

FINAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATIONS AND FACTUAL BASIS FOR DETERMINATION THAT REGULATIONS ARE NECESSARY

Article 2. Definitions, Abbreviations and Program Terms

Section 1810.207.5. County of Origin

Specific Purpose: Section 1810.207.5 is being added to define the term “county of origin” as it relates to mental health services for children in the Foster Care and Adoption Assistance programs.

Rationale for Necessity: This definition is necessary to clarify which county MHP must authorize specialty mental health services for wards or court dependents, or adoptees receiving adoption assistance, while placed or receiving services outside their county of adjudication. The definition is being incorporated by reference from the mental health definitions in Title 2 of California Code of Regulations (CCR), Section 60020(b). Variations from this definition have been made to improve clarity by changing the term “pupil” to child or youth and by deleting the word “disability” as this term is not defined in either Section 60020 of Title 2, or in the Title 9, Chapter 11 regulations. It is necessary to incorporate this definition to distinguish between the responsibilities of the MHPs when a beneficiary is placed outside of his/her service plan area.

Final Modification: In response to public comments received, this definition was rewritten based on existing statutory authority to more appropriately reflect the specialty mental health program requirements and the population served for out-of-county placements.

The Authority and Reference citations were corrected.

Section 1810.220.5. Host County

Specific Purpose: Section 1810.220.5 is being added to define the term “host county” as it relates to mental health services for children in the Foster Care and Adoption Assistance programs.

Rationale for Necessity: This definition is necessary to distinguish between the county of origin which is statutorily specified as the entity required for authorizing, from the host county where the beneficiary of the services may be living and receiving the services. The definition is being incorporated by reference from the mental health definitions in Title 2 of California Code of Regulations (CCR), Section 60020(d).

Variations from this definition has been made to improve clarity by changing the term “pupil” to child or youth and by deleting the word “disability” as this term is not defined in

either Section 60020 of Title 2, or in the Title 9, Chapter 11 regulations. The term, “host county” is also defined in the California Department of Social Services regulation, Manual of Policies and Procedures, Section 11-400(h)(1) and the link for this section is <http://www.dss.cahwnet.gov/getinfo/pdf/fcmana.pdf>. However, the definition contained in Title 2 is more applicable for the Specialty Mental Health program.

Final Modification: The Authority and Reference citations were corrected.

Article 2. Provision of Services

Section 1830.220(b)(4)(A)

Specific Purpose: Section 1830.220(b)(4)(A) provides standards governing the situations in which the MHP must authorize services delivered for a beneficiary by out-of-plan providers. This section is being amended to establish a statewide process for authorizing services for children and youth placed outside of their county of origin.

Rationale for Necessity: The amendments to this section of the regulation are necessary to establish prescribed timeframes for authorization and reimbursement of mental health services to children and youth placed outside of their county of origin. The amendments are necessary to ensure these children timely access to services.

Subsection (1) states the timeframe required to authorize services for a foster care child or adopted child or youth placed outside his/her county of origin. This subsection also provides for a time extension, if required, to obtain additional information to evaluate the need for mental health service. Failure to prescribe timeframes places the foster care child or adopted child or youth at risk of not receiving timely, accessible mental health services which could exacerbate those individuals’ mental health condition. The lack of a statewide, prescriptive timeframe for the authorization of services for these children and youth, is a barrier to those individuals receiving the necessary mental health services in a timely matter, which potentially increases the likelihood of these children and youth of being at of risk developing a crisis situation that could require hospitalization or some other high level of intervention. To minimize this possibility, this amendment would require the MHP to authorize the service within three-working days.

Subsection (2) denotes the timeframes required to arrange for the reimbursement for services that were provided to the child or youth. This ensures host counties that have provided services to out-of-plan beneficiaries are reimbursed in a timely manner which would eliminate potential fiscal concerns regarding payments.

Subsection (3) stipulates the process MHPs should use to resolve disagreements between the providers of the county of origin and providers of the host county.

Final Modification: In response to public comments received, and to provide clarity Subsection (1) was amended to indicate the following:

- to include other types of foster care arrangements such as Kin-GAP,

- to require the county of origin to notify both the host county and requesting service provider of its authorization decision, and
- establish that the maximum time to complete the authorization request not exceed 14 days from the date of the original Treatment Authorization Request.

To ensure timely arrangement of specialty mental health services, Subsection (2) was amended to require the MHP of the county of origin to arrange for reimbursement for service provided to a child or youth either through the host county or the requesting provider.

The Authority and Reference citations were corrected.

MATERIALS RELIED UPON IN PROMULGATING THIS RULEMAKING

California Department of Social Services regulation, Manual of Policies and Procedures, Section 11-400(h)(1) (<http://www.dss.cahwnet.gov/getinfo/pdf/fcmana.pdf>).

LOCAL MANDATE STATEMENT

DMH has determined that the proposed regulatory action does not impose mandates on county government because each local mental health plan is required by statute to develop procedures to ensure that foster children placed outside of their county of origin have access to outpatient mental health services.

STATEMENT OF ALTERNATIVES CONSIDERED

DMH has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

DMH has determined 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.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JUNE 20, 2007, THROUGH AUGUST 6, 2007.

The California Department of Mental Health (DMH) posted the proposed Authorization for Out-Of-Plan Rulemaking package on June 20, 2007 for a 45-day written comment period, beginning June 20, 2007, and ending August 6, 2007. A public hearing was not scheduled nor was one requested. The following presented comments:

California Alliance of Child and Family Services (CACFS)
California Association of Adoption Agencies (CAAA)
California Association of Marriage and Family Therapists (CAMFT)
California Council of Community Mental Health Agencies (CCCMHA)
California Mental Health Directors Association (CMHDA)
Children's Hospital and Research Center Oakland (CHRCO)
County Welfare Directors Association of California (CWDA)
Protection & Advocacy Inc. (PAI)
Public Interest Law Project/Youth Law Center (PILP/YLC)
United Advocates for Children and Families (UACF)
Renee C. Wachtel, M.D. (Dr. Wachtel)

General Comments

1. Comment:

CACFS, CCCMHA, CHRCO, PAI, UACF, and Dr. Wachtel commented that the proposed regulations do not establish a statewide process for the authorization and reimbursement of mental health services for children and youth placed outside their county of origin through the usage of prescribed timeframes. The prescribed timeframes only apply to situations where a host county voluntarily seeks authorization from the county of origin. The commenters expressed a strong objection to the limited nature of the proposed regulations and felt that DMH should broaden their scope to be consistent with their recommended changes.

Response:

As stated in the Initial Statement of Reasons (ISOR) overall summary, the purpose of this regulation package is to adopt Title 9 California Code of Regulations (CCR) Section 1810.207.5 "County of Origin" and Section 1810.220.5 "Host County" to define the terms used and to amend Section 1830.220(b)(4)(A) "Authorization of Out-of-Plan Service Services" to set clear time frames for action by the County of Origin when a Treatment Authorization Request (TAR) is received for a child and/or youth living outside the county.

Current law requires that Mental Health Plans (MHP) ensure that MediCal beneficiaries receive specialty mental health services regardless of where they

live, including foster, adopted, and Kin-GAP children/youth living out-of-county. Mental Health Plan Contracts were developed by each of California's counties stating how they would provide specialty mental health services to Medi-Cal beneficiaries including foster children placed out-of-county and adopted or Kin-GAP children living out-of-county.

The goal of this regulation package is to provide prescribed timeframes for the authorization and reimbursement of services for foster care, adopted, and Kin-GAP children/youth placed outside of their county of origin to ensure access to outpatient mental health services as mandated by Senate Bill (SB) 745, (Chapter 811, Statutes 2000), Welfare and Institutions Code (W&IC) Section 5777.5 and 5777.6 and Title 42, Code of Federal Regulations (CFR), Part 438, Section 438.210.

Through the establishment of prescribed timeframes, it will create consistency statewide in the amount of time that services must be authorized and reimbursed.

2. Comment:

Dr. Wachtel also commented that "DMH should require counties to switch Medi-Cal eligibility 'IMMEDIATELY' when a foster child is placed out of county, so the child can access appropriate mental health services in a timely fashion. I have many patients who remain in limbo for years unable to get the mental health care that they require."

Response:

The Medi-Cal program is under the auspices of the Department of Health Care Services (DHCS), which is the designated single-state agency responsible for the administration of the Medi-Cal program. Medi-Cal program eligibility rules are under CCR, Title 22 regulations. Specifically, Title 22 CCR Section 50125(a)(1)(B) states the following:

The county of responsibility for determining Medi-Cal eligibility for persons whose as MN, MI, or Other PA is not determined as part of a family, nor based on family income, shall be the placing county for children placed by a county agency in foster or adoptive care under Aid Codes 04, 43, 44, 45, 46 and 47.

Specialty mental health services program eligibility rules under Title 9 of the CCR are part of the broader Medi-Cal program and are administered by DMH via an interagency agreement with DHCS and waivers approved by Centers for Medicare and Medicaid Services under Section 1915(b) of the Social Security Act. As indicated in Title 9 CCR Section 1810.345, beneficiaries eligible for specialty mental health services must be eligible for the Medi-Cal program.

Changes to the Medi-Cal program Title 22 eligibility rules are outside the scope of this regulatory package.

DMH does not have the statutory authority to change the Medi-Cal eligibility from the county of origin to the host county.

DMH provides Medi-Cal Ombudsman Services whose primary goal is to assist individuals, families, advocates, etc., with difficulties accessing specialty mental health services. They may be contacted by phone at 800-896-4042 or by email at Ombudsman@dmhhq.state.ca.us.

3. Comment:

CAMFT stated “On behalf of the 29,000 members of the California Association and Marriage and Family Therapists (‘CAMFT’), we wish to express our position of support on the adoption of the proposed C.C.R Section 1810.207.5 and C.C.R. 1810.220.5, and the amendment of C.C.R. Section 1830.200. Establishing measures and tools to ensure that children receive necessary and vital mental health treatment is of the utmost importance. The proposed regulations will help assure that children under Medicaid receive services in an effective and timely manner.”

Response:

DMH appreciates and thanks CAMFT for its comment.

4. Comment:

CACFS, CCCMHA, CHRCO, CWDA, and UACF commented that “we believe that the uniform contract, authorization, and documentation requirements provided for in SB 785 and the other provisions of this Bill, in addition to the recommended changes in these proposed regulations, are needed to ensure that children and youth out of county have timely access to mental health services.”

Response:

While SB 785 is currently proposed legislation and unless it is enacted, which would not be until January 1, 2008, the uniform contracting, authorizing, and documenting provisions of the bill are statutorily outside the scope of this regulation package. However, DMH has already instituted an administrative procedure to ensure that State General Fund reimbursements for services provided to adopted children/youth go directly to the host county rather than the county of origin and will be evaluating the applicability of this procedure for Kin-GAP placements. Furthermore, the proposed regulations would require the county of origin to authorize appropriate and medically necessary specialty mental health services for an out-of-county foster care, adopted, or Kin-GAP

child/youth within 14 days of receipt of a Treatment Authorization Request (TAR). The county of origin is required to arrange for reimbursement of those services within 30 days. DMH is committed to working collaboratively with stakeholders to identify barriers that impede timely and accessible services.

Section 1810.207.5, County of Origin

5. Comment:

CACFS, CCCMHA, CHRCO, CWDA, PAI, and UACF commented that DMH should expand the list of children and youth placed out-of-county to include foster care children voluntarily placed and recipients of the Kin-GAP programs.

The above listed entities also requested clarification of the following last sentence of the definition. “For the purpose of this program the county of origin shall not change for children or youth who are between the ages of 18 and 22.” There was confusion about what the term “this program” was referring to. Specifically, the commenters stated the following: “If this term refers to the Medi-Cal program, we agree that the county of origin should remain unchanged for children who remain in foster care beyond their 18th birthday or who are solely eligible for Medi-Cal under the Former Foster Care Children Program (FFCC). Many youth who emancipate out of the foster care system, however, qualify for Medi-Cal under eligibility criteria other than the FFCC Program. We believe that the county of origin for these youth should be their county of residence.”

Response:

Title 9 CCR Section 1830.220(b)(4)(A) already allows for a variety of foster care arrangements, including Kin-GAP children. However, in response to the number of comments regarding the clarity of some parts of the definition, it was revised to provide a clearer definition of what is meant by “County of Origin”. The revised definition states that “for the purpose of out-of-plan Services under Section 1830.220, the county where legal jurisdiction has been established and/or that has financial responsibility for the child or youth” is the County of Origin. In recognition of the fact that various laws and programs use other terms to describe the same situation, the revised section goes on to state that “County of Origin” is synonymous with the terms “County of Adjudication” and “County of Responsibility”.

In response to testimony, the language regarding children or youth between the ages of 18 and 22 was removed. Existing laws regarding this age group remain unchanged. The FFCC Program eligibility rules are under the purview of DHCS and are outside the scope of this regulatory package.

6. Comment:

PILP/YLC commented that DMH should not have based the “county of origin” definition on Section 60020(b) because this definition was intended for mental health services provided to children as part of their special education program and not mental health services for foster children placed out-of-county. Concerns were expressed regarding the usage of the term parent and defining the “county of origin” for foster children based on the residence of the child’s parents.

It was also recommended that DMH clarify through regulations or some other means that former foster care youth are eligible for Medi-Cal mental health services in the county where they reside.

Response:

As discussed in comment number 5, the definition was rewritten to improve clarity as it relates to the provision of specialty mental health services. The revised definition of “County of Origin” does not refer to the parent’s residence. The sentence regarding children and youth between the ages of 18 and 22 has been deleted. Existing laws regarding this age group remain unchanged. As indicated in the prior response, the FFCC Program eligibility rules are under the purview of DHCS and are outside the scope of this regulatory package.

7. Comment:

The PILP/YLC commented that adopted children should be eligible for mental health services in the county where they reside. “If the Department determines that children in the Adoption Assistance and/or Kin-GAP program should not be eligible for mental health services in the county where they reside, it should explain its rationale.”

Response:

Children in Adoption Assistance or Kin-GAP programs are eligible to receive specialty mental health services from the county in which they reside. This county is referred to as the “Host County” as defined by the new Title 9, CCR Section 1810.220.5. CCR Section 1830.220 describes those situations in which a MHP must authorize out-of-plan services even if those services are available within the MHP’s provider network. The intent of CCR Section 1830.220 is to ensure that beneficiaries receive the services described in CCR Section 1810.345, regardless of where they live.

8. Comment:

“The phrase ‘adoptee receiving adoption assistance’ is imprecise. To the extent that the regulations refer to children in the Adoption Assistance Program, they should clarify whether they refer only to children receiving cash assistance adoption benefits, or also to children who receive only Medi-Cal pursuant to an Adoption Assistance Agreement.”

Response:

Redefining the phrase “adoptee receiving adoption assistance” is outside the scope of this regulation package. It is not necessary to distinguish between the types of adoption assistance benefits a child or youth may be receiving as the criteria for receipt of specialty mental health services as cited in Title 9 CCR Section 1810.345.

Section 1830.220(b)(4)(A)(1)

Comments received from CAAA, CACFS, CCCMHA, CHRCO, CMHDA, PAI, PILP/YLC, and UACF on CCR Section 1830.220(b)(4)(A)(1) are either the same or similar and have been summarized as follows:

9. Comment:

Although the proposed regulations would make it easier for the host county to provide mental health services to a foster or adopted child or youth, it does not require the host county to provide these services. There were concerns that because of limited resources and infrastructure, it was very challenging for many of the MHPS to provide services to their own children versus children placed from out-of-county, which invariably would not increase access to mental health services for out-of-county children.

The commenters indicated that it was a common occurrence for a provider to request authorization and reimbursement directly from the county of origin. Therefore, it was recommended that the regulations reflect that both the host county and the provider can initiate the request for authorization of services under the same proposed timelines.

It was also recommended that the same prescribed timeframes for authorization and reimbursement apply to children and youth receiving payments from the Kin-GAP programs.

Response:

Current law requires the responsible MHP to ensure its beneficiaries receive specialty mental health services regardless of where they live. Title 9, CCR

Section 1830.220(b)(4)(A) requires that mental health services must be provided to out-of-county foster and adopted children. While services may be provided by the host county or one of the service providers contracted with the responsible MHP, CCR Section 1810.228 defines “MHP of beneficiary” as being the entity responsible for providing or arranging and paying for specialty mental health services for a beneficiary. Mental Health Plan Contracts were developed by each of California’s counties defining how they would provide specialty mental health services to Medi-cal beneficiaries including out of county foster and adopted children.

In addition, as more completely set forth in the response to comment number 2 DHCS is the single state agency for MediCal and sets the eligibility requirements. Any changes to those regulations are outside the purview of DMH.

DMH is amending the text of the proposed regulation to require that both the host county and requesting service provider be notified by the county of origin regarding the authorization decision within the prescribed timeframe. As the commenter indicated, some MHPs have raised concerns about serving out-of-county children because of limited resources. Keeping in mind that the overarching goal of this regulation is to provide timely and accessible specialty mental health services, it would be beneficial for the host county to be cognizant of the number of out-of-county beneficiaries accessing services so if there is a resource or capacity issue, the MHP would be have the opportunity to work collaboratively with the requesting service provider and the county of origin to mitigate these issues.

The timelines for authorization and reimbursement do apply to children receiving Kin-GAP and Kin-GAP plus payments as indicated in CCR Section 1830.220(b)(4)(A). However, for clarity, the phrase “or other foster care arrangement” is being added to CCR Section 1830.220(b)(4)(A)(1).

10. Comment:

The proposed regulations should make an authorization decision within three working days and notify the host county and the requesting provider as well as the beneficiary. It was suggested that beneficiary notification will ensure that the child or youth placed out-of-county will receive “timely and continuous treatment even if he or she moves during the authorization process.” It was also recommended that the proposed regulations should state the beneficiary will have all the problem resolution found in Title 9, Chapter 11, Subchapter 5 for authorization decisions.

Response:

The requirements for notification of beneficiaries are provided for in Title 9, CCR Section 1810.360 and 42 CFR, Section 438.10 and are outside the scope of this regulatory package and continue to apply.

Beneficiaries continue to be able to utilize the Beneficiary Resolution process found in Title 9 CCR Sections 1850.205 through 1850.209. These proposed regulations do not affect that process.

11. Comment:

“Applying this regulation to providers would make it more administratively manageable for all providers, public and private, in the host county to provide timely access to needed services for children placed out of county. Forcing providers to go through the host county MHP to reap the proposed timeliness benefits add a new level of administrative burden for providers and requires host county MHP involvement that, in many cases, the host county MHP does not want.”

Response:

Title 9, CCR Section 1810.228 defines MHP of beneficiary as being responsible for providing or arranging and paying for specialty mental health services for a beneficiary. DMH contracts with the MHPs to provide payment for specialty mental health services. Providing time frames for “County of Origin” action on a TAR is intended to help the authorization and reimbursement process for out-of-county specialty mental health services move more quickly and should not “add a new level of administrative burden for providers”.

12. Comment:

It was recommended that the MHP of the County of Origin make an authorization decision and notify the host county MHP or requesting provider, and also the beneficiary, within three working days. The commenters felt that notification of the beneficiary will ensure that the child/youth would receive timely and ongoing services even if the child/youth moves during the authorization process. It was also recommended that the proposed regulations should indicate that the beneficiary has access to the Beneficiary Problem Resolution Processes in the Title 9, Chapter 11, Subchapter 5 regulations.

Response:

The requirements for notification of beneficiaries are provided for in Title 9, CCR Section 1810.360 and 42 CFR Section 438.10 and are outside the scope of this

regulation package and continue to apply. This regulation package does not affect the ability of beneficiaries to exercise the rights set forth in CCR Sections 1850.205 through 1850.209.

The proposed regulation CCR Section 1830.220(b)(4)(A)(3) defines the problem resolution between the MHP of the county of origin and the MHP of the host county. In response to testimony, the proposed regulation has been modified to require the "County of Origin" to notify both the host county and the requesting provider of its decision.

13. Comment:

PAI raised concerns that the proposed regulations do not indicate a timeline for which the MHP must document the request for information or specify the type of information that is needed. PAI recommends that if the TAR for out-of-county beneficiaries is not approved in the required timeframe, it should be approved by "operation of law" in accordance with W&IC Section 14103.6. Specifically, PAI stated "Such a requirement would be consistent with other California laws requiring that TARS be approved by operation of law when they are not acted upon within a set period of time. See, e.g., Welfare & Institutions Code Section 14103.6."

Response:

The proposed regulations require the MHP of the county of origin to authorize specialty mental health services within three working days. The proposed regulations allow for an extension up an additional of three working days if additional information is needed. The proposed regulation sets a maximum timeframe of 14 calendar days from the date the TAR is received for the authorization of services. In response to testimony the proposed regulation has been amended to clarify that the county of origin has a maximum of 14 days "from the receipt of the original Treatment Authorization Request."

If an MHP does not approve or deny within the 14 day timeframe, they are out of compliance with Title 9, CCR Section 1820.220 for "Hospital Services" and the contractual requirements for Non-Hospital Specialty Mental Health Services and would be subject to corrective action and/or civil penalties in CCR Sections 1810.380 and 1810.385.

The suggestion that all TARS not acted on within 30 days be deemed automatically granted in accordance with W&IC Section 14103.6 is not appropriate. This section of the law addresses the TAR requirements for elective services which are outside the scope of specialty mental health services.

14. Comment:

PAI commented that DMH has failed to set forth the alternatives it considered to these regulations, nor does it describe in its regulatory package the effect the proposed regulation is projected to have on individuals. The proposed regulations also do not meet the Administrative Procedures Act (APA).

Response:

The potential fiscal and economic impacts were addressed in the “Fiscal Impact Estimate” section of the Public Notice of Proposed Rulemaking. Alternatives to the proposed regulations were considered and no viable options were available and no possible alternatives were presented.

15. Comment:

PILP/YLC also commented that the proposed regulations do not require specialty mental health services to be provided within a particular timeframe and do not provide timelines for out of plan services when the request comes from someone other than another MHP.

Response:

Mental Health Plan Contracts were developed by each of California’s counties defining how they would provide specialty mental health services to Medi-Cal beneficiaries including out-of-county foster and adopted children. The timeliness standards for services are determined by each MHP and must be consistent with 42 CFR, Section 438.210 and Title 9, CCR Section 1830.215. The intent of this regulation package is to set timeframes for authorization and payment for services.

16. Comment:

PILP/YLC commented that “the proposed regulations address only the administrative concerns of the MHPs, not the needs of the child for timely services. As written, they are unlikely to result in quick action. The proposal allows for up to 30 days after the authorization for reimbursement arrangements to be made. It also allows up to an additional 14 days for authorization when the MHP documents a need for additional information. As a result, reimbursement arrangements may take six weeks or more from the date the request is received by the MHP in the county of origin.

The regulations should require the MHP in a host county to make a request within one working day of the time it becomes aware of the need for service authorization from another MHP and require the MHP in the county of origin to:

- 1) arrange for reimbursement as soon as possible, but not later than 30 days after authorization,
- 2) expedite reimbursement arrangements when necessary to meet the needs of the child.”

Response:

The scope of this regulation package is to define terms and establish time frames for action by the “County of Origin”. The commenter is correct that the maximum amount of time for payment could be six weeks from the date of receipt of the TAR in instances where the “County of Origin” needs to request additional information.

However, the proposed regulation requires that the “County of Origin” make a decision regarding the authorization request within three working days in most circumstances and a maximum of 14 days from the receipt of the TAR in situations where the “County of Origin” has needed to request additional information.

The proposed regulations require that arrangements for reimbursement for services be made within 30 days of the date of authorization. If an MHP fails to comply with these prescribed timeframes, it would be subject to corrective action and/or civil penalties as set forth in Title 9, CCR Sections 1810.380 and 1810.385.

17. Comment:

PILP/YLC commented that “in some instances, children will be receiving authorized services when they move to another county. The regulations should make clear that authorization for these services continues when the child moves to another county unless and until authorization is changed or withdrawn.”

Response:

Please see the response to comment number 9. This regulation package does not change the existing requirements that children and youth receive needed specialty mental health services.

18. Comment:

PILP/YLC commented that “the proposed regulations provide for arbitration pursuant to Section 1850.405 to resolve differences between MHPs (a process that can take more than two months) but do not articulate what happens with respect to service provision in the interim. As a result, children are likely to be denied access to timely services when there is a dispute. The regulations should require immediate provision of medically necessary services when there is a

dispute between MHPs, or, at a minimum, require a reimbursement arrangement agreement that will permit services to be delivered, with the responsible MHP to be determined through arbitration.”

Response:

The intent of this section of the proposed regulations is to stipulate the process to be used when there is a disagreement between the MHPs. Beneficiaries continue to have all existing rights including the right to receive specialty mental health services pending the outcome of a fair hearing as allowed in Title 9, CCR Section 1850.215.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE FIRST MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC.

Modified text was made available to the public from October 5, 2007 through October 22, 2007. The Department’s summary and response to comments received during that period is below.

The following presented comments:

California Alliance of Child and Family Services (CACFS)
California Mental Health Directors Association (CMHDA)
Public Interest Law Project/Youth Law Center (PILP/YLC)

General Comments

1. Comment:

CACFS commented that they support the following changes made to the regulations text:

- the definition of the County of Origin (Section 1810.207.5);
- the addition of Kin-GAP children to the groups of beneficiaries included in the regulations [Section 1830.220(b)(4)(a)(1)]; and
- the addition of provider to the entities notified by the county of origin MHP regarding authorization decisions [Section 1830.220.(b)(4)(a)(1).

Response:

DMH wishes to thank CACFS for their support of changes made to the regulations text sections noted above.

2. Comment:

PILP/YLC also commented that they support the changes to the definition of “County of Origin” in section 1810.207.5 and clarification regarding Kin-GAP children in Section 1830.220(b)(4)(A)(1).

Response:

Again, DMH wishes to thank CMHDA for their support of changes made to the regulations.

Section 1830.220(b)(4)

3. Comment:

CACFS supports the change to the proposed regulation text that clarified that Kin-GAP are part of the group of eligible beneficiaries and is proposing the following technical change since children in this program are no longer in foster care:

“If the beneficiary is a child or youth of either the Foster Care Program, Adoption Assistance Program, KinGAP program, or other type of foster care arrangement such as Kin-GAP, and is placed outside his/her county of origin,...

Response:

In part, the current modified regulation section states:

If the beneficiary is a child or youth of either the Foster Care Program, or the Adoption Assistance Program, or other type of foster care arrangement such as Kin-GAP, and is placed outside his/her county of origin...

Title 9, CCR Section 1830.220(b)(4)(A) allows for a variety of foster care arrangements, including Kin-GAP children. Changing the sequence of words does not change the meaning of the proposed regulation section; therefore, DMH did not make additional modifications to this section.

4. Comment:

CACFS also has concerns that the proposed regulations as written would delay services and create additional burdens on the host MHP and providers. CACFS also indicated that the language was ambiguous and specifically stated “This section is unclear. It could mean either the following:

1. The county of origin MHP must arrange for reimbursement to the host county entity it authorized to provide the services.
2. The county of origin must arrange for reimbursement to the host county MHP regardless of what entity it authorized to provide the services.”

CACFS recommends that DMH clarify the regulation text to support the option 1 and provided the following recommended language:

“Within 30 days of the date of authorization of service, the MHP of the county of origin shall arrange for reimbursement **to the host county MHP or a provider selected by the MHP of the county of origin** for the service provided to the child or youth through.”

Response:

DMH understands CACFS concerns and has modified the text as follows:

Within 30 days of the date of authorization of service, the MHP of the county of origin shall arrange for reimbursement for the service provided to the child or youth through the host county or the requesting provider.

5. Comment:

CMHDA stated “We agree with the proposed timeliness provision requiring the county of origin to arrange for reimbursement for services provided to the child or youth with 30 days of the date of the authorization of service. However, we recommend that latter part of this provision, “through the host county.” be deleted. This provision would make the host county the fiscal intermediary for the county of origin, which is not fiscally prudent.”

CMHDA also indicated that the existing proposed regulation was “too limiting and could unnecessarily impede more timely arrangements” between the various entities involved in the provision of services.

Response:

Please see the response to comment number 2.

6. Comment:

PILP/YLC expressed concerns that their comments sent to DMH on August 6, 2007, regarding Authorization for Out-of-Plan Services have not been addressed in the proposed regulation changes and therefore are resubmitting them for consideration.

Response:

DMH did receive PILP/YLC August 6, 2007 comments and has addressed them in the responses to the 45-day comment period.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE SECOND MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC.

The second modified text was made available to the public from February 19, 2008 through March 5, 2008. No comments were received during the period the second modified text was available to the public.