

**State of California
Office of Administrative Law**

In re:
Department of Health Care Services

Regulatory Action:

Title 22, California Code of Regulations

Adopt section: 51002.5
Amend section: 51003.1

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2018-1030-02

OAL Matter Type: Regular (S)

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.

Original Signed

Date: December 13, 2018

Eric Partington
Senior Attorney

For: Debra M. Cornez
Director

Original: Jennifer Kent, Director
Copy: David Kim

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2018-0223-01	REGULATORY ACTION NUMBER 2018-1030-02 S	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 13 2018

1:54 PM

2018 OCT 30 P 3:19
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

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	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2018-11-3	PUBLICATION DATE 3-16-18

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) eTAR Mandate	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 51002.5 AMEND 51003.1 REPEAL
TITLE(S) 22	

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON David Kim	TELEPHONE NUMBER (916) 345-8399	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) David.Kim@dhcs.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) 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.

Original Signed

DATE
10/29/18

TYPED NAME AND TITLE OF SIGNATORY
Jennifer Kent, Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 13 2018

Office of Administrative Law

(1) Adopt Section 51002.5 to read:

§ 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.

(2) Amend Section 51003.1 to read:

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

~~(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.~~

(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.

(j) 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.

NOTE: Authority cited: Sections 10725, 14105, 14124.5, 14132.22, 14132.5, 14133, 14133.01 and 14133.05, Welfare and Institutions Code; and Sections 20 and 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, 14133.01, 14133.05, 14133.1, 14133.25 and 14133.3, Welfare and Institutions Code; Jeneskiv. Meyers(1984) 163 Cal. App. 3d 18, 209 Cal. Rptr. 178; Duranv. 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).