



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



EDMUND G. BROWN JR.
Governor

NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION

SUBJECT: Drug Medi-Cal Rates (2012-2013), DHCS-12-007E

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) has adopted the regulations in California Code of Regulations (CCR), Title 22, Division 3, Subdivision 1, Chapter 3, Article 7, Section 51516.1 on an emergency basis. These emergency regulations became effective on April 7, 2015, and will remain in effect for a period of 180 days. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to Drug Medi-Cal Rates (2012-2013), DHCS-12-007E and submit using any of the following methods:

Mail Delivery: Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX: (916) 440-5748

Email: regulations@dhcs.ca.gov

The written comment period closes at **5:00 p.m., on June 11, 2015**, any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 p.m.** on this date, for consideration.

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

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, 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.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Welfare and Institutions Code (WIC) Sections 10725, 14021.5, 14021.6, 14021.30, 14105 and 14124.5; and Health and Safety Code (HSC) Section 20.

These regulations implement, interpret, or make specific the following:

WIC Sections 14021.5, 14021.51, 14021.6, 14021.9, 14021.30, 14121.24 and 14132.90; and HSC Section 11818.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This regulatory action amends Title 22, CCR, Section 51516.1, by updating Medi-Cal reimbursement rates for Drug Medi-Cal (DMC) substance use disorder services for Fiscal Year (FY) 2012-2013. This action implements, interprets, and makes specific the provisions of WIC Sections 14021.5, 14021.51, 14021.6, 14021.9, and 14124.24. These provisions require the Department, to establish rates for DMC substance use disorder services, and establish a per capita uniform statewide reimbursement (USR) rate for ancillary services.

Assembly Bill 106 (Chapter 32, Statutes of 2011) transferred California's DMC substance use disorder program from the Department of Alcohol and Drug Programs (ADP) to the Department, effective July 1, 2012. Senate Bill 1014 (Chapter 36, Statutes of 2012) facilitated the transfer by providing the statutory authority necessary for the Department to administer the program.

Anticipated Benefits or Goals of the Regulations

This regulatory action benefits DMC substance use disorder service providers through the provision of the recent FY 2012-2013 reimbursement rates, which in turn facilitates the continued delivery of these services. These 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.

Consistency and Compatibility with Existing State Regulations

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 regulations are consistent and compatible with those regulations. An automated search of Title 22, Division 3 and Title 9, Division 4 using the following keywords “Drug Medi-Cal”, “Substance Use Disorder Services”, and “rates” was conducted via Westlaw and yielded no conflicting state regulations.

This regulatory action is necessary to implement WIC Sections 14021.5, 14021.51 14021.6, 14021.9 and 14124.24, as specified below.

- WIC Section 14021.5(e) specifies that rates for DMC substance use disorder services shall be effective July 1 through June 30 of the fiscal year in which the rates are established.
- WIC Sections 14021.51 and 14021.6 specify how the Department shall determine rates for DMC substance use disorder services.
- WIC Section 14021.51 requires the Department to establish rates for the use of the narcotic replacement drugs Methadone and LAAM.
- WIC Section 14124.24(a) specifies DMC substance use disorder services that are reimbursable through the Medi-Cal program.
- WIC Section 14021.9(c) states that for FY 2012-2013 and each fiscal year thereafter, rates for DMC substance use disorder services shall be the lower of the following:
 1. The rates developed pursuant to WIC Sections 14021.35, 14021.51, and 14021.6; or
 2. The rates applicable in FY 2009-2010 pursuant to subdivision (a), 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.

Regulatory Sections

Proposed changes to Section 51516.1 include the following:

Throughout the regulation text “ADP” references are changed to “Department,” meaning the Department of Health Care Services.

Subsection (a)(2):

- Revised to update the reference to HSC Section 11818, which is the accurate citation.

Subsection (a)(3):

- Revised to update the WIC Section 14021.9(b) reference to the accurate citation, which is 14021.9(c); and to add the statewide maximum allowances (SMAs) for DMC substance use disorder services for FY 2012-2013. The specific methodology used to calculate the SMAs is described in the document entitled

“Drug Medi-Cal Rate Setting Methodology for Non-Narcotic Treatment Programs for Fiscal Year 2012-2013.” This document is included in the rulemaking file, which is maintained by the Department’s Office of Regulations.

Subsection (b)(2):

- A non-substantive change to be consistent with use of the term in Subsection (a)(1).

Subsection (g):

- Revised to include the per capita USR rates for narcotic treatment program services for FY 2012-2013. The specific methodology used to calculate these rates is described in the document entitled “Drug Medi-Cal - Narcotic Treatment Program - Uniform Statewide Reimbursement Rates and Methodology, Fiscal Year (FY) 2012-2013.” This document is included in the rulemaking file, which is maintained by the Department’s Office of Regulations.

Subsection (h):

- A non-substantive change in Paragraphs (1) and (2) to update cross references.

DISCLOSURES REGARDING THE RULEMAKING

The Department has made the following initial determinations:

Fiscal Impact Statement

- A. Costs to any Local Agency or School District that is not reimbursable by the State: The fiscal impact of updating DMC rates to fiscal year 2012-2013 has no current impact. The costs related to this regulation update were funded in the May 2012 Medi-Cal Estimate.

Costs to any Local Agency or School District that is required to be reimbursed Under Part 7 (commencing with Section 17500), Division 4 of the Government Code: The fiscal impact of updating DMC rates to fiscal year 2012-2013 has no current impact. The costs related to this regulation update were funded in the May 2012 Medi-Cal Estimate.

- B. Costs or Savings to any State Agency: None
- C. Costs or Savings in Federal Funding to the State: The fiscal impact of updating DMC rates to fiscal year 2012-2013 has no current impact. The costs related to this regulation update were funded in the May 2012 Medi-Cal Estimate.
- D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Governments: None

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.

Mandates on Local Agencies or School Districts

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.

Significant Statewide Adverse Economic Impact Affecting Businesses

The Department has made an initial determination that the 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 Medi-Cal reimbursement rates for DMC substance use disorder services for FY 2012-2013 are slightly higher than the rates from the prior fiscal year, so there is a benefit for DMC substance use disorder service providers from the increase in payment.

Results of the Economic Impact Assessment (Analysis)

In accordance with Government Code Section 11346.3(b)(1), the Department has made the following assessments and has determined that the proposed regulations would not significantly affect the following:

- (1) The creation or elimination of jobs in California.
- (2) The creation or elimination of businesses in California.
- (3) The expansion of businesses currently doing business in California.

Impact on Jobs and Businesses

These regulations affect DMC substance use disorder service providers and beneficiaries who receive these services through Medi-Cal. There is a benefit for providers from the increased rates for FY 2012-13. However, it is not anticipated that this rate increase would have an impact on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

Benefits of the Proposed Regulation

The Department has determined that the regulations would not affect worker safety or the state's environment. However, the regulations will benefit the health and welfare of California residents by maintaining the continuity of substance use disorder services in the DMC Program and implementing the FY 2012-2013 reimbursement rates for these

services. Furthermore, these 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.

Effect on Small Businesses

The Department has determined that the regulations would only affect small businesses that choose to provide DMC services.

Housing Costs Determination

The Department has determined that the regulations would have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

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, would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Department is required, pursuant to WIC Section 14021.5, to establish reimbursement rates for substance use disorder services under the Medi-Cal Program. Including these reimbursement rates in regulation is not only necessary for statutory compliance, but it provides DMC service providers with convenient access to these rates of reimbursement.

ASSISTIVE SERVICES

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and 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 call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email – regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code Section 11346.6.

CONTACT PERSONS

Inquiries regarding the regulations described in this notice may be directed to Don Braeger of the Substance Use Disorder Prevention, Treatment and Recovery Services Division at (916) 327-8608.

All other inquiries concerning the regulatory 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, Kenneisha Moore, at (916) 440-7755.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the regulations, all the information upon which the regulations are based, and the text of the 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 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.

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.

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at:

<http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

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 or 1-800-735-2929), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.