

**California Code of Regulations
Title 17, Division 2**

FINDING OF EMERGENCY

These regulations are being adopted on an emergency basis for the immediate preservation of the public peace, health and safety, and general welfare, within the meaning of Government Code Section 11346.1(b).

DESCRIPTION OF THE FACTS WHICH CONSTITUTE THE EMERGENCY

The Department of Developmental Services (Department) receives funding from the federal government for reimbursement of supports and services received by consumers eligible to receive services under the Home and Community-Based Services Waiver (Waiver). To increase the federal funding to the State, the Budget Act of 2003 (AB 1765, Item 4300-001-0001) provides the authority for the Department to promulgate emergency regulations specifically for implementing proposals to increase federal funding to the State.

There are approximately 53,000 consumers who receive Waiver services based on the eligibility criteria set by the federal government. The proposed changes to the regulations would enable the Department to add more services to the Waiver, thus increasing the federal funding the State receives. Under the Department's Waiver, and in accordance with Section 4442.10(A) of the State Medicaid Manual, the Department agrees to assure that there will be financial accountability for funds expended for home and community-based services. The Department also agrees to maintain and make available to the U. S. Department of Health and Human Services, the Comptroller General, or other designees, appropriate financial records documenting the cost of services provided under the Waiver, in accordance with Section 2500.2 of the State Medicaid Manual. These documents are to include the following information, as a minimum: date of service, name of recipient, Medicaid identification number, name of provider agency and person providing the service, nature, extent, or units of service, and the place of service. Existing regulations require vendors to maintain detailed records. The proposed changes will clarify the details of the records vendors are required to maintain per federal requirements.

Title 17 currently has a section which lists the conditions in which a regional center may terminate vendorization. However, none of the conditions listed allow regional centers to terminate vendorization if continued utilization of the vendor threatens the health and safety of the consumer(s). A new subsection is being proposed which would give regional centers the authority to terminate vendorization for the health and safety of the consumer(s).

AUTHORITY AND REFERENCE

Authority: Chapter 157, Statutes of 2003; Chapter 1095, Statutes of 1994, Section 14; Sections 4405, 4631, 4631(a)(2), 4648(a), 4648(a)(3), 4648.1, 4648.2, 4681.1, 4689.1, 4689.7(c), 4690, 4690.1, 4691, 4691.5, 4742, 4748, Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4500, 4501, 4502, 4525, 4629(f), 4631, 4646, 4646.5, 4648, 4648(a), 4648(a)(3)(B), 4648.1, 4648.3, 4681.1, 4689(e), 4689.1, 4689.7(c), 4690, 4690.1, 4691, 4691.5, 4740, 4742, 4748, Welfare and Institutions Code; and 42 U.S.C. Section 1396m.

INFORMATIVE DIGEST

The Department proposes to increase funding received from the federal government for consumers who are eligible to receive services under the Waiver. The Department also proposes giving regional centers the authority to terminate vendorization which threatens the health and safety of the consumer(s).

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

Section 50604(d)(2), (3), (3)(A), (3)(B), (3)(C), (3)(D), and (3)(E) – Service Provider Record Maintenance Requirements

Changes and additions are proposed to ensure that any and all pertinent information required by the agreement between the Department and the federal government on consumers who receive Waiver services is collected by the vendors.

Section 50608(c), (d) and (e) – Contract Duties and Responsibilities

Two new subsections, (c) and (d), are proposed to include a provision in vendor contracts to ensure that the vendor will maintain the required service records to support all billings/invoices and that such records will be submitted to the regional centers with the billings/invoices. The previous subsection (c) was changed to (e).

Chapter 3: Community Services, SubChapter 2: Vendorization, Article 2: Vendorization Process

Section 54326(a)(3)(B) – General Requirements for Vendors and Regional Centers

Changes are proposed to ensure that any and all pertinent information required by the federal government on consumers who receive Waiver services are collected by the vendors.

Section 54326(a)(3)(C)

This subsection has been added to ensure vendors include attendance data collected per Section 54326(a)(3)(B) with the billings/invoices to the regional center for the billing period.

Sections 54326(c), (d) and (e)

Subsection (c) has been added to ensure regional centers submit the information received by the service providers to the Department on a monthly basis. The previous subsection (c) was changed to (d) and (d) was changed to (e).

Chapter 3: Community Services, SubChapter 2: Vendorization, Article 4: Vendor Compliance and Prohibitions

Section 54370(a) and (b)(7) – Termination of Vendorization for Noncompliance

Language which limits regional centers ability to terminate vendorization which threatens the health and safety of the consumer(s) is being deleted from subsection (a). Subsection (b)(7) is being added giving regional centers the authority to terminate vendorization which threatens the health and safety of the consumer(s).

Chapter 3: Community Services, SubChapter 4: Residential Services and Quality Assurance Regulations, Article 2: General Requirements

Section 56003(a)(1)(A), (B), (C), (D), (E), (F), (G) – Residential Services Orientation

Subsection (a)(1)(A) is being added to clarify the information to be provided by the regional centers in the orientation of residential providers shall include the record maintenance requirements pursuant to Section 50604. Subsections (B), (C), (D), (E), (F), and (G) are being re-lettered due to subsection (A) being added. Changes were also made to the references in subsection (B) to correct incorrect references.

Chapter 3: Community Services, SubChapter 4.1: Family Home Agency (FHA) Regulations, Article 3: Contract and Vendorization

Section 56082(a)(1), (2) and (3) – Contract and Vendorization

Subsection (a)(1) has been added and contains language which was previously a part of subsection 56082(a). Subsection (a)(2) is being added to require a contract provision ensuring that FHAs maintain service records to support all billing/invoicing as specified in Section 50604(d)(1) through (3)(A) through (E), as applicable. Subsection (a)(3) is being added to ensure that vendors submit to the regional center with their billing/invoices the information specified in subsection (a)(2) for the billing period.

Chapter 3: Community Services, SubChapter 9: Rate-Setting Methodology for

Community-Based Day Programs, Article 4: Service Contracts

Section 57540(c)(3) and (e)(2) – Service Contracts Between the Regional Center and Community-Based Day Program Vendors

Changes are being proposed to subsection (c)(3) to specify that each regional center and vendor mutually agree, in writing, that any units of service reimbursed other than a daily or hourly rate shall also be maintained pursuant to Section 50604(d)(3)(A) through (E), as applicable. Changes proposed to subsection (e)(2) are for contracts to specify that vendors agree to maintain service information in accordance with the provisions of Section 50604(d)(1) through (3)(A) through (E), as applicable.

Section 57540(e)(3)

A new subsection (e)(3) is being proposed to ensure that regional centers include a contract provision specifying that vendors maintain service records to support all billings/invoicing and that such records are submitted to the regional centers with the billings/invoices.

Chapter 3: Community Services, SubChapter 18: Transportation Service, Article 2: General Provisions

Section 58510(b)(3) and (c)(2) – General Requirements Applicable to Regional Centers

Subsection (b)(3) is now obsolete and is thus being deleted. Changes to subsection (c)(2) are being proposed to specify information regional centers are required to submit to the Department on a monthly basis.

Chapter 3: Community Services, SubChapter 19: Supported Living Service, Article 8: SLS Contract Standards

Section 58671(h) and (i) – Contract Requirements

Subsection (h) is being added to specify that a contract provision be included ensuring that vendors maintain service records to support all billing/invoicing as specified in Section 50604(d)(1) through (3)(A) through (E), as applicable. Subsection (i) is being added to specify that a contract provision be added ensuring that vendors submit to the regional center with their billing/invoices the information specified in (h) for the billing period.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will affect small business. The regulations have, therefore, been drafted in plain English.

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, nor c) cause the expansion of businesses currently doing business within the State of California. The Department has determined that the proposed regulations will not have: a) a significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states, b) a significant potential cost impact on private persons or directly affected businesses, nor c) a significant effect on housing costs.