



TITLE 9. CALIFORNIA DEPARTMENT OF MENTAL HEALTH

ACTION: NOTICE OF PROPOSED RULEMAKING

SUBJECT: AUTHORIZATION FOR OUT-OF-PLAN SERVICES

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Mental Health will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

WRITTEN COMMENT PERIOD: Any interested person, or their authorized representative, may submit comments relevant to the action described in this notice. Any written statements, arguments, or contentions must be received by the Office of Regulations, California Department of Mental Health, 1600 Ninth Street, Room 153, Sacramento, CA 95814, by 5:00 p.m. on **August 6, 2007**. It is requested but not required that written statements sent by mail or hand-delivered be submitted in triplicate.

Comments may be transmitted via facsimile 916-651-9919 or electronic mail DMH.Regulations@dmh.ca.gov and must be received before 5:00 p.m. on the last day of the public comment period. All comments, including electronic mail or facsimile transmissions, should include the author's name and U.S. Postal Service mailing address in order for DMH to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

WEB SITE: This public notice, the regulation text, the initial statement of reasons, and other related documents, are available from the DMH world-wide-web site http://www.dmh.ca.gov/Admin/regulations/rulemaking_pkgs.asp.

CONTACT: Inquiries concerning the rulemaking process described in this notice may be directed to Steve Appel, Chief, Office of Regulations, by electronic mail DMH.Regulations@dmh.ca.gov or telephone 916-654-4027. The backup contact person is Gayathri Murthy, Office of Legal Services at 916-653-2319. Inquiries concerning the substance of the rulemaking may be directed to Sophie Cabrera at 916-654-6605.

Hearing impaired persons wishing to utilize the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 800-735-2929, if you have a TDD; or 800-735-2922, if you do not have a TDD.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: The Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) service is Medicaid's comprehensive and preventive child health program for individuals under the age of 21. States are required to inform all Medicaid-eligible persons under age 21 that EPSDT services as described in section 1905(r) of the Social Security Act are available and the need for age-appropriate immunizations.

The Department of Health Services (DHS) is the single state agency under federal Medicaid law with the responsibility and authority for administering the Medi-Cal program, including the supervision and oversight of other entities providing Medi-Cal services. Federal law allows for an interagency agreement between DHS and the Department of Mental Health (DMH), whereby DMH agrees to provide administration and oversight of the mental health plan (MHP) contracts and the provision of medically necessary specialty mental health services to Medi-Cal beneficiaries.

In California, EPSDT, which is one of the specialty mental health services defined in Title 9, California Code of Regulations (CCR), Section 1810.247 must be provided to Medi-Cal beneficiaries of each county through the MHP which contracts with DMH. However, problems arose when a foster care child who was adjudicated in one county and was placed in another county and needed outpatient specialty mental health care services from an entity other than their local MHP. There were disagreements as to which county was responsible for the cost of the mental health care and authorizing the care in a timely manner. Senate Bill (SB) 745, (Chapter 811, Statutes of 2000) added Section 5777.6 to the Welfare and Institutions Code (W&IC) requiring local mental health plans to establish a procedure to ensure access to outpatient mental health services for foster children placed outside of their county of origin (adjudication).

Unfortunately, even with the enactment of SB 745, foster and adopted children and youth are still experiencing difficulties in obtaining access to mental health services when they are placed outside of their county of origin. The California Institute for Mental Health (CIMH), in partnership with the Child and Family Policy Institute of California (CFPIC), with a grant from the Zellerbach Family Foundation have led a project to address the issue of timely access to mental health care for foster care children placed outside of their county of origin.

After careful analysis, it was decided that the most effective method to resolve the timely access issue for foster and adopted children placed out of county was to amend Sections 1830.220(b) of the regulations to require a specified timeframe for authorizing and reimbursing for mental health services. This in effect will institute a statewide approach to mental health service for out-of-county placements. W&IC Section 5777.6(b)(1) provides the authority for implementing a state-wideness procedures without having to seek federal approval.

DMH recognizes that other population of EPSDT eligible children who are placed out of county would benefit from similar provisions and considered extending this requirement to other EPSDT eligible children and youth not under the auspices of the Foster Care or the Adoption Assistance programs, however DMH has focused on foster and adopted children as they represent a population that currently experiences significant delays in service and can be immediately assisted by the amendments to the Title 9 regulations.

DMH will continue to conduct research on the various statues and regulations for other programs to determine the feasibility of extending the provision as defined in this regulation package to other EPSDT eligible children placed out of county.

This proposed regulation package adopts Sections 1810.207.5 and 1810.220.5, Title 9, California Code of Regulations (CCR) to incorporate relevant definitions from CCR, Title 2, Section 60020 with the intent of providing program clarity for the Authorization of Out-of-Plan Services requirement in Section 1830.220(b)(4)(A). The definitions from Title 2 will be incorporated by reference, with slight modifications into Title 9. This package also amends Section 1830.220(b)(4)(A) to provide prescribed timeframes in the authorization of services for foster care and adopted children and youth placed outside of their county of origin to ensure access to outpatient mental health services as mandated by SB 745 and Title 42, Code of Federal Regulations, Part 438, Section 438.210. The rulemaking has also been forwarded to DHS, the single state agency for review.

AUTHORITY: Section 7576, Government Code; and Sections 5777.6 and 14680, Welfare and Institutions Code.

REFERENCE: Section 56331, Education Code; and Sections 5777, 5777.6, 11400, 14680, 14684, and 16115, Welfare and Institutions Code; and Section 438.210 of Title 42, Code of Federal Regulations.

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>).

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government:** No additional expenditures or savings because the proposed changes are expanding the regulations to specify timeframes for already required procedures.
- B. Fiscal Effect on State Government:** It is anticipated that State agencies will be able to absorb these additional costs within their existing budgets and resources.
- C. Fiscal Effect on Federal Funding of State Programs:** These proposed changes to the regulations are not changing any federal requirements but clarifying existing requirements by imposing specified timeframes for the local mental health plan providers.
- D. Fiscal Effect on Private Persons or Businesses Directly Affected:** Impacts businesses and/or employees, including public and private agencies for foster family agencies and group homes.

DETERMINATIONS: 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.

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.

DMH has determined that the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.
4. DMH has determined that these regulations may impact small businesses.
5. Housing costs within the State of California.

AVAILABILITY OF STATEMENT OF REASONS AND REGULATION TEXT:

DMH prepared and has available for public review an initial statement of reasons for the regulations, all the information upon which the regulations are based, and the text of the regulations. These documents are posted on the DMH web site. A copy of the initial statement of reasons and the text of the regulations are available upon request to the Office of Regulations at the address noted above. This address will be the location of public records, including reports, documentation, and other material related to the regulations. In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations or from the DMH web site.

AVAILABILITY OF THE CHANGED OR MODIFIED REGULATION TEXT:

After considering all timely and relevant comments received, DMH may adopt the regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DMH adopts the regulations. Any modifications will also be posted on the DMH web site. Requests for copies of any modified regulations should be directed to Steve Appel, Office of Regulations, at the address indicated above.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.2(b)(3)(A), DMH must determine that no reasonable alternative considered by the DMH, or that has been otherwise identified and brought to the attention of DMH, 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.

DMH has not scheduled a public hearing on the proposed regulatory action. However, if any person wishes to submit oral comments, DMH will schedule a public hearing upon receipt of that person's written request. Such request must be received at the address shown above no later than 15 days prior to the close of the written comment period.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations during the written comment period.