# INITIAL STATEMENT OF REASONS

## TITLE 17, CALIFORNIA CODE OF REGULATIONS
## DIVISION 2. DEPARTMENT OF DEVELOPMENTAL SERVICES

### (a) Description of the Public Problem, Administrative Requirement or Other Condition or Circumstance of the Regulations are Intended to Address

During 2003-04, the State has had a deficit of approximately $35 billion, which has required cuts to the Department's budget. The 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 Waiver (Waiver). To increase the federal funding to the State, AB 1765 (Item 4300-001-0001) provides the authority for the Department to promulgate 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 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.

**(b) Specific Purpose and Rationale for Necessity**

**Chapter 1. General Provisions**
**Subchapter 6. Service Provider Accountability**
**Article 1. General Provisions**
**Section 50604. Service Provider Record Maintenance Requirements**
**Subsection (d)(3)(D)**

**Specific Purpose:**

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.

**Rationale for Necessity:**

Adding a new service, vouchered respite, to the Waiver would allow the State to receive additional funding from the federal government for consumers who are on the Waiver. By adding vouchered respite to the Waiver, changes must be made to this subsection. The changes clarify what records vendors are required to maintain for each individual hired by the service provider and who provides a service utilizing a voucher.

**Chapter 1. General Provisions**
**Subchapter 6. Service Provider Accountability**
**Article 1. General Provisions**
**Section 50605. Service Provider Record Retention Requirements**
**Subsection (a)**

**Specific Purpose:**

Changes are proposed to require that service providers retain all financial and service records, including source documentation for five years instead of three years.

**Rationale for Necessity:**

Changing the number of years in which records and documents evidencing service activities provided to the consumer are retained from three years to five years will ensure compliance of federal regulations.

**Chapter 3. Community Services**
**Subchapter 2. Vendorization**
**Article 2. Vendorization Process**
**Section 54310. Vendor Application Requirements**
**Subsections (a), (a)(5), (a)(10)(J), (b), (g) and (h)**

**Specific Purpose:**

Changes are proposed to ensure that specific pertinent information be given 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, the revision date has been added, and the vendor is now required to submit the original form to the vendoring regional center has been added. The vendor application, Form DS 1890 has been revised 8/04 and changes indicate the revision date.

**Rationale for Necessity:**

Adding a new service, vouchered respite, to the Waiver would allow the State to receive additional funding from the federal government for consumers who are on the Waiver. By adding vouchered respite to the Waiver, changes must be made to this subsection, which would require applicants who desire to be vendored include required information on the Vendor Application and would insure financial accountability for funds expended for home and community-based services. The Department of Health Services, which developed the form "Medi-Cal Program Provider Agreement Claim Certification" changed the name to "Home and Community-Based Services Provider Agreement". The changes to this section reflect the name change of the form and the revision date has been added. 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. The vendor application, Form DS 1890 has been revised to include an excerpt regarding the Public Records Act, and, in section "H" under the instructions, change "Medi-Cal Program Provider Agreement Claim Certification" to "Home and Community-Based Services Provider Agreement".

**Chapter 3. Community Services**
**Subchapter 2. Vendorization**
**Article 2. Vendorization Process**
**Section 54320. Regional Center Review of Vendor Application**
**Subsection (a)(5)**

**Specific Purpose:**

The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed.

**Rationale for Necessity:**

The Department of Health Services, which developed the form "Medi-Cal Program Provider Agreement Claim Certification", changed the name to "Home and Community Based Services Provider Agreement". The changes to this section reflect the name change of the form and the revision date has been added. 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 2. Vendorization Process**
**Section 54326. General Requirements for Vendors and Regional Centers**
**Subsections (a)(3)(A), (a)(16), (a)(16)(B), (a)(16)(B)(2) and (a)(16)(B)(3)**

**Specific Purpose:**

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.

**Rationale for Necessity:**

Changing the number of years in which records and documents evidencing service activities provided to the consumer are retained from three years to five years will ensure compliance of federal regulations. The Department of Health Services, which developed the form "Medi-Cal Program Provider Agreement Claim Certification", changed the name to "Home and Community Based Services Provider Agreement". The changes to this section reflect the name change of the form and the revision date has been added. 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 2. Vendorization Process**
**Section 54332. Regional Center Files**
**Subsections (a)(8) and (b)(5)**

**Specific Purpose:**

The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed.

**Rationale for Necessity:**

The Department of Health Services, which developed the form "Medi-Cal Program Provider Agreement Claim Certification", changed the name to "Home and Community Based Services Provider Agreement". The changes to this section reflect the name change of the form and the revision date has been added. 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. Vouchers**
**Subsections (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.**

**Specific Purpose:**

The word "and" is being stricken from subsection (b)(1)(D). Subsections (b)(1)(F) and (b)(2) are being added and changed to clarify 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), (b)(4)(A) through (O) and (b)(5) require that voucher recipients note specific provider information and attendance on a billing form, developed by the Department and submitted to the regional center. Subsections (g)(4)(C)(1)a. and b. outlines the criteria a voucher recipient must follow when selecting a respite provider.

**Rationale for Necessity:**

Subsections (b)(1)(F) and (b)(2) are being added to clarify that any voucher recipient that employs and pays an individual(s) for in-home respite understand their (voucher recipient) responsibility, as an employer, to withhold and pay the appropriate Federal, State and local taxes. Subsection (b)(3) clarifies the requirement that any voucher recipient maintain specified records on the actual provider of the service for verification purposes, and subsection (b)(4) clarifies the information that service providers are required to submit to the regional center and introduces a new form on which this information must be recorded and submitted. Subsections (b)(4)(A) through (O) were added to outline the information requested and subsection (b)(5) was added to require that the voucher recipients sign the billing form and outlines the certification statement on the form. In order to adhere to federal regulations, subsection (g)(4)(C)(1)a. is being added to require that all persons hired who will be providing vouchered respite services must be at least 18 years of age per federal regulations; and subsection (g)(4)(C)(1)a. is being changed to include the requirement that the qualifications of all persons who provide vouchered respite services be comparable to other respite providers who are employed by respite agencies or are vendored directly as in-home respite workers.

## Appendix A (page 282.21)

**Specific Purpose:**

Proposed changes to regulations will remove the copy of the vendor application, form DS 1890 (12/92) from Title 17.

**Rationale for Necessity:**

The vendor application, form 1890 (12/92) (Appendix A) was revised 8/04 to include an excerpt regarding the Public Records Act, and, in section "H" under the instructions, change "Medi-Cal Program Provider Agreement Claim Certification" to "Home and Community-Based Services Provider Agreement". The copy is being removed from Title 17 as it is now available on-line at http://www.dds.ca.gov/forms/pdf/DS1890.pdf.