

**TITLE 17, Division 2, Subchapters 2, 6, 18, and 22  
DEPARTMENT OF DEVELOPMENTAL SERVICES**

**NOTICE OF PROPOSED RULEMAKING**

**Financial Management Services-Participant-Directed Services**

The Department of Developmental Services (Department) proposes to amend Title 17, California Code of Regulations (CCR), Division 2, Chapter 1, Subchapter 6: Service Provider Record Maintenance Requirements; Chapter 3, Subchapter 2: Vouchers; Chapter 3, Subchapter 18: Standard Rate Schedule, by amending sections 50604, 54355, and 58543. Additionally, the Department proposes to add, to Division 2, a new Subchapter 22: Financial Management Services-Participant-Directed Services, new sections 58884, 58886, 58887, and 58888.

**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, December 3, 2012. Please submit any written comments, via U.S. Mail, fax or email, to the Department's contact person designated below by that time and date.

**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)(B), 4688.21, 4690, 4690.1, and 4690.2, Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), 4648.12(c), 4690, 4690.1, Welfare and Institutions Code; 42 U.S.C. Section 1396n(c) (section 1915(c) of the Social Security Act).

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Currently, the Department offers voucher services to consumers and/or their families for which the State is reimbursed with Federal Financial Participation (FFP) as part of the renewal of the Home and Community-Based (HCBS) Waiver. The federal Center for Medicaid and Medicare Services (CMS) requires the use of a financial management service (FMS) provider when participating in the funding of voucher services for respite, day care, nursing, and transportation. These voucher services and new vouchered Community-based Training Program

for Adults, when used in conjunction with FMS providers will become known as Participant-Directed Services.

The Department proposes to amend Sections 50604, 54355 and 58543, and add Sections 58884, 58886, 58887 and 58888 of Title 17, of the CCR, to add Participant-Directed Services and FMS for eligible participants. Consistent with current regulations, regional centers may vendor providers as an FMS to carry out the responsibilities such as: assisting a vouchered family member or adult consumer in verifying worker eligibility status; collecting and processing timesheets of workers; processing payroll, withholdings, filing and payment of applicable federal, state and local employment-related taxes and insurance; performing billing payments and reimbursements as authorized; and maintaining all source documentation related to the authorized service(s). New service codes will be added to existing service codes to identify when these services are used in conjunction with the FMS and the rates of reimbursement for these services.

The adoption of these regulations is consistent with the Department's objective to maximize FFP funding through the HCBS Waiver and to receive funds for the 1915(i) State Plan Amendment that is currently under review with CMS.

Anticipated Benefits of the Proposed Regulations: The proposed regulations will benefit persons with developmental disabilities and their families by ensuring the continuance of federal funding and the preservation of this service delivery modality (vouchers) which is currently used by many recipients as a component to their avoidance of institutional care. The proposed regulations allow for the implementation of the FMS providers with the objective of helping families and consumers in meeting their current vendor requirements pursuant to applicable Federal and State law covering mandated payroll costs, as well as provide a mechanism for transparency for how these funds are expended.

Evaluation of Consistency/Compatibility with Existing State Regulations: After conducting a review of existing State regulations, the Department has concluded that these are the only regulations dealing with this subject area, and therefore, the regulations are neither inconsistent nor incompatible with the existing State regulations.

## **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) 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.
- (c) Costs or savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (d) Nondiscretionary Costs/Savings to Local Agencies: None.
- (e) Programs Mandated on Local Agencies or School Districts: None.
- (f) 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.
- (g) Effect on Housing Costs: None.
- (h) 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 proposed changes provide requirements to 21 non-profit regional centers under contract with the Department. Pursuant to Government Code section 11342.610, "An entity organized as a nonprofit institution" is not considered a "small business" (b)(6). Therefore it is determined that the adoption of these regulations will not affect small businesses.

## **RESULTS OF THE ECONOMIC IMPACT STATEMENT**

- (a) 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.
- (b) 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 requirements and current State regulations for voucher services. They provide additional protections for families and consumers by providing assistance with meeting employment law and payroll tax requirements. Additionally, the proposed changes will provide opportunities to families and consumers by allowing them to customize day services in order to meet their individualized needs; have opportunities to further the development or maintenance of employment and volunteer activities; direct their day services; and increase their ability to lead integrated and inclusive lives.

## **PLAIN ENGLISH OVERVIEW**

The proposed regulations are considered non-technical and the Department has drafted the regulations in Plain English pursuant to Government Code sections 11343.580 and 11346.2(a)(1).

## **CONSIDERATION OF 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: Diana Nicolaou  
Phone: (916) 654-1760 Facsimile: (916) 654-3641  
E-mail Address: [Diana.Nicolaou@dds.ca.gov](mailto:Diana.Nicolaou@dds.ca.gov)

If the above person is unavailable, you may also contact Jeffrey Greer, at (916) 654-2201. E-mail Address: [jeff.greer@dds.ca.gov](mailto:jeff.greer@dds.ca.gov)

## **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](http://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.