

## Proposed Emergency Regulation Text

California Code of Regulations  
Title 17. Public Health

Division 2. Health and Welfare Agency – Department of Developmental Services Regulations  
Chapter 3. Community Services

Amend Section 56810 to read as follows.

[NOTE: Amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The symbol “# # #” means that intervening text not proposed for amendment is not shown.]

### Subchapter 2. Vendorization Article 2. Vendorization Process

#### § 54326. General Requirements for Vendors and Regional Centers.

(a) All vendors shall:

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(11) (A) Not bill for consumer absences for nonresidential services. The Department shall authorize payment for absences which are the direct result of situations and/or occurrences for which a State of Emergency has been declared by the Governor, other than a State of Emergency declared due to COVID-19. If payment for absences due to a State of Emergency other than an Emergency due to COVID-19 is authorized by the Department, the vendor shall bill only for absences in excess of the average number of absences experienced by the vendor during the 12-month period prior to the month in which the disaster occurred; (B) Vendors shall be permitted to bill for nonresidential services provided pursuant to section 56810 because of COVID-19.

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Note: Authority cited: Chapter 157, Statutes of 2003; Section 4648.12(c)(1)(A), Welfare and Institutions Code; and Section 11152, Government Code. Reference: Sections 4500, 4501, 4502, 4641.5, 4648, 4648.1, 4648.12 and 4742, Welfare and Institutions Code; and Title 42, Code of Federal Regulations, Sections 455.104, 455.105 and 455.106.

California Code of Regulations  
Title 17. Public Health  
Division 2. Health and Welfare Agency – Department of Developmental Services Regulations  
Chapter 3. Community Services  
**Subchapter 5. Standards for Nonresidential Services**

Adopt new Article 6. Alternative Service Delivery, new Section 56810 to read as follows.

NOTE: The text below is new regulatory language shown in underline to indicate additions to be added to the California Code of Regulations.

**Article 6. Alternative Service Delivery**

**§ 56810. Alternative Service Delivery for Nonresidential Services During COVID-19.**

(a) The purpose of this section is to permit alternative delivery of nonresidential services that meet the individual needs of consumers, sustain the state’s developmental services vendor network, and continue receipt of federal reimbursement for services provided to consumers during the COVID-19 State of Emergency.

(b) (1) Effective September 1, 2020, vendors of nonresidential services, as defined in Section 54302(a)(49), may utilize alternative delivery of nonresidential services to meet a consumer’s service needs.

(2) When providing services to consumers during the COVID-19 declared State of Emergency, vendors shall be creative, resourceful and make modifications as needed to how existing services are delivered. Vendors shall utilize alternative delivery of nonresidential services to consumers when the delivery of nonresidential services is not possible or must be modified due to COVID-19. Any alternative delivery of nonresidential services used shall be responsive to each consumer’s current needs and be mindful of the importance of safety during the COVID-19 State of Emergency including compliance with applicable state and local health orders and licensing requirements.

(c) Alternative delivery of nonresidential services shall include, but is not limited to, the following:

(1) Supports related to minimizing the exposure to or impact of COVID-19 on the consumer;

(2) Completion of an individual assessment of skills, preferences, and service needs for the consumer;

(3) Completion of an individualized service plan to provide needed services for the consumer;

(4) Services delivered to the consumer via telephone, video or other electronic communication;

(5) Delivery of supplies or other items to the consumer’s home needed to provide services or supports;

(6) Use of self-guided training and educational materials supplied by the vendor intended to support the consumer’s service;

(7) Skills training to individuals within the consumer's household who are specifically designated to support the consumer;

(8) Services provided in-person at the consumer's home, modified to comply with the most restrictive state or local guidelines in effect at the time the service is to be delivered;

(9) Services provided in-person in a community setting, modified to comply with the most restrictive state or local guidelines in effect at the time the service is to be delivered;

(10) Services provided in-person at the vendor's facility, modified to comply with the most restrictive state or local guidelines in effect at the time the service is to be delivered;

(11) Supports for transition to the Self-Determination Program; and

(12) Training provided to vendor staff that is necessary for consumers to receive alternative delivery of nonresidential services. This training may include, but is not limited, to the following:

(A) COVID-19 safety precautions for both staff and the consumer;

(B) Delivering services using the person-centered planning and approach criteria set forth in Title 42, Code of Federal Regulations, Section 441.540;

(C) Informed decision-making so that consumers can understand what choices they have in receiving services and understand the benefits, risks and responsibilities associated with the service choices available to them;

(D) Self-Determination Program requirements;

(E) Developing written materials using plain language that can be readily understood by consumers;

(F) Using alternative communication technology, tools or methods to deliver services;

(G) Delivering services in a manner accommodating the cultural and linguistic needs of the consumer; or

(H) Use of technology utilized to deliver services.

(d) (1) Alternative delivery of nonresidential services shall be permitted where the vendor certifies in writing to the regional center prior to seeking reimbursement, that:

(A) The vendor will seek reimbursement for providing one or more of the services listed in subdivision (c) or another type of alternative delivery of nonresidential services;

(B) The vendor will engage the consumer about options available under the vendor's alternative delivery of nonresidential services;

(C) The vendor can be contacted at a specified phone number and email address during the time services are being provided;

(D) The vendor will maintain documentation of alternative services provided as required by Section 54326(a)(3); and

(E) The vendor will have staff to provide services.

(2) By November 30, 2020, and on the last day of the month thereafter, the vendor shall submit to the regional center a report in writing of the alternative services it provided for each time period. The initial report, covering the period of September 1, 2020 – October 31, 2020, and each subsequent monthly report shall include:

- (A) The number of consumers with service authorizations;
- (B) The number of consumers served by the vendor who received alternative delivery of nonresidential services;
- (C) The number of consumers with service authorizations who did not receive alternative delivery of nonresidential services;
- (D) The number of consumers who used each type of service listed in subdivision (c);
- (E) A description of the alternative delivery of services provided to consumers that is not listed in subdivision (c), if any, and the number of consumers who used them; and
- (F) The number of days in each month each consumer received an alternative delivery of services.

(e) Vendors shall submit claims for alternative delivery of nonresidential services utilizing a monthly unit rate, calculated using the average monthly amount reimbursed based on the prior 12 months ending February 2020. For those 12 months, only those months where the amount of reimbursement to the vendor is greater than zero shall be included in determining the average.

(1) The monthly unit rate for vendors reimbursed by individual consumer service authorizations shall be calculated using the average monthly amount reimbursed to the vendor for each consumer.

(2) The monthly unit rate for vendors not reimbursed by individual consumer service authorizations shall be calculated using the monthly average amount reimbursed to the vendor.

Note: Authority cited: Sections 4500.5, 4501, 4502.1, 4620, 4643.5, 4646, 4648, and 4685.5, Welfare and Institutions Code. Reference: Executive Order N-25-20 dated March 12, 2020; Sections 4500, 4501, 4502.1, 4620, 4643.5, 4646, 4648, and 4685.5, Welfare and Institutions Code; and Title 42, Code of Federal Regulations, Section 441.540.