

NOTICE OF PROPOSED RULEMAKING

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

RECORDS MAINTENANCE

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 50608, Contract Duties and Responsibilities; Division 2, Chapter 3, Subchapter 2, Article 2, Section 54326, General Requirements for Vendors and Regional Centers; Division 2, Chapter 3, Subchapter 2, Article 4, Section 54370, Termination of Vendorization for Noncompliance; Division 2, Chapter 3, Subchapter 4, Article 2, Section 56003, Residential Services Orientation; Division 2, Chapter 3, Subchapter 4.1, Article 3, Section 56082, Contract and Vendorization; Division 2, Chapter 3, Subchapter 9, Article 4, Section 57540, Service Contracts Between the Regional Center and Community-Based Day Program Vendors; Division 2, Chapter 3, Subchapter 18, Article 2, Section 58510, General Requirements Applicable to Regional Centers; Division 2, Chapter 3, Subchapter 19, Article 8, Section 58671, Contract Requirements.

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 December 8, 2003. 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 December 8, 2003. The hearing will be held in Room 360 at the Bateson Building, 1600 9th 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.

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/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). 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. The Department also proposes giving regional centers the authority to terminate vendorization which threatens the health and safety of the consumer(s).

Section 50604(d)(2), (3), (3)(A), (3)(B), (3)(C), (3)(D), and (3)(E)

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)

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).

Section 54326(a)(3)(B)

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).

Section 54370(a) and (b)(7)

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).

Section 56003(a)(1)(A), (B), (C), (D), (E), (F), (G)

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.

Section 56082(a)(1), (2) and (3)

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.

Section 57540(c)(3) and (e)(2)

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 require that vendors agree to maintain service information in accordance with the provisions of Section 50604(d)(1) through (3)(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.

Section 58510(b)(3) and (c)(2)

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 monthly.

Section 58671(h) and (i)

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.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations will affect small businesses.

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 has been assessed relative to the extent that it will create new jobs within the State of California, help in the creation of new business within the State and expansion of businesses currently doing business within the State of California. Based on the Department's findings it is anticipated that the proposed action will have no economic effect on the creation or expansion of new jobs and new businesses within the State of California. The Department has also determined this proposed action will not eliminate jobs or existing businesses.

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, 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.

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
Sacramento, CA 95814
Attention: Lisa Primeaux
Phone: (916) 654-2199 Facsimile: (916) 654-1578
E-mail Address: lprimeau@dds.ca.gov

If the above person is unavailable, you may also contact Glenda Davis, Chief, Community Rate Section at (916) 654-2201.

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' 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.

ABAILABILITY 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.