

## **Explanation of Changes Without Regulatory Effect**

### **Background**

Medi-Cal, California's Medicaid Program, is administered by the Department of Health Care Services (Department). Medi-Cal provides health care services including medical, dental, mental health (including psychiatry services), substance use treatment services, and long-term care services and supports for low income families, children, seniors, pregnant women, seniors and persons with disabilities.

Welfare and Institutions Code (WIC) 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 purpose and intent of the laws enforced by the Department. Specifically, WIC, Chapter 7, Basic Health Care, Section 14000 states the purpose of this chapter is to afford qualifying individuals health care services. The uniform schedule of health care benefits under Medi-Cal are described under WIC Section 14131, et seq., including mental health services, which are specified under Sections 14021 and 14132.03.

### **Summary**

The Department proposes changes without regulatory effect that would amend Title 22 of the California Code of Regulations (CCR), Section 51305, Physician Services (psychiatry services). Section 51305 specifies the scope and duration of these physician services. Currently Section 51305 specifies that a maximum of eight psychiatry services may be provided in any 120-day period without prior authorization. The proposed amendments to remove this service limitation, as contained in the accompanying regulation text, are changes without regulatory effect, pursuant to 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:

1. The regulatory provision is inconsistent with and superseded by a changed statute; and
2. The adopting agency has no discretion to adopt a change that differs in substance from the one chosen.

The proposed amendments are 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 amendments as proposed related to mental health services (psychiatry services) are pursuant to the enactment of Senate Bill (SB) X1-1 (Hernandez, Chapter 4, Statutes of 2013, Section 28), which added WIC Section 14132.03 as part of the implementation of the Patient Protection and Affordable Care Act (PPACA).

### **Relevant Laws**

WIC Section 14132.03(a)(1) specifies:

*“(a) The following shall be covered Medi-Cal benefits effective January 1, 2014:*

*(1) Mental health services included in the essential benefits package adopted by the state pursuant to Section 1367.005 of the Health and Safety Code and Section 10112.27 of the Insurance Code and approved by the Secretary of Health and Human Services under Section 18022 of Title 42 of the United States Code. To the extent behavioral health treatment services are considered mental health services pursuant to the essential health benefits package, these services shall only be provided to individuals who receive services through federally approved waivers or state plan amendments pursuant to the Lanterman Developmental Disability Services Act, at Division 4.5 (commencing with Section 4500).”*

Health and Safety Code (HSC) Section 1367.005 further specifies, in part:

*“(a) An individual or small group health care service plan contract issued, amended, or renewed on or after January 1, 2014, shall, at a minimum include coverage for essential health benefits pursuant to the PPACA and as outlined in this section. For purposes of this section, “essential health benefits” means all of the following:*

*(1) Health benefits within the categories identified in Section 1302(b) of PPACA:.....mental health and substance use disorder services, including behavioral health treatment.....*

*(2)(A) The health benefits covered by Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035) as this plan.....”*

Additionally, Insurance Code (INS) Section 10112.27 specifies in part:

*“(a) An individual or small group health insurance policy issued, amended, or renewed on or after January 1, 2014, shall, at a minimum, include coverage for essential health benefits pursuant to PPACA and as outlined in this section. This section shall exclusively govern what benefits a health insurer must cover as essential health benefits. For purposes of this section, “essential health benefits” means all of the following:*

*(1) Health benefits within the categories identified in Section 1302(b) of PPACA: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment....*

*(2) (A) The health benefits covered by the Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035) as this plan ....”*

The Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035), which is available at <http://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/california-ehb-benchmark-plan.pdf>), includes “Mental/Behavioral Health Outpatient

Services” as essential health benefits. These benefits do not have a quantitative service limitation.

Lastly, Section 18022 of Title 42 of the United States Code (USC) [Section 1302(b) PPACA] states in part:

*“(b) Essential Health benefits*

*(1) In general....such benefits shall include at least the following general categories and items and services covered within these categories:*

*(E) Mental Health and substance use disorder services, including behavioral health treatment.....”*

### **Conclusion**

Psychiatry services as specified under Section 51305 are considered “mental health services.” These mental health services are essential health benefits (meaning Medi-Cal covered benefits) as described in WIC Section 14132.03(a)(1), HSC Section 1367.005, INS Section 10112.27, USC Section 18022, and by the Kaiser Foundation Health Plan Small Group HMO 30 plan. These mental health services (including psychiatry services), as described in the statutes above, do not include service authorization requirements or service imitations when provided to a Medi-Cal beneficiary that meets eligibility criteria (i.e. medical necessity) for mental health services.

The Department has no discretion to adopt changes that differ in substance from that intended by WIC Section 14132.03(a)(1) and the aforementioned statutes.

Amendments to Section 51305 include:

1. Subsection (d), first sentence – deleting the phrase “eight psychiatry services and”;
2. Subsection (d), fifth sentence – deleting the phrase “eight psychiatry or”;
3. Subsection (d)(2), first sentence – deleting the phrase “psychiatry and”; and
4. Adding WIC Section “14132.03” to the Note as a Reference.