NOTICE OF PROPOSED RULEMAKING

SUBJECT: Hospice Care, DHCS-14-021

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) proposes to amend Sections 51180 and 51349, 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 Hospice Care, DHCS-14-021 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 pm on September 8, 2015**, any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 pm** 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:

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

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

Sections 14053, 14132, and 14132.74 and 14133.85, W&I Code; 42 United States Code Sections 1395d (a)(4), 1395d (d)(1), 1396d (o) and 1397jj (a)(23); and 42 Code of Federal Regulations Section 418.21.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title XIX of the Social Security Act (SSA) 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 low-income families, children, pregnant women, seniors, and persons with disabilities with vital health care services.

Hospice benefits are covered under the Medi-Cal program for certified terminally ill beneficiaries [W&I Code Section 14132(w)]. An individual is certified as terminally ill if the individual has a medical prognosis that his or her life expectancy is six months or less. Hospice benefits are covered when provided by a designated hospice, which include hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, or any licensed health care provider who has been certified by Medicare to provide hospice care and is enrolled as a Medi-Cal hospice care provider. Like any other benefit in Medi-Cal, the coverage for this benefit shall continue to be available only to the extent that no additional costs are incurred [W&I Code Section 14132(a)].

Prior to the Affordable Care Act of 2010 (ACA), specifically Section 2302, entitled "Concurrent Care for Children," and pursuant to Title 22, California Code of Regulations (CCR), Sections 51180 and 51349, terminally ill Medicaid beneficiaries who elect hospice care are denied curative treatment. Section 2302 of the ACA amends Sections 1905(o)(1) and 2110(a)(23) of the SSA to provide that an election of the hospice benefit by or on behalf of a Medicaid eligible child shall not constitute a waiver of rights to receive curative treatment. Changes contained in this proposal relating to concurrent care for children are mandated by federal law.

Hospice benefit periods, under Title 22, CCR, Section 51349(e) currently specify that hospice elections may be made for up to two periods of 90 days each, one subsequent period of 30 days, and one 180 day extension of the 30 day period, and that services shall not be covered beyond 390 days. These benefit periods are not consistent with those under the Medicare hospice program, specifically with Title XVIII SSA, Section 1812(d)(1) and Title XIX SSA, Section 1905 (o)(2)(B) that establish hospice benefit periods (two 90 day periods followed by an unlimited number of 60 day periods). Changes contained in this proposal relating to hospice benefit periods are mandated by federal law.

Anticipated Benefits and Goals of the Regulations

This regulatory proposal is necessary in order to bring state regulations into conformity with the delivery of hospice care as specified under federal laws and through the Medicare hospice program, as described above.

In addition, these proposed amendments are consistent with the current provision of hospice care under the Medi-Cal program, as specified in the California State Plan [Attachments 3.1-A and 3.1-B (pages 6, 7 & 22)], which in part, specifies that hospice care under the Medi-Cal program are covered when provided by a Medicare certified hospice in the same scope and duration as Medicare.

This regulatory proposal also 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 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 [including benefits under Article 4 and Section 14021 (Mental Health Services)].

The amendments proposed through this regulatory action will address the matter of updating the definition and the scope and duration of hospice care benefits under the Medi-Cal program, which are currently in practice. The proposed regulations will directly benefit Medi-Cal hospice care providers and will also benefit the health and welfare of California residents by clearly specifying the scope and duration of hospice care for Medi-Cal beneficiaries. 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 in accordance with the federal and state laws that govern the Program’s rules of participation, funding and the authorized schedule of benefits.

Consistency and Compatibility with Existing State Regulations
The Department has conducted an evaluation of the related existing state regulations under Title 22 CCR, Division 3 and has determined that the regulations are consistent with and compatible with those regulations. An automated search of Title 22, Division 3 using the following keywords "hospice," "palliative," and "curative" was conducted via Westlaw and yielded no conflicting state regulations.

Regulatory Sections
This regulatory action specifically accomplishes the following:

- Amends Section 51180 to correct a typographical error and to allow curative treatment under hospice care for a child, under the age of 21.
- Amends Section 51349 to correct a cross reference to Section 51180.7; adds provisions related to the allowance of curative treatment as specified under Section 51180; clarifies that only adults waive curative services once a hospice election is made, and adds hospice benefit periods that are consistent with federal law and the Medicare program.

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 required to be reimbursed under Part 7 (commencing with Section 17500), Division 4 of the Government Code: None

Costs or Savings to Local Government (Nonreimbursable): None

(b) Costs or Savings to any State Agency: None

(c) Costs or Savings in Federal Funding to the State: None

(d) Other Nondiscretionary Costs or Savings on State or Local Government (including Revenue Changes): None

All cost impacts, known to the Department, at the time the notice of proposed action, was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:
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.

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 businesses, 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

This regulatory proposal aligns state regulations related to the definition and scope and duration of hospice care, with those provided through the Medicare program. These regulations will only affect providers, who offer hospice care under Medi-Cal and the beneficiaries, who receive these services. The proposed amendments, which will conform not only with federal standards but also to established practice, are not anticipated to have an impact on the creation or elimination of jobs, the creation of new businesses, 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 specifically affect worker safety or the state's environment; however, the proposed regulations will benefit the health and welfare of California residents by providing Medi-Cal beneficiaries with hospice care that corresponds to the services provided under Medicare. The proposed regulations will promote the availability of critical hospice care; align state regulations with provisions under federal and state law, and the California State Plan; and ensure the proper and efficient administration of Medi-Cal, in accordance with federal and state laws.

Effect on Small Businesses

The Department has determined the proposed regulations would only affect small businesses that provide hospice care under Medi-Cal.

Housing Costs Determination

The Department has determined the proposed 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 Medi-Cal benefits (including hospice care) are located in Title 22, CCR, Chapter 3, Health Care Services. Using this regulatory proposal to make amendments related to hospice care is the most effective and convenient method to provide current information for providers and beneficiaries who receive these services. This regulatory action will also align these regulations with federal and state law and with the California State Plan, as described above.

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 California Code of Regulations 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 Janice Spitzer, Chief, Benefits Analysis Section at (916) 552-9422.

All other inquiries concerning the action described in this notice may be directed to Kenneisha Moore, Office of Regulations, at (916) 440-7755, or to the designated backup contact person, Lori Manieri, at (916) 650-6825.

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 regulatory 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.