INITIAL STATEMENT OF REASONS

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 of Health Care Services (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 Medi-Cal for certified terminally ill beneficiaries [Welfare and Institutions (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 Medi-Cal, as specified in the California State Plan [Attachments 3.1-A and 3.1-B (pages 6, 7) and Limitations on Attachments 3.1-A and B page 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 Medi-Cal, 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 Medi-Cal, 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 Medi-Cal in accordance with the federal and state laws.

The specific purpose and rationale for the proposed amendments under Title 22, CCR, Sections 51180 and 51349(d) are described below:

<u>Section 51180</u>
Subsection (a)(1) - The letter ‘r’ is inserted in the term ‘services,’ which is necessary to correct a spelling error.

Subsection (b) - This amendment is necessary to update the regulations to be compatible with the ACA, specifically Section 2302 (Concurrent Care for Children); and with Sections 1905(o)(1) and 2110(a)(23) of SSA, which allow for curative treatment for children. A child has been determined to be “under the age of 21,” which is consistent with Title 42, United States Code (U.S.C.) Section 1396d(a)(i) and with W&I Code Section 14132.74(b) that describes beneficiaries eligible to receive the pediatric palliative (hospice) care benefit.

<u>Section 51349</u>
Subsection (d) - This amendment is necessary to correct an inaccurate reference to the CCR Section that defines a “Representative.”

Subsection (d)(2)(A) - This amendment is necessary to distinguish hospice care for adults which is palliative (only) from hospice care for children, as specified under new Subsection (d)(2)(B), which may be palliative and curative pursuant to Section 2302 of the ACA.

Subsection (d)(2)(B) - This amendment is necessary to comply with Section 2302 of the ACA, which amended Sections 1905(o)(1) and 2110(a)(23) of SSA relating to concurrent care for children under the age of 21. As described under Section 51180(b) above, a "child" is considered to be an individual, who is under the age of 21, which is consistent with U.S.C. Section 1396d(a)(i) and W&I Code Section 14132.74(b).

Existing Subsection (d)(2)(B) is re-designated to (d)(2)(C) to account for new Subsection (d)(2)(B).

Subsection (d)(2)(C) – "For adults" is inserted to clarify that only adults waive curative services once they make a hospice election in accordance with Subsection (d)(2)(A).

Subsection (e) - This amendment is necessary to add clarity by adding a cross reference to Subsection (d), which describes elections. This amendment also makes the regulations consistent with the duration of the hospice benefit periods under the federal law for Medicare hospice programs [Title XVIII SSA, Section 1812(d)(1) and Title XIX SSA, Section 1905 (o)(2)(B)]; and with the California State Plan (Attachments 3.1-A page 7 and 3.1-B page 6).

Subsection (e)(1) - This amendment is necessary to make the regulations consistent with proposed changes under Subsection (e), and with the duration of the hospice benefit periods under the federal law for Medicare hospice programs [Title XVIII SSA, Section 1812(d)(1) and Title XIX SSA, Section 1905 (o)(2)(B)]; and with the California State Plan (Attachments 3.1-A page 7 and 3.1-B page 6).

Subsection (e)(4) - This amendment is necessary to make the regulations consistent with proposed changes under Subsection (e) and with the duration of the hospice benefit periods under the federal law for Medicare hospice programs [Title XVIII SSA, Section 1812(d)(1) and Title XIX SSA, Section 1905 (o)(2)(B)]) and with the California State Plan (Attachments 3.1-A page 7 and 3.1-B page 6).

DOCUMENTS RELIED UPON

California State Plan Amendment (SPA 12-011), available at:
http://www.dhcs.ca.gov/formsandpubs/laws/Documents/State%20Plan%20Amendment%2012-011%20with%20Enclosures.pdf

- California State Plan Attachment 3.1-A, page 7, July 1, 1991
- California State Plan Attachment 3.1-B, page 6, July 1, 1991
- California State Plan Limitations on Attachment 3.1-A, page 22, October 1, 2012
- California State Plan Limitations on Attachment 3.1-B, page 22, October 1, 2012

STATEMENTS OF DETERMINATION

ALTERNATIVES CONSIDERED
The Department has determined 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 this regulatory action was taken, would be as effective and less burdensome to affected private persons than the regulatory 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.

LOCAL MANDATE DETERMINATION
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.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT
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.

The Department has determined the proposed regulations would not significantly affect the following within the State of California:

1. The creation or elimination of jobs;
2. The creation of new businesses or the elimination of existing businesses; and
3. The expansion of businesses currently doing business.

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 Regulations

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.