

EXPLANATION FOR CHANGES WITHOUT REGULATORY EFFECT

The Department of Health Care Services (Department) proposes changes without regulatory effect that would amend Title 22, California Code of Regulations (CCR) Sections 50090, 50260, 50262.3, 50951, 50953, 51008, 51008.5, 51015, 51159, 51200, 51303, 51341.1, 51458.1, 51476, and 51490.1.

The proposed amendments contained in the accompanying regulation text and associated forms are changes without regulatory effect because the changes would not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provisions.

The proposed amendments, as discussed in further detail below, are pursuant to the following:

- Title 1 CCR, Section 100(a)(2), which allows for deleting a regulatory provision for which all statutory or constitutional authority has been repealed.
- Title 1 CCR, Section 100(a)(4), which allows for revising structure, syntax, cross-reference, grammar and punctuation.
- Title 1 CCR, Section 100(a)(5), which allows for changing “authority” or “reference” citations.
- Title 1 CCR, Section 100(a)(6), which allows for making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
 - (A) the regulatory provision is inconsistent with and superseded by a changed statute, and,
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

BACKGROUND

The Department is the designated state agency to receive and administer federal funds from the Centers for Medicare & Medicaid Services for California residents. California’s state Medicaid program is known as Medi-Cal. Drug Medi-Cal (DMC) is a funding carve-out of Medi-Cal for substance use disorder services.

Welfare and Institutions Code (WIC) Section 14113 authorized the Department to enter into contracts with other state departments, such as the Department of Alcohol and Drug Programs (ADP), the Department of Social Services, and the Department of Mental Health to administer Medi-Cal funding and requirements for services particular to their fields of expertise. DMC services were administered by ADP through an interagency agreement until the recent transfer of the program to the Department pursuant to Assembly Bill (AB) 106 (Statutes of 2011, Chapter 32).

The DMC program regulations are contained in Title 22, CCR, Division 3, Sections 51341.1, 51490.1, and 51516.1^[1]. These three sections include references to other Medi-Cal related sections under Division 3. The Notes within these referenced sections are also proposed to be amended through this regulatory action, to include relevant DMC statutes, as Reference citations.

LEGISLATION

Assembly Bill (AB) 106 (Statutes of 2011, Chapter 32), as detailed in WIC Section 14021.30, transferred the DMC program, administered by ADP, to the Department effective July 1, 2012. The Legislative Counsel Digest summarized the intent of this change as follows:

“AB 106, Committee on Budget. Human services.
Existing law provides for the Medi-Cal Drug Treatment Program (Drug Medi-Cal), under which each county enters into contracts with the State Department of Alcohol and Drug Programs for the provision of various drug treatment services to Medi-Cal recipients, or the department directly arranges for the provision of these services if a county elects not to do so.

This bill would declare the intent of the Legislature to transfer Drug Medi-Cal functions from the State Department of Alcohol and Drug Programs to the State Department of Health Care Services, effective July 1, 2012, in accordance with an administrative and programmatic transition plan developed by the State Department of Health Care Services and the State Department of Alcohol and Drug Programs, as required in the bill.”

Senate Bill (SB) 1014 (Statutes of 2012, Chapter 36), titled “2011 Realignment Legislation” transferred remaining administrative and programmatic functions of ADP, to the Department, effective July 1, 2013. SB 1014 also repealed Health and Safety Code (HSC) Chapter 3.4 “Medi-Cal Drug Treatment Program” (Sections 11758.40, 11758.42, 11758.421, 11758.425, 11758.43, 11758.44, 11758.45, and 11758.47) and added WIC, Division 9, Part 3, Chapter 7, Article 3.2 – “Drug Medi-Cal Treatment Program” (Sections 14124.20, 14124.21, 14124.22, 14124.23, 14124.24, 14124.25, and 14124.26). In addition, SB 1014 amended WIC Section 14021 to change the term “drug abuse” to “substance use disorder.”

SPECIFIC PURPOSE

The changes to Title 22, CCR Sections 50090, 50260, 50262.3, 50951, 50953, 51008, 51008.5, 51015, 51159, 51200, 51303, 51341.1, 51458.1, 51476 and 51490.1 are described below:

- (1) Amend the Notes to remove HSC sections that were repealed and to add WIC sections for DMC;

^[1] Section 51516.1 is not included in this rulemaking as it has already been updated since the transfer of DMC to the Department.

- (2) Revise the NOTE under applicable sections to include HSC Section 20 as an Authority. This is a result of the California Public Health Act of 2006 (SB 162, Ch.241, Statutes of 2006) – the renaming of the Department of Health Services as the Department of Health Care Services and the relevant authority to adopt, amend or repeal regulations;
- (3) Delete references to ADP throughout Sections 51341.1 and 51490.1, and change these references to the Department;
- (4) Amend references to the Department of Health Services to the Department of Health *Care Services*;
- (5) Make corrections to grammar and citation style; and
- (6) Make non-substantive corrections in several sections as described below.

Section 50090

Add to the Note – Authority: HSC Section 20.

Add to the Note - Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 50260

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Add to the Note – Reference: WIC Sections 14021.51, 14132.21, and 14132.905 as they pertain to services available to pregnant/postpartum and perinatal women. Section 14132.905 was added by Stats.2013, Ch.22, Sec.106 (AB 75) to provide day care habilitative services to pregnant and postpartum women pursuant to DMC services (WIC Section14021(c)) and is operative July 1, 2013.

Amend Note for minor citation style changes to add “Title,” and change from “1396a (e) (5)” to “1396a(e)(5)” to remove excess spacing.

Section 50262.3

Add to the Note – Authority: HSC Section 20.

Add to the Note - Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Add to the Note – Reference: WIC Section 14021.51 as it pertains to continued services available to pregnant/postpartum and perinatal women.

Amend to correct federal citation style in the Note by placing “United States Code” after Title 42 rather than at the end of the citation.

Section 50951

Add to the Note – Authority: HSC Section 20.

Add to the Note - Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 50953

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 51008

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 51008.5

Add to the Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Amend Note to add "Title" and spell out "C.F.R." as "Code of Federal Regulations."

Section 51015

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 51159

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 51200

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 51303

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14021, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 51341.1

Pursuant to SB 1014 (Stats.2012, Ch.36) amend throughout the section, the term "abuse" to "use" or "use disorder." This is the current term used under the law and in the treatment field; therefore, the title of this section as well as other references are amended.

(Title 1, CCR Section 100(a)(6))

Throughout the section: Replace references to ADP with the Department pursuant to AB 106 (Stats.2011, Ch.32).

(Title 1, CCR Section 100(a)(6))

Subsection (b)(2): Remove the definition of ADP since the DMC functions and remaining programmatic and administrative functions of ADP were transferred to the Department pursuant to AB 106 (Stats.2011, Ch.32) and SB 1014 (Stats.2012, Ch.36).

(Title 1, CCR Section 100(a)(6))

Re-designate Subsections (b)(2) through (b)(21) due to the removal of (b)(2), the ADP definition.

(Title 1, CCR Section 100(a)(4))

Re-designated Subsection (b)(6): Replace “DHS” with the “Department,” and add the term “Care” to reflect the name of the Department, as a result of SB 162 (Stats.2006, Ch.241). Relocate the ADP description/responsibilities from existing Subsection (b)(2) to re-designated Subsection (b)(6), due to transfer of the DMC Program to the Department, pursuant to AB 106 (Stats.2011, Ch.32).

(Title 1, CCR Sections 100(a)(2) & (6))

Re-designated Subsection (b)(7): Spell out “ten” for grammatical accuracy.

(Title 1, CCR Section 100(a)(4))

Subsection (d)(4)(B): Delete federal citations that no longer exist (no longer refer to the subject matter).

(Title 1, CCR Sections 100(a)(2))

Subsection (e)(1): Added the term “use disorder” which appears inadvertently to have been excluded.

Subsection (j)(5): Amend a citation to HSC Section 11758.42 which was repealed and renumbered to WIC Section 14021.51.

(Title 1, CCR Section 100(a)(6))

Subsection (p)(1)(E): Correct the Mail Stop (MS) number that is inaccurate and correct the phone number for DSS, which has two numbers transposed.

Subsection (p)(1)(F): Amend an error that directed beneficiaries to appeal in writing to ADP. In the context of Subsection (p), the Department of Social Services is the correct entity to which the beneficiary would submit an appeal hearing request. This correction has no effect on a beneficiary’s appeal rights.

Subsection (q): Delete the reference to the Interagency Agreement as it is now moot and invalid upon the transfer of the DMC program to the Department pursuant to AB 106 (Stats.2011, Ch.32).

(Title 1, CCR Section 100(a)(6))

Subsection (q)(1)(A): Amend the addressee to which a provider/county would submit a letter in writing to initiate an administrative appeal. The two level appeal remains in place except now the first level appeal would go to: *Division Chief, Substance Use Disorders Prevention, Treatment, and Recovery Services Division, PO Box 997413, MS-2621, Sacramento, CA 95899-7413* of the Department due to the transfer of DMC to the Department pursuant to AB 106 (Stats.2011, Ch.32) *and the subsequent reorganization of the Department which created this Division within which the DMC program functions are located.*

(Title 1, CCR Section 100(a)(6))

Remaining Subsections: Change “ADP” to “*Substance Use Disorders Prevention, Treatment, and Recovery Services Division (SUDPTRSD)*” to be consistent with changes in Subsection (q)(1)(A), *and place the acronym SUDPTRSD throughout thereafter.*

Subsections (q)(2), (q)(2)(A)(ii) and (q)(2)(C): Amend to direct second level appeals to the Office of Administrative Hearings and Appeals. This amendment is consistent with the Department’s appeal process for all Medi-Cal providers. This change is necessary since DMC was transferred to the Department pursuant to AB 106 (Stats.2011, Ch.32). *(Title 1, CCR Section 100(a)(6))*

Subsection (q)(2)(B): Amend address to reflect the address for the Office of Administrative Hearings and Appeals.

ADD TO NOTE – AUTHORITY:

HSC Section 20

WIC Section 14021 – Authorizes DMC substance use disorder services – (SB 1014, Stats.2012, Ch.36, Section 72) – 2011 Realignment Legislation

WIC Section 14021.30 – Transfers DMC functions to the Department – (SB 1014, Stats.2012, Ch.36, Section 63) – 2011 Realignment Legislation

WIC Section 14021.51 – *(formerly HSC Section 11758.42)* – pertains to continued services available to pregnant/postpartum and perinatal women, applicable to DMC (NTP, dosing fee, cost reports) (SB 1014, Stats.2012, Ch.36, Section 76) – 2011 Realignment Legislation

WIC Section 14124.24 – *(formerly HSC Section 11758.46)* Applicable to DMC (DMC reimbursable services) (WIC Art.3.2 (commencing with Section 14124.20) is added to Ch.7, Pt.3, Div.9) – 2011 Realignment Legislation

Stats. 2011, Ch.32 – (AB 106) – This bill declares the intent of the Legislature to transfer DMC functions from the State Department of Alcohol and Drug Programs to the Department effective July 1, 2012

Stats. 2012, Ch.36 – (SB 1014) – Cited as the 2011 Realignment Legislation

DELETE FROM NOTE - AUTHORITY:

HSC Section 11758.41 – No longer exists (was repealed by Stats.2004, Ch.862, Section 34)

Stats. 1996, Ch.1027 – (AB 2071) No longer applicable as this bill is where Section 11758.41 (Sec.1) was added

ADD TO NOTE - REFERENCE:

WIC Section 14021.33 – Regulations formerly adopted by ADP remain in effect until readopt, amend or repeal (SB 1014, Stats.2012, Ch.36, Section 74)

WIC Section 14021.51 – (*formerly HSC Section 11758.42*) – pertains to continued services available to pregnant/postpartum and perinatal women, applicable to DMC (NTP, dosing fee, cost reports) (SB 1014, Stats.2012, Ch.36, Section 76) – 2011 Realignment Legislation

WIC Section 14043.7 – Applicable to DMC providers, regarding departmental unannounced visits to applicants or providers

WIC Section 14053 – Defines “health care services” as those including DMC benefits pursuant to WIC Section 14021

WIC Section 14107 – Applicable to DMC providers – pertaining to fraudulent claims, intent, punishment, and other enforcement remedies

WIC Section 14124.2 – Applicable to DMC providers – departmental right to examine books or records, inspect premises or facilities, and obtain copies

WIC Sections 14124.20 (*formerly HSC Section 11758.40*), **14124.21** (*formerly HSC Section 11758.43*), **14124.24** (*formerly HSC Section 11758.46*), **14124.25** (*formerly HSC 11758.47*), **and 14124.26** [SB 1014, Stats.2012, Ch.36, Section 80 –“Drug Medi-Cal Treatment Program”, WIC Art.3.2 (commencing with Section 14124.20) added to Ch.7, Pt.3, Div.9] – 2011 Realignment Legislation

WIC Section 14131 – Defines “Health care services” as limited to the benefits set forth in Art.4, the Medi-Cal Benefits Program, and includes those pertaining to DMC as specified in WIC Section 14021

WIC Section 14132.21 – Applicable to DMC providers for perinatal substance abuse and case management services

WIC Section 14132.905 – Adds day care habilitative services to pregnant and postpartum women pursuant to DMC services (WIC Section 14021(c)) (AB 75, Stats.2013, Ch.22, Sec.106); operative July 1, 2013

WIC Section 14133.1 – Applicable to DMC providers – Departmental authority to apply utilization controls

Stats. 2011, Ch.32 – (AB 106) – This bill declares the intent of the Legislature to transfer DMC functions from the State Department of Alcohol and Drug Programs to the Department, effective July 1, 2012

Stats. 2012, Ch.36 – (SB 1014) – Cited as the 2011 Realignment Legislation

DELETE FROM NOTE – REFERENCE:

HSC Sections 11758.42 (*now WIC Section 14021.51*), **11758.46** (*now WIC Section 14124.24*), and **11758.47** (*now WIC Section 14124.25*) – no longer exist [SB 1014, Stats.2012, Ch.36, Sec.15 repealed HSC Ch.3.4 (commencing with Section 11758.40) Pt.1, Div.10.5] – 2011 Realignment Legislation

WIC Section 14132.90 – Section inoperative July 1, 2013, by its own provisions (AB 75, Stats.2013, Ch.22, Sec.105)

Stats. 1996, Ch.1027 – (AB 2071) - No longer applicable as this bill is where Sections 11758.42 (Sec.2), 11758.46 (Sec.4), and 11758.47 (Sec.5) were added

Section 51458.1

Add to the Note – Authority: HSC Section 20.

Add to the Note – Reference: WIC Sections 14053 and 14124.24, because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Correction in the Note: correct typographical error “1477” to “14177.”

Section 51476

Add to Note – Reference: WIC Sections 14021, 14053, 14124.24, and 14131 because this regulation is referenced as a DMC program requirement it should be connected to DMC through the Note.

Section 51490.1

Pursuant to SB 1014 (Stats.2012, Ch.36) amend the term “abuse” to “use disorder.” This is the current term used under the law and in the treatment field; therefore, the title of this section is changed to “Claim Submission Requirements for Counties and Providers of Drug Medi-Cal Substance Use Disorder Services.”

(Title 1, CCR Section 100(a)(6))

Throughout the section: Delete references to ADP and replace with the Department pursuant to AB 106 (Stats.2011, Ch.32).

(Title 1, CCR Section 100(a)(6))

Section 51490.1(b) & (c)

Delete Subsections (b) and (c). This process is no longer applicable as a result of the DMC program transfer to the Department pursuant to AB 106 (Stats.2011, Ch.32).

(Title 1, CCR Section 100(a)(6))

Section 51490.1(b)

Subsection (d) is re-designated to (b).

Delete the sentence regarding the meaning of “Multiple billing override code” and the reference to form Drug/Medi-Cal Eligibility Worksheet, ADP 1584 (Rev.06/96) because this process and form no longer exist due to the transfer of DMC to the Department, pursuant to AB 106 (Stats.2011, Ch.32).

“Form ADP 7700 Revised 5/97” has been revised as a DHCS form: “Multiple Billing Override Certification DHCS MC 7700 (Rev.10/12)” in accordance with WIC Section 14105.05 which requires the Department to adopt the federal Healthcare Common Procedure Coding System codes or any other coding system required for compliance with the federal Health Insurance Portability and Accountability Act (HIPAA), and due to the transfer of DMC to the Department pursuant to AB 106 (Stats.2011, Ch.32). The changes made to this form are a result of changes in business requirements because of HIPAA standardization and automation of billing systems as mandated in Health and Safety Code Section 130301, and as a result of the transfer of the DMC program to the Department. The changes do not materially alter any requirement, right, or responsibility of the affected public. This form can be accessed via the Department’s website. See the individual forms for each identified change and Attachment 1 for detailed explanation of each nonsubstantial change.

(Title 1, CCR Section 100(a))

Section 51490.1(b)(3)

Remove Image 1 “Multiple Billing Override Certification, ADP 7700 (Rev. 5/97).”

See explanation under Section 51490.1(b) above.

Remove Image 2 “Drug/Medi-Cal Eligibility Worksheet, ADP 1584 (Rev. 06/96)” as this form is obsolete and no longer in use due to the transfer of DMC to the Department pursuant to AB 106 (Stats.2011, Ch.32).

Remove Image 3 “Complete Instructions – Drug/Medi-Cal Eligibility Worksheet—ADP 1584 (For Submission of Federal Drug/Medi-Cal Claims Only) (Revised 6/96) Alcohol/Drug and Perinatal” as this form and related instructions are obsolete and no longer in use due to the transfer of DMC to the Department pursuant to AB 106 (Stats.2011, Ch.32).

ADD TO THE NOTE – AUTHORITY:

HSC Section 20

WIC Section 14021.30 – Transfers DMC functions to the Department – (SB 1014, Stats.2012, Ch.36, Section 63) – 2011 Realignment Legislation

WIC Section 14021.33 – ADP regulations enforceable/in effect until readoption, amendment, or repeal by the Department (SB 1014, Stats.2012, Ch.36, Section 74) – 2011 Realignment Legislation

WIC Section 14124.26 – ADP regulations for former HSC Sections 11758.40-11758.47 remain in effect until readoption, amendment or repeal by the Department [SB 1014, Stats.2012, Ch.36, Section 80 – “Drug Medi-Cal Treatment Program”, WIC Art.3.2 (commencing with Section 14124.20) is added to Ch.7, Pt.3, Div.9] – 2011 Realignment Legislation

DELETE FROM THE NOTE – AUTHORITY:

HSC Section 11758.41 – No longer exists, was repealed in Stats.2004, Ch.862, Section 34

Stats.1996, Ch.1027 (AB 2071) – No longer applicable as this bill is where HSC Section 11758.41 (Sec.1) was added

ADD TO THE NOTE – REFERENCE:

WIC Section 14021 – Authorizes DMC substance use disorder services (SB 1014, Stats.2012, Ch.36, Section 72) – 2011 Realignment Legislation

WIC Section 14021.6 – Applicable to DMC providers, regarding DMC program maximum rates

WIC Section 14021.51 – pertains to continued services available to pregnant/postpartum and perinatal women

WIC Section 14043.7 – Applicable to DMC providers, regarding departmental unannounced visits to applicants or providers

WIC Section 14053 – Defines “health care services” as those including DMC benefits pursuant to WIC Section 14021

WIC Section 14107 – Applicable to DMC providers, pertaining to fraudulent claims, intent, punishment, and other enforcement remedies;

WIC Section 14124.1 – Applicable to DMC providers, pertaining to records required and period of retention

WIC Section 14124.2 – Applicable to DMC providers – departmental right to examine books or records, inspect premises or facilities, and obtain copies

WIC Sections 14124.20 (*formerly HSC Section 11758.40*), **14124.21** (*formerly HSC Section 11758.43*), **14124.24** (*formerly HSC Section 11758.46*), **14124.25** (*formerly HSC 11758.47*), [SB 1014, Stats.2012, Ch.36, Section 80 –“Drug Medi-Cal Treatment Program”, WIC Art.3.2 (commencing with Section 14124.20) added to Ch.7, Pt.3, Div.9] – 2011 Realignment Legislation

WIC Section 14131 – Defines “Health care services” as limited to the benefits set forth in Art.4, the Medi-Cal Benefits Program, and includes those pertaining to DMC as specified in WIC Section 14021

WIC Section 14132.21 – Applicable to DMC providers for perinatal substance abuse and case management services

WIC Section 14132.905 – Adds day care habilitative services to pregnant and postpartum women pursuant to DMC services (WIC Section 14021(c)) (AB 75, Stats.2013, Ch.22, Sec.106); operative July 1, 2013

WIC Sections 14133 and 14133.1 – Applicable to DMC providers – Departmental authority to apply utilization controls

Stats. 2011, Ch.32 (AB 106) – This bill declares the intent of the Legislature to transfer DMC functions from the State Department of Alcohol and Drug Programs to the Department effective July 1, 2012

Stats. 2012, Ch.36 – (SB 1014) – Cited as the 2011 Realignment Legislation

DELETE FROM THE NOTE – REFERENCE:

HSC Section 11758.42 (*now WIC Section 14021.51*), and **Section 11758.46** (*now WIC Section 14124.24*) – no longer exist [SB 1014, Stats.2012, Ch.36, Sec.15 repealed HSC Ch.3.4 (commencing with Section 11758.40) Pt.1, Div.10.5] – 2011 Realignment Legislation

Stats. 1996, Ch.1027 (AB 2071) – No longer applicable as this bill is where HSC Section 11758.42 (Sec.2) and Section 11758.46 (Sec.4) were added