

State of California
Office of Administrative Law

NOTICE OF APPROVAL OF REGULATORY ACTION
Government Code Sections 11349.3
OAL Matter Number: 2018-1030-02
OAL Matter Type: Regular (S)

In re:
Department of Health Care Services
Regulatory Action:
Title 22, California Code of Regulations

Adopt sections: 51002.5
Amend sections: 51003.1

This action establishes processes for submission of electronic Treatment Authorization Requests (eTARs) under the Medi-Cal program.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2019.

Date: December 13, 2018

[Original Signed]
Eric Partington, Senior Attorney

For: DEBRA M. CORNEZ, Director

Original: Jennifer Kent
Copy: David Kim

[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**- 2018-0223-01
REGULATORY ACTION NUMBER: 2018-1030-02S
EMERGENCY NUMBER: [Blank]

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

REGULATIONS: [Date Stamp]
2018 OCT 30 PM 3:19
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
DEC 13 2018
1:54 pm

AGENCY WITH RULEMAKING AUTHORITY: Department of Health Care Services
AGENCY FILE NUMBER (if any): DHCS-14-032

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Disapproved/Withdrawn: [Blank]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: 2018, 11-Z
PUBLICATION DATE: 03/16/18

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATIONS: eTAR Mandate

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: 51002.5

AMEND: 51003.1

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): [Blank]

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: David Kim

TELEPHONE NUMBER: 916-345-8399

FAX NUMBER (Optional): [Blank]

EMAIL ADDRESS (Optional): David.Kim@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: 10/29/18

For use by Office of Administrative Law (OAL) only

[Date Stamp]

Endorsed Approved

DEC 13 2018

Office of Administrative Law

METHOD OF INDICATING CHANGES

This Accessible PDF version of the proposed regulation text includes the phrase [begin underline] at the beginning of each addition, [end underline] at the end of each addition, [begin strikeout] at the beginning of each deletion, and [end strikeout] at the end of each deletion.

A standard PDF version of this proposed regulation text is also available on the Department's Office of Regulations Internet site.

(1) Adopt Section 51002.5 to read:

[begin underline]§ 51002.5. Submission of Electronic Treatment Authorization Requests (eTARs).

(a) The Department shall consider the capacity of a provider to comply with the requirements of Welfare and Institutions Code Section 14133.01, as it pertains to the submission of eTARs, including:

(1) Allowing a provider a reasonable time to establish the infrastructure necessary for the generation of eTARs.

(2) Offering a provider the opportunity to participate in education and training provided by the Department on the generation and submission of eTARs.

(b) A provider shall submit a TAR, as an eTAR, through the Medi-Cal eTAR web portal system.

(c) A provider may submit a paper TAR to request authorization when there is a disruption in the Medi-Cal eTAR web portal system that delays the provider from submitting the eTAR for more than 72 consecutive hours; and the Department has directed the provider to submit a paper TAR.

NOTE: Authority cited: Sections 10725, 14124.5 and 14133.01, Welfare and Institutions Code; and Section 20, Health and Safety Code. Reference: Section 14133.01, Welfare and Institutions Code. [end underline]

(2) Amend Section 51003.1 to read:

§ 51003.1. Provider Appeal Process for Treatment Authorization Requests (TARs).

~~[begin strikeout](a) A provider of services may appeal the decision of a Medi-Cal consultant regarding a TAR, as follows:~~

~~(1) The provider shall submit a written appeal to the Medi-Cal Operations Division Headquarters in Sacramento within 180 calendar days from the date on the TAR, which is the date a decision on the TAR is made by the Medi-Cal consultant.~~

~~(A) The written appeal shall be:~~

- ~~1. Post marked by the United States Postal Service,~~
- ~~2. Personally delivered to the Department and date stamped upon receipt, or~~
- ~~3. Labeled with the date deposited with a common carrier for delivery to the Department.~~

~~(B) When the last day of the 180 day appeal period falls on a Saturday, Sunday or Holiday, the final date to submit the appeal would be the next business day.~~

~~(2) The written appeal shall include:~~

- ~~(A) Original TAR number and service type requested,~~
- ~~(B) Date(s) or service(s) in dispute,~~
- ~~(C) Reason the appeal should be granted,~~
- ~~(D) Any additional documentation that a provider chooses to submit that supports the basis for the conclusion that the services are medically necessary, and~~
- ~~(E) A new, completed TAR for the services appealed.~~

~~(b) The Department shall review the provider appeal and send a written decision, and the basis for that decision, to the provider:~~

~~(1) When the appeal decision is based on a review of documented medical necessity, the written decision shall be sent to the provider within 180 calendar days from the date of receipt by the Department.~~

~~(2) When the appeal decision is a denial based on failure to submit the appeal within 180 calendar days from the date of the decision on the original TAR, the written decision shall be sent to the provider within 60 calendar days from the date of receipt by the Department.~~

~~(c) If a provider is not satisfied with the appeal decision, the provider may seek a judicial remedy pursuant to Section 1085 of the Code of Civil Procedure.[end strikeout]~~

[begin underline](a) A provider of services may appeal the decision of a Medi-Cal consultant regarding a Treatment Authorization Request (TAR), as follows:

(1) The provider shall submit a TAR appeal within 180 calendar days from the date of the decision on the original TAR.

(2) When the last day of the 180 calendar day appeal period falls on a Saturday, Sunday or Holiday, the final date to submit the TAR appeal will be the next business day.

(b) The TAR appeal, regardless of submission method, shall include:

(1) The original TAR number and service type requested,

(2) The date(s) or service(s) in dispute,

(3) The reason the appeal should be granted, and

(4) Any additional documentation that a provider chooses to submit that supports the basis for the conclusion that the services are medically necessary.

(c) An eTAR appeal shall:

(1) Be submitted through the Medi-Cal eTAR web portal system.

(2) Include the special handling indicator found in the Medi-Cal eTAR web portal system that indicates that the submission is an electronic appeal.

(d) A provider may submit a paper TAR appeal when there is a disruption in the Medi-Cal eTAR web portal system that delays the provider from submitting the TAR appeal for more than 72 consecutive hours; and the Department has directed the provider to submit a paper TAR appeal.

(e) A provider who submitted a paper TAR based on the Department's consideration of the provider's capacity to submit an eTAR, as described in Section 51002.5(a), may submit a paper TAR appeal.

(f) A paper TAR appeal shall:

(1) Include a new, completed TAR for the services appealed; and

(2) Be submitted to the Department; and either

(3) Be post marked by the United States Postal Service; or

(4) Be personally delivered to the Department and date stamped upon receipt; or

(5) Be labeled with the date deposited with a common carrier for delivery to the

Department.

(g)(1) The Department shall review an eTAR appeal and enter the appeal decision and the basis for that decision into the Medi-Cal eTAR web portal system.

(2) The Department shall review a paper TAR appeal and:

(A) Enter the appeal decision and the basis for that decision into the Medi-Cal eTAR web portal system; and

(B) Send the appeal decision and the basis for that decision to the provider.

(h) When the appeal decision is based on a review of documented medical necessity:

(1) For an eTAR appeal, the decision shall be entered into the Medi-Cal eTAR web portal system within 180 calendar days from the date that the eTAR appeal was submitted through the Medi-Cal eTAR web portal system.

(2) For a paper TAR appeal, the decision shall be entered into the Medi-Cal eTAR web portal system and sent to the provider within 180 calendar days from the date that the paper TAR appeal was received by the Department.

(i) When the appeal decision is a denial based on failure to submit the appeal within 180 calendar days from the date of the decision on the original TAR:

(1) For an eTAR appeal, the decision shall be entered into the Medi-Cal eTAR web portal system within 60 calendar days from the date that the eTAR appeal was submitted through the Medi-Cal eTAR web portal system.

(2) For a paper TAR appeal, the decision shall be entered into the Medi-Cal eTAR web portal system and sent to the provider within 60 calendar days from the date that the paper TAR appeal was received by the Department.

(i) If a provider is not satisfied with the appeal decision, the provider may seek a judicial remedy pursuant to Section 1085 of the Code of Civil Procedure.[end underline]

NOTE: Authority cited: Sections 10725, 14105, 14124.5, 14132.22, 14132.5, 14133[begin underline], 14133.01[end underline] and 14133.05, Welfare and Institutions Code; and Section[begin underline]s 20 and[end underline] 1267.7, Health and Safety Code. Reference: Sections 14053, 14064, 14081, 14087, 14088, 14088.16, 14088.2, 14103.6, 14105.12, 14132, 14132.22, 14132.25, 14132.5, 14132.42, 14132.8, 14133, [begin underline]14133.01,[end underline] 14133.05, 14133.1, 14133.25 and 14133.3, Welfare and Institutions Code; *Jeneski v. Meyers* (1984) 163 Cal. App. 3d 18, 209 Cal. Rptr. 178; *Duran v. Belshe*, San Diego County Superior Court Case No. 674204, (1995); and *Fresno Community Hospital and Medical Center v. State of California, et al., Fresno County, Superior Court Case No. 555694-9*, (1996).