# INITIAL STATEMENT OF REASONS

## California Code of Regulations
## Title 9. Rehabilitative and Developmental Services
## Division 1. Department of Mental Health
## Chapter 11. Medi-Cal Specialty Mental Health Services

**Introduction:**
The Department is required to implement managed mental health care for Medi-Cal recipients through fee-for-service or capitated contracts with counties, counties acting jointly, qualified individuals or organizations or nongovernmental entities. The Department is responsible for assuming specified program oversight authority formerly provided by the State Department of Health Care Services, including, but not limited to oversight of certain utilization controls. This oversight responsibility entails, in part, conducting program reviews of Mental Health Plans (MHP) which may result in Medi-Cal disallowances and Plans of Correction.

The Department convened a workgroup with representation from the County Mental Health Directors Association (CMHDA), provider (subcontractor) organizations and Department staff to discuss these concerns and explore possible solutions. These subcontractors' chief concern regarding the EPSDT appeals process was that subcontractors could not directly appeal to the Department without the MHP's agreement to submit the appeal on the subcontractor's behalf. Additionally, providers wanted assurance that the MHP could not block their appeal submission.

A progressive appeal process with the ability for the MHP subcontractors to directly appeal to the Department was placed in Assembly Bill 1780. This bill was signed into law on September 26, 2008 and required the Department to propose a rulemaking package by no later than the end of the 2008-09 fiscal year to address the existing appeals process.

This proposed regulation package will provide an appeal process that includes a progressive process to resolve disputes about claims or recoupment relating to specialty mental health services under the Medi-Cal specialty mental health services waiver. Also these regulations allow for the MHP subcontractor to appeal directly to the Department.

## Subchapter 1. General Provisions
## Article 2. Definitions, Abbreviations and Program Terms

### Section. 1810.203.5. Appeal

### Section 1810.203.5, Subdivision (d)

**Specific Purpose:** Subdivision (d) of Section 1810.203.5 is added to expand the definition of "appeal" to include MHP and/or MHP subcontractor's request for a review of the client record review findings.

**Rationale for Necessity:** This amendment is necessary to make clear that the MHP and/or MHP subcontractor are part of this appeal process.

## Subchapter 5. Problem Resolutions Processes
## Article 3. Provider Problem Resolution and Appeal Processes

### Section 1850.350 MHP/MHP Subcontractor Client Record Review Findings Appeal Process

### Section 1850.350, Subdivisions (a) and (a)(1)(A)-(B)

**Specific Purpose:** Subdivisions (a) and (a)(1)(A)-(B) of Section 1850.350 are adopted to identify the progressive appeal process that is available to the MHPs and MHP subcontractors.

**Rationale for Necessity:** These regulations are necessary to identify that there are two (2) different levels in the progressive appeals process to be used by MHPs and MHP subcontractors.

### Section 1850.350, Subdivision (a)(2)

**Specific Purpose:** Subdivision (a)(2) of Section 1850.350 is adopted to identify the type of action that may be appealed using this process.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHPs or MHP subcontractors that this appeal process is limited to disallowances resulting from client record review findings in dispute.

### Section 1850.350, Subdivisions (b) and (b)(1)

**Specific Purpose:** Subdivisions (b) and (b)(1) of Section 1850.350 are adopted to provide standards for filing an informal appeal.

**Rationale for Necessity:** These regulations are necessary to establish timeframes by which a MHP or MHP subcontractor must file an appeal related to the findings of a client record review resulting in a disallowance of paid claims. The Department chose the 60 calendar day timeframe since it mirrors timeframes that are used by other departments, specifically the Department of Health Care Services, which hear similar appeals.

**Section 1850.350, Subdivisions (b)(2) and (b)(2)(A)-(D)**

**Specific Purpose:** Subdivisions (b)(2) and (b)(2)(A)-(D) of Sections 1850.350 are adopted to specify what information is needed when an informal appeal request is made.

**Rationale for Necessity:** These regulations are necessary to make clear to the MHP or MHP subcontractor what information is required when requesting an informal appeal from the Department. The contact information is necessary to identify who is responsible for filing the appeal. It is also necessary to understand the reason for the appeal and for the MHP or MHP subcontractor to provide any additional information that would support the appeal. This information is essential in order for the Department to be able to make an appropriate decision.

**Section 1850.350, Subdivisions (b)(3) and (b)(3)(A)-(B)**

**Specific Purpose:** Subdivisions (b)(3) and (b)(3)(A)-(B) of Sections 1850.350 are adopted to specify to the MHP subcontractor the protocols to follow and to identify what documents are required to be sent to the MHP when filing an informal appeal request.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP subcontractor that the MHP must be notified and provided with all the documentation when the MHP subcontractor is requesting an informal appeal with the Department. This is intended to keep the MHP informed about appeal actions their subcontractor is taking.

**Section 1850.350, Subdivisions (b)(4) and (b)(4)(A)-(B)**

**Specific Purpose:** Subdivisions (b)(4) and (b)(4)(A)-(B) of Section 1850.350 are adopted to specify to the MHP the protocols to follow and to identify what documents are required to be sent to the MHP subcontractor when filing an informal appeal request.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP that the MHP subcontractor must be notified and provided with all documentation when the MHP is requesting an informal appeal with the Department, and the matter involves the

MHP subcontractor. This is intended to keep the MHP subcontractor informed about actions the MHP is taking regarding a matter that affects the subcontractor.

**Section 1850.350, Subdivisions (b)(5) and (b)(5)(A)-(B)**

**Specific Purpose:** Subdivisions (b)(5) and (b)(5)(A)-(B) of Section 1850.350 are adopted to provide standards for a progressive appeal process.

**Rationale for Necessity:** These regulations are necessary to establish a timeframe and procedure by which DMH will render a decision on an informal appeal request by an MHP or MHP subcontractor based on the information provided. The Department chose the 30 calendar day timeframe because it mirrors timeframes that are used by other departments, specifically the Department of Health Care Services, which hears similar appeals. Additionally, this regulation allows the MHP or MHP subcontractor the option to request a telephone or face to face conference as a part of the informal appeal process.

**Section 1850.350, Subdivision (b)(6)**

**Specific Purpose:** Subdivision (b)(6) of Section 1850.350 is adopted to provide standards for determining when a decision rendered from an informal appeal is final.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP or MHP subcontractor that, unless the entity who initiated the informal appeal makes a request for a formal appeal, the decision rendered by the Department during the informal appeal process is final.

**Section 1850.350, Subdivision (c)**

**Specific Purpose:** Subdivision (c) of Section 1850.350 is adopted to provide that a formal appeal hearing will be filed with a State Agency designated by DMH and the timeframe in which the formal appeal request must be filed.

**Rationale for Necessity:** This regulation makes clear to the MHP or MHP subcontractor the timeframe that must be adhered to when a formal appeal is requested through the State Agency designated by DMH indicated on the notification of the informal appeal decision. The 30 day timeframe is consistent with timeframes that are used by other departments, specifically the Department of Health Care Services, which hears similar appeals.

**Section 1850.350, Subdivision (c)(1)**

**Specific Purpose:** Subdivision (c)(1) of Section 1850.350 is adopted to provide standards and timeframes for a formal appeal process.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP or MHP subcontractor that a formal appeal may be filed only after the Department has issued a written decision on the informal appeal. The formal appeal request can only address same matter that was considered during the informal appeal process.

**Section 1850.350, Subdivision (c)(2)**

**Specific Purpose:** Subdivision (c)(2) of Section 1850.350 is adopted to provide standards for determining who can file a formal appeal.

**Rationale for Necessity:** The regulation is necessary to make clear to the MHP or MHP subcontractor that only the entity that initiated the informal appeal may request a formal appeal on the same matter.

**Section 1850.350, Subdivision (c)(3)**

**Specific Purpose:** Subdivision (c)(3) of Section 1850.350 is adopted to provide notification procedures for the appellant when submitting a formal appeal request.

**Rationale for Necessity:** The regulation is necessary to inform the appellant that a copy of the formal appeal request must be provided to the Department and the MHP or MHP subcontractor (when the matter involves the subcontractor) at the same time the formal appeal is filed. This is intended to keep all entities informed regarding formal appeals that affect them.

**Section 1850.350, Subdivision (d)**

**Specific Purpose:** Subdivision (d) of Section 1850.350 is adopted to provide standards for who can conduct a formal appeal hearing.

**Rationale for Necessity:** This regulation is necessary to make clear that the Department must engage an independent entity for conducting the formal hearing. This provides an impartial examination of the information provided by both the Department and the MHP or MHP subcontractor.

**Section 1850.350, Subdivision (e)**

**Specific Purpose:** Subdivision (e) of Section 1850.350 is adopted to specify the standards under which the formal appeal hearing will be conducted.

**Rationale for Necessity:** This regulation is necessary to provide the legal procedures that are to be followed when conducting the formal appeal hearing. This section references the legal standards found in Title 22, Division 3, Subdivision 1, Chapter 3, Article 1.5 used by the Department of Health Care Services (DHCS) to conduct formal appeal hearings. It is appropriate for this Department's regulations to reference DHCS regulations and follow the same hearing procedures, since DHCS conducts hearings for

other Medi-Cal issues and is considered by the federal government as the single State Agency for health care.

**Section 1850.350, Subdivision (f)**

**Specific Purpose:** Subdivision (f) of Section 1850.350 is adopted to specify when a decision from a formal appeal is final.

**Rationale for Necessity:** The regulation is necessary to make clear that a formal appeal decision from a hearing officer or administrative law judge is not final until adopted.

**OTHER REQUIRED SHOWINGS – GOVERNMENT CODE 11346.2(b)(2)-(4)**

Studies, Reports, or Documents Relied Upon – Gov. Code 11346.2(b)(2): None

Reasonable Alternatives Considered – Gov. Code 11346.2(b)(3)(A): None

Reasonable Alternatives That Would Lessen the Impact on Small Businesses – Gov. Code 11346.2(b)(3)(B): None

Evidence Relied Upon to Support the Initial Determination That the Regulations Will Not Have A Significant Adverse Economic Impact on Business – Gov. Code 11346.2(b)(4): The proposed regulation will not have a significant adverse impact upon business since it applies only to an administrative (appeals) process between the MHP and/or MHP subcontractors and the Department and costs will be covered within existing resources. The Department may use the Federal Financial Participation (FFP) or other departmental resources.

Duplication or Conflicts with Federal Regulations – Gov. Code 11346.2(b)(5): None. There are no Federal Regulations on the subject since these regulations are required by State statute.