



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: LONG-TERM CARE REIMBURSEMENT, DHCS-09-013E

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, Chapter 3, Article 7, Sections 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51535, 51535.1; and Chapter 5, Article 6, Section 54501 on an emergency basis. These emergency regulations became effective on December 24, 2013, 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 Long-Term Care Reimbursement, DHCS-09-013E 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 pm on February 26, 2014, any written comments, regardless of the method of transmittal must be received by the Office of Regulations by 5:00pm 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:

Sections 20, 1267.7 and 1275.3 Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14108.2, 14109.5, 14110.6, 14110.7, 14124.5, 14125.5 and 14570, Welfare and Institutions Code.

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

Sections 14087.3, 14105, 14105.47, 14105.981, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7, 14123, 14132.22, 14132.25, 14171 and 14571, Welfare and Institutions Code; Sections 1250, 1267.7, 1275.3, 1324, 1324.2, 1324.4, 1324.6, 1324.8, 1324.10, 1324.12 and 1324.14 Health and Safety 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; and the Settlement Agreement in *California Association for Adult Day Services v. Department of Health Services*, January 12, 1994, San Francisco County Superior Court (Case Number 944047).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Welfare and Institutions (W&I) Code Section 14105 requires the Department to adopt regulations establishing reimbursement rates for Medi-Cal providers of health care services and mandates for the emergency adoption of regulations for these changes in response to legislative budgeting decisions.

This regulatory action amends the CCR, Title 22 to reflect reimbursement rates established by the Department for specific types of facilities providing long-term care services to Medi-Cal beneficiaries. The rate years are August 1, through July 31 of 2004-05, 2005-06 and 2006-07. In the Budget Acts of 2004-05, Items 4260-101-0001 and 4260-101-0890 (Ch. 208, Stats. 2004); 2005-06, Items 4260-101-0001 and 4260-101-0890 (Ch. 38, Stats. 2005); and 2006-07, Items 4260-101-0001 and 4260-101-0890 (Ch. 48, Stats. 2006), the Legislature appropriated funding to pay these rates. The

reimbursement rates established through this regulatory action include the Quality Assurance Fee (QAF), pursuant to Health and Safety (H&S) Code Section 1324.21.

Anticipated Benefits or Goals of the Regulations

This regulatory proposal supports the intent of the initiating legislation as specified under W&I Code Section 14000, which states the purpose of Chapter 7, Basic Health Care is to afford qualifying individuals (such as the aged or disabled) employment of 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 14105 specifies that the Director shall prescribe policies and regulations for the administration of the chapter, which includes the establishment of rates for payment of health care services.

The amendments proposed through this regulatory action will address the matter of establishing reimbursements rates for specific types of facilities providing long-term care services to Medi-Cal beneficiaries. These amendments will directly benefit these Medi-Cal providers through the update of their specific rates of reimbursement, which facilitates the delivery of these vital long-term care services to beneficiaries. In addition to meeting the goals of the authorizing statutes as described above, 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.

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 has determined that the regulations are consistent and compatible with those regulations.

Regulatory Sections

The proposed changes affect the following CCR sections: 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51535, 51535.1, and 54501. In addition to the changes in reimbursement rates this regulatory action will also accomplish the following:

- Make non-substantial changes in formatting and language structure.
- Specify the fiscal period for audit report findings.
- State audit disallowance factors per rate year.

DISCLOSURES REGARDING THE RULEMAKING

The Department has made the following initial determinations:

Estimated Fiscal Impact Statement

- A. 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: None
- B. Costs or Savings to any State Agency: The costs for the General Fund (Dollars in Thousands): FY 2004-05, \$119,133; FY 2005-06, \$61,884; and FY 2006-07, \$34,195. These costs were appropriated for and paid in their respective rate years and are included in the ongoing Medi-Cal base expenditures for Long-Term Care rates.
- C. Costs or Savings in Federal Funding to the State: The costs for federal funding to the state via matching funds: FY 2004-05, \$119,133; FY 2005-06, \$61,884; and FY 2006-07, \$34,195.
- 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 business, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (Analysis)

Impact on Jobs and Businesses

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.

This determination is made on the basis that the regulations reflect rate changes based upon reported costs that are prospectively updated for economic indicators and adjusted for audit results.

Medi-Cal is a voluntary program for both service providers and beneficiaries. These emergency regulations will affect only those long-term care facilities that choose to participate in the Medi-Cal program.

Benefits of the Proposed Regulation

The Department has determined that the emergency regulations will not affect worker safety or the state's environment. However, the emergency regulations will benefit the health and welfare of California residents by maintaining the continuity of the Medi-Cal program through the provision of comprehensive health care services at low cost for low-income individuals such as families with children, seniors, persons with disabilities, children in foster care and pregnant women, including the delivery of long-term care services.

This emergency regulatory action will benefit long-term care Medi-Cal service providers through the provision of the reimbursement rates established in the Budget Acts of 2004-05, Items 4260-101-0001 and 4260-101-0890 (Ch. 208, Stats. 2004); 2005-06, Items 4260-101-0001 and 4260-101-0890 (Ch. 38, Stats. 2005); and 2006-07, Items 4260-101-0001 and 4260-101-0890 (Ch. 48, Stats. 2006) for these services, which in turn facilitates the delivery of these vital services to beneficiaries.

Effect on Small Businesses

The Department has determined that the emergency regulations would only affect small businesses that voluntarily provide long-term care services to Medi-Cal beneficiaries. The regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

Housing Costs Determination

The Department has made the determination 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.

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 substance of the regulations described in this notice may be directed to Sandy Yien of the Long-Term Care Reimbursement Unit at (916) 552-9636.

All other inquiries concerning the regulatory action described in this notice may be directed to Ben Carranco of the Office of Regulations, at (916) 440-7766, or to the designated backup contact person, Lynette Cordell, at (916) 650-6827.

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.