

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

In re:

DEPARTMENT OF MANAGED HEALTH CARE	) ) ) )	DECISION OF DISAPPROVAL OF REGULATORY ACTION
REGULATORY ACTION:	)	(Gov. Code, sec. 11349.3)
Title 28, California Code of Regulations	) ) )	OAL File No. 02-0927-01 S
ADOPT SECTIONS: 1300.70.4, 1300.74.30	) )	
AMEND SECTIONS: 1300.68, 1300.68.01	) ) )	

---

**DECISION SUMMARY**

This regulatory action amends provisions governing a health plan’s grievance system for handling enrollee complaints. It also adopts provisions governing (1) an enrollee’s right to obtain independent medical review of whether a procedure is medically necessary and (2) a health plan’s denial of experimental or investigational medical treatments. On November 12, 2002, the Office of Administrative Law (“OAL”) approved the amendment of sections 1300.68 and 1300.68.01 and the adoption of section 1300.70.4. OAL also disapproved the adoption of section 1300.74.30 for failure to comply with the “clarity” standard of the Administrative Procedure Act.

**DISCUSSION**

Regulations adopted by the Department of Managed Health Care (“Department”) concerning health care service plans must be adopted pursuant to the Administrative Procedure Act (“APA”). See Health and Safety Code section 1344 and Government Code section 11346.5. Any regulatory act adopted by a state agency through the exercise of quasi-legislative power delegated to the agency by statute is subject to the APA unless the act is expressly exempted or excluded by statute from APA coverage. (Gov. Code section 11346.) No exemption or exclusion

applies to the regulatory action here under review. Thus, before the instant regulatory action may become effective, it is subject to a review by the OAL for compliance with procedural requirements of the APA and for compliance with certain substantive standards including the “clarity” standard.

### **A. CLARITY**

In adopting Government Code section 11340(b), the Legislature determined that adopted regulations were frequently unclear and confusing to the persons who must comply with them. For this reason, OAL is mandated to review each regulation to determine whether it complies with the “clarity” standard. (Gov. Code, sec. 11349.1(a)(3).) “Clarity” as defined by Government Code section 11349(c) means “. . . written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

1. Proposed subsection (d) of section 1300.74.30 is unclear because it fails to adequately identify the form mandated for use by the Department. Subsection (d) states, in pertinent part:

“(d) Applications for independent medical review shall be submitted on a one-page form provided by the Department.”

Subsection 1300.74.30(d) does not specify the form by title, number, and revision date, and the form that the Department will provide was not included in the rulemaking record. The regulated public has no means of determining what form must be utilized from the regulation text itself. OAL is unable to locate any other reference to this form in this regulatory filing or in existing regulations. A copy of the form must be included in the rulemaking file.

If any regulatory material is included on the form, it must be properly adopted as a regulation as well. See, *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130, 135-136. This may be done by printing the form in the regulation text, writing out the substance of any regulations contained in the form in the regulation text, or incorporating the form by reference in accordance with the provisions of Title 1, California Code of Regulations, section 20. Otherwise, the content of the form may violate the Government Code section 11340.5 prohibition against “underground regulations.”

**CONCLUSION**

For the reasons set forth above, OAL has disapproved the proposed adoption of section 1300.74.30 of Title 29 of the CCR. If you have any questions, please contact me at (916) 323-8916.

November 18, 2002

---

GORDON R. YOUNG  
Senior Staff Counsel

For:

SHEILA R. MOHAN  
Acting Director/Chief Counsel

Original: Daniel Zingale, Director  
Cc: Lyn Amor Macaraeg