

## **Explanation of Changes Without Regulatory Effect**

### **Background**

California's Medicaid Program, Medi-Cal, is administered by the Department of Health Care Services (DHCS). Medi-Cal provides health care services including medical, dental, mental health (including psychology services), substance use treatment services, and long-term care services and supports for low income families, children, seniors, pregnant women, and persons with disabilities.

Welfare and Institutions (W&I) Code Sections 10725 and 14124.5, authorize DHCS' director to adopt, amend, or repeal regulations as necessary and proper to carry out the purpose and intent of the laws enforced by DHCS. Specifically, W&I Code, Chapter 7, Basic Health Care, Section 14000 states the purpose of this chapter is to afford qualifying individuals health care services. The uniform schedule of health care benefits under Medi-Cal are described under W&I Code Section 14131, et seq., including mental health services, which are specified under Sections 14021 and 14132.03.

The California Public Health Act of 2006 (SB 162, Chapter 241, Statutes of 2006), effective July 1, 2007, split the Department of Health Services into two separate departments: DHCS and the California Department of Public Health. The inclusion of Health and Safety Code (HSC) 20, as an authority citation, clearly demonstrates the authority for DHCS to adopt, amend, or repeal regulations.

### **Summary**

DHCS proposes changes without regulatory effect that would amend Title 22 of the California Code of Regulations (CCR), Section 51309, Psychology, Physical Therapy, Occupational Therapy, Speech Pathology and Audiological Services; and Section 51331, Hospital Outpatient Department Services and Organized Outpatient Clinic Services. The scope and duration of psychology services is specified under Section 51304(a) at a maximum of two services in any one calendar month. The proposed amendments to remove this service limitation, as contained in the accompanying regulation text, are changes without regulatory effect, pursuant to Title 1, CCR, Section 100(a)(6), which allows for making a regulatory provision consistent with a changed California statute if both of the following conditions are met:

- The regulatory provision is inconsistent with and superseded by a changed statute; and
- The adopting agency has no discretion to adopt a change that differs in substance from the one chosen.

The proposed amendments are without regulatory effect, because the changes would not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provisions.

The amendments related to mental health services (including psychology services) as proposed, are pursuant to the enactment of Senate Bill (SB) X1-1 (Hernandez, Chapter 4, Statutes of 2013, Section 28), which added W&I Code Section 14132.03 as part of the implementation of the Patient Protection and Affordable Care Act (PPACA)(Pub. L. 111-148) amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) also known as the Affordable Care Act (ACA).

WIC Section 14132.03(a)(1) specifies:

*“(a) The following shall be covered Medi-Cal benefits effective January 1, 2014:  
(1) Mental health services included in the essential benefits package adopted by the state pursuant to Section 1367.005 of the Health and Safety Code and Section 10112.27 of the Insurance Code and approved by the Secretary of Health and Human Services under Section 18022 of Title 42 of the United States Code. To the extent behavioral health treatment services are considered mental health services pursuant to the essential health benefits package, these services shall only be provided to individuals who receive services through federally approved waivers or state plan amendments pursuant to the Lanterman Developmental Disability Services Act, at Division 4.5 (commencing with Section 4500).”*

Health and Safety Code (HSC) Section 1367.005 further specifies, in part:

*“(a) An individual or small group health care service plan contract issued, amended, or renewed on or after January 1, 2014, shall, at a minimum include coverage for essential health benefits pursuant to the PPACA and as outlined in this section. For purposes of this section, “essential health benefits” means all of the following:  
(1) Health benefits within the categories identified in Section 1302(b) of PPACA:.....mental health and substance use disorder services, including behavioral health treatment.....  
(2)(A) The health benefits covered by Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035) as this plan.....”*

Additionally, Insurance Code (INS) Section 10112.27 specifies in part:

*“(a) An individual or small group health insurance policy issued, amended, or renewed on or after January 1, 2014, shall, at a minimum, include coverage for essential health benefits pursuant to PPACA and as outlined in this section. This section shall exclusively govern what benefits a health insurer must cover as essential health benefits. For purposes of this section, “essential health benefits” means all of the following:  
(1) Health benefits within the categories identified in Section 1302(b) of PPACA: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment....  
(2) (A) The health benefits covered by the Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035) as this plan.”*

The Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035), which is available at <http://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/california-ehb-benchmark-plan.pdf>), includes “Mental/Behavioral Health Outpatient Services” as essential health benefits. These benefits do not have a quantitative service limitation.

Lastly, Section 18022 of Title 42 of the United States Code (USC) [Section 1302(b) ACA] states in part:

*“(b) Essential Health benefits*

*(1) In general....such benefits shall include at least the following general categories and items and services covered within these categories:.....*

*(E) Mental Health and substance use disorder services, including behavioral health treatment.....”*

## **Conclusion**

Psychology services as specified under Sections 51309 and 51331, are considered “mental health services.” These mental health services are essential health benefits (meaning Medi-Cal covered benefits) as described in W&I Code Section 14132.03(a)(1), HSC Section 1367.005, INS Section 10112.27, USC Section 18022, and by the Kaiser Foundation Health Plan Small Group HMO 30 plan. These mental health services (including psychology services), as described in the statutes above, do not include service limitations when provided to a Medi-Cal beneficiary, which meets eligibility criteria, i.e., medical necessity, for mental health services. DHCS has no discretion to adopt changes that differ in substance from that intended by W&I Code Section 14132.03(a)(1) and the aforementioned statutes.

Amendments to Section 51309 include:

- Adding section (e), “Such services, except psychology, are subject to the limitations set forth in Section 51304(a);”
- Adding HSC Section “20” to the Note as an Authority; and
- Adding W&I Code Section “14132.03” to the Note as a Reference.

Amendments to Subsection 51331 include:

- Subsection (b), third sentence – deleting the phrase “(3) and;”
- Adding HSC Section “20” to the Note as an Authority; and
- Adding W&I Code Section “14132.03” to the Note as a Reference.