



TOBY DOUGLAS
Director

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
Governor

NOTICE OF PROPOSED RULEMAKING

SUBJECT: DENTAL SERVICES, DHCS-12-017

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) proposes to amend California Code of Regulations (CCR), Title 22, Division 3, Chapter 3, Article 1.3, Section 51003 after considering all public comments, objections, and recommendations.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice. Please label any comments as pertaining to **Dental Services, DHCS-12-017** and submit using any of the following methods:

Mail Delivery: Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX: (916) 440-5748

Email: regulations@dhcs.ca.gov

The written comment period closes on **November 12, 2013 at 5:00pm**. Any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **November 12, 2013 at 5:00pm** for consideration.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Sections 10725, 14105 and 14124.5, Welfare and Institutions Code; and Sections 20 and 1267.7, Health and Safety Code

These regulations implement, interpret, or make specific the following:

Sections 14053, 14064, 14081, 14087, 14088, 14088.16, 14088.2, 14103.6, 14105.12, 14132, 14132.22, 14132.25, 14133, 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. Belshé*, 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).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Title XIX of the Social Security Act is a federal/state entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources. This program, known as Medicaid, became law in 1965 as a cooperative venture jointly funded by the federal and state governments to assist states in furnishing medical assistance to eligible needy persons. California's Medicaid program is called the Medi-Cal program and is administered by the Department.

Welfare and Institutions (W&I) Code, sections 10725 and 14124.5 authorize the director of the Department to adopt, amend or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal program. W&I Code section 14132 sets forth the Medi-Cal schedule of benefits, which includes certain dental services. The Department's Medi-Cal Dental Services Program (Program) is responsible for the delivery of dental services to eligible Medi-Cal beneficiaries. Delta Dental of California (Delta) serves as the fiscal intermediary for the Program, contracting directly with dental providers, authorizing treatments and processing claims.

California State Senate Bill 456 (Chapter 635, Statutes of 2001) added Division 110 (commencing with section 130300) to the Health and Safety (H&S) Code and is known as the Health Insurance Portability and Accountability Act (HIPAA) of 2001. H&S Code section 130301(f) provides that federal HIPAA rules directly apply to state and county

departments that provide health coverage, health care, mental health services, and alcohol and drug treatment programs. Additionally, H&S Code section 130301(h) provides that the implementation of HIPAA shall be accomplished as required by federal law and regulations. H&S Code section 130301(c) further provides that “administrative simplification is a key feature of HIPAA” requiring the development of uniform standards for the coding and transmission of claims. These provisions of the H&S Code subject the Department to federal HIPAA rules and regulations for the implementation of uniform standard code sets.

The federal Health Insurance Portability and Accountability Act of 1996, specifically 45 Code of Federal Regulations §162.1002 adopted as the standard medical data code set, the Code on Dental Procedures and Nomenclature, as maintained and distributed by the American Dental Association (ADA), for dental services. This provision required the Program to update the code set every two years to the national standard Current Dental Terminology procedure codes as compiled by the ADA. The current version of these codes is called CDT 13. These procedure codes are used by the Program, Delta, and dental providers for the identification and billing of dental services provided to Medi-Cal beneficiaries.

W&I Code, section 14133.9 requires the Department to publicize and continue to develop its list of objective medical criteria that guide the professional judgment of Department consultants in their decisions as to whether a service is medically necessary and should be authorized. The Manual of Criteria for Medi-Cal Authorization (MOC), last revised April 11, 2011, which is incorporated by reference in Title 22, CCR Section 51003, is the method by which the Department has met this requirement. Chapter 8.1 of the MOC available at <http://www.denti-cal.ca.gov/WSI/Publications.jsp?fname=Publications>, is dedicated to the dental criteria.

This regulatory proposal supports the intent of the initiating legislation as specified under W&I Code section 14000, which states the purpose of Chapter 7, Basic Health Care is to afford qualifying individuals (such as the aged or disabled) employment of health care services in a manner equitable to the general public and without duplication of benefits available under other federal or state laws.

W&I Code, section 14124.5 further specifies that the Director may establish regulations as are necessary or proper to carry out the purpose and intent of this Chapter, which includes outlining the uniform schedule of health care benefits under the Medi-Cal program, as described under section 14131 (including benefits under Article 4 and section 14021 [Mental Health Services]).

Anticipated Benefits or Goals of the Regulations

The proposed revisions to Title 22, CCR section 51003 and to Chapter 8.1 of the MOC will address the matter of implementing updated national standard CDT 13 codes as mandated by HIPAA, while establishing the health care (dental) services that are available under the Medi-Cal program. These amendments will directly benefit dental

providers through the provision of dental criteria associated with the national standard CDT procedure codes, which in turn facilitates the delivery of these vital dental services to beneficiaries.

In addition to meeting the goals of the authorizing statutes as described above, these proposed regulation changes assure that the Program meets current standards of dental practice and ensures the proper and efficient administration of the Medi-Cal program in accordance with the federal and state laws that govern the Medi-Cal program's rules of participation, funding and the authorized schedule of benefits.

Consistency and Compatibility with Existing State Regulations

The Department has conducted an evaluation of the related existing state regulations in CCR, Title 22, Division 3 and has determined that the regulations are consistent and compatible with those regulations.

Regulatory Sections

This regulatory action specifically accomplishes the following:

- Amends CCR section 51003(e) with a revision date for the MOC,
- Amends Chapter 8.1 of the MOC, which is incorporated by reference in CCR section 51003(e) and includes revised criteria for the twelve (12) major dental procedure categories.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Fiscal Impact Statement

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department 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

Mandates on Local Agencies or School Districts

The Department has determined that the proposed 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.

Significant Statewide Adverse Economic Impact Affecting Businesses

The Department has made an initial determination that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment

Impact on Jobs and Businesses

The Department has determined that the regulations will 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 Medi-Cal program is a voluntary program for both service providers and beneficiaries. These regulations will affect only those dental providers that choose to participate in the Medi-Cal program and the beneficiaries who are offered these dental services through the program.

Benefits of the Proposed Regulation

Additionally, the Department has determined that the regulations will not affect worker safety or the state's environment. However, the regulations will benefit the health and welfare of California residents by maintaining the continuity of the Medi-Cal Program through the provision of comprehensive health care services at low cost for low-income individuals including families with children, seniors, persons with disabilities, children in foster care and pregnant women, including the delivery of dental services.

This regulatory action will benefit Medi-Cal dental providers by updating the MOC with the most current CDT codes, which in turn helps facilitate the delivery of these vital services to beneficiaries.

Effect on Small Businesses

The Department has determined that the regulations may affect small businesses since many Medi-Cal dental providers meet the criteria for a small business. Medi-Cal is a voluntary program for both providers and beneficiaries. Therefore, only those businesses that choose to be Medi-Cal providers for dental services would be affected by these regulations.

Effect on Housing Costs

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

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

ASSISTIVE SERVICES

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please write or call: Harry Cockcroft, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413; voice (916) 440-7695 and/or California Relay 711 or 1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code Section 11346.6.

CONTACT PERSONS

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Dr. Brian Kennedy of Medi-Cal Dental Services Division at (916) 464-1206.

All other inquiries concerning the action described in this notice may be directed to Ben Carranco of the Office of Regulations, at (916) 440-7766, or to the designated backup contact person, Lynette Cordell, at (916) 650-6827.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at:

<http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.