential function and the Department makes it a top priority to

ensure the continued processing of TAR appeals even during a disruption. Accordingly the Department would seek to restore TAR appeal processing well within 72 hours. However, if there was a circumstance that prevented restoration within this timeframe, as a contingency plan to resume business operations, providers would have the option to submit paper TAR appeals. If this timeframe were to lapse the Department would direct providers to this alternate format for TAR appeal submissions. This provision is consistent with W&I Code Section 14133.01(c)(3), which directs the Department to designate an alternate format for submitting TARs in case of system disruption. The Department has determined that this same exception that applies to the submission of an eTAR is necessary for an eTAR appeal submission.

- Subsection (e)
This subsection is necessary to describe an additional exception for when a provider may submit a paper TAR appeal instead of an eTAR appeal. If the Department determines that a provider may submit a paper TAR, because the provider does not have the capacity to comply with W&I Code Section 14133.01 (see Section 51002.5 subsection (a) discussion), then that provider may also submit a paper TAR appeal. This provision is consistent with Section 51002.5(a) and with W&I Code Section 14133.01(c)(2) that pertain to the consideration of a provider's capacity. The Department has determined that this same additional exception that applies to the submission of an eTAR is necessary and would reasonably apply for an eTAR appeal submission.
- Subsection (f)
This subsection provides a heading statement for subsections (f)(1) through (f)(5), which set forth specific requirements that apply to paper TAR appeals. This subsection takes the place of existing subsection (a)(1)(A), and includes changes to clarify that the following subsections pertain only to paper TAR appeals (instead of a written appeal).
- Subsection (f)(1)
This subsection has been moved from subsection (a)(2)(E) in the existing regulation text to subsection (f)(1), so it is located with the other provisions related to paper TAR appeals. The term "Include" is added to provide parallel construction in the listing of criteria under subsection (f). The term "and" is included as a lead into the paragraphs under subsection (f)(1).
- Subsection (f)(2)
This subsection is necessary to specify that a paper TAR appeal must be submitted to the Department, and is consistent with subsection (a)(1) of the existing regulation text. This subsection also serves as a heading sentence for the three alternative methods of submission that are covered in subsections (f)(3),(4) and (5). The term "Be" is added to provide parallel construction in the listing of criteria under subsection (f).

- Subsection (f)(3)
This subsection specifies that a provider may send a paper TAR appeal through the United States Postal Service. This requirement is currently stated in subsection (a)(1)(A)1. of the existing regulation text and is now proposed to be moved to subsection (f)(3). The term “Be” is added to provide parallel construction in the listing of criteria under subsection (f).
- Subsection (f)(4)
This subsection specifies that a provider may personally deliver a paper TAR appeal to the Department to be date stamped upon receipt. This requirement is currently stated in subsection (a)(1)(A)2. of the existing regulation text and is now proposed to be moved to subsection (f)(4). The term “Be” is added to provide parallel construction in the listing of criteria under subsection (f).
- Subsection (f)(5)
This subsection specifies that a provider may use a common carrier to have a paper TAR appeal delivered to the Department. This requirement is currently stated in Subsection (a)(1)(A)3. of the existing regulation text and is now proposed to be moved to subsection (f)(5). The term “Be” is added to provide parallel construction in the listing of criteria under subsection (f).
- Subsections (g)(1) and (2)
These subsections are necessary to replace existing subsection (b), which pertains to the Department’s review of paper TAR appeals only. Subsection (g), as described below specifies the Department’s review process for both eTAR and paper appeals, which is necessary to be consistent with the discussion of both eTAR and paper TAR submissions under Section 51002.5.
- Subsection (g)(1)
This subsection prescribes the review procedure that the Department shall undertake when it accepts an eTAR appeal. The Department will review the eTAR appeal and enter the decision and the basis for that decision in the Medi-Cal eTAR web portal system. This is necessary so the provider will have easy and more immediate access to the information.
- Subsection (g)(2)
This subsection serves as a lead into paragraphs (A) and (B) below, which prescribe the review procedures that the Department shall undertake when it accepts a paper TAR appeal.
- Subsection (g)(2)(A) and (B)
Paragraphs (A) and (B) under subsection (g)(2) prescribe the procedure that the Department shall undertake when it accepts a paper TAR appeal. Paragraph (A) specifies that the Department will review the paper TAR appeal and enter the decision and the basis for that decision in the Medi-Cal eTAR web portal system. This is necessary so the provider will have easy and more immediate access to the information if the provider has on-line accessibility. Paragraph (B) specifies

that the Department will also send the appeal decision and the basis for that decision to the provider. This is necessary to ensure that the provider receives this information in the case of a disruption in the eTAR system (as described in subsection (d)) or in the case of an out-of-state provider or a provider who does not have the capacity or infrastructure to use the eTAR system.

- Subsection (h)

This subsection is necessary to replace existing subsection (b)(1), which pertains to an appeal decision that is based on a review of documented medical necessity for the review of paper TAR appeals only. Subsection (h) provides a lead into paragraphs (1) and (2) that describe the Department's review and decision notification processes for eTAR and paper TAR appeals.

- Subsection (h)(1)

This subsection is necessary to specify the provisions related to an eTAR appeal decision that is based on a review of documented medical necessity (which is similar to paper TAR appeals as currently described in existing subsection (b)(1)). This subsection is necessary to be consistent with the discussion of eTAR submissions under Section 51002.5 and with the discussion of the Department's review and decision notification processes for eTAR appeals, described in subsection (g)(1) above. The timeframe of "within 180 calendar days" remains the same as it is under existing subsection (b)(1). However, the phrasing of this provision is amended to refer to "the date that the eTAR appeal was submitted through the Medi-Cal eTAR web portal system," instead of "the date of receipt by the Department." This change is necessary to make this subsection specific to eTAR appeals. The term "written" has been excluded because the provisions under subsection (h) pertain to both eTAR and paper appeals and to be consistent with the exclusion of this term throughout the regulations.

- Subsection (h)(2)

This subsection is necessary to specify the provisions related to a paper TAR appeal decision that is based on a review of documented medical necessity (which is similar to paper TAR appeals as currently described in existing subsection (b)(1), but includes an additional amendment, as described below). This subsection is necessary to be consistent with the discussion of paper TAR submissions under Section 51002.5 and with the discussion of the Department's review and decision notification processes for paper TAR appeals, described in subsection (g)(2) above. Subsection (g)(2) specifies how the Department will enter the appeal decision information into the eTAR system as well as send this information to the provider for paper TAR appeals. The timeframe of "within 180 calendar days" remains the same as it is under existing subsection (b)(1). However, this provision includes a nonsubstantive amendment to refer to "the date that the paper TAR appeal was received by the Department," instead of "the date of receipt by the Department." This phrasing was chosen because it emphasizes that this subsection pertains to paper TAR appeals. The term "written" has been excluded because the provisions under subsection (h) pertain

to both eTAR and paper appeals and to be consistent with the exclusion of this term throughout the regulations.

- Subsection (i)
This subsection is necessary to replace existing subsection (b)(2), which pertains to an appeal decision that is a denial based on failure to submit the TAR appeal within 180 calendar days from the date of the decision on the original TAR for the review of paper TAR appeals only. Subsection (i) provides a lead into paragraphs (1) and (2) which describe the Department's review and decision notification processes for eTAR and paper TAR appeals.
- Subsection (i)(1)
This subsection is necessary to update the provisions related to an eTAR appeal decision that is a denial based on failure to submit the appeal within 180 calendar days from the date of the decision on the original TAR (which is similar to paper TAR appeals as currently described in existing subsection (b)(2)). This subsection is necessary to be consistent with the discussion of eTAR submissions under Section 51002.5 and with the discussion of the Department's review and decision notification processes for eTAR appeals, described in subsection (g)(1) above. The timeframe of "within 60 calendar days" remains the same as it is under existing subsection (b)(2). However, the phrasing of this provision is amended to refer to "the date that the eTAR appeal was submitted through the Medi-Cal eTAR web portal system," instead of "the date of receipt by the Department." This change is necessary to make this subsection specific to eTAR appeals. The term "written" has been excluded because the provisions under subsection (i) pertain to both eTAR and paper appeals and to be consistent with the exclusion of this term throughout the regulations.
- Subsection (i)(2)
This subsection is necessary to specify the provisions related to a paper TAR appeal decision that is a denial based on failure to submit the appeal within 180 calendar days from the date of the decision on the original TAR (which is similar to paper TAR appeals as currently described in existing subsection (b)(2), but includes an additional amendment as described below). This subsection is necessary to be consistent with the discussion of paper TAR submissions under Section 51002.5 and with the discussion of the Department's review and decision notification processes for paper TAR appeals, described in subsection (g)(2) above. Subsection (g)(2) specifies how the Department will enter the appeal decision information into the eTAR system as well as send this information to the provider for paper TAR appeals. The timeframe of "within 60 calendar days" remains the same as it is under existing subsection (b)(2). However, this provision includes a nonsubstantive amendment to refer to "the date that the paper TAR appeal was received by the Department," instead of "the date of receipt by the Department." This phrasing was chosen because it emphasizes that this subsection pertains to paper TAR appeals. The term "written" has been excluded because the provisions under subsection (i) pertain to both eTAR and

paper appeals, and to be consistent with the exclusion of this term throughout the regulations.

- Subsection (j)
Subsection (c) in the existing regulation text, which provides for judicial remedy to a provider challenging the appeal decision has been moved to subsection (j) in the proposed amended text.

STATEMENTS OF DETERMINATION

A. 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.

Regulations related to the TARs and TAR appeals are located in Title 22, CCR, Chapter 3, Health Care Services. Using this regulatory proposal to make amendments related to TARs and TAR appeals is the most effective method to provide current information to those affected by the regulations in one convenient location (the CCR). This regulatory action is also necessary to meet the mandate in W&I Code Section 14133.01 that the Department promulgate regulations to implement Section 14133.01, and it will promote the accurate and timely submission of TARs and TAR appeals through this eTAR system.

B. LOCAL MANDATE DETERMINATION

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.

Participation in the Medi-Cal program is voluntary. The amendments proposed through this regulatory action will only impact providers who participate in the Medi-Cal program and submit TARs and TAR appeals. The majority of providers own and operate computers connected to the internet. This regulatory proposal leverages computing equipment and network access that these providers already have. Providers that do not have the capacity to electronically submit TARs and TAR appeals may continue to submit paper TARs and TAR appeals. Therefore, no considerable new cost impacts to these entities are presumed to be incurred as a result of adopting the requirements of this proposed regulation.

C. ECONOMIC IMPACT STATEMENT

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, 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 or elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

Impact on Jobs and Businesses

Participation in the Medi-Cal program is voluntary. The amendments proposed through this regulatory action will only impact providers who participate in the Medi-Cal program and submit TARs and TAR appeals. As described under the Local Mandate Determination above the majority of providers own and operate computers connected to the internet. This regulatory proposal leverages computing equipment and network access that these providers already have. Providers that do not have the capacity to electronically submit TARs and TAR appeals may continue to submit paper TARs and TAR appeals. Therefore, it is not anticipated that businesses will experience any cost impacts as a result of this regulatory action. To the contrary, the use of the eTAR system is anticipated to provide some cost savings in bookkeeping, processing and mailing expenses for providers. In addition these providers will also realize an accelerated timeframe for reimbursement. It is not anticipated that providers' use of the eTAR system would have a significant impact on the creation or elimination of jobs, the creation of business, the elimination of existing business or the expansion of businesses in California.

Benefits of the Proposed Regulation

The Department has determined that the proposed regulations will not affect worker safety or the state's environment. However, the proposed regulations will benefit the health and welfare of California residents by supporting the continuity of the Medi-Cal program and the vital services that are offered to qualified individuals through the provision of a modern and streamlined approach for TAR and TAR appeal processing.

This regulatory proposal not only supports an efficient timeframe for reimbursement for these providers, it also ensures the proper and efficient administration of the Medi-Cal program in accordance with federal and state laws. It also provides cost efficiencies for these providers, the Department and the state.

D. EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations would only affect those small businesses that choose to participate as providers in the Medi-Cal program and submit TARs and TAR appeals to the Department.

E. HOUSING COSTS DETERMINATION

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