



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 (2011-2012), DHCS-12-003E

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, Section 51516.1, on an emergency basis. These emergency regulations became effective on September 18, 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 Drug Medi-Cal Rates (2011-2012), DHCS-12-003E, and submit using any of the following methods:

Mail: 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 on December 4, 2013, at 5:00 p.m. 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:

Sections 10725, 14021.5, 14021.6, 14021.30, 14105 and 14124.5, Welfare and Institutions Code; and Sections 20 and 11758.42 [Repealed by Stats. 2012, Ch. 36 (SB 1014) Sec. 73, Effective June 27, 2012.], Health and Safety Code.

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

Sections 5705, 14021.5, 14021.6, 14021.9, 14021.30 and 14132.90, Welfare and Institutions Code; and Sections 11758.42 [Repealed by Stats. 2012, Ch. 36, (SB 1014) Sec. 73, Effective June 27, 2012.] and 11758.46 [Repealed by Stats. 2012, Ch. 36 (SB 1014) Sec. 73, Effective June 27, 2012.], Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This regulatory action amends Title 22, CCR, Section 51516.1, by updating Medi-Cal reimbursement rates for substance abuse (Drug Medi-Cal [DMC]) services for Fiscal Year (FY) 2011-2012. This action implements, interprets, and makes specific the provisions of WIC Sections 14021.5, 14021.6, 14021.9, and 14105, and HSC Sections 11758.42 and 11758.46. These provisions require the Department of Alcohol and Drug Programs (ADP) in consultation with the Department, to establish rates for DMC, 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 program from ADP to the Department, effective July 1, 2012.

Anticipated Benefits or Goals of the Regulations

This regulatory action benefits Drug Medi-Cal service providers through the provision of the recent (2011/2012 FY) reimbursement rates, which in turn facilitates the continued delivery of these vital 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.

This regulatory action is necessary to implement WIC Sections 14021.5, 14021.6, and 14021.9; and HSC Sections 11758.42 and 11758.46, as specified below.

- WIC Section 14021.5(e) specifies that rates for DMC services shall be effective July 1 through June 30 of the fiscal year in which the rates are established.
- WIC Section 14021.6 and HSC Section 11758.42 specify how rates for DMC services shall be determined.
- WIC Section 14105(a) authorizes adoption of regulations to set rates for Medi-Cal services on an emergency basis.
- HSC Section 11758.42 requires ADP to establish rates for the use of the narcotic replacement drugs Methadone and LAAM.
- HSC Sections 11758.46(a) and (b) specify DMC services that are reimbursable through the Medi-Cal Program.
- WIC Section 14021.9(b) states that for FY 2010-2011 and each fiscal year thereafter, rates for DMC services shall be the lower of the following:
 1. The rates developed by ADP under its normal rate-setting methodologies; 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 CCR, Title 22, Section 51516.1 include the following:

Section 51516.1(a)(3):

- Revisions to this subsection will add the statewide maximum allowances (SMAs) for DMC substance abuse program services for FY 2011-2012. The specific methodology used to calculate DMC SMAs are described in the document entitled "Drug Medi-Cal Rate Setting Methodology for Non-Narcotic Treatment Programs for Fiscal Year 2011-2012." This document is included in the rulemaking file, which is maintained by the Department's Office of Regulations.

Section 51516.1(g):

- Revisions to this subsection will add the USR rates for narcotic treatment program services for FY 2011-2012. The specific methodology used to calculate narcotic treatment USR rates is described in the document entitled "Narcotic Treatment Program – Uniform Statewide Reimbursement Rates and Methodology, FY 2011-2012." This document is included in the rulemaking file, which is maintained by the Department's Office of Regulations.

DISCLOSURES REGARDING THE RULEMAKING

The Department has made the following initial determinations:

Fiscal Impact Statement

- A. Fiscal Effect on Local Government: Expenditures for the DMC Treatment Program reimbursement are funded by 2011 Realignment (Ch. 40, Statutes of 2011). Since the DMC program is partially funded by Local Revenue Funds (LRF), the local government would be responsible for \$3,844,826 in FY 2011-2012.
- B. Fiscal Effect on State Government: No fiscal impact exists because this regulation does not affect any State agency or program.
- C. Fiscal Effect on Federal Funding of State Programs: Additional expenditures of approximately \$3,386,875 for FY 2011-2012.
- D. 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 action.
- E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None.

Mandates on Local Agencies or School Districts

The Department has determined that the regulations will 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.

Results of the Economic Impact Assessment

Impact on Jobs and Businesses

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

Medi-Cal is a voluntary program for both service providers and beneficiaries. These regulations affect Medi-Cal providers and beneficiaries who are offered substance abuse services through Medi-Cal.

Benefits of the Regulations

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 the Medi-Cal Program through the provision of quality health care services, including the delivery of substance abuse services.

This regulatory action will benefit DMC service providers through the provision of the recent (FY 2011/2012) reimbursement rates 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 regulations would only affect small businesses that voluntarily provide DMC services.

Effect on Housing Costs

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.

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: Robert Maus, Manager, Program and Fiscal Policy Branch, at (916) 323-1074.

All other inquiries concerning the regulatory action described in this notice may be directed to Lori Manieri, Office of Regulations, at (916) 650-6825, or to the designated backup contact person, Lynette Cordell, at (916) 440-7695.

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.