

## **TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES**

### **NOTICE OF PROPOSED RULEMAKING**

#### **FAMILY COST PARTICIPATION REGULATIONS**

The Department of Developmental Services (DDS) proposes to adopt sections 50243, 50245, 50247, 50249, 50251, 50253, 50255, 50257, 50259, 50261, 50262, 50263, 50265 and 50267 to Title 17, California Code of Regulations (CCR), Division 2, Subchapter 2.5, Family Cost Participation (FCP).

#### **Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of DDS. The written comment period closes at 5:00 p.m. on March 7, 2005. DDS will only consider comments received at its Headquarters by that time. Please submit any written comments to the DDS' contact persons designated below.

#### **Public Hearing**

A public hearing to receive oral and written comments is scheduled as follows:

March 7, 2005, at 10:00 a.m. in Office Building 9 (Twin Tower),  
Auditorium, Room 102, located at 744 P Street, Sacramento, CA 95814.

DDS requests that persons who make oral comments at the public hearing submit a written copy of their testimony at the hearings. The hearing location is wheelchair accessible.

#### **Authority and Reference**

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

Reference: Sections 4512, 4514, 4646(b), 4677, 4685(c)(6), 4782, 4783, 4784, WIC. Section 1915(c)(6), Social Security Act.

#### **Informative Digest/Policy Statement**

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

- (A) The child has a developmental disability.
- (B) The child is 3 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.

The amount of the Family Cost Participation (FCP) is determined by a sliding scale for families with annual gross income not less than 400 percent of the federal poverty guideline and adjusted by the number of people living in the family home. The FCP only applies to respite, day care, and camping services that are included in the child's Individual Program Plan (IPP).

The adoption of the emergency regulations will allow finalization and provide a more consistent statewide implementation of the FCPP, which became effective January 1, 2005.

Section 50243, establishes the authority for the implementation of the FCPP under Section 4783 of the WIC.

Section 50245, defines the term "Developmental Disability" which means a disability, which originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual.

Section 50247, defines the term " Institutionally Deemed" as 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.

Section 50249, defines the term "Family Cost Participation Schedule" as the official table developed by DDS and used by the regional centers to determine the amount of the FCP.

Section 50251, defines the term "Gross Annual Income" as the income of the parents as reported on their latest California State and Federal Income Tax returns 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.

Section 50253, defines the term " Persons Living In The Family Home" as those persons who depend on the gross family income of the parents for more than one-half of his/her support. This is used to determine family size.

Section 50255, defines the term "Parent" to be the mother, father, or both, as defined under WIC, Section 4783(a)(1), and further defined under Section 50215, Title 17, CCR, as being jointly and severally responsible for the assessed amount of the FCP.

Section 50257, states that DDS 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.

Section 50259, makes specific that the FCPP shall not impact any other services other than those identified in Section 4783(c), WIC. It also clarifies that 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.

Section 50261, describes the parents' responsibility to provide the regional center with proof of their gross annual income within ten (10) working days from the date the parents sign the IPP. Failure to provide this information will result in the regional center setting the FCP at the maximum.

Section 50262, clarifies and assures parents that any documentation submitted as proof of income, or any correspondence from the regional center, shall be confidential pursuant to Section 4514, WIC. This section also makes specific the time frame for retention of documents.

Section 50263, exempts those parents whose child is "Institutionally Deemed" Medi-Cal eligible, from participation in the FCPP. This section is necessary to ensure consistency in administration of the program across 21 regional centers.

Section 50265(a), 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 was not reduced.

Section 50265(a), Subsections (a) and (b), are necessary to ensure efficient and consistent administration of the program across the 21 regional centers.

Section 50265(b), defines the term "Direct Economic Impact" to that which are basic family needs such as food, shelter, clothing, or medical care, but does not limit to just these specific needs. This provision allows the regional center Executive Director flexibility in the application of this term.

Section 50265(c), allows for documented non-reimbursed dollar cost of a direct economic impact to be deducted from the gross annual income and recalculation of the FCP based on adjusted income. This section is necessary to ensure the discretionary adjustments are calculated in a consistent manner.

Section 50265(d), requires regional centers to re-determine, at least annually, those FCPs that have been adjusted by the Executive Director, consistent with the authorizing legislation.

Section 50267, allows for a reduction or increase of a FCP based on a reduction or increase in the gross annual 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 or consumer's circumstances.

**Small Business Determination:**

DDS has determined that the proposed regulations may affect small businesses. Parents who are assessed a FCP amount will be required to pay vendors directly for services and supports provided to their child. Parents who fail to make payment to vendors for services provided, or parents who elect not to purchase the portion of services for which they are financially liable, may result in a financial impact on those small businesses.

**Local Mandate Determination:**

DDS has determined that the proposed regulatory actions do not impose: 1) a mandate on local agencies or school districts; 2) costs to any local agency or school district that must be reimbursed in accordance with Government Code, Sections 17500 through 17630; 3) other nondiscretionary costs or savings imposed on local agencies; and, 4) costs or savings in federal funding to the State. DDS has determined that the proposed regulatory actions do impose significant savings to State agencies. Based on assumptions used for the 2004-05 May Revision, the Fiscal Year (FY) 2004-05 total net savings is \$0; however, the FY 2005-06 total net savings is projected to be \$2,231,000.

**Assessment Statement:**

By statute, the creation of the FCPP as clarified by this proposed action, will create approximately 15 new positions across the 21 non-profit regional centers located throughout the State providing services to the developmentally disabled. These positions are funded by the State through the contracts between the regional centers and DDS. The proposed action will not: a) help in the creation of new business within the State of California; nor, b) cause the expansion of business currently doing business within the State of California. DDS has determined that the proposed regulations will not eliminate jobs within the State of California. DDS has determined that the proposed regulations will not have: a) a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states; nor, b) a significant effect on housing costs. By statute, this program will have a cost impact on parents of eligible children not exceeding the amount of the parental fee that the parent would pay if the child lived in a 24-hour, out-of-home facility, which currently has a maximum fee of \$662 per month. DDS has determined that the proposed regulations will not

have a significant potential cost impact on directly affected businesses beyond those described under the "Small Business Determination" noted above.

**Cost Impacts on Representative Private Persons or Businesses:**

The FCPP impacts the 21 non-profit regional centers located throughout the State providing services to the developmentally disabled and parents of eligible children. It is estimated that the FCPP will create 15 new regional center positions with initial average costs of \$27,000 per regional center, which includes the additional cost for reporting, programming, and record keeping. However, this cost is funded through contracts between the regional centers and DDS. Other than those costs previously identified for select small businesses and parents of eligible children, DDS is not aware of any cost impacts that a representative, private person, or business would necessarily incur in reasonable compliance with the proposed action.

**Alternatives Considered:**

During the course of this rulemaking, the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department has made an initial determination that these proposed regulations are the most effective manner of meeting the requirements of Welfare and Institutions Code Section 4783. The Department will take written comments and hold a public hearing on March 7, 2005, for additional comments and consider other alternatives on these proposed FCPP regulations.

**Contact Person:**

Comments and inquiries concerning the proposed action or substance of proposed action may be directed to:

Attention: Larry Lipsmeyer, Program Manager  
Client Financial Services Section  
1600 Ninth Street, Room 205, MS 2-3  
Sacramento, CA 95814

Email: [llipsmey@dds.ca.gov](mailto:llipsmey@dds.ca.gov)  
Phone: (916) 654-3355  
Fax: (916) 653-4587/(916) 654-3186

If Mr. Lipsmeyer is unavailable, comments and inquiries concerning the proposed action or substance of the proposed action may be directed to:

Attention: Katherine Williamson, Chief  
Client Financial Services Section  
1600 Ninth Street, Room 205, MS 2-3  
Sacramento, Ca. 95814

Email: [Katherine.Williamson@dds.ca.gov](mailto:Katherine.Williamson@dds.ca.gov)  
Phone: (916) 654-2422  
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**Availability of Rulemaking Documents:**

DDS has prepared and has copies ready for public review of the exact text of the proposed regulations and Initial Statement of Reasons (ISOR) for the proposed regulations, and all of the information upon which the proposed regulations are based. Copies of the ISOR and text of the proposed regulations, along with 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. In addition, the text, ISOR and other materials for this rulemaking may be viewed over the Internet at [www.dds.ca.gov](http://www.dds.ca.gov).

**Availability of Changed or Modified Text:**

After the close of the comment period, DDS may adopt the proposed regulations as described in this notice. If DDS 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 DDS adopts the regulations as revised. If the text is modified, the text may be viewed over the Internet at [www.dds.ca.gov](http://www.dds.ca.gov). Please send requests for copies of any modified regulations to the contact persons named above.

**Final Statement of Reasons:**

When the Final Statement of Reasons is available, it may be viewed over the Internet at [www.dds.ca.gov](http://www.dds.ca.gov). Additionally, requests for the Final Statement of Reasons could be made to the contact persons named above.