California Code of Regulations
Title 17, Division 2

FINDING OF EMERGENCY

These regulations are being adopted on an emergency basis for the immediate preservation of the public peace, health and safety, and general welfare, within the meaning of Government Code Section 11346.1(b).

DESCRIPTION OF THE FACTS WHICH CONSTITUTE THE EMERGENCY

The Department of Developmental Services (Department) receives funding from the federal government for reimbursement of supports and services received by consumers eligible to receive services under the Home and Community-Based Services Waiver (Waiver). To increase the federal funding to the State, the Budget Act of 2003 (AB 1765, Item 4300-001-0001) provides the authority for the Department to promulgate emergency regulations specifically for implementing proposals to increase federal funding to the State.

There are approximately 53,000 consumers who receive Waiver services based on the eligibility criteria set by the federal government. The proposed changes to the regulations would enable the Department to add respite services through the use of vouchers (vouchered respite) to the Waiver, thus increasing the federal funding the State receives from the federal government.

The State spent approximately $77 million in fiscal year 2001-02 for vouchered respite and it is estimating that $7.1 million in federal financial participation (FFP) can be obtained for the first nine months of 2004-05, and at least $9.5 million annually thereafter, by adding this service to the list of billable services. However, such a Waiver amendment will require that the qualifications of those providing the vouchered respite services be comparable to others providing respite services, i.e., in-home respite workers employed by respite agencies and individuals vendored directly as in-home respite workers. The qualification that would have to be added to make vouchered respite providers' qualifications comparable to other respite providers is the requirement for Cardiopulmonary Resuscitation (CPR) and First Aid training.

Under the Department's Waiver, and in accordance with Section 4442.10(A) of the State Medicaid Manual, the Department agrees to assure that there will be financial accountability for funds expended for home and community-based services. The Department also agrees to maintain and make available to the U. S. Department of Health and Human Services, the Comptroller General, or other designees, appropriate financial records documenting the cost of services provided under the Waiver, in accordance with Section 2500.2 of the State Medicaid Manual. These documents are to include the following information for any individual hired by a service provider to provide a service utilizing a voucher: the individual's date of birth, social security number, address, and telephone number. This information would be used to verify that the delivery of service being purchased and the funds provided are used in a fiscally

responsible manner, in addition to confirming that the individual providing the service is 18 years of age or older.

Current regulations require vendors to maintain detailed records. The proposed changes will clarify the details of the records vendors are required to maintain per federal requirements.

Other proposed changes include extending the record retention period from three years to five years in order to comply with federal requirements; and, a copy of the vendor application is being removed from Title 17.

AUTHORITY AND REFERENCE

Authority: Chapter 157, Statutes of 2003; Chapter 1095, Statutes of 1994, Section 14; Sections 4405, 4631, 4631(a)(2), 4648, 4648(a), 4648.2, 4689.1, and 4690.1, Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4500, 4501, 4502, 4631, 4648, 4648(a), 4648.1, 4690, 4690.1, 4691, 4693, 4742, and 4791, Welfare and Institutions Code.

INFORMATIVE DIGEST

The Department proposes to increase funding received from the federal government for consumers who are eligible to receive services under the Waiver by adding a new service – vouchered respite.

Chapter 1: General Provisions, SubChapter 6: Service Provider Accountability, Article 1: General Provisions

Sections 50604(d)(3)(D) – Service Provider Record Maintenance Requirements

Changes and additions are proposed to ensure that any and all pertinent information on consumers who receive Waiver services is maintained by the vendors in order to comply with federal requirements and allow the State to claim FFP for these services. This information would be used to verify that the delivery of service being purchased and the funds provided are used in a fiscally responsible manner, in addition to confirming that the individual providing the service is 18 years of age or older.

Section 50605(a) – Service Provider Record Retention Requirements

The minimum number of years a service provider is to retain financial and service records has been changed from three years to five years in order to comply with federal regulations.

Section 54310(a), (a)(5), (a)(10)(J), (g) and (h) – Vendor Application Requirements

Proposed changes to regulations ensure that specific pertinent information be supplied

by the applicant applying for vendorization. This information would be used to verify that the delivery of service being purchased and the funds provided are used in a fiscally responsible manner. Also, the name of the agreement to be signed by applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed and the vendor is now required to submit the original form to the vendoring regional center. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate and not available on-line.

Section 54320(a)(5) – Regional Center Review of Vendor Application

The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate and not available on-line.

Sections 54326(a)(3)(A), (a)(16), (a)(16)(B), (a)(16)(B)(2), and (a)(16)(B)(3) – General Requirements for Vendors and Regional Centers

The minimum number of years a service provider is to retain financial and service records has been changed from three years to five years. The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate and not available on-line.

Section 54332(a)(8) and (b)(5) – Regional Center Files

The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate and not available on-line.

Chapter 3: Community Services, SubChapter 2: Vendorization, Article 3: Vendor Numbers and Service Codes

Section 54355(b)(1)(D), (b)(1)(F), (b)(2), (b)(3), (b)(4), (b)(4)(A) through (O), (b)(5), g)(4)(C)(1)a. and (g)(4)(C)(1)b. – Vouchers

The word “and” is being stricken from subsection (b)(1)(D). Subsections (b)(1)(F) and (b)(2) are being added and changed to state the responsibility of voucher recipient regarding withholding and paying the appropriate Federal, State and local taxes.

Subsection (b)(3) was added to clarify the requirement of voucher recipients to maintain specific records of the actual provider of the service. Subsections (b)(4) and (b)(4)(A) through (O) require that voucher recipients note specific provider information and attendance on a billing form, developed by the Department that is to be submitted to the regional center, and outlines the information requested. Subsection (b)(5) was added in order to require that the voucher recipients sign the billing form and outlines the certification statement on the form. Subsections (g)(4)(C)(1)a. and b. outlines the criteria a voucher recipient must follow when selecting a respite provider.

Appendix A (page 282.21)

The vendor application, form 1890 (12/92) (Appendix A) was revised 8/04 to include an excerpt regarding the Public Records Act. Letter (H) under "Instructions" was changed to indicate the form name change of the provider agreement with the Department of Health Services. Proposed changes to regulations will remove the copy of the vendor application, form DS 1890 (12/92) (Appendix A), from Title 17 as it is available on-line at http://www.dds.ca.gov/forms/pdf/DS1890.pdf.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will affect small business in that they will now be expected to maintain records for five years instead of three.

FISCAL IMPACT DETERMINATIONS

The Department has determined that the proposed regulatory action does not impose: 1) a mandate on local agencies or school districts, 2) significant costs or savings to any state agency, 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, or 4) other nondiscretionary costs or savings imposed on local agencies. However, it will bring in additional federal funding to the State which will reduce costs to the State's general fund.

ECONOMIC IMPACT AND BUSINESS ASSESSMENT

The proposed action will not: a) create new jobs within the State of California, b) help in the creation of new businesses within the State of California, nor c) cause the expansion of businesses currently doing business within the State of California. The Department has determined that the proposed regulations will not have: a) a significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states, b) a significant potential cost impact on private persons or directly affected businesses, nor c) a significant effect on housing costs.