

INITIAL STATEMENT OF REASONS

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

Currently, the Department offers voucher services to consumers and/or to their families. The federal government is requiring the use of a financial management service (FMS) provider when participating in the funding of voucher services. These voucher services, along with the new Community-based Training Program for Adults, will be known as Participant-Directed Services.

The Department proposes to amend sections 50604, 54355, 58543 of Title 17, California Code of Regulations (CCR) and add new sections 58884, 58886, 58887, and 58888 in order to give regional centers authority to vendor family members and consumers for Participant-Directed Services.

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 (HCBS) Waiver and to receive funds for the 1915(i) State Plan Amendment.

Specific Purpose and Rationale for Necessity

Section 50604. Service Provider Record Maintenance Requirements.

Section 50604(d)(3)(E) as amended

Specific Purpose

This proposal will add the Participant-Directed Services as a type of vendored service required to maintain records pursuant to the current regulations.

Rationale for Necessity

This amendment is necessary to ensure record maintenance requirements for vendors of voucher services are applied to the proposed Participant-Directed Services.

Section 54355. Vouchers.

Section 54355(i)

Specific Purpose

This proposal will amend the current section to add new subsection (i) which requires regional centers to vendor consumers and/or family members receiving voucher services funded with federal financial participation (Medicaid) as Employers or Co-Employers in conjunction with an FMS Fiscal/Employer Agent (F/EA) or FMS Co-Employer, effective October 1, 2011, or use another vendored service provider.

Rationale for Necessity

This amendment is necessary to comply with the federal requirements of the HCBS Waiver, in which participants in self-directed services such as vouchers, must be linked with a financial management services provider for payroll and reimbursements.

Section 58543. Standard Rate Schedule.

Section 58543(a) as amended

Specific Purpose

This proposal amends the current section to add Participant-Directed Services - Transportation to be an applicable service for the Standard rate schedule.

Rationale for Necessity

This amendment is needed in order to include the Participant-Directed Services - Transportation, the new service code, and align it with the rate-setting methodology currently applicable to voucher Transportation service.

Section 58884. Definitions.

Specific Purpose

This proposal of new section 58884, under subsection (a), adds new definitions for the "Participant-Directed Services" that will be utilized in the proposed sections that follow, such as "Employer" and "Co-Employer." The definitions correlate the "Financial Management Service *Co-Employer*" to the "*Co-Employer*," and the Financial Management Service Fiscal/Agent" to the "Employer." Subsection (b) reinstates definitions currently existing within CCR, Title 17, as applicable to this section.

Rationale for Necessity

This section is needed to enhance the common meanings of these words in order to associate the participant's status as an employer (Co-Employer or Employer) with the appropriate type of Financial Management Service (Co-Employer or Fiscal/Agent).

Section 58886. General Requirements for Participant-Directed Services

Specific Purpose

This proposal of new section 58886 allows for regional centers to offer the Participant-Directed Services (subsection (a)). Subsections (b), (c), and (d) describe the general requirements for participants that may be vendored as "Employers" and "Co-Employers" and will describe the voucher services to be available as Participant-Directed Services and their relationship to the type of FMS. Subsection (e) proposes service descriptions that are consistent with the service descriptions for the existing voucher services designated in section 54355 of Title 17. The new voucher service of Community-Based Training for Adults is also described. Sub-section (f) allows for the "grandfathering in" of existing participants vendored for voucher services to the new Participant-Directed Services on September 30, 2011.

Rationale for Necessity

This section is needed to include basic guidelines and requirements for participants that may be vendored as Employers or Co-Employers and also delineates specific requirements specific to the corresponding FMS. It transitions the current voucher services to new service codes needed to associate the services with federal funding. And it further links the vendored Employer or Co-Employer to the appropriate type of FMS provider.

Section 58887. Service Components for Participant-Directed Services

Specific Purpose

This proposal of Section 58887 (a) outlines general requirements for the FMS F/EA and FMS Co-Employer. Subsection (b) provides service components, responsibilities, and service codes specific to the FMS F/EA and subsection (c) for the FMS Co-Employer. Additionally, this section links the two types of FMS providers to the two types of employment relationships as defined in the preceding section 58886.

Rationale for Necessity

This section is needed to include basic guidelines and requirements for vendors of FMS Co-Employer and FMS F/EA, including descriptions of the duties, related new service codes for FMS vendors, the FMS F/EA and FMS Co-Employer, and basic payment parameters.

Section 58888. General Provisions for Rate-Setting and Reimbursements

Specific Purpose

This proposal of new section 58888 subsection (a) provides the basic provisions for rate-setting and reimbursements for the new Participant-Directed Services, and assign their new service codes. Subsection (b) provides rate-setting provisions and service codes for FMS F/EA and FMS Co-Employer Service Codes. Subsection (c) instructs the regional center on the assignment of service codes to the authorizations.

Rationale for Necessity

This section is needed to extend the general provisions for rate-setting and reimbursements for voucher services to the proposed Participant-Directed Services and the FMS Co-Employer and FMS F/EA, including rates for the new service code 475. Also, the proposed section establishes a mechanism for directing related reimbursements through the FMS vendors by means of purchase of service authorization.

BENEFITS OF THE REGULATION

California residents with developmental services benefit from the preservation of federal funding of their services that help maintain these persons in community settings in lieu of institutionalization. The proposal provides 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.

IMPACT OF REGULATORY ACTIONS

The proposed changes are necessary for the preservation of federal funding for current services, and therefore the prevention of adverse economic impacts. Relying upon the Economic Impact Analysis Document/Report, 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 regulations provide requirements to 21 non-profit regional centers under contract with the Department, however, these non-profits are not considered "small businesses" as defined in Government Code Section 11342.610 (b)(6).

There is no significant 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.

CONSIDERATION OF ALTERNATIVES

The Department has determined that the only alternative would be not to pursue this regulation adoption. This alternative is not reasonable given that continuance of federal funds for voucher services is contingent upon the utilization of FMS. The Centers for Medicare & Medicaid Services (CMS) sets requirements in order for the Department to receive funding and this regulation will implement federal requirements in order to receive federal matching funds. Pursuant to CMS's "Instructions, Technical Guide and Review Criteria" used for the State's HCBS Waiver, the use of an FMS is required when providing services under the HCBS Waiver program.

There has been no reasonable alternative to the regulatory proposal that 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.