

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

1700 K STREET
 SACRAMENTO, CA 95814-4037
 TDD (916) 445-1942
 (916) 322-6680



ADP BULLETIN

Title:

Passage of Assembly Bill 1349, adding Health and Safety Code Sections 11758.421 and 11758.425 (and amending Section 11839.20)

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Deputy Director Approval

MICHAEL S. CUNNINGHAM
 Deputy Director
 Program Services Division

Function:

- Information Management
- Quality Assurance
- Service Delivery
- Fiscal
- Administration

Supersedes Bulletin/ADP
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PURPOSE

This Bulletin is to provide notification to counties and Drug Medi-Cal (DMC) providers regarding the passage of Assembly Bill (AB) 1349. The addition of Health and Safety Code Sections 11758.421 and 11758.425 clarifies what is necessary for DMC providers to qualify for an exception that will minimize the risk of certain audit findings.

DISCUSSION

One limitation to reimbursement of DMC providers is the “customary charge to the general public for the same or similar service.” The Department of Alcohol and Drug Program’s (ADP) audits have applied this limitation to the detriment of the Narcotic Treatment Program (NTP) providers. NTP providers indicated they needed more guidance on how to qualify for the sliding scale exception to the reimbursement limitation.

NTP providers and county alcohol and drug program administrators collaborated with ADP in developing the proposed legislative language. Although the language in AB 1349 is limited to NTP providers, the content should be considered by all DMC providers that serve private cash-paying clients. Meeting the requirements and guidelines contained in this law will likely avoid costly audit findings of non-compliance.

REFERENCES

42 Code of Federal Regulations Section 413.13
Center for Medicare and Medicaid Services Publication 15-1, Provider Reimbursement Manual, Sections 2600 et.seq. Title 22, CCR, Section 51516.1

BACKGROUND

The Lower of Cost or Charges (LCC) principle has been a federal requirement related to Medicare and Medicaid for many years. The principle limits reimbursement to the lowest of a provider's "usual and customary charge to the general public," the allowable cost of services, or the maximum allowance (rate cap) established in regulation. With the passage of AB 2071 in 1996, fixed DMC rates were established for NTPs, and the language in Health and Safety Code Section 11758.42(h)(1) modified the LCC requirement to exclude cost as a limitation. Subsequently, the term Lower of Rate or Charges (LRC) has been informally adopted as a name for the limitation, as related to NTPs.

Audits of NTPs, since the early 1990s, included an evaluation of compliance with the LCC, followed by the LRC limitation. A significant number of audit exceptions were taken over that period. Initially, the audit exceptions were reasonably clear, in that NTP providers generally charged a flat fee for all non-DMC patients that was lower than the cost and the DMC maximum allowance. Thus, the flat fee was determined to be the customary charge, which became the reimbursement limitation.

Subsequently, with some guidance by ADP in the form of ADP Bulletins, providers began to develop sliding scales in an effort to qualify for an exception to the usual and customary charge limitation. However, two common audit findings began to be noted. First, providers failed to maintain documentation to show how each patient's ability to pay was determined, thus providing no audit trail. Second, providers established sliding scales that were structured in such a way that all patients continued to be charged the same fee.

Providers expressed to ADP that there was significant confusion and misunderstanding regarding the application of the sliding scale exception. The effort to remedy the issue

has culminated with the passage of AB 1349.

QUESTIONS/MAINTENANCE

If you have questions regarding this bulletin, please contact: Robert Maus, Fiscal Policy Section, Program and Fiscal Policy Branch, Program Services Division, at (916) 323-1074, or via e-mail at rmaus@adp.state.ca.us. An additional copy of this document may be requested through ADP's Resource Center at (800) 879-2772. This bulletin is also available on ADP's Web page at <http://www.adp.ca.gov/>.

EXHIBITS

[AB 1349 Assembly Bill Chaptered](#)

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