



TOBY DOUGLAS
Director

State of California—Health and Human Services Agency Department of Health Care Services



EDMUND G. BROWN JR.
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Two-Plan Model Modification, DHCS-12-010

PUBLIC PROCEEDINGS: Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Medi-Cal, California's Medicaid program, is administered by the Department. Medi-Cal provides health care services for low income individuals including, but not limited to, families with children, seniors, persons with disabilities, children in foster care, and pregnant women.

The Department operates the Medi-Cal managed care program under the authority of California's Medicaid Section 1115 (of the Social Security Act) Demonstration Waiver, titled "California's Bridge to Reform" (1115 Waiver). The 1115 Waiver approves variations in the single comprehensive medical care program for eligible low-income individuals required by Title XIX of the Social Security Act in the following sections:

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|-----|----------------|---|
| (a) | 1902(a)(1) | Statewideness |
| (b) | 1902(a)(5) | Single State Agency |
| (c) | 1902(a)(10)(B) | Amount, Duration, and Scope of Services and Comparability |
| (d) | 1902(a)(23) | Freedom of Choice |
| (e) | 1902(a)(30) | Basis for Payment |
| (f) | 1902(a)(13) | Payment to Providers |

Welfare and Institutions Code (W&I Code) Articles 2.7 (commencing with Section 14087.3), 2.8 (commencing with Section 14087.5), 2.81 (commencing with Section 14087.96), 2.9 (commencing with Section 14088), and 2.91 (commencing with Section 14089) of Chapter 7 and Articles 1 (commencing with Section 14200) and 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9, establish the statutory authority for the Department to contract with Medi-Cal managed care health plans (MCPs) to provide Medi-Cal and case management services.

Title 22, California Code of Regulations (CCR), Division 3, Chapters 4 (commencing with Section 53000), 4.1 (commencing with Section 53800), 4.5 (commencing with Section 53900), and 6 (commencing with Section 56000), contain the regulations that specifically implement the Medi-Cal managed care program.

W&I Code Sections 10725, 14105, and 14124.5 authorize the director of the Department to adopt, amend, or repeal regulations as necessary and proper to carry out the purpose and intent of the statutes governing the Medi-Cal Program.

The Department's Medi-Cal Managed Care Division (MMCD) provides high quality, accessible, and cost-effective health care through managed care delivery systems. MMCD contracts for health care services through established networks of organized systems of care, which emphasize primary and preventive care. MCPs are a cost-effective use of health care resources that improve health care access and assure quality of care for Medi-Cal beneficiaries. Approximately 5.2 million Medi-Cal beneficiaries in 30 counties receive their health care through three models of managed care: Two-Plan Model, County Organized Health Systems, and Geographic Managed Care.

As a result of the enabling legislation, Assembly Bill (AB) 1467 (Chapter 23, Statutes of 2012), Senate Bill (SB) 1008 (Chapter 33, Statutes of 2012), SB 1036 (Chapter 45, Statutes of 2012), AB 1494 (Chapter 28, Statutes of 2012), and the 1115 Waiver, Medi-Cal managed care is continuing to expand into additional counties and will soon be serving several more transitioning populations.

W&I Code Section 14000 states that the intent of Chapter 7, of Division 9, Part 3, is to provide qualifying individuals with health care services, to the extent practicable, in the same manner as the public generally, with an emphasis on organized managed care plans. Section 14087.3 authorizes the Department to contract to provide services to, arrange for or case-manage the care of Medi-Cal beneficiaries. This section also allows at the director's discretion, the contract may be exclusive or nonexclusive, statewide or on a more limited geographic basis.

This regulatory proposal supports the goals of W&I Code Sections 14000 and 14087.3, and the proper and efficient administration of the Medi-Cal Program in accordance with federal and state laws governing the Program's participation and funding rules. The proposed regulatory amendments will authorize the Department, in counties designated by the Department as operating under the Two-Plan Model, to contract with an Alternate Health Care Service Plan (AHCSP) to provide medical services to beneficiaries who demonstrate a specific linkage to the AHCSP.

The proposed regulatory amendments directly benefit Medi-Cal beneficiaries with linkage to the AHCSP by authorizing the Department to offer them the option to choose continuity in the delivery of health care services, which preserves direct access to providers and maintains existing physician-patient relationships. These beneficiaries would include a significant number of people transitioning from the Healthy Families Program into the Medi-Cal Program.

The Department has conducted an evaluation of the related existing State regulations in CCR, Title 22, Division 3 and has determined that the proposed regulations are consistent and compatible with those regulations.

The changes proposed in this regulatory action are as follows:

- Amending Section 53800 to allow the Department to add a voluntary alternative option to the Two-Plan Model if a beneficiary meets specific criteria; and to make non-substantial grammar and re-designation changes.
- Amending Section 53810 to include definitions for AHCS and AHCS family member linkage; to remove definitions that are no longer applicable; and to make non-substantial grammar and re-designation changes.
- Repealing both Article 3, Maximum Enrollment Levels, which includes Section 53820; and Article 4, Prepaid Health Plan and Primary Care Case Management Plan Enrollment Growth During the Transition Period, which includes Section 53830.

AUTHORITY: Section 20, Health and Safety Code; Sections 10725, 14105, 14124.5 and 14312, Welfare and Institutions Code.

REFERENCE: Sections 14087.3, 14087.4, 14088, 14088.16, 14088.25, 14105.98, 14201 and 17000, Welfare and Institutions Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on June 11, 2013, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413; or
2. By hand-delivery to the Office of Regulations, Department of Health Care Services, 1501 Capitol Avenue, Suite 5084, Sacramento, CA 95814; or
3. By fax transmission: (916) 440-5748; or
4. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-12-010" in the subject line to facilitate timely identification and review of the comment).

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Brad Aust of the Medi-Cal Managed Care Division at (916) 449-5239.

All other inquiries concerning the 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.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-12-010.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed 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 proposed 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.

Documentation regarding the regulatory action described in this notice (including this public notice, the proposed regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the **Laws and Regulations** link (from the QUICK LINKS menu), then selecting the **DHCS Proposed and Emergency Regulations** link.

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), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, audiocassette, computer disk.

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.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of this proposed 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.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: Indeterminate. However, the Department will only pursue this option in a cost-neutral manner.
- B. Fiscal Effect on State Government: Indeterminate. However, the Department will only pursue this option in a cost-neutral manner.
- C. Fiscal Effect on Federal Funding of State Programs: Indeterminate. However, the Department will only pursue this option in a cost-neutral manner.
- 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 proposed action.
- E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: Indeterminate. However, the Department will only pursue this option in a cost-neutral manner.

DETERMINATIONS: The Department has determined that the proposed 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.

The Department has made an initial determination that the proposed 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.

The Department has determined that the proposed 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 service providers. It is also voluntary for an individual to apply to participate in Medi-Cal. These proposed regulations will affect only those health care plans that voluntarily choose to participate in the Medi-Cal managed care program and the beneficiaries who are offered services through the program.

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

The Department has determined that the regulations would potentially affect small businesses that voluntarily choose to be Medi-Cal providers, in the situation when a beneficiary may choose to enroll and receive services through an AHCSPP contracting directly with the Department.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: 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.

No public hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing 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.

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, 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 write or call: Harry Cockcroft, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413; voice (916) 440-7695 and/or California Relay 711 or 1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

DEPARTMENT OF HEALTH CARE SERVICES

Original Signed

DHCS-12-010

Dated: April 15, 2013

Toby Douglas
Director