

**State of California
Office of Administrative Law**

In re:
Department of Health Care Services

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 22, California Code of Regulations

OAL File No. 2015-0403-04 S

Adopt sections: 51193.1, 51193.3
Amend sections: 51051, 51113, 51311,
51511.6, 51531
Repeal sections:

The Department of Health Care Services proposed this action to amend five sections and adopt two sections in title 22 of the California Code of Regulations. The proposed action replaces the term "X-ray" with the technically correct term "imaging," defines "portable imaging services" and "portable imaging services provider," clarifies the scope of portable imaging services and authorization for payment, specifies financial interest and direct care relationship standards, and makes other nonsubstantive changes.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2015.

Date: 5/12/2015

Original Signed

Richard L. Smith
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Jennifer Kent
Copy: Lori Manieri

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2014-1017-01	REGULATORY ACTION NUMBER 2015-0403-04S	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California**MAY 12 2015**

1:57 P.M.

2015 APR -3 P 1:05
OFFICE OF
ADMINISTRATIVE LAWAGENCY WITH RULEMAKING AUTHORITY
Department of Health Care ServicesAGENCY FILE NUMBER (if any)
DHCS-14-011**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2014, 442	PUBLICATION DATE 10/31/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Portable Imaging Services		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 51193.1 and 51193.3	
		AMEND 51051, 51113, 51311, 51511.6 and 51531	
TITLE(S) 22		REPEAL	
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) February 12, 2015 through February 27, 2015			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Lori Manieri		TELEPHONE NUMBER (916) 650-6825	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) lori.manieri@dhcs.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Original Signed

DATE

3/23/15

TYPED NAME AND TITLE OF SIGNATORY

Jennifer Kent, Director per agency request

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED**MAY 12 2015**

Office of Administrative Law

(1) Amend Section 51051 to read:

§51051. Provider.

(a) “Provider” means any individual, partnership, group, association, corporation, institution, or entity, and the officers, directors, owners, managing employees or agents of any partnership, group association, corporation, institution, or entity, that provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary, and that has been enrolled in the Medi-Cal program.

(b) Providers include, but are not limited to:

Acupuncturists

Audiologists

Blood Banks

Child Health and Disability Prevention Providers

Chiropractors

Clinical Laboratories or Laboratories

Comprehensive Perinatal Services Providers

Dental School Clinics

Dentists

Dispensing Opticians

Durable Medical Equipment and Medical Supply Providers

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Providers

EPSDT Supplemental Services Providers

Fabricating Optical Laboratory

Hearing Aid Dispensers

Home Health Agencies-/Hospices

Hospital Outpatient Departments

Hospitals

Intermediate Care Facilities

Intermediate Care Facilities for the Developmentally Disabled

Licensed Midwife

Local Educational Agency Providers

Nurse Anesthetists

Nurse Midwives

Nurse Practitioners

Nursing Facilities

Occupational Therapists

Ocularists Optometrists

Orthotists

Organized Outpatient Clinics

Outpatient Heroin Detoxification Providers

Personal Care Service Providers

Pharmacies/Pharmacists

Physical Therapists

Physicians

Podiatrists

Portable X-ray Imaging Services Providers

Prosthetists

Providers of Medical Transportation

Psychologists Rehabilitation

Religious Nonmedical Health Care Institutions

Renal Dialysis Centers and Community Hemodialysis Units

Respiratory Care Practitioners

Rural Health Clinics

Short-Doyle Medi-Cal Providers

Skilled Nursing Facilities

Speech Therapists

Targeted Case Management Providers

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14043.75, 14100.1, ~~14015~~ 14105 and 14124.5, Welfare and Institutions Code; ~~Section 87, Chapter 1594, Statutes of 1982; and Section 13, Chapter 502, Statutes of 1990.~~
Reference: Sections 14043, 14043.1, 14043.15, 14043.26, 14043.27, 14043.36, ~~14100.1~~, 14105, 14105.3, ~~14115.6~~, ~~14124.5~~, 14132, 14132.39, 14132.4, 14132.44 and 14134.5, Welfare and Institutions Code; Section 33, Chapter 456, Statutes of 1990; Section 1250(k), Health and Safety Code; Section 1206, Business and Professions Code; and Title 42 United States Code, Section 263a.

(2) Amend Section 51113 to read:

§ 51113. Hospital Outpatient Department Services.

“Hospital outpatient department services” means diagnostic, preventive or therapeutic services furnished on an outpatient basis on the premises of a hospital. Hospital based home health agency services, home dialysis services, portable ~~X-ray~~ imaging services, and collection of laboratory specimens need not be furnished on the premises of the facility.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, and 14105, and 14124, Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

(3) Adopt Section 51193.1 to read:

§ 51193.1. Portable Imaging Services.

“Portable imaging services” means diagnostic imaging examinations which utilize equipment that is transported to locations where these services are performed. These services include the following diagnostic examinations: radiological, ultrasound, echocardiographic, and non-invasive vascular.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1765.105, Health and Safety Code; and Section 14132, Welfare and Institutions Code.

(4) Adopt Section 51193.3 to read:

§ 51193.3. Portable Imaging Services Provider.

“Portable imaging services provider” means a provider who is enrolled in the Medi-Cal program and performs portable imaging services.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code. Reference: Section 1765.105 Health and Safety Code; and Section 14132, Welfare and Institutions Code.

(5) Amend Section 51311 to read:

§ 51311. Laboratory, Radiological, ~~and Radioisotope~~ Portable Imaging Services.

(a) Examinations, tests, and therapeutic services ordered by a licensed practitioner, within his/her scope of practice as defined by California law, for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, injury or impairment of, or the assessment of the health of, human beings, or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition or illness in a human being are covered except that laboratory services provided for chronic outpatient hemodialysis in renal dialysis centers and community hemodialysis units are payable only when billed by the renal dialysis center or community hemodialysis unit.

(b) Portable imaging ~~services rendered by portable X-ray providers~~ are covered subject to prior authorization except ~~that services~~ when they are rendered in skilled nursing and intermediate care facilities ~~shall not require prior authorization~~. Emergency portable imaging services performed in locations other than skilled nursing and intermediate care facilities ~~are covered without~~ do not require prior authorization. ~~subject to the submission of a written statement with the claim for services to support the emergency. The following procedures and examinations are covered as portable X-ray services:~~

~~(1) Diagnostic radiological procedures.~~

~~(2) Diagnostic ultrasonic procedures.~~

~~(3) Noninvasive cardiovascular studies.~~

(c) Procedures and examinations ~~which~~ that are not covered as portable X-ray imaging services include:

- (1) Procedures involving fluoroscopy;
- (2) Procedures involving the use of contrast media;
- (3) Procedures requiring the administration of a substance to the patient or injection of a substance into the patient and/or special manipulation of the patient;
- (4) Procedures ~~which~~ that require special medical skill or knowledge possessed by a physician, dentist or podiatrist or ~~which~~ that require ~~that~~ medical judgment be exercised;
- (5) Routine screening procedures;
- (6) Procedures ~~which~~ that are not of a diagnostic nature; and
- (7) Procedures ~~which~~ that for safety, and effectiveness to permit clear interpretation of the ~~film~~ image by a radiologist, need to be performed in a radiology ~~radiologic~~ facility ~~and because there is a necessity for;~~ and require any of the following:

- (A) Immobilization of the patient.
- (B) Avoidance of excessive radiation due to the number of views required.
- (C) Special techniques to deal with complex radiologic problems.
- (D) Special equipment and supplies.

(d) Portable imaging services are covered only when:

- (1) The provider ordering the portable imaging services has no financial interest in the business of the portable imaging services provider; and

(2) The patient is under the direct care of the ordering provider, not the portable imaging services provider.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 5, Chapter 1156, Statutes of 1983. Reference: Section 1206, Business and Professions Code; Sections 14132, 14133, 14133.05 and 14133.1, Welfare and Institutions Code; and Section 149.1, Chapter 323, Statutes of 1993.

(6) Amend Section 51511.6 to read:

§ 51511.6. Nursing Facility Services-Pediatric Subacute Care Reimbursement.

(a) The per diem rates of reimbursement for pediatric subacute services as ~~defined~~ described in Section 51335.6(a) shall be as follows:

. . . .

No changes to Subsections (b) - (e)

(f) The pediatric subacute per diem rate includes the following:

- (1) Equipment and supplies necessary for continuous intravenous therapy;
- (2) Oxygen and all equipment necessary for administration including positive pressure apparatus;
- (3) Ventilators, including calibration and maintenance;
- (4) Registered Dietician consultant services;
- (5) Respiratory therapy services;
- (6) Physical, occupational and speech therapy services, as specified in Section 51215.10(h);
- (7) Developmental services;
- (8) Service Coordinator activities; and
- (9) Portable ~~x-ray~~ imaging services ~~when~~ provided by freestanding providers.

NOTE: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Section 14132.25, Welfare and Institutions Code; Statutes of 2004, Chapter 208, Items 4260-101-0001 and 4260-101-0890; Statutes of 2005, Chapters 38, Items 4260-101-0001 and 4260-101-0890; and Statutes of 2006, Chapters 48, Items 4260-101-0001 and 4260-101-0890.

7) Amend Section 51531 to read as follows:

§51531. ~~X-Ray~~ Payment for Portable Imaging Services.

(a) Payment for ~~X-ray~~ portable imaging services, when provided at home, in residential care facilities, in intermediate care facilities or in skilled nursing facilities, and done by or under the direction of a physician, may be made when billed by the physician, except when these services are included in the cost payment formula of a skilled nursing facility.

(b) Payment for ~~X-ray~~ portable imaging services performed by a portable X-ray imaging services provider, as set forth in accordance with Sections 51193.1 and 51311(b), when provided at home, in residential care facilities, in intermediate care facilities or in skilled nursing facilities may be made in accordance with the following:

(1) Payment for ~~X-ray~~ portable imaging services shall be reasonable charges not to exceed the charge in the locality for similar services with consideration for customary charges. Services shall be billed by ~~either the interpreting physician (Radiologist) and/or the portable X-ray imaging services provider.~~ either the interpreting physician (Radiologist) and/or the portable X-ray imaging services provider. In no event shall the charge exceed the charge made to the general public.

(2) Payment for portable ~~X-ray~~ imaging services transportation shall include transportation of portable ~~X-ray~~ imaging equipment and personnel to the home or skilled nursing facility. Maximum reimbursement rates shall be established pursuant to Welfare and Institutions Code Section 14105.23.

(c) Claims for services rendered by a portable X-ray imaging services provider shall include the name and address of the ~~practitioner~~ portable imaging services provider and

ordering provider, the ~~service~~, tentative diagnosis and a brief statement stating why portable ~~X-ray imaging~~ services ~~was~~ are necessary.

NOTE: Authority cited: Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Section 20, Health and Safety Code. Reference: Section 14105, Welfare and Institutions Code; Statutes of 1982, Chapter 1594, Section 77; Statutes of 1983, Chapter 323, Section 149; Statutes of 1984, Chapter 268, Section 66; and Statutes of 1985, Chapter 111, Items 4260-106-001 and 890.