



Arnold Schwarzenegger, Governor
State of California
Business, Transportation and Housing Agency
Department of Managed Health Care
Office of Legal Services

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ACTION: NOTICE OF PROPOSED RULEMAKING AND
NOTICE OF PUBLIC HEARINGS
Title 28, California Code of Regulations

SUBJECT: Adopting title 28, California Code of Regulations section 1300.67.2.2 –
Timely Access To Health Care Services, Control No. 2005-0203

PUBLIC PROCEEDINGS: Notice is hereby given that the Director of the Department of Managed Health Care (Department) proposes to adopt regulations under the Knox-Keene Health Care Service Plan Act of 1975 (Act) relating to Timely Access to Health Care by adopting title 28, California Code of Regulations section 1300.67.2.2, to implement Health & Safety Code section 1367.03. Before undertaking the action, the Director will conduct public proceedings, during which time interested persons may present statements, arguments, or contentions relevant to the action described in this notice.

NOTICE OF PUBLIC HEARING: Notice is hereby given that a public hearing will be held regarding the adoption of California Code of Regulations Title 28, Chapter 2, Article 7, Section 1300.67.2.2, “Timely Access To Health Care Services.” The proposed new section 1300.67.2.2 will implement Health & Safety Code section 1367.03, as adopted by Assembly Bill 2179 by adopting indicators and standards to ensure that enrollees of health care service plans have access to needed health care services in a timely manner.

NOTICE OF HEARING DATE AND LOCATION: Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

The public hearing will be held on:

March 5, 2007
10:00 a.m.
980 Ninth Street, 2nd Floor
Conference Rooms A, B & C
Sacramento, California

WRITTEN COMMENT PERIOD: Any interested person, or his or her authorized representative, may submit written statements, arguments or contentions (hereafter referred to as comments) relating to the proposed regulatory action by the Department. In order for comments to be considered by the Department before it adopts the regulation, comments must be received by the Department of Managed Health Care, Office of Legal Services, by 5 p.m. on March 5, 2007, which is hereby designated as the close of the written comment period.

Please address all comments to the Department of Managed Health Care, Office of Legal Services, Attention: Regulations Coordinator. Comments may be transmitted by regular mail, FAX, email or via the Department's website:

Website: <http://wps0.dmhc.ca.gov/regulations/>
Email: regulations@dmhc.ca.gov
Mail: Department of Managed Health Care
Office of Legal Services
Attn: Regulations Coordinator
980 9th Street, Suite 500
Sacramento, CA 95814
Fax: (916) 322-3968

Please note, if comments are sent via the website, email or fax, there is no need to send the same comments by mail delivery. All comments, including via the website, email, fax or mail, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

Please identify the action by using the Department's regulation title and control number, **Timely Access To Health Care Services, Control No. 2005-0203**, in any of the above inquiries.

CONTACTS: Inquiries concerning the proposed adoption of this regulation may be directed to:

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OR **Stephen Hansen, Staff Counsel III**
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AVAILABILITY OF DOCUMENTS: All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the Regulations Coordinator listed above. Please call (916) 322-6727 to make an appointment.

AUTHORITY AND REFERENCE

California Health and Safety code sections 1344 and 1346 vest the Director of the Department of Managed Health Care (Director) with the power to administer and enforce the provisions of the Act.

California Health and Safety Code section 1344 authorizes that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of the Act, including rules governing applications and reports, and defining any terms, whether or not used in the Act, insofar as the definitions are not inconsistent with the provisions of the Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter.

California Health and Safety Code sections 1346(a)(3)-(a)(4) vest in the Director the power to administer and enforce the Act, including but not limited to recommending and proposing the enactment of any legislation necessary to protect and promote the interests of plans, subscribers, enrollees, and the public.

Note: Authority cited: Sections 1344, 1346 and 1367.03, Health and Safety Code. Reference: Sections 1342, 1363, 1367, 1368, 1368.01, 1370, 1375.7, and 1380, Health and Safety Code. Cross Reference: Sections 1300.51(d)(Exhibits G, H, I, J, K), 1300.68, and 1300.70, Title 28, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Department proposes to adopt section 1300.67.2.2 pursuant to California Health and Safety code section 1367.03, which specifically authorizes the Department to develop and adopt regulations to ensure that enrollees have access to needed health care services in a timely manner. Section 1367.03 directs the Department to develop indicators of and standards for timeliness of access to care.

AB 2179 (2002) added section 1367.03 of the Health and Safety Code, expressly instructing the Department to develop and adopt regulations to assure timely access to health care. The statute also contained specific requirements for the content of the regulations, including requirements that the regulations establish indicators of timeliness of access to care, adopt standards for timely access to health care services, and specify the manner in which health care service plans are to report annually to the Department on compliance with the standards. Accordingly, the regulation establishes standards and requirements related to: timely access to primary care physicians, specialty physicians, hospital care, and other health care; health plan monitoring of health care provider compliance with the standards; corrective action by health plans upon identifying deficiencies in compliance; and the statutory requirement of filing an annual report of compliance.

The statute requires the adoption of "time elapsed" standards specifying the time elapsed between the time an enrollee seeks health care and obtains care. The statute also authorizes the Department to adopt standards other than time elapsed but requires the Department to demonstrate why such standard other than time elapsed is "more appropriate." Proposed section 1300.67.2.2 adopts time elapsed standards and proposes a "same-day access" standard which is demonstrated to be "more appropriate" than time elapsed standards because timeliness of access under the same-day access standard exceeds timeliness of access under all of the time elapsed standards of the proposed regulation.

In Section 1 of AB 2179, the Legislature found and declared “that timely access to health care is essential to safe and appropriate health care and that lack of timely access to health care may be an indicator of other systemic problems such as lack of adequate provider panels, fiscal distress of a health care service plan or a health care provider, or shifts in the health needs of a covered population.”

ALTERNATIVES CONSIDERED: Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified or brought to the attention of the Department would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the requirements of the proposed regulation at the scheduled hearing or during the written comment period.

SUMMARY OF FISCAL IMPACT:

- Mandate on local agencies and school districts: None
- Cost or Savings to any State Agency: None
- Direct or Indirect Costs or Savings in Federal Funding to the State: None
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None
- Costs to private persons or businesses directly affected: The Department 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
- Other non-discretionary cost or savings imposed upon local agencies: None

DETERMINATIONS: The Department has made the following initial determinations:

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code. As specified in Section 6 of AB 2179, no reimbursement is required.

The Department has determined that the regulations will have no significant effect on housing costs.

The Department has determined that the regulations do not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342.610(b) and (c).

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs within the State of California.

The Department has determined that the regulations will not significantly affect the creation of new businesses, or the elimination of existing businesses within the State of California.

The Department has determined that the regulations will not significantly affect the expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

FINDING REGARDING REPORTING REQUIREMENT:

Government Code section 11346.3(c) provides as follows:

“No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.”

All reporting requirements included in these regulations do apply to businesses because the Department has determined and found that the regulations are necessary to maintain the health, safety and welfare of the people of the State of California.

The reporting requirements of these regulations are mandated by subdivision (f) of section 1367.03 of the Health & Safety Code.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT AND RULEMAKING FILE:

The Department has prepared and has available for public review the Initial Statement of Reasons, text of the proposed regulation and all information upon which the proposed regulation is based (rulemaking file). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Sacramento, CA 95814, Attention: Regulations Coordinator.

AVAILABILITY OF MODIFIED TEXT: The full text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulation(s) should be addressed to the Regulations Coordinator. The Director will accept comments via the Department’s website, mail, fax or email on the modified regulation(s) for 15 days after the date on which the modified text is made available. The

Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth without further notice.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

The Notice of Proposed Rulemaking, proposed text of the regulation, and the Initial Statement of Reasons are available via the Department's website at <http://wps0.dmhc.ca.gov/regulations/>, under the heading "Open Pending Regulations."

Dated this _____ day of December, 2006, at Sacramento, California.

STEPHEN A. HANSEN
Staff Counsel III