

NOTICE OF PROPOSED RULEMAKING

TITLE 9, CALIFORNIA CODE OF REGULATIONS AMEND SECTION 1810.203.5 AND ADOPT SECTION 1850.350 REGARDING EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT APPEAL PROCESS

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Department of Mental Health (DMH) is proposing to take the action described in the Informative Digest.

Any interested person may submit written statements, arguments, or comments relating to this proposal by submitting them in writing, or at the public hearing, whichever comes later, to the contact person listed below. Comments may also be submitted by facsimile (FAX) at (916) 651-3852 or by e-mail to regulations@dmh.ca.gov. Comments must be submitted prior to **5:00 p.m. on April 21, 2010**.

A public hearing regarding this proposal will be held on Wednesday, April 21, 2010, in the Auditorium at the Department of Water Resources located at 1416 Ninth Street in Sacramento, California. It will start at 1:00 P.M., and end when all comments have been received, or at 5:00 P.M., whichever comes first.

Following the public hearing the Department of Mental Health may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony, if a public hearing is held, or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 4005.1, and 4027 of the Welfare and Institutions Code, and to implement, interpret or make specific section 5778 of the Welfare and Institutions Code, the Department of Mental Health (DMH) is seeking changes to Division 1 of Title 9 of the California Code of Regulations as follows: amend Section 1810.203.5 and adopt Section 1850.350.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department is required to implement managed mental health care for Medi-Cal recipients through either a fee-for-service basis of reimbursement or with 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 various reviews of Mental Health Plans (MHP), including subcontracting providers, which may result in Medi-Cal disallowances and/or Plans of Correction.

The Department convened and participated in a workgroup with representation from the County mental Health Directors Association (CMHDA), provider (subcontractor) organizations and

Department staff to discuss related issues and explore possible proposals regarding appeals procedures. The chief desire of the subcontractor organizations regarding the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) record review appeals process was to address the fact 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 requirement to develop a progressive appeal process, with the ability for the MHP subcontractors to directly appeal to the Department, was placed in Assembly Bill 1780 as an amendment to Section 5778 of the Welfare and Institutions Code. 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 adoption of an 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 that result from record reviews of EPSDT providers. These regulations allow for the MHP subcontractor to appeal directly to the Department.

This is the second notice of action in regard to this regulation package. The first notice of action was published on July 10, 2009 and the initial public comment ended on August 24, 2009. The Department is reopening the public comment period to provide an opportunity for further comment on the proposed regulation package.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any costs or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

BUSINESS IMPACT/SMALL BUSINESSES

The Department of Mental Health has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610 because an appeal process currently exists without a formal hearing. These regulations add to that existing process without any associated fees. Additionally persons or entities are not mandated to utilize this process and will only do so voluntarily.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The Department of Mental Health has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department of Mental Health is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS: None

CONSIDERATION OF ALTERNATIVES:

The Department of Mental Health must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Inquiries concerning the proposed adoption of these regulations and written comments may be directed to:

Steve Appel
Department of Mental Health
1600 9th Street, Room 435
Sacramento, CA 95814
(916) 654-2321

Backup Contact:
Gayathri Murthy
Department of Mental Health
1600 9th Street, Room 435
Sacramento, CA 95814
(916) 653-4460

INITIAL STATEMENT OF REASONS AND INFORMATION

The Department of Mental Health has prepared an initial statement of the reasons for the proposed action and has available all of the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Department of Mental Health at 1600 9th Street room 435, Sacramento, CA 95814. These documents may also be viewed and downloaded from the DMH website at www.dmh.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal may be found at www.dmh.ca.gov.