

NOTICE OF PROPOSED RULEMAKING

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

VOUCHERED RESPITE

The California Department of Developmental Services (Department) proposes to amend Title 17, California Code of Regulations (CCR), Division 2, Chapter 1, Subchapter 6, Article 1, Section 50604, Service Provider Record Maintenance Requirements; Division 2, Chapter 1, Subchapter 6, Article 1, Section 50605, Service Provider Record Retention Requirements; Division 2, Chapter 3, Subchapter 2, Article 2, Section 54310, Vendor Application Requirements; Division 2, Chapter 3, Subchapter 2, Article 2, Section 54320, Regional Center Review of Vendor Application; Division 2, Chapter 3, Subchapter 2, Article 2, Section 54326, General Requirements for Vendors and Regional Centers; Division 2, Chapter 3, Subchapter 2, Article 2, Section 54332, Regional Center Files; Division 2, Chapter 3, Subchapter 2, Article 3, Section 54355, Vouchers;

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on October 25, 2004. The Department will only consider comments received at its headquarters by that time. Please submit all comments to the Department's contact person as designated in the Notice.

PUBLIC HEARING

A public hearing to receive comments on the proposed rulemaking is scheduled for October 25, 2004. The hearing will be held in the auditorium at Office Building 9, 744 P Street, Sacramento, California. The hearing will begin at 10:00 a.m. and conclude at 12:00 p.m. The Department requests that persons who make oral comments at the hearing submit two (2) written copies of their testimony at the hearing. This room is wheelchair accessible. No food or drinks will be allowed.

AUTHORITY AND REFERENCE

Authority: Chapter 157, Statutes of 2003; Chapter 1095, Statutes of 1994, Section 14; Sections 4405, 4631, 4631(a)(2), 4648, 4648(a), 4648.2, 4689.1, and 4690.1, Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4500, 4501, 4502, 4631, 4648, 4648(a), 4648.1, 4690, 4690.1, 4691, 4693, 4742, and 4791, Welfare and Institutions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to increase funding received from the federal government for consumers who are eligible to receive services under the Home and Community-Based Services Waiver (Waiver) by adding a new service – voucherred respite.

Chapter 1: General Provisions, SubChapter 6: Service Provider Accountability,
Article 1: General Provisions

Section 50604 (d)(3)(D) – Service Provider Record Maintenance Requirements

Changes and additions are proposed to ensure that any and all pertinent information on consumers who receive Waiver services is maintained by the vendors in order to comply with federal requirements and allow the State to claim federal financial participation (FFP) for these services. This information would be used to verify that the delivery of service being purchased and the funds provided are used in a fiscally responsible manner, in addition to confirming that the individual providing the service is 18 years of age or older.

Section 50605(a) – Service Provider Record Retention Requirements

The minimum number of years a service provider is to retain financial and service records has been changed from three years to five years in order to comply with federal regulations.

Section 54310(a), (a)(5), (a)(10)(J), (b), (g) and (h) – Vendor Application Requirements

Proposed changes to regulations ensure that specific pertinent information be supplied by the applicant applying for vendorization. This information would be used to verify that the delivery of service being purchased and the funds provided are used in a fiscally responsible manner. The name of the agreement to be signed by applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed and the vendor is now required to submit the original form to the vendoring regional center. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate and not available on-line. The vendor application, Form DS 1890 was revised to include an excerpt regarding the Public Records Act, and, in section “H” under the instructions, change “Medi-Cal Program Provider Agreement Claim Certification” to “Home and Community-Based Services Provider Agreement” and the changes indicate the revision date.

Section 54320(a)(5) – Regional Center Review of Vendor Application

The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate.

Sections 54326(a)(3)(A), (a)(16), (a)(16)(B), (a)(16)(B)(2), and (a)(16)(B)(3) – General Requirements for Vendors and Regional Centers

The minimum number of years a service provider is to retain financial and service records has been changed from three years to five years. The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate and not available on-line.

Section 54332(a)(8) and (b)(5) – Regional Center Files

The name of the agreement to be signed by those applicants whose proposed service is eligible for Medi-Cal reimbursement has been changed. The copy of this form (SAMPLE – Medi-Cal Program Provider Agreement Claim Certification) is being removed from Title 17 as this version is now obsolete. A copy of the latest version dated 6/99 is not being included in the regulations as it is now in duplicate and not available on-line.

Chapter 3: Community Services, SubChapter 2: Vendorization, Article 3: Vendor Numbers and Service Codes

Section 54355(b)(1)(D), (b)(1)(F), (b)(2), (b)(3), (b)(4), (b)(4)(A) through (O), (b)(5), (g)(4)(C)(1)a. and (g)(4)(C)(1)b. – Vouchers

The word “and” is being stricken from subsection (b)(1)(D). Subsections (b)(1)(F) and (b)(2) are being added and changed to state the responsibility of voucher recipient regarding withholding and paying the appropriate Federal, State and local taxes. Subsection (b)(3) was added to clarify the requirement of voucher recipients to maintain specific records of the actual provider of the service. Subsection (4) requires that voucher recipients note specific provider information and attendance on a billing form, developed by the Department that is to be submitted to the regional center. Subsections (b)(4)(A) through (O) outline the information requested on the billing form. Subsection (b)(5) requires that the voucher recipients sign the billing form and outlines the certification statement on the form. Subsections (g)(4)(C)(1)a. and b. outlines the criteria a voucher recipient must follow when selecting a respite provider.

Appendix A (page 282.21)

The vendor application, form 1890 (12/92) (Appendix A) was revised to include an excerpt regarding the Public Records Act, and, in section “H” under the instructions, change “Medi-Cal Program Provider Agreement Claim Certification” to “Home and Community-Based Services Provider Agreement” and the changes indicate the new revision date. Other proposed changes to regulations will remove the copy of the vendor application, form DS 1890 (Appendix A), from Title 17 as it is now available on-line at <http://www.dds.ca.gov/forms/pdf/DS1890.pdf>.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will affect small business in that they will now be expected to maintain records for five years instead of three.

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, or 4) other nondiscretionary costs or savings imposed on local agencies. However, it will bring in additional federal funding to the State which will reduce costs to the State's general fund.

ECONOMIC IMPACT AND BUSINESS ASSESSMENT

The proposed action will not: a) create new jobs within the State of California, b) help in the creation of new businesses within the State of California, c) cause the expansion of businesses currently doing business within the State of California, nor d) eliminate jobs or businesses within the State of California. The Department has determined that the proposed regulations will not have: a) a statewide significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states, nor b) a significant effect on housing costs. The agency 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

The Department has determined 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 invites interested persons to present written statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearing.

CONTACT PERSON

General and substantive inquiries concerning the proposed action may be directed to:

Department of Developmental Services
Community Rate Section
1600 Ninth Street, Room 310, MS 3-21
Sacramento, CA 95814
Attention: Lisa Primeaux
Phone: (916) 654-2199 Facsimile: (916) 654-1578
E-mail Address: lprimeau@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. 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.