

~~INITIAL~~ FINAL STATEMENT OF REASONS

TITLE 17, CALIFORNIA CODE OF REGULATIONS

DIVISION 2, DEPARTMENT OF DEVELOPMENTAL SERVICES

SUBCHAPTER 2.5, FAMILY COST PARTICIPATION

NOTE: THIS DOCUMENT IS AN AMENDMENT OF THE INITIAL STATEMENT OF REASONS (ISOR) AND CHANGES TO THE LANGUAGE OF THE ISOR ARE REFLECTED HEREIN BY STRIKEOUTS FOR LANGUAGE DELETED, AND UNDERLINING FOR LANGUAGE ADDED.

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

Welfare and Institutions Code Section 4783, establishes the Family Cost Participation Program (FCPP) for the purpose of assessing a cost participation to parents, who have a child to whom all of the following applies:

- (A) The child has a developmental disability.
- (B) The child is three years of age through 17 years of age.
- (C) The child lives in the parents' home.
- (D) The child receives services and supports purchased through the regional center.
- (E) The child is not eligible for Medi-Cal.

The amount of the Family Cost Participation (FCP) will be determined by a sliding scale for families with annual gross income not less than 400% of the federal poverty guideline and adjusted by the number of people living in the family home. The FCP will only be applied to respite, day care and camping services that are included in the child's individual program plan. This program is to be implemented by the twenty-one regional centers effective January 1, 2005. Section 4783 (l) allows the Department of Developmental Services (DDS) to adopt emergency regulations to implement the FCPP.

Specific Purpose and Rationale for Necessity

SUBCHAPTER 2.5, FAMILY COST PARTICIPATION

ARTICLE 1. GENERAL

50243. PURPOSE

Specific Purpose:

Section 4783 of the Welfare and Institutions Code establishes the authority for the implementation of the FCPP.

Rationale for Necessity:

This section is necessary to define the extent to which this article is to be applied.

Article 2. Definitions

Specific Purpose:

The following definitions shall apply to language contained in Sections 50245 through 50253 of these regulations:

50245 Developmental Disability. The term “Developmental Disability” has the same meaning as provided in WIC, Section 4512. “Developmental disability” means a disability, which originates before an individual attains 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

50247. Medi-Cal Eligible Consumers. The term “Institutionally Deemed” means that the income and resources of a parent are not deemed to the consumer, therefore making the consumer eligible for Medi-Cal if all other Medi-Cal eligibility criteria are met.

50249. Family Cost Participation Schedule. The term “Family Cost Participation Schedule” means the official table developed by the Department of Developmental Services and used by the regional centers to determine the amount of family cost participation.

50251. Gross Annual Income. The term “Gross Annual Income” means the income of the parents as reported on their latest California State or Federal Income Tax return and includes any money or benefit acquired, earned, or received as payment for labor or services, support, or return on investments. Income from the operation of a business or from self-employment is the net

income after deducting business expenses. Depreciation, amortization, and depletion shall not be allowed as business expense deductions.

50253. Persons Living In The Family Home. This means the number of persons living in the family home who depends on the gross family income of the parents for more than one-half of his/her support shall be counted in determining family size. In the case of divorce, legal separation, or established paternity where income from both parents is used, all persons who depend on the gross annual income of the parents for more than one-half of his/her support shall be considered persons living in the family home.

Rationale for Necessity:

To make specific the language and terminology used in formulating regulations for the FCPP.

Article 3. Administrative Provisions

50255. Parent Responsible for Cost Participation.

Specific Purpose:

This section defines the term "Parent " to be the mother or father or both as defined under WIC, Section 4783 (a) (1) and further defined under 50215, Title 17, as being jointly and severally responsible for the assessed amount of the FCP. This section also clarifies the responsibility in the case of a divorce, legal separation, or established paternity cases in relationship to the FCPP. In the event that a custodial parent certifies in writing that income information from the non-custodial parent cannot be obtained by the custodial parent, then only the income of the custodial parent may be used to determine the cost participation. This section also makes the regional centers responsible for funding their authorized share of services regardless of the FCPP.

Rationale for Necessity:

This section is necessary to make the determination of responsibility of the parent(s). In addition, this section also includes the responsibility in issues concerning divorce, legal separation or established paternity cases, and income that cannot be obtained from the non-custodial parent. It is necessary to define this responsibility as it pertains to the FCPP to ensure efficient and consistent administration for the program across the 21 regional centers.

50257. Program Administration.

Specific Purpose:

The Department of Developmental Services has the responsibility to develop a pamphlet describing the FCPP in addition to developing all forms necessary for the regional center to administer the program. The regional centers shall provide the pamphlet to the parents of children ages 3 through 17 years during initial intake and assessment and all subsequent IPP review meetings where changes occur to day care, camping, or respite. Additionally, the FCPP shall not exempt parents from responsibilities for day care pursuant to Section 4685 (c) (6) of the Welfare and Institutions Code.

Rationale for Necessity:

This section describes the Department of Developmental Services responsibility to provide the necessary pamphlet and forms necessary for the regional centers to implement the FCPP and the requirement that the regional centers use these forms provided. Use of standardized forms ensures there is no interruption in regional center funded services for the consumer. It also delineates the regional centers' responsibility to provide for funding their authorized share of services without regard to the FCP. This section makes specific that the FCPP shall not exempt parents from the responsibilities for day care pursuant to Section 4685 (c) (6) of the Welfare and Institutions Code.

Article 4. Assessment of the Family Cost Participation.

50259. Assessment of the Family Cost Participation.

Specific Purpose:

This section makes specific that the FCPP shall not impact any other services other than those identified in Section 4783 (c) of the Welfare and Institutions Code. Reductions due to multiple minor children receiving services shall only impact the FCPP and shall not reduce fees for consumers in 24-hour out-of-home placements.

Rationale for Necessity:

The Department of Developmental Services operates a Parental Fee Program that assesses a fee to parents of children 0 through 18 years of age in 24-hour out-of-home placement. It is necessary to delineate this program from the FCPP and advise parents that reductions for multiple minor children will only affect the FCPP. It is also necessary to clearly prohibit regional centers from allowing the FCPP to be included in calculations for related services that are not specifically subject to the FCPP.

50261. Maximum Family Cost Participation Assessment.

Specific Purpose:

This section describes the parents' responsibility to provide the regional center with proof of their annual gross income within ten (10) working days from the date the parents sign the IPP. The regional center may grant a ten (10) working day extension to provide documentation, if the parents have acted in good faith. In no event shall more than one ten (10) working day extension be granted.

Failure to provide this information will result in the regional center setting the cost participation at the maximum. The regional centers shall include a statement on the Individual Program Plan signature page indicating that the regional center shall fund respite, day care, and camping services consistent with the FCPP.

Rationale for Necessity:

This section describes the parents' responsibility to provide the necessary proof of income to determine their portion of participation in the FCPP. In addition, the parents are advised the consequences of not providing the necessary income verification will result in the regional center setting the FCPP at the maximum. The addition of the statement to the Individual Program Plan signature page is necessary to advise parents that the regional center shall fund respite, day care, and camping services consistent with the FCPP, and therefore, the parent may be responsible for paying for a portion of the services identified in the IPP.

50262. Confidentiality and Retention of Income Documentation.

Specific Purpose:

This section assures parents that any documentation submitted as proof of income, or any correspondence from the regional center, shall be confidential pursuant to Section 4514 of the Welfare and Institutions Code. In addition, this section makes specific the time frame for retention of documents.

Rationale of Necessity:

This section will ensure that documentation used for income verification will be held confidential and is necessary to alleviate parental concern about supplying financial information to the regional centers. Regional centers will universally apply the Welfare and Institutions Code Section 4514, to all financial data used for the FCPP. This section makes specific that the regional center shall retain all documentation pursuant to Sections 50261, 50265, or 50267, and any document relied on by the executive director shall be retained for 3 years. This is necessary to ensure that regional centers have adequate documentation to withstand an audit by DDS or other government agencies, or defend a decision in a fair hearing.

50263. Waiver Exemption.

Specific Purpose:

This section exempts those parents whose child is Institutionally Deemed Medi-Cal eligible from participation in the FCPP.

Rationale for Necessity:

This section makes specific that parents of Institutionally Deemed Medi-Cal eligible are exempt from the FCPP. This section is necessary to ensure efficiency and consistency in administration of the program across 21 regional centers.

50265. Adjustment By Regional Center Executive Director.

Specific Purpose:

(a) This section specifies the regional center executive director authority to adjust the FCP in cases of substantiated unavoidable and universal catastrophic loss that would temporarily limit the parents' ability to pay and would create a direct economic impact if the amount of the FCP were not reduced. The executive director may also make an adjustment for significant unreimbursed medical costs associated with the care for a child who is a regional center consumer.

(b) This section defines the term "Direct Economic Impact" to mean that the result of not granting the adjustment would deprive the family of what is needed for basic family necessities, including but not limited to, food, shelter, clothing, or medical care. A direct economic impact is a substantial change that impacts more than just the family's standard of living.

(c) Allows the adjustment to be calculated by deducting the documented non-reimbursed dollar cost of the direct economic impact from the gross annual income, and then reassessing the amount of family cost participation by applying the FCP schedule against the reduced income amount.

(d) This section allows the regional center to re-determine at least annually those FCP adjustments made by the executive director.

Rationale of Necessity:

(a) This section allows for adjustments to the FCPP by the regional center executive director in those situations of catastrophic loss that would result in a direct economic impact to the family if the amount were not reduced.

Subsections (a) and (b) are necessary to ensure efficient and consistent administration of the program across the 21 regional centers.

(b) This section defines term “Direct Economic Impact” to that which is basic family needs such as food, shelter, clothing or medical care but does not limit to just these specific needs. This provision does allow the regional center executive director flexibility in the application of this term.

(c) This section allows for documented non-reimbursed dollar cost of a direct economic impact to be deducted from the gross annual income and re-calculation of the FCP based adjusted income. This section is necessary to ensure the discretionary adjustments are calculated in a consistent manner.

(d) This section requires regional centers to re-determine as least annually those FCPs that have been adjusted by the executive director, consistent with the authorizing legislation.

50267. Assessments And Reassessment Of Cost Participation.

Specify Purpose:

(a) This section provides when the FCPP will be assessed to coincide with the consumer’s Individual Program Plan.

(b) This portion of the section allows for assessments of the FCPP to be reduced or increased if there is reduction or increase in the gross annual income on which the FCPP was determined. Also, it allows for adjustment if there is an increase or reduction of services provided in the consumer’s Individual Program Plan , or a change in family size.

Rationale for Necessity:

(a) This section specifies for program participants that the original amount of FCP will be assessed upon completion of the IPP and reassessed every third year thereafter to coincide with the review of the consumer’s IPP. This section is necessary to provide notice to parents of the times when their level of participation will most likely change.

(b) This section allows for reduction or increase of the FCP based on a reduction or increase in the annual gross income. This would also allow for the adjustment based on an increase or decrease in the amount of services provided pursuant to a change in the IPP or family size. This section is necessary to ensure the FCP is updated consistent with the changes in the family’s or the consumer’s circumstances.

AUTHORITY AND REFERENCE

Authority: Section 4783, Welfare and Institutions Code (WIC).

Reference: Sections 4512, 4514, 4646(b), 4685(c)(6), 4782, 4783, 4784, WIC.
Section 1915(c)(6), Social Security Act.

- The Department considered the alternative of not adopting regulations, and rejected that alternative as it did not provide the safeguards and assurances to the consumer's health and well being that the Department is seeking.

- The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

- The Summary of Comments and Responses filed in Tab J of the Final Rulemaking File is incorporated herein as if fully set forth below.

- The Summary of Comments and Responses filed in Tab M of the Final Rulemaking File is incorporated herein as if fully set forth below.

- There are no alternatives proposed by any parties during the public comment periods other than those comments summarized and responded to in Tabs J and M of the Final Rulemaking File.

- The Department has determined that the adopted regulations do not impose any mandate on local agencies or school districts.