State of California—Health and Human Services Agency
Department of Health Care Services

TOBY DOUGLAS
DIRECTOR

EDMUND G. BROWN JR.
GOVERNOR

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Medi-Cal Eligibility for IHSS Recipients, DHCS-05-020

PUBLIC PROCEEDINGS: Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Medi-Cal program currently provides a safety net of full-scope health care benefits to approximately 7.3 million low-income individuals residing in California. These individuals must meet certain restrictive resource and/or income criteria and primarily includes pregnant women; children under 21; individuals receiving California Work Opportunity and Responsibility to Kids benefits and similarly situated families; and the aged, blind, and disabled population. The Medi-Cal program is free to most participants; however, some individuals who have monthly income in excess of certain amounts based upon family size must pay or obligate to pay certain amounts of health care expenses each month in which there are medical expenses before the Medi-Cal program will pay for the remainder of the medical expenses for that month. The Medi-Cal program is comprised of both federal and state funds, a funding ratio of approximately 50/50. The American Recovery and Reinvestment Act (ARRA), increased California's Federal Medical Assistance Percentage (FMAP) from 50 percent to 61.6 percent through December 31, 2010, but legislation in Congress could extend this higher level of funding through June 30, 2011.

42 Code of Federal Regulations (CFR), Section 431.10 requires that states designate a single state agency to administer their Medicaid program as a condition to receive federal funds under Title XIX of the Social Security Act. In California, the Department is designated as the single state agency for Medi-Cal; however, the counties determine the eligibility of the individual participants based on policies and procedures established by the Department.

The Department authorizes Medi-Cal county eligibility workers (EWs), within the county's Medi-Cal chain of command, who have received Title XIX Medi-Cal eligibility training, to

process Medi-Cal applications and redeterminations using Medi-Cal rules. Only these trained Medi-Cal EWs are authorized to provide these Medi-Cal eligibility determinations. This workload is funded by 50 percent State General Funds and 50 percent federal Title XIX funds. Department of Social Services' social workers are funded by Title XX and are not among the agencies listed in federal regulations as permitted to conduct Medi-Cal eligibility determinations.

California Code of Regulations (CCR), Sections 50035.5, 50145, 50179.5, 50183, 50245, and 53845 currently include provisions that indicate that applications and eligibility for In-Home Supportive Services (IHSS) are also applications for the Medi-Cal program and/or that IHSS individuals receive automatic Medi-Cal and no application or separate Medi-Cal eligibility determination is required. In order to comply with federal regulations (42 CFR Section 431.10) and for the State to receive Federal Financial Participation for IHSS recipients' services and county administrative expenses associated with those services, Sections 50035.5, 50145, 50179.5, 50183, and 53845 are proposed to be amended and Section 50245 is proposed to be repealed to remove these provisions. County EWs within the Medi-Cal chain of command, who are trained in Title XIX Medi-Cal eligibility rules and processes and funded by Title XIX funds, must complete Medi-Cal determinations and redeterminations.

AUTHORITY: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code.

REFERENCE: Sections 11004, 12305, 12305.5, 14005, 14005.1, 14016, 14019, 14050.1, 14087.3 and 14087.4, Welfare and Institutions Code.

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m., on May 20, 2011, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413; or

2. By fax transmission: (916) 440-5748; or

3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-05-020" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Tammy Kaylor of the Medi-Cal Eligibility Division, at (916) 327-0406.

All other inquiries concerning the action described in this notice may be directed to Lori Manieri of the Office of Regulations, at (916) 650-6825, or to the designated backup contact person, Lynette Cordell, at (916) 440-7695.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-05-020.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: 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.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

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 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the 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.

FISCAL IMPACT ESTIMATE:

A. Fiscal Effect on Local Government: The ongoing cost of $9,902,000 in total funds involved with this regulation is included in the Medi-Cal County Administration base estimate.

B. Fiscal Effect on State Government: The ongoing cost of $4,951,000 in general funds associated with this regulation is included in the Medi-Cal County Administration base estimate.

C. Fiscal Effect on Federal Funding of State Programs: The ongoing cost of $4,951,000 in federal funds associated with this regulation is included in the Medi-Cal County Administration base estimate.

D. 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.

E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None.

DETERMINATIONS: 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.

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.

The Department has determined that the proposed regulations would not significantly affect the following:

(1) The creation or elimination of jobs within the State of California.

(2) The creation of new businesses or the elimination of existing businesses within the State of California.

(3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations would not affect small business. The proposed action simply brings the regulations into conformity with federal regulations regarding the use of a single state agency to administer the Medi-Cal Program and the process for Medi-Cal eligibility determinations and redeterminations. These proposed regulations do not impose any additional reporting, record.keeping, or other compliance requirements on small businesses.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS: 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

No public hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing 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.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, .MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413; voice (916) 440-7695; and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

DHCS-05-020
Dated: March 15, 2011

DEPARTMENT OF HEALTH CAR SERVICES

Originally Signed

Toby Douglas
Director