State of California
Office of Administrative Law

In re:
Department of Managed Health Care

Regulatory Action:

Title 28, California Code of Regulations

Adopt sections:
Amend sections: 1300.67.005
Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION

Government Code Sections 11346.1 and 11349.6

OAL Matter Number: 2016-1117-01

OAL Matter Type: Emergency (E)

This action amends the Essential Health Benefits (EHB) coverage requirements of health care service plans based upon amendments to the base benchmark plan pursuant to SB 43. California originally selected the Kaiser Small Group 30 (2012) plan as the base benchmark plan, but SB 43 amended the Code to select the Kaiser Small Group 30 (2014) plan as the new base benchmark plan. (Health & Saf. Code, § 1367.005, subd. (a)(2)(A).) The amendments bring the regulations into alignment with the Kaiser Small Group 30 (2014) plan pursuant to SB 43.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 11/28/2016 and will expire on 5/31/2017. The Certificate of Compliance for this action is due no later than 5/30/2017.

Date: November 28, 2016

Mark Storm
Senior Attorney

For: Debra M. Cornez
Director

Original: Shelley Rouillard
Copy: Jennifer Willis

STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

EMERGENCY

NOTICE PUBLICATION/REGULATIONS SUBMISSION (See instructions on reverse)

STD. 400 (REV. 01-2013)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2016-1117-01E

For use by Office of Administrative Law (OAL) only

2016 NOV 17 P 12:02

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State of the State of California

NOV 28 2016
1:42 P.M.

AGENCY WITH RULEMAKING AUTHORITY
Department of Managed Health Care

AGENCY FILE NUMBER (If any)
Control No. 2016-5191

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional)

OAL USE ONLY — ACTION ON PROPOSED NOTICE
☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn

NOTICE REGISTER NUMBER | PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Essential Health Benefits

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT

AMEND
Section 1300.67.005

TITLE(S)
28

REPEAL

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)

☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

☒ Emergency (Gov. Code, §11346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

☐ Emergency Readopt (Gov. Code, §11346.1(h))

☐ File & Print

☐ Other (Specify) _____

☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) ☒ Effective on filing with Secretary of State ☐ §100 Changes Without Regulatory Effect ☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) (SAM §6660) ☐ Fair Political Practices Commission ☐ State Fire Marshal

☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Jennifer Willis	(916) 324-9014	(916) 322-3968	jennifer.willis@dmhc.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Michelle Rouillard

DATE
11/17/16

TYPED NAME AND TITLE OF SIGNATORY
Michelle Rouillard, Director

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 28 2016

Office of Administrative Law

Changes in text are noted by underline and strikeout

§ 1300.67.005. Essential Health Benefits.

(a) All health plans that offer individual and small group contracts subject to Health and Safety Code Section 1367.005 shall comply with the requirements of this section.

(b) In addition to any other requirements set forth in the Knox-Keene Health Care Service Plan Act of 1975 (hereinafter the "Act'), to demonstrate compliance with Health and Safety Code Section 1367.005 and this section, health plans shall electronically file through the Department's Efile application the Essential Health Benefits Filing Worksheet (EHB Filing Worksheet) no later than ~~July 15, 2013~~ the date that qualified health plan product filings are required to be submitted, and thereafter as necessary for new or amended plan contracts.

(c) The EHB Filing Worksheet shall include:

(1) The benefits specified in Health and Safety Code Section 1367.005 and the federal Patient Protection and Affordable Care Act (PPACA) at section 1302(b) (42 U.S.C. § 18022) and 45 Code of Federal Regulations (CFR) parts 156.100 and 156.115;

(2) Pursuant to Health and Safety Code Section 1367.005(a)(2)(A)(v), any "other health benefits" covered by the base-benchmark plan, the Kaiser Foundation Health Plan Small Group HMO 30 plan, in the first quarter of ~~2012~~2014, which are not otherwise required to be covered under the Act;

(3) Required benefits for pediatric vision and dental care, for individuals ~~under 19 years of age~~ until at least the end of the month in which the enrollee turns 19 years of age, consistent with benefits described in Health and Safety Code Section 1367.005(a)(4) - (5); and

(4) Prescription drug benefits required by Health and Safety Code Section 1367.005(d) and 45 CFR part 156.122, including the plan's prescription drug list and/or formulary. The EHB Filing Worksheet shall include a certification that the plan's drug list meets or exceeds the prescription drug formulary requirements specified in 45 CFR part 156.122, subparagraph (a)(1).

(d) "Other health benefits" are essential health benefits and are required to be covered as follows:

. . .

(4) Special contact lenses to treat aniridia (missing iris) or aphakia~~,~~(absence of the crystalline lens of the eye), as follows:

(A) Aniridia: Up to two medically necessary contact lenses per eye (including fitting and dispensing) in any 12-month period, whether provided by the plan during the current or a previous 12-month contract period.

Changes in text are noted by underline and strikeout

(B) Aphakia: Up to six medically necessary aphakic contact lenses per eye (including fitting and dispensing) per calendar year for enrollees ~~through age 9~~, whether provided by the plan under the current or a previous contract in the same calendar year.

. . .

(10) Skilled nursing facility services as follows:

(A) For up to 100 days per benefit period (including any days covered under the prior subscriber contract issued by the plan to the enrollee or enrollee's group) of skilled inpatient services in a skilled nursing facility. The skilled inpatient services must be customarily provided by a skilled nursing facility, and above the level of custodial or intermediate care.

(B) A benefit period begins on the date the enrollee is admitted to a hospital or skilled nursing facility at a skilled level of care. A benefit period ends on the date the enrollee has not been an inpatient in a hospital or skilled nursing facility, receiving a skilled level of care, for 60 consecutive days. A new benefit period can begin only after any existing benefit period ends. A prior three-day stay in an acute care hospital is not required to commence a benefit period.

(C) The following services are covered as part of the skilled nursing services:

(i) Physician and nursing services;

(ii) Room and board;

(iii) Drugs prescribed by a physician as part of the plan of care in the plan skilled nursing facility in accord with the plan's drug formulary guidelines if they are administered in the skilled nursing facility by medical personnel;

(iv) Durable medical equipment in accord with the plan's durable medical equipment formulary if skilled nursing facilities ordinarily furnish the equipment;

(v) Imaging and laboratory services that skilled nursing facilities ordinarily provide;

(vi) Medical social services;

(vii) Blood, blood products, and their administration;

(viii) Medical supplies;

~~(ix) Physical, occupational, and speech therapy;~~

(~~x~~ix) Behavioral health treatment for pervasive developmental disorder or autism; and

(x~~i~~) Respiratory therapy.

(11) Procedures for the prenatal diagnosis of fetal genetic disorders including tests for specific genetic disorders for which genetic counseling is available.

(12) Rehabilitative/habilitative health care services and devices.

(A) Coverage shall be in accordance with subdivisions (a)(3) and (p)(1) of section 1367.005, and as follows:

(i) Individual and group outpatient physical, occupational, and speech therapy related to pervasive developmental disorder or autism;

(ii) All other individual and group outpatient physical, occupational, and speech therapy;

(iii) Physical, occupational, and speech therapy provided in an organized, multidisciplinary rehabilitation day-treatment program, a skilled nursing facility; and in an inpatient hospital (including treatment in an organized multidisciplinary rehabilitation program).

(B) The plan shall include in its Evidence of Coverage and Schedule of Benefits a disclaimer that limits for rehabilitative and habilitative service shall not be combined.

(13) Coverage in connection with a clinical trial in accordance with section 1370.6, and as follows:

(A) The plan would have covered the services if they were not related to a clinical trial.

(B)The enrollee is eligible to participate in the clinical trial according to the trial protocol with respect to treatment of cancer or other life-threatening condition (a condition from which the likelihood of death is probable unless the course of the condition is interrupted), as determined in one of the following ways:

(i) a plan provider makes this determination;

(ii) the enrollee provides the plan with medical and scientific information establishing this determination;

(C) If any plan providers participate in the clinical trial and will accept the enrollee as a participant in the clinical trial, the enrollee must participate in the clinical trial through a plan provider unless the clinical trial is outside the state where the enrollee lives; or

(D) The clinical trial is an approved clinical trial, meaning it is a phase I, phase II, phase III, or phase IV clinical trial related to the prevention, detection, or treatment of cancer or other life-threatening condition and it meets one of the following requirements:

(i) The study or investigation is conducted under an investigational new drug application reviewed by the U.S. Food and Drug Administration;

(ii) The study or investigation is a drug trial that is exempt from having an investigational new drug application, or

(iii) The study or investigation is approved or funded by at least one of the following:

- (I) The National Institutes of Health;
- (II) The Centers for Disease Control and Prevention;
- (III) The Agency for Health Care Research and Quality;
- (IV) The Centers for Medicare & Medicaid Services;
- (V) A cooperative group or center of any of the above entities or of the Department of Defense or the Department of Veterans Affairs;
- (VI) A qualified non-governmental research entity identified in the guidelines issued by the National Institutes of Health for center support grants; or

Changes in text are noted by underline and strikeout

(VII) The Department of Veterans Affairs or the Department of Defense or the Department of Energy, but only if the study or investigation has been reviewed and approved though a system of peer review that the U.S. Secretary of Health and Human Services determines meets all of the following requirements: (1) It is comparable to the National Institutes of Health system of peer review of studies and investigations and (2) it assures unbiased review of the highest scientific standards by qualified people who have no interest in the outcome of the review.

. . .

(g) The worksheet shall be in the following form:

CALIFORNIA ESSENTIAL HEALTH BENEFITS FILING WORKSHEET

For Individual Plan Subscriber Contracts and Evidence of Coverage ("EOC"), Small Group Plan EOCs, or Combined Individual or Small Group EOC/Disclosure Forms ("DF")

This EHB Worksheet requires plans to record how their coverage, as disclosed in EOCs, Subscriber Contracts, and DFs, complies with EHB requirements set forth in Health and Safety Code section 1367.005. The alignment of certain provisions of the Act with federal EHB categories is not meant to be legally definitive, but is offered as a way to organize required benefits as plans frequently organize them within their EOCs. Note that some benefits may be listed under multiple federal EHB categories because benefits and categories overlap in many plan EOCs. The plans must utilize the boxes in the third column to identify where the required EHB is located in plan documents and supply the necessary information to describe the benefit. For the purposes of the EHB Worksheet, "Section" refers to a provision of the Health and Safety Code and "Rule" refers to a section of Title 28 of the California Code of Regulations.

(Benefit categories that have not been changed have been deleted for brevity per conversation with OAL.)

Federal Essential Health Benefits Categories ("EHB")	Required pursuant to § 1367.005(a)	❑ Individual EOC, Subscriber Contract ❑ Group, EOC, Subscriber Contract ❑ Combined Individual or Group DF/EOC ❑ Qualified

		Health Plan in the Exchange ☐ Multi-State Plan Check all that apply. In the space below, please provide page number and section number or heading in plan documents that describe the required EHB.
#1: Ambulatory Patient Services	Section 1345(b)(2) Rule 1300.67(b-c) **Ambulatory Care Services**	
	Section 1345(b)(1) Rule 1300.67(a) **Outpatient Physician Services**	
	Section 1345(b)(4) Rule 1300.67(e) Section 1367.005(a)(2)(C) **Home Health Services**	
	Section 1345(b)(2) Rule 1300.67(c) **Outpatient Physical, Occupational, and Speech Therapy**	
	Section 1370.6 **Cancer Clinical Trials**	
	Benchmark Plan EHB Rule 1300.67.005(d)(13) **Other Clinical Trials**	

	Section 1373(b) **Sterilization Services**	
	Benchmark Plan EHB Rule 1300.67.005(d)(1)~~:~~ **Acupuncture Services**	
	Benchmark Plan EHB Rule 1300.67.005(d)(8)~~:~~ **Ostomy, Urinary Supplies**	
#3: Hospitalization	Section 1345(b)(2) Rule 1300.67(b-c) **Inpatient Hospital Services**	
	Section 1345(b)(7) Section 1368.2 Rule 1300.67(h) **Hospice Services**	
	Section 1367.635 **Mastectomies and Lymph Node Dissections**	
	Section 1367.63 **Reconstructive Surgery**	
	Section 1367.6 **Breast Cancer Coverage, Including Surgery**	
	Section 1367.68 **Jawbone Surgery**	
	Section 1367.71 **Dental Anesthesia**	
	Section 1373(b) **Sterilization Services**	

	Section 1374.17 **Organ Transplant Services for HIV**	
	Benchmark Plan EHB Rule 1300.67.005(d)(2)~~:~~ **Ambulance and Psychiatric Transport Services-Nonemergency ~~(N2)~~**	
	Benchmark Plan EHB Rule 1300.67.005(d)(7)~~:~~ **Organ Donation Services**	
	Benchmark Plan EHB Rule 1300.67.005(d)(10)~~:~~ **Skilled Nursing Facility Services**	
#5: Mental Health and Substance Use Disorder Services, Including Behavioral Health Treatment	Section 1345(b)(1) Rule 1300.67(a) Section 1374.72 Section 1367.005(a)(2)(D) **Mental Health Services**	
	Section 1374.73 Section 1367.005(a)(2)(D) Benchmark Plan EHB Rule 1300.67.005(d)(12)(A) **Behavioral Health Treatment ("BHT") for PDD or Autism**	
	Section 1367.005(a)(2)(D) Benchmark Plan EHB~~:~~ Rule 1300.67.005(d)(6) **Mental Health Services for Mental Disorders Other**	

	than SMI and SED	
	~~Benchmark Plan EHB:~~ Section 1367.005(a)(2)(D) Benchmark Plan EHB : Rule 1300.67.005(d)(3)~~:~~ **Chemical Dependency Services**	
#6: Prescription Drugs	Section 1367.25 **Coverage for Contraceptive Methods**	
	Section 1367.45 **Coverage for Approved AIDS Vaccine**	
	Section 1370.6 **Cancer Clinical Trials**	
	EHB Benchmark Plan Rule 1300.67.005(d)(13) **Other Clinical Trials**	
	Section 1367.21 **Off Label Drug Use**	
	Section 1367.002 Section 1367.06 **Pediatric Asthma Services**	
	Section 1374.56 **Phenylketonuria Services**	
	Section 1367.215 **Pain Management Medication for Terminally Ill**	
	Section 1367.22 **Coverage for Previously Approved Prescription**	
	Section 1367.24 **Prescription Authorization Process for Non Formulary Drugs**	

	Rule 1300.67.24 **Outpatient Prescription Drug Coverage, Limitations and Exclusions**	
#7: Rehabilitative and Habilitative **Services and Devices**	Section 1345(b)(2) Rule 1300.67(c) Benchmark Plan EHB Rule 1300.67.005(d)(12) **Outpatient Physical, Occupational, and Speech Therapy**	
	Section 1374.73 Section 1367.005(a)(3) Benchmark Plan EHB Rule 1300.67.005(d)(12)(A) **Behavioral Health Treatment ("BHT") for PDD or Autism**	
	Section 1345(b)(4) Rule 1300.67(e) Section 1367.005(a)(2)(C) **Home Health Services**	
	Section 1367.61 **Prosthetics for Laryngectomy**	
	Section 1367.18 **Orthotic and Prosthetic Devices and Services**	
	Section 1367.6 Section 1367.635 **Prosthetic Devices Incident to Mastectomy**	
	Benchmark Plan EHB Rule 1300.67.005(d)(4)~~:~~ **Contact Lenses to Treat Aniridia and Aphakia**	
	Benchmark Plan EHB Rule 1300.67.005(d)(5)~~:~~ **Additional Durable Medical Equipment Required to be Covered**	
	Benchmark Plan EHB Rule 1300.67.005(d)(9)~~:~~ **Additional Prosthetic-Orthotics Devices Required**	

	to be Covered	
#10: Pediatric Services, Including Oral and Vision Care	~~Benefits offered by the Healthy Families Program 2012~~ ~~Dental Plan~~ Section 1367.005(a)(5)~~, 10 CCR 2699.6709~~ Benefits for pediatric oral care covered under the dental benefit received by children under the Medi-Cal program as of 2014, pursuant to the Medi-Cal Dental Program Provider Handbook in effect during the first quarter of 2014, including coverage pursuant to the Early Periodic Screening, Diagnosis, and Treatment benefit pursuant to 42 U.S.C. Section 1396d(r), and the provision of medically necessary orthodontic care provided pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009. **Oral Care**	
	~~Benefits offered by the FEDVIP Blue Cross Blue Shield 2012 FEP BlueVision Plan~~ Section 1367.005(a)(4) BCBS Association, 2014 FEP BlueVision – High Option, including but not limited to low vision benefits. **Vision Care**	
	Section 1345(b)(5) Rule 1300.67(f)(4) **Pediatric Vision and Hearing Services**	
	Section 1345(b)(5) Rule 1300.67(f)(5) **Pediatric Immunization Services**	
	Section 1367.002 Section 1367.06 **Pediatric Asthma Services**	
	Section 1367.002 Section 1367.35 **Comprehensive Pediatric Preventive Services**	

PRESCRIPTION DRUG BENEFITS