

State of California
Office of Administrative Law

NOTICE OF APPROVAL OF REGULATORY ACTION
Government Code Section 11349.3
OAL File No. 2015-0403-04 S

In re:
Department of Health Care Services
Regulatory Action:

Title 22, California Code of Regulations

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

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

[Signed]
Richard L. Smith, Senior Attorney

For: DEBRA M. CORNEZ, Director

Original: Jennifer Kent
Copy: Lori Manieri

[Stamp]
[REGULAR]

**STATE OF CALIFORNIA – OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION**

STD. 400 (REV. 01-2013)
OAL FILE NUMBERS
NOTICE FILE NUMBER: **Z-** 2014-1017-01
REGULATORY ACTION NUMBER: 2015-0403-045
EMERGENCY NUMBER: [Blank]

For use by Office of Administrative Law (OAL) only
NOTICE: [Blank]

REGULATIONS: [Date Stamp]
2015 APR 3 PM 1:05
OFFICE OF ADMINISTRATIVE LAW

For Use by Secretary of State Only
[Date Stamp]
Endorsed Filed in the Office of the Secretary of State of the State of California
May 12 2015
1:57 PM

AGENCY WITH RULEMAKING AUTHORITY: Department of Health Care Services
AGENCY FILE NUMBER (if any): DHCS-14-011

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE: [Blank]
TITLES: [Blank]
FIRST SECTION AFFECTED: [Blank]
2. REQUESTED PUBLICATION DATE: [Blank]
3. NOTICE TYPE
Notice re Proposed Regulatory Action: [Blank]
Other: [Blank]
4. AGENCY CONTACT PERSON: [Blank]
TELEPHONE NUMBER: [Blank]
FAX NUMBER (Optional): [Blank]

OAL USE ONLY

ACTION ON PROPOSED NOTICE

Approved as Submitted: [Blank]
Approved as Modified: [Blank]
Disapproved/Withdrawn: [Blank]
NOTICE REGISTER NUMBER: 2014, 44Z
PUBLICATION DATE: 10/31/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATIONS: Portable Imaging Services

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBERS: [Blank]

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLES AND SECTIONS

(Including Title 26, if toxics related)

SECTIONS AFFECTED (List all section numbers individually. Attach additional sheet if needed.)

ADOPT: 51193.1 and 51193.3

AMEND: 51051, 51113, 51311, 51511.6 and 51531

REPEAL: [Blank]

TITLES: 22

3. TYPE OF FILING

Regular Rulemaking (Gov. Code Section 11346): [Checked]

Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code Sections 11349.3, 11349.4): [Blank]

Emergency (Gov. Code, Section 11346.1(b)): [Blank]

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code Sections 11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute: [Blank]

Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, Section 11346.1): [Blank]

Emergency Readopt (Gov. Code, Section 11346.1(h)): [Blank]

File & Print: [Blank]

Changes Without Regulatory Effect (Cal. Code Regs., Title 1, Section 100): [Blank]

Print Only: [Blank]

Other (Specify): [Blank]

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs, Title 1, Section 44 and Gov. Code Section 11347.1): February 12, 2015 through February 27, 2015

5. EFFECTIVE DATE OF CHANGES (Gov. Code, Sections 11343.4, 11346.1(d)); Cal. Code Regs, Title 1, Section 100):

Effective January 1, April 1, July 1, or October 1 (Gov. Code Section 11343.4(a)): [Checked]

Effective on filing with Secretary of State: [Blank]

Section 100 Changes Without Regulatory Effect: [Blank]

Effective other (Specify): [Blank]

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY.

Department of Finance (Form STD. 399) (SAM Section 6660): [Checked]

Fair Political Practices Commission: [Blank]
State Fire Marshal: [Blank]
Other (Specify): [Blank]

7. CONTACT PERSON: Lori Manieri
TELEPHONE NUMBER: 916-650-5825
FAX NUMBER (Optional): [Blank]
EMAIL ADDRESS (Optional): lori.manieri@dhcs.ca.gov

8. I certify that the attached copy of the regulations is a true and correct copy of the regulations 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]
TYPED NAME AND TITLE OF SIGNATORY: Jennifer Kent, Director
DATE: 3/23/15

For use by Office of Administrative Law (OAL) only

[Date Stamp]
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 [begin underline] Services [end underline] 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 [begin strikeout] X-ray [end strikeout] [begin underline] Imaging [end
underline] Services [begin underline] Providers [end underline]

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: [begin underline] Section 20, Health and Safety Code; and [end underline] Sections 10725, 14043.75, 14100.1, [begin strikeout] 14015 [end strikeout] [begin underline] 14105 [end underline] and 14124.5, Welfare and Institutions Code [begin strikeout] ; Section 87, Chapter 1594, Statutes of 1982; and Section 13, Chapter 502, Statutes of 1990.[end strikeout] Reference: Sections 14043, 14043.1, 14043.15, 14043.26, 14043.27, 14043.36, [begin strikeout] 14100.1, [end strikeout] 14105, 14105.3, [begin strikeout] 14115.6, 14124.5, [end strikeout] 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 [begin strikeout] X-ray [end strikeout] [begin underline] imaging [end underline] services, and collection of laboratory specimens need not be furnished on the premises of the facility.

NOTE: Authority cited: [begin underline] Section 20, Health and Safety Code; and [end underline] Sections 10725 [begin strikeout] , [end strikeout] [begin underline] and [end underline] 14105 [begin underline] , [end underline] [being strikeout] and 14124, [end strikeout] Welfare and Institutions Code. Reference: Section 14132, Welfare and Institutions Code.

(3) Adopt Section 51193.1 to read:

§ [begin underline] 51193.1. Portable Imaging Services. [end underline]

[being underline] “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. [end underline]

[begin underline] 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. [end underline]

(4) Adopt Section 51193.3 to read:

§ [begin underline] 51193.3. Portable Imaging Services Provider. [end underline]

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

[begin underline] 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. [end underline]

(5) Amend Section 51311 to read:

§ 51311. Laboratory, Radiological [begin underline] , [end underline] and [begin
strikeout] Radioisotope [end strikeout] [begin underline] Portable Imaging [end
underline] Services.

(a) Examinations, tests, and therapeutic services ordered by a licensed practitioner, within his [begin underline] /her [end underline] scope of practice as defined by California law, for the purpose of providing information for [begin underline] the [end underline] 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) [begin underline] Portable imaging [end underline] [begin strikeout] S [end strikeout] [begin underline] ≤ [end underline] ervices [begin strikeout] rendered by portable X-ray providers [end strikeout] are covered subject to prior authorization except [begin strikeout] that services [end strikeout] [begin underline] when they are [end underline] rendered in skilled nursing and intermediate care facilities [begin strikeout] shall not require prior authorization [end strikeout]. Emergency [begin underline] portable imaging [end underline] services performed in locations other than skilled nursing and intermediate care facilities [begin strikeout] are covered without [end strikeout] [begin underline] do not require [end underline] prior authorization [begin

~~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 begin

strikeout] ~~film~~ [end strikeout] [begin underline] image [end underline] by a radiologist, need to be performed in a [begin underline] radiology [end underline] [begin strikeout] radiologic [end strikeout] facility [begin strikeout] and because there is a necessity for [end strikeout] [begin underline] ; and require [end underline] 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.

[begin underline] (d) Portable imaging services are covered only when: [end underline]
 [begin underline] (1) The provider ordering the portable imaging services has no financial interest in the business of the portable imaging services provider; and [end underline]
 underline]

[begin underline] (2) The patient is under the direct care of the ordering provider, not the portable imaging services provider. [end underline]

NOTE: Authority cited: [begin underline] Section 20, Health and Safety Code; and [end underline] Sections 10725, 14105 and 14124.5, Welfare and Institutions Code [begin strikeout] ; and Section 5, Chapter 1156, Statutes of 1983. [end strikeout]
Reference: Section 1206, Business and Professions Code; Sections 14132, 14133 [begin underline] , 14133.05 [end underline] 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 [begin
strikeout] ~~defined~~ [end strikeout] [begin underline] described [end underline] 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 [begin strikeout] - [end strikeout] [begin underline]
; and [end underline]
- (9) Portable [begin strikeout] x-ray [end strikeout] [begin underline] imaging [end
underline] services [begin strikeout] when [end strikeout] 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. [begin strikeout] ~~X-Ray~~ [end strikeout] [begin underline] Payment for Portable Imaging [end underline] Services.

(a) Payment for [begin strikeout] ~~X-ray~~ [end strikeout] [begin underline] portable imaging [end underline] 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 [begin strikeout] ~~X-ray~~ [end strikeout] [begin underline] portable imaging [end underline] services performed by [begin underline] a [end underline] portable [begin strikeout] ~~X-ray~~ [end strikeout] [begin underline] imaging [end underline] services [begin underline] provider, [end underline] [begin strikeout] ~~as set forth~~ [end strikeout] in [begin underline] accordance with [end underline] Section [begin underline] s 51193.1 and [end underline] 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 [begin strikeout] ~~X-ray~~ [end strikeout] [begin underline] portable imaging [end underline] 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 [begin strikeout] ~~either~~ [end strikeout] the [begin underline] interpreting [end underline] physician [begin strikeout] ~~(Radiologist)~~ [end strikeout] [begin underline] and/ [end underline] or the portable [begin strikeout] ~~X-ray~~ [end strikeout] [begin underline] imaging [end underline] service [begin underline] s provider

[end underline]. In no event shall the charge exceed the charge made to the general public.

(2) Payment for portable [begin strikeout] X-ray [end strikeout] [begin underline] imaging services [end underline] transportation shall include transportation of portable [begin strikeout] X-ray [end strikeout] [begin underline] imaging [end underline] 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 [begin underline] a [end underline] portable [begin strikeout] X-ray [end strikeout] [begin underline] imaging [end underline] services [begin underline] provider [end underline] shall include the name and address of the [begin strikeout] practitioner [end strikeout] [begin underline] portable imaging services provider and [end underline] ordering [begin underline] provider, [end underline] the [begin strikeout] service, [end strikeout] tentative diagnosis and a brief statement stating why portable [begin strikeout] X-ray [end strikeout] [begin underline] imaging [end underline] service [begin underline] s [end underline] [begin strikeout] was [end strikeout] [begin underline] are [end underline] 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.