

NOTICE OF PROPOSED RULEMAKING

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

Medicaid Integrity Vendorization Requirements

The Department of Developmental Services (Department) proposes to amend regulations governing regional center vendorization of service providers: California Code of Regulations (CCR), Title 17, Division 2, Chapter 3: Subchapter 2, Article 2, Sections 54302, Definitions, 54310, Vendor Application Requirements, (Proposed New Section 54311, Ownership Disclosure Requirements), 54314, Ineligibility for Vendorization, 54320, Regional Center Review of Vendor Application, 54326, General Requirements for Vendors and Regional Centers, 54332, Regional Center Files, and 54370 Termination for Vendorization and Noncompliance.

WRITTEN COMMENT PERIOD

Any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action of the Department. The written comment period closes at 5:00 p.m. on **Monday, May 7, 2012**. Please submit any written comments, via U.S. Mail or fax or email, to the Department's contact person designated below by 5:00 p.m. on **Monday, May 7, 2012**.

NO PUBLIC HEARING

No public hearing is scheduled for this rulemaking. However, any interested person or his or her duly authorized representative may request a public hearing no later than 15 days prior to the close of the written comment period.

AUTHORITY AND REFERENCE

Authority: Sections 4405, 4648(a), 4648.12(c)(1)(A), 4689.7(c), 4689.1, 4866, 10725, 14043.75 and 14124.5, Welfare and Institutions Code; and Section 11152, Government Code; Chapter 157, Statutes of 2003; Chapter 1095, Statutes of 1994, Section 14.

Reference: Sections 1250 and 1502, Health and Safety Code; Sections 240, 242, 243.4, 245, 261, 264.1, 273d, 285, 286, 288, 288a, 289, 311.2, 311.3, 311.4, 647a, 11165.1, 11165.2, 11165.3 and 11165.6, Penal Code; Sections 4500, 4501, 4502, 4504, 4512(i), 4626, 4627, 4631, 4646.5, 4648, 4648(a), 4648.1, 4648.1(d), 4648.12(c) and 4689(a)(1), 4689.7(c), 4690, 4691, 4693, 4742, 4791, 4851, 4861(c), 12305.81(a)(2), 14043.2, 14043.26, 14043.27, 14043.36, 14125.8, 15610.57 and 15610.63; and Article II, Chapter 5, Welfare and

Institutions Code; 42, Code of Federal Regulations, Sections 455.104, 455.105, and 455.106; Section 10430(g), Public Contract Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In January 2011, the Centers for Medicare and Medicaid Services (CMS) issued its final report entitled “Medicaid Integrity Program, California Comprehensive Program Integrity Review.” In conjunction with the Health and Human Services Agency, the review focused on, among other things, Medicaid program integrity regulations and oversight duties. The Department of Health Care Services (DHCS) administers the California Medicaid Program within the State. The DHCS delegates the program integrity functions for regional center vendorization to the Department of Developmental Services (Department) and ensures consistency and compatibility with DHCS regulations for the CMS approved Home and Community-Based Services Waiver and Targeted Case Management Program, operated through the regional center system. This regulatory proposal updates existing regulations relating to the vendorization process and is therefore consistent and compatible with existing state regulations.

The CMS report includes findings of non-compliance with federal regulation. The areas of non-compliance impacting the Department, regional centers, and ultimately the vendors providing federally funded consumer services are:

- 1) The State does not capture all required ownership, control, and relationship information from providers of Medicaid funded services prior to enrollment;
- 2) The State does not capture required criminal conviction information from providers of Medicaid funded services at the time they enroll or renew their applications;
- 3) The State does not require disclosure, on request, of “significant” business transactions from providers of Medicaid funded services.

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 as specified by federal regulation.

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.

The Department proposes to amend Sections 54302, 54310, 54314, 54320, 54326, 54332, and 54370 and add Section 54311, of Title 17 of the California Code of Regulations (CCR). Vendors shall be required to submit business ownership, control and relationship information, pursuant to federal law, and regional centers will be required to gather and review this information from current and prospective vendors. Additionally, regional centers will be required to determine that all prospective and current vendors, at a minimum, are eligible by verifying that they do not have prior criminal convictions or have been involved in civil proceedings of fraud or abuse in any government program, or of abuse or

neglect of an elderly person(s), dependent adult(s), or child(ren). Furthermore, on a periodic basis, regional centers will be required to verify that vendors continue to meet all applicable vendorization requirements, including those identified above, in order for the State to comply with federal law and meet the CMS mandated HCBS Waiver assurance that only qualified providers deliver Medicaid funded services.

Section 54302(a)

Proposed changes to subsection **(9)** will amend the definition to read: “an individual, partnership, group, association, corporation, nonprofit organization, institution, or entity, and the officers, directors, boards of directors, owners, managing employees or agents thereof, that apply to the regional center to become a vendor” that must provide Federal disclosure information. Subsection **(75)** will amend the definition of “vendor application” to include “application packet” and will amend the date of form DS 1890. The proposal will also amend the subsection number in subsection **(78)** “Vendorization”, so as to include disclosure requirements.

Section 54302(b)

Proposed addition of new subsection **(b)** will provide definitions for the required Federal disclosure information: excluded individuals or entities; indirect ownership interest; managing employee; ownership interest; person with an ownership or control interest; significant business transaction; subcontractor; and wholly owned supplier.

Section 54310(a)

Proposed changes will modify wording and numbering and the date on the application form Vendor Application DS 1890 will be revised.

Section 54310(b)

Proposed change will revise the date on the application form Vendor Application DS 1890.

Section 54310(c)

Proposed change will add the word “packet” after the word “application” to be consistent with definitions in Section 54302.

Section 54310 (d)(f) & (g)

Proposed change will revise the date on the application form Vendor Application DS 1890.

Section 54310(h)

Proposed addition of new subsection **(h)** ensures those applicants under Title 17, Service Code 715, Dentistry, with documentation provided by Department of Health Care Services, approving enrollment in the Denti-Cal program, will satisfy vendorization requirements.

Section 54311

Proposed addition of this new section will require that all prospective applicants and current vendors complete and submit a signed and dated form DS 1891 (7/2011) Applicant/Vendor Disclosure Statement, by July 1, 2012, which requests Federal disclosure information including: indirect ownership interest; managing employee; ownership interest; person with an ownership or control interest; significant business transactions; subcontractors; and/or suppliers and specify the required criminal convictions. The proposal contains language that would include the disclosure requirements to existing vendors, and authorizes the regional centers to ensure submission of information. Additionally, the proposed change requires vendors to provide the disclosure information upon written request to the Department, regional center, the Department of Health Care Services, any State survey team, the Secretary of the United States Department of Health and Human Services, or any other duly authorized agency representative of the above named entities.

Section 54314(a)(7)

Proposed addition of new subsection **(7)** will ensure that an applicant determined to be excluded from receiving federal funds as specified in section 54302 definition of “excluded individual or entity” will be ineligible for vendorization.

Section 54320

Proposed change in wording to preface the word “application” with “vendor” to be consistent with definitions in Section 54302. Proposed addition of subsection **(a)(6)** to require that regional centers verify that disclosed individuals or entities are not “excluded” as defined in Section 54302 and are not under investigation.

Section 54320(b)

Proposed change of subsection **(b)** will include that no further action be taken if all required information is not received and any investigation, pursuant to **(a)(6)** is resolved.

Section 54326(a) & new subsection (f)

Proposed changes to subsection **(4)** will add disclosure information records that vendors must make available for purposes of audit or review. Proposed addition of new subsection **(17) and (18)** requiring vendors to notify the vendoring regional center of any additions or changes in the information disclosed on the DS 1891 (7/2011) and submit the information pursuant to requirements of Section 54311(c). New subsection **(f)** will require regional centers to take routine action to ensure vendor eligibility is current and valid.

Section 54332(b)

Proposed change of subsection **(b)** will require regional centers to review vendor files bi-annually or sooner as requested, for the required disclosure information, to ensure that the information is current and, with added subsection **(b)(6)**, that the vendor is not “excluded”, pursuant to Section 54314(a)(7).

Section 54370(b)(8) and (9)

Proposed addition of new subsections which will give the regional centers the duty and authority to terminate a vendor **(8)** who knowingly and willfully makes a false statement or representation on the application form, Vendor Application DS 1890 and **(9)** has been “excluded” from receiving federal funding.

Section 54370(d)(1)

Proposed addition to this subsection will require that the vendoring regional center notify any user regional center in writing upon termination.

IMPACT OF REGULATORY ACTIONS

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment: The proposed changes are in concurrence with Federal law and address the deficiencies in current regulations by providing additional protections for consumers from unlicensed providers or providers with specified criminal convictions; such as fraud, neglect and/or abuse.
- (d) Cost Impacts on a Representative Private Person or Business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (e) Costs or savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (f) Nondiscretionary Costs/Savings to Local Agencies: None.
- (g) Programs Mandated on Local Agencies or School Districts: None.
- (h) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (i) Effect on Housing Costs: None.

Effect on Small Business: It has been determined that the adoption of these regulations will not affect small businesses. This initial determination is based on the following fact:

The amendment provides a process to 21 non-profit regional centers who will implement the verification of the new requirements. "An entity organized as a nonprofit institution" is not considered a "small business" pursuant to Government Code section 11342.610 (b)(6); therefore it is determined that the adoption of these regulations will not affect small businesses.

The Department has drafted the regulations in Plain English pursuant to Government Code sections 11343.580 and 11346.2(a)(1).

DETERMINATION REGARDING ALTERNATIVES

The Department must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention 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 implementing the statutory policy or other provision of law than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

General and substantive inquiries concerning the proposed action may be directed to:

Department of Developmental Services
Community Rate Section
1600 Ninth Street, Room 310
Sacramento, CA 95814
Attention: Jeffrey Greer
Phone: (916) 654-2201 Facsimile: (916) 654-1578
E-mail Address: jeff.greer@dds.ca.gov

If the above person is unavailable, you may also contact Marina Olivas, Community Rate Section, at (916) 654-1620.

AVAILABILITY OF RULEMAKING DOCUMENTS

The Department has prepared and has copies ready for public review, an Initial Statement of Reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the exact text of the proposed regulations.

Copies of the Notice, Initial Statement of Reasons and text of the proposed regulations will be made available through the Department's website at

www.dds.ca.gov. All other public records, reports, documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact persons at the above address. Upon completion, the Final Statement of Reasons will be made available by either contacting the persons above or through the Department's website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After close of the comment period the Department may adopt the proposed regulations as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before the Department adopts the regulations as revised. Requests for the modified text should be made to the contact person named above.