TITLE 10. CALIFORNIA DEPARTMENT OF MANAGED CARE

FINDING OF EMERGENCY

Pursuant to Government Code section 11346.1, the Director of the Department of Managed Care (Director) amends section 1300.68 and adopts section 1300.68.01 under the KNOX-KEENE HEALTH CARE SERVICE PLAN ACT OF 1975 (Title 10, Chapter 3, sections 1300.68 and 1300.68.01) as emergency regulations. These emergency regulations relate to the grievance process. The Department of Managed Care (Department) has internally numbered this emergency regulatory package as OP 08-00.

Emergency regulations on this topic were originally filed by the Department of Corporations and became effective on May 30, 2000. However, on July 1, 2000, the Department of Managed Care (Department) officially became a separate state agency invested with the authority to monitor the health care industry in the State of California. Health and Safety Code sections 1341.9 and 1344 transferred the powers and duties relating to health care service plans and related matters from the Department of Corporations to the Department, including regulatory authority. The Department has determined that the May emergency regulations originally enacted by the Department of Corporations do not adequately accomplish the purpose of the legislation that the regulations implemented. Therefore, pursuant to Government Code section 11346.1(h), the Department is requesting that OAL approve the re-adoption of this emergency regulatory package. In effect, this emergency package would supercede the Department of Corporation's May emergency filing.

This regulatory package is filed in conjuction with a second emergency package, OP # 09-00. OP 09-00 repeals the emergency package that was initially filed by the Department of Corporations in May, and returns the language to the permanent text that existed prior to the May emergency package.

The Department of Managed Care plans on filing a separate rulemaking package that will affect these sections. No date has been made for this filing, however, it will be noticed pursuant to the Administrative Procedures Act.

FINDING OF EMERGENCY

The emergency regulations will preserve public peace, health and general welfare by clarifying procedures with respect to an expedited grievance process, especially in the case of urgent and emergency grievances. Enrollees will be assured of immediate assistance when challenging a decision to deny, delay, or modify health care services on the grounds of medical necessity.

The emergency regulation provides guidelines for the expedited grievance process so that plans will be better able to respond to requests for information from the Department. By implementing emergency regulations, enrollees in an urgent and emergency situation will receive immediate assistance. In order for enrollees to benefit from these procedures, it is necessary for the regulation to be adopted immediately.

INFORMATIVE DIGEST

Document OP 08-00

Under the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act) health care service plans ("plans") are required to establish and maintain a grievance system to resolve enrollee complaints against plans regarding health care services. The Knox-Keene Act also allows enrollees to file complaints against plans with the Department, and establishes a statutory process for resolving complaints with the Department.

Senate Bill 189 (Chapter 542, Statutes 1999), among other things, shortened the period of time from 60 to 30 days in which plans and the Department have to review and resolve enrollee complaints; allows enrollees to seek the Department's review of unresolved grievances after 30 days (instead of the current 60 days), and requires plans to act on emergency grievances, including those involving severe pain, within 3 days of receipt of the grievance (instead of the current 5 days).

In accordance with the changes to the statute made by SB 189, the Director has determined that changes to Section 1300.68 were necessary. These changes will enable the Department to respond to the requirements of the Legislature to resolve enrollee complaints within 30 days.

Section 1300.68 requires plans to establish a grievance system and sets forth the quarterly report form for pending and unresolved grievances. The Director proposes to amend Section 1300.68 to implement the changes made by SB 189.

Subsection (a) is being amended to clarify that plans should resolve grievances within 30 calendar days of receipt of the grievance by the plan or the entity delegated by the plan to resolve grievances.

The remainder of subsection (a) is being moved to new subsection (b). Grammatical and format changes are also being made to this subsection, (i.e., former subsections (b) through (h) have been renumbered subsection (b), paragraphs (2) through (8)).

Health and Safety Code Section 1368(a)(5) requires plans to keep all copies of grievances and responses thereto for five years. Subsection (b)(9) specifies that copies of the medical records, documents, evidences of coverage and other relevant information that the plan used to reach its decision, be maintained with the grievance file.

Health and Safety Code Section 1368.01(b) requires that the grievance system include a requirement for expedited plan review of grievances for cases involving an imminent and serious threat to the health of the patient, including but not limited to, severe pain, potential loss of life, limb, or major bodily function. Subsection (10) is being added to subsection (a) to clarify that the plan's grievance system is also to include procedures for the expedited review of grievances.

Subsection (b) of Health and Safety Code Section 1368 allows an enrollee to submit a grievance to the Department for review after the enrollee has completed the plan's grievance system or after participating in the plan's grievance system for 30 days. The Director proposes adopting new subsection (c) to set forth procedures and the information that the plan is required to submit to the Department. Specifically, the plan is required to submit information that it used to reach a decision with respect to an enrollee's grievance within five calendar days after receipt of notification from the Department.

Health and Safety Code Section 1368 requires plans to submit a quarterly report of grievances

which are pending and unresolved for 30 days or more. Subsection (d) sets forth the procedures for the quarterly report. A plan is not required to report grievances filed and processed outside of the plan's grievance system. Paragraph (1) of subsection (d) is amended to expand the list of outside review organizations to include the Center for Health Care Dispute Resolution, an independent review organization, and the Medi-Cal Fair Hearing Process.

The Quarterly Report of Pending and Unresolved Grievances is contained in paragraph (6) of subsection (d) of Section 1300.68. Item 3 of the report is being amended to request the total plan enrollment information for each category, i.e., number of Commercial, Medicare (Risk), Medicare (Supplement) and Medi-Cal enrollees.

The Director proposes adopting Section 1300.68.01 to clarify procedures for the expedited review of grievances ("urgent grievances").

Subsection (a) clarifies the minimum requirements to be included in the plan's procedures for expedited review. This subsection clarifies that the enrollee's medical condition shall be considered when determining the plan's response time.

Subsection (b) requires that the plan establish a system that is capable of receiving Department contacts 24 hours a day, 7 days a week. The system requires that the plan provide for the availability of a representative with authority on the plan’s behalf. The representative must have the authority to authorize and/or intervene in health care services and treatment and financial decisions on behalf of the plan without having to obtain further approval from the plan. This subsection requires the contact persons to respond to the Department within a specific timeframe.

Subsection (c) requires plans to provide the Department with the plan's organizational information with respect to urgent and emergency requests; the names, titles, telephone numbers, pager numbers, answering service or voice mail numbers, and e-mail addresses, for contacting the primary and the back-up contact persons; and a monthly duty roster for the primary and back-up contact persons. Plans are required to notify the Department when there are any changes to contact person information or to the monthly duty roster.

AUTHORITY

Section 1344, Health and Safety Code.

REFERENCE

Sections 1368 and 1368.01, Health and Safety Code.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The proposed regulation does not impose a mandate on local agencies and school districts. No other direct or indirect costs or savings to local agencies or school districts required to be reimbursed under Part 7 (commencing with section 17,500) of Division 4, of the Government Code, or other nondiscretionary cost or savings imposed on local agencies are applicable.

COST OR SAVINGS TO STATE AGENCY

No other nondiscretionary costs or savings to state agencies will result from this regulation. However, the Department anticipates it will need additional staff to handle the workload created by the reduced grievance review period required by SB 189 (Chapter 542, Statutes 1999). No direct or

indirect costs or savings to the state or in federal funding will result from this regulation.

CONTACT PERSON

Comments or inquiries concerning these proposed regulation changes may be directed to , G. LEWIS CHARTRAND, JR., Supervising Counsel. Enforcement Division. Department of Managed Care. 980 Ninth Street, Suite 500. Sacramento, California 95814. (916) 322-6727.

Dated: 10 July , 2000
Sacramento, California

_____
DANIEL ZINGALE
Director