

## **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 THAT CONSTITUTE THE EMERGENCY**

Section 4648.12 (c)(1)(A) of the Welfare and Institutions Code (WIC) (Stats 2011, C.9; SB74, § 11, eff. March 24, 2011) provides the authority for the Department of Developmental Services (Department) to promulgate emergency regulations to amend provider and vendor eligibility and disclosure criteria to meet federal participation requirements and continue federal participation funding.

## **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." The review focused on, among other things, some of the Medicaid program integrity and oversight duties that have been delegated to the Department relative to its CMS approved Home and Community-based Services Waiver and Targeted Case Management Program, operated through the regional center system.

The CMS report includes findings of non-compliance with federal statute. 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.

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 DS 1890 will be revised.

**Section 54310(b)**

Proposed change will revise the date on the application form 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 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 or vendors complete and submit a signed and dated form DS 1891 (7/2011) 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 every three years 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 vendor application form, 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.

**LOCAL MANDATE AND 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, 4) other nondiscretionary costs or savings imposed on local agencies, or 5) costs or savings in federal funding to the state.