

FINAL STATEMENT OF REASONS

TITLE 17, CALIFORNIA CODE OF REGULATIONS DIVISION 2. DEPARTMENT OF DEVELOPMENTAL SERVICES

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.

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

During fiscal year 2003/2004, the State has had a deficit of approximately \$35 billion, which has required cuts to the Department's budget. The 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 Waiver (Waiver). To increase the federal funding to the State, AB 1765 (Item 4300-001-0001) provides the authority for the Department to promulgate 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. 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. In addition, existing Title 17 regulations require vendors to maintain detailed records. The proposed changes will clarify the details of the records vendors are required to maintain.

Section 54370 of Title 17 lists the conditions for which a regional center may terminate vendorization. However, there is language which limits regional centers ability to terminate vendorization if continued utilization of the vendor threatens the health and safety of the consumer(s). This language would be deleted and 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).

The summary of comments and responses filed in Tabs J, M, and P of the Final Rulemaking File are incorporated herein as if fully set forth below.

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.

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

(b) Specific Purpose and Rationale for Necessity

**Chapter 1. General Provisions
Subchapter 6. Service Provider Accountability
Article 1. General Provisions
Section 50604. Service Provider Record Maintenance Requirements
Subsections (d)(2), (d)(3), (d)(3)(A), (d)(3)(B),
(d)(3)(C), (d)(3)(D), and (d)(3)(E) and (d)(3)(F)**

Specific Purpose:

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.

Rationale for Necessity:

In order for the State to receive additional funding from the federal government for consumers who are on the Waiver, changes must be made to these subsections. The changes specify to what records vendors are required, by the federal government, to maintain for each consumer receiving services from that vendor. A new subsection was added in order to clarify the information required for community-based day programs.

**Chapter 1. General Provisions
Subchapter 6. Service Provider Accountability
Article 1. General Provisions
Section 50608. Contract Duties And Responsibilities
Subsections (c), (d) and (e)**

Specific Purpose:

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

Rationale for Necessity:

The addition of these two new subsections ensures compliance with the federal requirements the Department is to follow in order to insure financial accountability for funds expended for home and community-based services.

Chapter 3. Community Services
Subchapter 2. Vendorization
Article 2. Vendorization Process
Section 54326. General Requirements for Vendors and Regional Centers
Subsections (a)(3)(B), (a)(3)(C), (c), (d) and (e)

Specific Purpose:

Changes are proposed to subsection (a)(3)(B) to ensure that any and all pertinent information required by the federal government on consumers who receive Waiver services are collected by the vendors. Subsection (a)(3)(C) 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. 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).

Rationale for Necessity:

In order for the State to receive additional funding from the federal government for consumers who are on the Waiver, changes must be made to subsections (a)(3)(B). The changes pertain to what records vendors are required, by the federal government, to maintain for each consumer receiving services from that vendor. Subsection (a)(3)(C) has been changed to ensure that vendors submit maintained attendance data to the regional center and subsection (c) has been added specifying that the regional centers submit the information to the Department on a monthly basis. The changes and additions of these subsections ensures compliance with the federal requirements the Department is to follow in order to insure financial accountability for funds expended for home and community-based services. Subsections (d) and (e) were re-lettered due to (c) being added. No other changes were made to (d) and (e).

Chapter 3. Community Services
Subchapter 2. Vendorization
Article 4. Vendor Compliance and Prohibitions
Section 54370. Termination of Vendorization for Noncompliance
Subsections (a), and (b)(7), (d)(2)(C), (e), (e)(1), (e)(2), (e)(3), (f), (g), (h) and (i)

Specific Purpose:

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). Additions and changes to sections (d)(2)(C), (e), (e)(1), (e)(2), (e)(3), (f), (g), (h) and (i) pertain to the vendor appeal process.

Rationale for Necessity:

There is no language in Title 17 which authorizes regional centers to terminate vendorization which could threaten the health and safety of consumer(s) being served by that vendor. The language to be deleted from subsection (a) limits regional centers in their ability to terminate such vendors. Adding subsection (b)(7) gives regional centers the authority to terminate vendorization which threatens the health and safety of the consumer(s). Additions and/or changes to sections (d) through (f) clarifies the process if a vendor decides to appeal their termination. Additions and/or changes to sections (g) and (h) clarify the actions a regional center may take in regards to placing consumers with a vendor whose vendorization has been terminated and who has filed an appeal. Section (i) was re-lettered due to section (h) being added.

Chapter 3. Community Services
Subchapter 4. Residential Services And Quality Assurance Regulations
Article 2. General Requirements
Section 56003. Residential Services Orientation
Subsections (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), and (a)(1)(G)

Specific Purpose:

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.

Rationale for Necessity:

In order for the State to receive additional funding from the federal government for consumers who are on the Waiver, subsection (a)(1)(A) is being added. This addition will clarify that the orientation of residential providers shall include the record maintenance requirements pursuant to Title 17, CCR, Section 50604. Subsection (a)(1)(B) is being changed to correct incorrect references. Subsections (a)(1)(B) through (G) are being re-lettered due to subsection (A) being added.

Chapter 3. Community Services
Subchapter 4.1. Family Home Agency (FHA) Regulations
Article 3. Contract And Vendorization
Section 56082. Contract and Vendorization
Subsections (a)(1), (a)(2), and (a)(3)

Specific Purpose:

Subsection (a)(1) has been added and contains language which was previously a part of subsection (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)(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.

Rationale for Necessity:

In order for the State to receive additional funding from the federal government for consumers who are on the Waiver, subsection (2) is being added requiring regional centers to include in their contracts with FHAs the requirement that the vendor maintain service records to support all billing/invoicing and that the vendor submit this information with their billings/invoices to the regional center. Subsection (1) has also been added, however, it contains language which was previously a part of subsection (a). The additions of these two subsections ensures compliance with the federal requirements the Department is to follow in order to insure financial accountability for funds expended for home and community-based services.

Chapter 3. Community Services
Subchapter 9. Rate-Setting Methodology For Community-Based Day Programs
Article 4. Service Contracts
Section 57540. Service Contracts Between the Regional Center and
Community-Based Day Program Vendors
Subsections (c)(3), (e)(2) and (e)(3)

Specific Purpose:

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

Rationale for Necessity:

In order for the State to receive additional funding from the federal government for consumers who are on the Waiver, subsection (c)(3) is being changed to require a contract provision specifying that any units of service reimbursed other than a daily or hourly rate shall also be maintained pursuant to Section 50604(d)(3)(E), as applicable. Changes to subsection (e)(2) will require vendors to maintain information on services consumers receive, in addition to information on the program. Subsection (e)(3) is being added to require that vendors submit the billings/invoices of information required by the federal government to the regional centers. The changes of these subsections ensures compliance with the federal requirements the Department is to follow in order to insure financial accountability for funds expended for home and community-based services.

**Chapter 3. Community Services
Subchapter 18. Transportation Service
Article 2. General Provisions
Section 58510. General Requirements Applicable to Regional Centers
Subsections (b)(3) and (c)(2)**

Specific Purpose:

Subsection (b)(3) is 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.

Rationale for Necessity:

In order for the State to receive additional funding from the federal government for consumers who are on the Waiver, changes to subsection (c)(2) are being proposed to clarify the information the regional centers are required to provide to the Department on a monthly basis. The language in subsection (b)(3) is being deleted as it pertains to Fiscal Year 1991-92.

**Chapter 3. Community Services
Subchapter 19. Transportation Service
Article 8. Supported Living Service
Section 58671. Contract Requirements
Subsections (h) and (i)**

Specific Purpose:

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)(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.

Rationale for Necessity:

In order for the State to receive additional funding from the federal government for consumers who are on the Waiver, two new subsections are being added specifying that SLS vendor contracts must include a provision requiring the vendor to maintain service records to support billing/invoicing and that those billings/invoices be submitted. The additions of these two subsections ensure compliance with the federal requirements the Department is to follow in order to insure financial accountability for funds expended for home and community-based services.

Additional Findings:

The five people who attended the public hearing on December 8, 2004 provided oral comments which were not substantially different from the written comments they provided.

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.

The Department has determined that the proposed regulations will not have: 1) a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states as the proposed regulations clarify the information that service providers are to maintain for each consumer to whom they provide services; or 2) a significant effect on housing costs. The Department is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.