

## FINDING OF EMERGENCY

This regulatory action adopts rates, for facilities providing long-term care, that the California Department of Health Care Services (Department) established for the 2003-04 rate year, August 1, 2003 through July 31, 2004 pursuant to funding in the 2003-04 Budget Act, Items 4260-101-0001 and 4260-101-0890 (Ch. 157, Stats. 2003, para. 2.00, pp. 282, 284, 286, 294). These regulations must be adopted as an emergency and will provide for the official regulatory publication of these rates for which facilities have received funding.

Welfare and Institutions Code Section 14105, subdivision (a), provides as follows:

The director shall prescribe the policies to be followed in the administration of this chapter, may limit the rates of payment for health care services, and shall adopt any rules and regulations as are necessary for carrying out, but are not inconsistent with, the provisions thereof.

The policies and regulations shall include rates for payment for services not rendered under a contract pursuant to Chapter 8 (commencing with Section 14200). In order to implement expeditiously the budgeting decisions of the Legislature, the director shall, to the extent permitted by federal law, adopt regulations setting rates that reflect these budgeting decisions within one month after the enactment of the Budget Act and of any other appropriation that changes the level of funding for Medi-Cal services. With the written approval of the Department of Finance, the director shall adopt the regulations as emergency regulations in accordance with the Administrative Procedures Act (Chapter 3.5 commencing with Section 11340, Part 1, Division 3, Title 2 of the Government Code). For purposes of that Act, the adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

Pursuant to Welfare and Institutions Code Section 14105, the adoption of these regulatory changes is “deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.”

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Welfare and Institutions Code Section 14105 requires the Department to adopt regulations establishing reimbursement rates for Medi-Cal providers of health care services and mandates for the emergency adoption of regulations for these changes in response to legislative budgeting decisions.

This emergency regulatory action amends the California Code of Regulations (CCR), Title 22 to reflect reimbursement rates established by the Department for specific types of facilities providing long-term care services to Medi-Cal beneficiaries. There are two time periods affecting the CCR sections established in the table below that are revealed through this regulatory action. The first time period being July 1, 2003 through July 31, 2003, which reflects the standard reimbursement rate for that period in addition to the Quality Assurance Fee (QAF), as described below. The second time period is the rate year August 1, 2003 through July 31, 2004. In the 2003-04 Budget Act (Chapter 157, Statutes of 2003), Items 4260-101-0001 and 4260-101-0890, the Legislature appropriated funding to pay these rates. These reimbursement rates are for services provided on or after August 1, 2003 and include the QAF, as described below.

This regulatory action establishes that reimbursement rates, as described above, include the QAF, pursuant to provisions under Health and Safety Code, Sections 1324 through 1324.14. These provisions require the Department to impose a QAF of six percent of the entire gross receipts for each Intermediate Care Facility for the Developmentally Disabled (ICF/DD), Intermediate Care Facility for the Developmentally Disabled-Habilitative (ICF/DD-H), and Intermediate Care Facility for the Developmentally Disabled-Nursing (ICF/DD-N), effective July 1, 2003.

The Title 22, CCR sections that are affected through this regulatory action, the service and the weighted average percentage change are specified in the table below.

<u>Section</u>	<u>Service</u>	<u>Weighted Average Percentage Change</u>
51510 (e)	Nursing Facility Level A Services	1.47
51510.1(d) & (e)	Intermediate Care Services for the Developmentally Disabled	2.38
51510.2(a)	Intermediate Care Services for the Developmentally Disabled-Habilitative	0.00
51510.3(a)	Intermediate Care Services for the Developmentally Disabled-Nursing	0.00
51511(a)	Nursing Facility Level B Services 2003-04	3.92

51511.5(a), (e) (f) & (g)	Nursing Facility Services – Subacute Care Reimbursement	0.82
51511.6(a), (b) & (c)	Nursing Facility Services – Pediatric Subacute Care Reimbursement	2.00
51535(d)	Leave of Absence	2.02
51535.1(d)	Bed Hold for Acute Hospitalization	2.02
51544(h)	Hospice Care	N/A
54501(b)	Adult Day Health Care Services	1.47

The percentages listed above cannot be used to determine the rate for each facility category from the prior year. The percentage changes shown above are averages of all facility categories in each regulation section, weighted by patient days for those categories.

In addition to the reimbursement rates as specified above this regulatory action will also accomplish the following:

- Make non-substantial grammatical, typographical, organization, cross reference, and capitalization amendments where applicable throughout the regulations.
- Under Section 51510(e) specify rates for freestanding Level A nursing facilities.
- Under Sections 51511(a)(2)(C) and 51511.5(f)(2) state the audit disallowance factor to reflect data for the fiscal year 2003-04 rate setting period.
- Under Sections 51511 and 51511.5 revise dates to reflect the fiscal year 2003-04 rate setting period.
- Under Section 51544(h) set forth that payment for hospice care services shall be 95 percent of the facility's Medi-Cal per diem rate where the patient resides.

**AUTHORITY:**

Sections 20, 1267.7 and 1275.3 Health and Safety Code; and Sections 10725, 14105, 14108, 14108.1, 14108.2, 14109.5, 14110.6, 14110.7, 14124.5, 14125.5, 14126.023 and 14570, Welfare and Institutions Code.

**REFERENCE:**

Sections 14053, 14087.3, 14105, 14105.47, 14105.981, 14108, 14108.1, 14108.2, 14109.5, 14110.1, 14110.4, 14110.6, 14110.7, 14123, 14132.22,

14132.25 and 14571, Welfare and Institutions Code; Sections 1250, 1267.7, 1275.3, 1324, 1324.2, 1324.4, 1324.6, 1324.8, 1324.10, 1324.12 and 1324.14 Health and Safety Code; Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890; Sections 447.15 and 483.1, et seq., Title 42, Code of Federal Regulations; 42 United States Code Section 1396(a)(13)(B) [Section 1902(a)(13)(B) of the Federal Social Security Act]; and the Settlement Agreement in *California Association for Adult Day Services v. Department of Health Services*, January 12, 1994, San Francisco County Superior Court (Case Number 944047).

#### FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: Additional Cost of \$51,259,000 in fiscal year 2003-04 and \$61,775,000 annually. These costs were included in the May 2004 Estimate and are now included in the ongoing Medi-Cal base expenditures.
- C. Fiscal Effect on Federal Funding of State Programs: Additional Cost of \$51,259,000 in fiscal year 2003-04 and \$61,775,000 annually. These costs were included in the May 2004 Estimate and are now included in the ongoing Medi-Cal base expenditures.
- D. All cost impacts, known to the agency 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: None

#### DETERMINATIONS:

The Department has determined that the 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 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 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.

The Department has determined that the regulations would not affect small business because the regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

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