NOTICE OF PROPOSED RULEMAKING

SUBJECT: Local Educational Agency (LEA) Program Specialized Medical Transportation Services, DHCS-12-015

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) proposes to adopt Section 51190.4.1 and amend Sections 51231.1, 51231.2, 51323, 51360 and 51491, Title 22, Division 3, Chapter 3 of the California Code of Regulations (CCR), after considering all public comments, objections, and recommendations.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to **LEA Program Specialized Medical Transportation Services, DHCS-12-015** and submit using any of the following methods:

Mail Delivery: Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX: (916) 440-5748

Email: regulations@dhcs.ca.gov

The written comment period closes at **5:00 p.m., on September 14, 2015**; any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 p.m.,** on this date, for consideration.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Welfare and Institutions (W&I) Code Sections 10725, 14105, 14115.8, 14124.5 and 14132.06; and Health and Safety Code Section 20.

These regulations implement, interpret, or make specific the following:

W&I Code Sections 14000, 14018.2, 14053, 14059, 14100.2, 14105, 14115.8, 14124.1, 14124.5, 14131, 14132, 14132.06, 14132.15, 14133, 14133.1, 14133.3, 14133.6, 14133.9, 14136.3, 14136.5 and 14170; Sections 500 et seq., 4980 and 4981, Business and Professions Code; Sections 44225(b)(4), 44268, 44874, 44877, 49600, 49422, 49423.5, 49426 and 56340 et seq., Education Code; Section 95020, Government Code; Sections 1685 and 1686, Health and Safety Code; Section 300.34, Title 34 Code of Federal Regulations (CFR); and Sections 431.53 and 440.130, Title 42 CFR.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Title XIX of the Social Security Act provides for the federal Medicaid Program. In California, the federal Medicaid Program is known as the California Medical Assistance Program, or the Medi-Cal Program and is administered by the Department. The Medi-Cal Program provides qualified low-income Californians (primarily families, children, pregnant women, persons with disabilities and seniors) with vital health care services.

The Local Educational Agency Medi-Cal Billing Option Program (LEA Program), established in 1993, in conjunction with the California Department of Education (CDE), provides health care services including related services, such as specialized medical transportation services for LEA eligible beneficiaries within the school environment. Under the LEA Program, enrolled school districts and county offices of education, choosing to participate, are reimbursed by the federal government for services provided to LEA eligible beneficiaries. The LEA Program is locally funded. Local Educational Agencies fund the state share of Medicaid expenditures through a Certified Public

Expenditures (CPE) program, in accordance with Title 42, Code of Federal Regulations (CFR), Section 433.51.

Since the 1970s, schools have been mandated by the Individuals with Disabilities Education Act (IDEA), as set forth in Title 20, United States Code (USC), Section 1400 et seq., to provide appropriate educational services to all children with disabilities. Specialized medical transportation services to Medicaid-eligible children under IDEA can be claimed under the Medicaid Program, as stated in the Centers for Medicare & Medicaid Services' (CMS) Medicaid and School Health: A Technical Assistance Guide, August 1997 (p. 59), when the following conditions are met:

- The child receives transportation to obtain a Medicaid-covered service (other than transportation).
- Both the Medicaid-covered service and the need for transportation are included in the child's Individualized Education Program (IEP) or Individualized Family Services Plan (IFSP).

Assembly Bill (AB) 2608, (Chapter 755, Statutes of 2012), amended W&I Code, Sections 14115.8 and 14132.06 to require, among other provisions, that the Department ensure schools receive reimbursement for all eligible services they provide by eliminating any regulatory constraints that exceed federal requirements pertaining to the LEA Program. This proposed regulatory action will align state regulations with W&I Code Sections 14115.8 and 14132.06. These regulations are also consistent with the description of related services (including transportation services) under Title 34, CFR, Section 300.34, and with the requirements under the IDEA to provide appropriate educational services to children with disabilities.

Anticipated Benefits or Goals of the Regulations

This regulatory proposal supports the intent of the initiating legislation as specified under W&I Code Section 14000, which states the purpose of Chapter 7, Basic Health Care, is to afford qualifying individuals (such as the aged or disabled) employment of health care services in a manner equitable to the general public and without duplication of benefits available under other federal or state laws.

Within Chapter 7, Section 14124.5 further specifies that the Director may establish regulations as are necessary or proper to carry out the purpose and intent of this Chapter, which includes outlining the uniform schedule of health care benefits under the Medi-Cal program, as described under Section 14131, which includes medical transportation in Section 14132.06.

The amendments proposed through this regulatory action will address the matter of establishing a clear definition for "Local Educational Agency (LEA) Specialized Medical Transportation Services" and will include related regulatory amendments that promote the availability of these vital school-based health related services and consistency with state and federal mandates. Accessibility to LEA specialized medical transportation services directly benefits LEA eligible beneficiaries by allowing them access to critical LEA services. In addition to meeting the goals of the authorizing statutes as described

above, these proposed regulations ensure the proper and efficient administration of the Medi-Cal program and the LEA Program in accordance with the federal and state laws that govern the Program's rules of participation and funding.

Consistency and Compatibility with Existing State Regulations
The Department has conducted an evaluation of the related existing state regulations under Title 22, Division 3 and has determined that the proposed regulations are consistent with and compatible with those regulations. An automated search of Title 22, Division 3 using the following keywords: "Local Educational Agency," "LEA," "Medical Transportation Services," and "Specialized Transportation Services," was conducted via Westlaw and yielded no conflicting state regulations.

Objectives/Proposed Amendments
This proposed regulatory action will provide a uniform interpretation of LEA Specialized Medical Transportation Services and related provisions; offer conformity of terms used in the regulations; and align the regulations with state law, federal law, federal regulation and federal directives related to school-based health care services. This regulatory action will specifically accomplish the following:

- Adopt Section 51190.4.1 as a definition for "Local Educational Agency (LEA) Specialized Medical Transportation Services."
- Amend the following sections, to be consistent with provisions under W&I Code Section 14132.06 related to medical transportation: 51231.1, Litter Van Requirements; 51231.2, Wheelchair Van Requirements; and 51323, Medical Transportation Services.
- Amend the following sections, to be consistent with a federal directive and a changed state law, which do not allow reimbursement for off-site transportation services if the service is specified in an Individualized Health and Support Plan (IHSP): 51360, Local Educational Agency (LEA) Services; and 51491, Local Educational Agency (LEA) Eligibility for Payment.
- Include non-substantive grammar, typographical, re-designation, cross reference and related amendments.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Fiscal Impact Statement

A. Costs to any Local Agency or School District that is not reimbursable by the State: None.

Costs to any Local Agency or School District that is required to be reimbursed under Part 7 (commencing with Section 17500), Division 4 of the Government Code: None.

Approximate annual savings to Local Agencies or School Districts:

$7,210,000 for Fiscal Year 2014-15
$7,931,000 for Fiscal Year 2015-16
$8,724,000 for Fiscal Year 2016-17

B. Costs or Savings to any State Agency:
There are no additional costs or savings as a result of the proposed regulations. Any additional workload will be absorbed with current staffing levels. LEAs fund the State share of Medicaid expenditures through Certified Public Expenditures.

C. Costs or Savings in Federal Funding to the State:
Additional expenditures in the current Fiscal Year (approximate):

$7,210,000 for Fiscal Year 2014-15

D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Governments: None.

Cost Impacts on a Representative Private Person or Business:
This regulatory action will impact providers who choose to participate in the LEA Program. See below "Impact on Jobs and Businesses" for discussion related to any impact on LEA service providers.

Mandates on Local Agencies or School Districts
The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Significant Statewide Adverse Economic Impact Affecting Businesses
The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (Analysis)

In accordance with Government Code Section 11346.3(b)(1), the Department has made the following assessments and has determined that the proposed regulations would not significantly affect the following:

(1) The creation or elimination of jobs in California.
(2) The creation or elimination of businesses in California.
(3) The expansion of businesses currently doing business in California.

Impact on Jobs and Businesses
Participation in the LEA Program is voluntary for LEA's, LEA service providers and LEA eligible beneficiaries. The proposed regulations would likely increase the amount of LEA specialized medical transportation services provided to LEA beneficiaries. This increase in services would raise the amount of claims submitted by LEAs for reimbursement of LEA specialized medical transportation services. This in turn will increase the amount of federal reimbursement provided to LEAs as well as the amount of reimbursement to the provider of the LEA specialized medical transportation services. However, it is not anticipated that this increase in reimbursement would have a significant impact on the creation or elimination of jobs, the creation of business, the elimination of existing business or the expansion of businesses in California.

Benefits of the Proposed Regulation
The Department has determined that the proposed regulations will not affect worker safety or the state's environment. However, the proposed regulations will benefit the health and welfare of California residents, specifically California children with disabilities (LEA eligible beneficiaries). The proposed regulations will promote the availability of critical school based health related services, specifically LEA specialized medical transportation services. This regulatory action also aligns state regulations with provisions under W&I Code Sections 14115.8 and 14132.06; Title 20, USC, Section 1400 et seq.; and Title 34, CFR Section 300.34.

Effect on Small Businesses
The Department has determined that the proposed regulations would only affect small businesses or contracted service providers that choose to provide LEA specialized medical transportation services through the LEA Program.

Housing Costs Determination
The Department has made the determination that the regulations would have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Regulations related to the LEA Program are located in Title 22, CCR, Chapter 3, Health Care Services. Using this regulatory proposal to make amendments related to LEA specialized medical transportation is the most effective and convenient method to provide current information to those affected by the regulations. This proposed regulatory action will align state regulations with W&I Code Section 14115.8. These

regulations are also consistent with the description of related services (including transportation services) under Title 34, CFR, Section 300.34, and with the requirements under the IDEA to provide appropriate educational services to children with disabilities.

ASSISTIVE SERVICES

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email – regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the CCR or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code Section 11346.6.

CONTACT PERSONS

Inquiries regarding the proposed regulations described in this notice may be directed to Rick Record, Chief, Administrative Support/LEA Program Unit, at (916) 552-9065.

All other inquiries concerning the regulatory action described in this notice may be directed to Lori Manieri, Office of Regulations, at (916) 650-6825, or to the designated backup contact person, Jordan Espey, at (916) 445-1514.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at:
http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.