

## **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 no later than August 24, 2009, or at the conclusion of the public hearing, if any, whichever comes later, to the contact person listed below.

A public hearing regarding this proposal has not been scheduled; however any interested person or his or her duly authorized representative may request that one be held, no later than August 9, 2009, by contacting the person listed below.

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.

#### **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 has determined 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:

Jon Cordova  
Department of Mental Health  
1600 9th Street, Room 435  
Sacramento, CA 95814  
(916) 651-1446

Backup Contact:

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

Comments may also be submitted by facsimile (FAX) at (916) 651-3852 or by e-mail to [regulations@dmh.ca.gov](mailto:regulations@dmh.ca.gov). Comments must be submitted prior to 5:00 p.m. on August 24, 2009.

**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](http://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](http://www.dmh.ca.gov).