

INITIAL STATEMENT OF REASONS (Revised)

TITLE 17, California Code of Regulations Division 2, Department of Developmental Services Chapter 3 – Community Services

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

The Centers for Medicare & Medicaid Services' (CMS) Medicaid Integrity Group conducted a comprehensive program integrity review of the California Medicaid Program and issued the Medicaid Integrity Program, California Comprehensive Program Integrity Review, Final Report January 2011. The report indicated that Department of Developmental Services (DDS) is not in compliance with the Code of Federal Regulations (CFR) regarding federal disclosure information including enrollment of excluded providers, methods for identifying, investigating and referring fraud cases, verification of receipt of billed services, required disclosures, and reporting requirements.

It is the intent of the Department that the proposed action will address the deficiencies in current regulations by providing for further safeguards for consumers by ensuring that providers are appropriately licensed and do not have specified criminal convictions outlined in California Statute. Additionally, the proposed regulations will provide a mechanism to prevent the payment of Medicaid and State funds to providers with known criminal convictions for fraud.

Welfare and Institutions Code Section (WIC) 4648.12 authorizes the DDS to adopt regulations in order to meet federal disclosure information (hereinafter referred to as Federal Disclosure Information) required by Title 42 CFR Sections 455.101, Definitions, 455.104, Disclosure by Medicaid providers and fiscal agents: Information on ownership and control, 455.105, Disclosure by providers: Information related to business transactions and 455.106, Disclosure by providers: Information on persons convicted of crimes.

The adoption of these regulations are necessary in order for the State to continue to receive federal financial participation funding through the Home and Community-Based Services Waiver and to receive funds for the 1915(i) State Plan Amendment.

Currently, Title 17, California Code of Regulations (CCR), lacks a process to capture the required Federal Disclosure Information. Therefore, DDS proposes to amend Sections 54302, 54310, 54314, 54320, 54326, 54332, 54370, and add Section 54311 in Title 17, CCR, in order for regional centers to determine if all prospective and current vendors comply with the Federal Disclosure Information.

Consideration of Alternatives

The only alternative would be not to pursue this regulation adoption. This alternative is not reasonable given that CMS sets requirements in order for DDS to receive funding and this regulation will implement federal disclosure requirements in order to receive federal matching funds.

No reasonable alternative to the regulatory proposal would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Economic Impact and Business Assessment

This regulation will not have a significant adverse economic impact on businesses, relying upon the Economic Impact Analysis Document/Report. In the Department's development of the FY 2011-12 Budget, in developing the New Major Assumption Form determined that there would be an economic impact to 21 non-profit institutions. However, these non-profits are not considered "small businesses" as defined in Government Code Section 11342.610 (b)(6) and were allocated additional funds at that time. There may be vendored service providers who will no longer be eligible to receive funding due to criminal issues.

Specific Purpose and Rationale for Necessity

Section 54302. Definitions.

Section 54302(a)

Specific Purpose:

This proposal will add the phrase "except as provided in subsection (b)" to allow for a new subsection for definitions needed for Federal Disclosure Information requirements.

Rationale for Necessity:

Current definitions do not include the specific definitions needed to describe the Federal Disclosure Information requirements being added by this rulemaking to subsequent sections 54310 through 54390.

Section (a)(9)

Specific Purpose:

This proposal will amend the definition of "Applicant".

Rationale for Necessity:

The amendment is necessary in order to capture any individual or organization that desires to be vendored.

Section (a)(75)

Specific Purpose:

This proposal will amend the definition of “vendor application” to include “or application packet”, and update the revision date on the form, Vendor Application DS 1890 from “12/92” to “7/2011”.

Rationale for Necessity:

The amendment is necessary for consistency in the use of the term “application packet” in sections 54310(c)(1)(A) and (B), and to provide consistency in the date of the form, Vendor Application DS 1890.

Section (a)(78)(A)

Specific Purpose:

This proposal will amend the definition of “vendorization” by changing the regulation being referenced from 54320(b) to 54310.

Rationale for Necessity:

This amendment is necessary to ensure that the reference is correct regarding the requirements for vendorization contained in Section 54310. This is a technical correction.

Section (b)

Specific Purpose:

This proposal will add section (b) to provide definitions that will be consistent with the definitions contained in 42 CFR, Section 455.101, Definitions.

Rationale for Necessity:

The definitions in (b) are used throughout these proposed regulatory amendments. Although they are duplicative of Section 455.101, the DDS has determined the duplication is necessary because not everyone that’s required to comply with these regulations will have easy access to the CFR. In each definition DDS has slightly redefined the federal regulation from “disclosing entity” to “applicant or vendor entity”. Because “disclosing entity” is not a term DDS has used in the vendorization regulations.

Section 54310. Vendor Application Requirements.

Section 54310(a)

Specific Purpose:

This proposal will amend the date on the form, Vendor Application DS 1890 from “(8/04)” to “(7/2011)”; delete the phrase “as applicable”, and delete the sentence “Items (1) through (7) specified below must be completed by all applicants.”

Rationale for Necessity:

The revision date has been updated. The language proposed for deletion is unnecessarily repetitive because the applicant has to submit the form which contains all the required information.

Section (b), (d), (f), and (g)

Specific Purpose:

This proposal will amend in four subsections, the date on the form, Vendor Application DS 1890 from (08/04) to “(7/2011)”.

Rationale for Necessity:

The amendment will provide consistency in the date of the form, Vendor Application DS 1890.

Sections (c)(1)(A) and (B)

Specific Purpose:

This proposal will add the word “packet” after the word “application”.

Rationale for Necessity:

Under the proposed regulations, prospective vendors will have to submit both the vendorization application and the Form DS 1891, Applicant/Vendor Disclosure Statement which will constitute a packet of information that must be submitted to the regional center in order to become vendored.

Section (h)

Specific Purpose:

This proposal will add new subsection (h) to exempt dentists under service code 715 from the vendorization requirements in (a) and (b) of this section 54310.

Rationale for Necessity:

This amendment is needed in order to avoid duplication of vendorization efforts by the regional centers and the Department of Health Care Services (DHCS). DHCS requires an application process by which dentists are vendored to provide services to Medi-Cal patients and the information required by 54310(a) and (b) is

duplicative of what is required by DHCS. To avoid this duplication, regional centers shall consider the vendorization under DHCS satisfactory for vendorization under these regulations.

Section 54311. Disclosure Requirements.

Section 54311

Specific Purpose:

This section is being added to provide criteria by which certain individuals will be deemed ineligible to be vendored. The section mandates the use of a new form, DS 1891 (7/2011) Applicant/Vendor Disclosure Statement, which will require an applicant to disclose the information required. Also provided is the date by which current vendors have to submit the application.

Rationale for Necessity:

The California Comprehensive Program Integrity Review Report determined that DDS does not have methods for identification, investigation, and referral of suspected fraud cases from DHCS. The information required by this section will provide an applicant screening process so the regional centers can determine eligibility or ineligibility for vendorization. Additionally, WIC Section 4648.12 (c)(1)(A) requires disclosure criteria to include abuse or neglect of an elder, dependent adult, or child.

~~The June 30, 2012, deadline to submit the form to the regional centers gives current vendors adequate time to complete and submit the form.~~

Section 54314. Ineligibility for Vendorization.

Section (a)(7)

Specific Purpose:

This proposal will add subsection (7) to clarify and specify which individuals or entities are ineligible for vendorization.

Rationale for Necessity:

This proposed amendment is necessary to clarify that the individuals listed in 54302(b)(1) are automatically ineligible for vendorization.

Section 54320. Regional Center Review of Vendor Application.

Sections (a)(1), (a)(3)(C)

Specific Purpose:

This proposal will add the word “vendor” to describe the word “application.”

Rationale for Necessity:

This amendment is needed for consistency with the definition “Vendor Application” under Section 54302, Definitions.

Section (a)(5)

Specific Purpose:

This proposal will amend the reference from “Section 54310 (a)(10)(l), (d) and (e)” to “Section 54310”.

Rationale for Necessity:

This amendment is necessary to capture the requirement of the new section 54310 (h) as part of the vendorization requirements.

Section (a)(6)

Specific Purpose:

This proposal will add section (6) to mandate regional centers to determine whether a vendor applicant is an excluded individual or entity as required under the newly proposed Section 54311.

Rationale for Necessity:

This amendment is necessary to clarify that regional centers are responsible for screening individuals for eligibility or ineligibility for vendorization.

Section (b)

Specific Purpose:

This proposal will add the word “vendor” and add the phrase “any investigation pursuant to (a)(6) above is resolved”.

Rationale for Necessity:

The amendment to add the word “vendor” is necessary for consistency with the definition “Vendor Application” under Section 54302, Definitions.

The new phrase will ensure that regional centers take no further action to vendor service providers that are not in compliance with these regulations.

Section 54326. General Requirements for Vendors and Regional Centers.

Section (a)(4)

Specific Purpose:

This proposal will require vendors to make available for inspection Form DS 1891.

Rationale for Necessity:

This regulation is necessary to ensure vendors maintain disclosure information.

Section (a)(16)

Specific Purpose:

This proposal will delete the reference from subsection references “(a)(10)(I), (d) and (e).”

Rationale for Necessity:

This amendment is technical correction for incorrect reference in existing regulations.

Section (a)(17)

Specific Purpose:

This proposal will mandate vendors to notify the vendoring regional center of any changes to the information certified on the Form DS 1891 (7/2011), Applicant/Vendor Disclosure Statement.

Rationale for Necessity:

This amendment is needed to ensure the vendor provides updates to the information contained in the DS 1891.

Section (a)(18)

Specific Purpose:

This proposal will add section “(18)” to mandate vendors notify the vendoring regional center of any person convicted of crimes, settlements, and any loss of certification required for the performance or operation of the vendored service.

Rationale for Necessity:

This proposal is necessary to require the vendor to notify the vendoring regional center of the actions listed in this subsection.

Section (f)

Specific Purpose:

This proposal will add section (f) to mandate regional centers take routine action in verifying the vendor’s eligibility for the performance or operation of the vendored service as required by the Federal Disclosure Information.

Rationale for Necessity:

This amendment is necessary to ensure periodic reviews are conducted by the regional centers to ensure continued eligibility for vendorization.

Section 54332. Regional Center Files.

Section (b)

Specific Purpose:

The proposed amendment requires regional centers to biannually review, or sooner upon notification of DDS or DHCS or any licensing or certification board, vendor files to determine if the information contained in the vendor file is current and the vendor is not considered an excluded individual or entity.

Rationale for Necessity:

This amendment is necessary to ensure vendor information is current and the vendor is not considered an excluded individual or entity.

Sections (b)(3), (b)(4), and (b)(5)

Specific Purpose:

This proposal will delete the word “and”.

Rationale for Necessity:

This amendment is required for grammatical correction due to the addition of subsection (6).

Section (b)(6)

Specific Purpose: This proposal will add section (6).

Rationale for Necessity: This amendment will require that during the review of files, regional centers ensure that vendors are not in violation of Section 54314, Ineligibility for Vendorization.

Section 54370. Termination of Vendorization for Noncompliance.

Section (b)(5)

Specific Purpose:

This proposal will delete the word “or”.

Rationale for Necessity:

This amendment is necessary for grammatical correction due to the addition of sections (b)(8) and (9).

Sections (b)(8) and (b)(9)

Specific Purpose:

This proposal will give the regional centers authority to terminate vendorization of an individual or entity that knowingly and willfully makes a false statement or

representation on the vendor application information or upon regional center request, or has been excluded from receiving federal funding.

Rationale for Necessity:

This amendment is necessary to provide a process by which regional centers can terminate the vendorization of individuals or entities that are no longer eligible for vendorization.

Subsection (d)(1)

Specific Purpose:

This proposal will require the vendoring regional center to notify any user regional centers of the termination of vendorization.

Rationale for Necessity:

This amendment ensures that user regional center(s) are copied upon termination of vendorization.