State of California
Office of Administrative Law

NOTICE OF APPROVAL OF REGULATORY ACTION
Government Code Sections 11349.3
OAL Matter Number: 2015-1120-03
OAL Matter Type: Regular (S)

In re:
Department of Health Care Services
Regulatory Action:
Title 22, California Code of Regulations

Adopt sections: [Blank]
Amend sections: [51180, 51349]
Repeal sections: [Blank]

This rulemaking by the Department of Health Care Services amends sections in Title 22 of the California Code of Regulations regarding hospice benefits under the Medi-Cal program for certified terminally ill beneficiaries. This action clearly specifies the scope and duration of hospice care for Medi-Cal beneficiaries and that children under hospice care who are under the age of 21 are allowed curative care. With these changes, the Medi-Cal provisions will be consistent with federal law and the Medicare program.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2016.

Date: January 5, 2016

[Original Signed]
Beverly J. Johnson, Deputy Director

For: DEBRA M. CORNEZ, Director

Original: Jennifer Kent
Copy: Kenneisha Moore

[Stamp]
[REGULAR]

STATE OF CALIFORNIA – OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 01-2013)
OAL FILE NUMBERS
NOTICE FILE NUMBER: **Z-** 2015-0713-02
REGULATORY ACTION NUMBER: 2015-1120-03S
EMERGENCY NUMBER: [Blank]

For use by Office of Administrative Law (OAL) only
NOTICE: [Blank]

REGULATIONS: [Date Stamp]
2015 NOV 20 PM 4:08
OFFICE OF ADMINISTRATIVE LAW

For Use by Secretary of State Only
[Date Stamp]
Endorsed Filed in the office of the Secretary of State of the State of California
JAN 5 2016
2:10 pm

AGENCY WITH RULEMAKING AUTHORITY: Department of Health Care Services
AGENCY FILE NUMBER (if any): DHCS-14-021

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE: [Blank]
   TITLES: [Blank]
   FIRST SECTION AFFECTED: [Blank]
2. REQUESTED PUBLICATION DATE: [Blank]
3. NOTICE TYPE
   Notice re Proposed Regulatory Action: [Blank]
   Other: [Blank]
4. AGENCY CONTACT PERSON: [Blank]
   TELEPHONE NUMBER: [Blank]
   FAX NUMBER (Optional): [Blank]

OAL USE ONLY

ACTION ON PROPOSED NOTICE
Approved as Submitted: [Blank]
Approved as Modified: [Blank]
Disapproved/Withdrawn: [Blank]
NOTICE REGISTER NUMBER: 2015, 30-Z
PUBLICATION DATE: 7/24/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)
1a. SUBJECT OF REGULATIONS: Hospice Care
1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBERS:
[Blank]
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLES AND SECTIONS **(Including Title 26, if toxics related)**
SECTIONS AFFECTED **(List all section numbers individually. Attach additional sheet if needed.)**
ADOPT: [Blank]
AMEND: 51180 and 51349
REPEAL: [Blank]
TITLES: 22

3. TYPE OF FILING
Regular Rulemaking (Gov. Code Section 11346): [Checked]
Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code Sections 11349.3, 11349.4): [Blank]
Emergency (Gov. Code, Section 11346.1(b)): [Blank]
Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code Sections 11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute: [Blank]
Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, Section 11346.1): [Blank]
Emergency Readopt (Gov. Code, Section 11346.1(h)): [Blank]
File & Print: [Blank]
Changes Without Regulatory Effect (Cal. Code Regs., Title 1, Section 100): [Blank]
Print Only: [Blank]
Other (Specify): [Blank]

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs, Title 1, Section 44 and Gov. Code Section 11347.1): [Blank]

5. EFFECTIVE DATE OF CHANGES (Gov. Code, Sections 11343.4, 11346.1(d)); Cal. Code Regs, Title 1, Section 100):
Effective January 1, April 1, July 1, or October 1 (Gov. Code Section 11343.4(a)): [Checked]
Effective on filing with Secretary of State: [Blank]
Section 100 Changes Without Regulatory Effect: [Blank]
Effective other (Specify): [Blank]

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY.
Department of Finance (Form STD. 399) (SAM Section 6660): [Checked]
Fair Political Practices Commission: [Blank]

State Fire Marshal: [Blank]
Other (Specify): [Blank]

7. CONTACT PERSON: Kenneisha Moore
TELEPHONE NUMBER: 916-440-7695
FAX NUMBER (Optional): [Blank]
EMAIL ADDRESS (Optional): Kenneisha.Moore@dhcs.ca.gov

8. I certify that the attached copy of the regulations is a true and correct copy of the regulations identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.
SIGNATURE OF AGENCY HEAD OR DESIGNEE: [Original Signed]
TYPED NAME AND TITLE OF SIGNATORY: Jennifer Kent, Director
DATE: 11/19/15

For use by Office of Administrative Law (OAL) only

[Date Stamp]
Endorsed Approved
JAN 05 2016
Office of Administrative Law

(1) Amend Section 51180 as follows:

§ 51180. Hospice Care.

(a) Hospice care means the provision of palliative and supportive items and services described below to a terminally ill individual as defined in Section 51180.2, who has voluntarily elected to receive such care in lieu of curative treatment related to the terminal condition, by a hospice provider or by others under arrangements made by a hospice provider:

(1) Nursing se[begin underline]r[end underline]vices;

(2) Physical or occupational therapy, or speech-language pathology;

(3) Medical social services under the direction of a physician;

(4) Home health aide and homemaker services;

(5) Medical supplies and appliances;

(6) Drugs and biologicals;

(7) Physician services;

(8) Short-term inpatient care;

(9) Counseling, including bereavement, dietary and spiritual counseling;

(10) Any other item or service for which payment may otherwise be made under the Medi-Cal Program.

[begin underline](b) Hospice care for a child, under the age of 21, shall also include the items and services specified in subsection (a) for care related to curative treatment.[end underline]

Note: Authority cited: [begin underline]Section 20, Health and Safety Code; and[end underline] Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053[begin underline],[end underline] [begin strikeout]~~and~~[end

strikeout] 14132[begin strikeout]~~,~~[end strikeout] [begin underline]and 14132.74[end underline], Welfare and Institutions Code[begin underline]; and 42 U.S.C. Sections 1395d (a)(4), 1395d (d)(1), 1396d (o) and 1397jj (a)(23) [end underline].

(2) Amend Section 51349 as follows:

§ 51349. Hospice Care.

Subsections (a) through (c) – No Changes

(d) An individual who elects to receive hospice care, or that individual's representative as defined in Section 51180. [begin strikeout]~~3~~[end strikeout] [begin underline]7[end underline] must file an election statement with the hospice providing the care. The election statement shall include:

(1) Identification of the hospice.

(2) The individual's or representative's acknowledgement that:

(A) [begin strikeout]~~He or she has full understanding that the h~~[end strikeout] [begin underline]H[end underline]ospice care [begin underline]provided to adults shall[end underline] [begin strikeout]~~given as it relates to the individual's terminal illness will~~[end strikeout] be palliative rather than curative in nature[begin underline], or[end underline] [begin strikeout]~~.~~[end strikeout]

(B) [begin underline]Hospice care provided to a child, under the age of 21, may be palliative and curative at the discretion of the treating physician.[end underline]

[begin strikeout]~~(B)~~[end strikeout] [begin underline](C)[end underline] [begin underline]For adults,[end underline] [begin underline]c[end underline][begin strikeout]~~C~~[end strikeout]ertain Medi-Cal benefits as specified in subsection (f) are waived by the election.

(3) The effective date of the election.

(4) The signature of the individual or representative.

(e) Elections[begin underline], as specified under subsection (d),[end underline] may be made for up to two periods of 90 days each[begin strikeout]~~, one subsequent period of 30 days, and one 180-day extension of the 30-day period. Hospice services shall not be covered beyond 390 days.~~[end strikeout] [begin underline]and for an unlimited number of subsequent periods of 60 days each.[end underline]

(1) Payment shall be made for hospice care on behalf of an individual who voluntarily elects such care only during the two periods of 90 days each [begin strikeout]~~and one subsequent period of 30 days and any subsequent extension~~[end strikeout] [begin underline]and during the unlimited number of subsequent periods of 60 days each[end underline] during the individual's lifetime.

(2) An election period shall be considered to continue through the initial election period and through subsequent election periods as long as the hospice provider agrees to renew the election and as long as the individual:

(A) Remains in the care of the hospice; and

(B) Does not revoke the election.

(3) An individual's voluntary election may be revoked or modified at any time. To revoke the election of hospice care, the individual or representative must file a statement with the hospice that includes the following information:

(A) A signed statement that the individual or representative revokes the individual election for Medi-Cal coverage for the remainder of the election period.

(B) The effective date, which may not be earlier than the date the revocation is made.

(4) Revocation shall constitute a waiver of the right to hospice care during the remainder of the current 90 or [begin strikeout]~~30-~~[end strikeout] [begin underline]subsequent 60[end underline]-day election period[begin underline]s[end underline] [begin strikeout]~~plus any extension~~[end strikeout].

Subsections (e)(5) through (j) – No changes

Note: Authority cited: [begin underline]Section 20, Health and Safety Code; and[end underline] Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132[begin underline],[end underline] [begin strikeout]~~and~~[end strikeout] [begin underline]14132.74 and[end underline] 14133.85, Welfare and Institutions Code[begin underline]; 42 U.S.C. Sections 1395d (a)(4), 1395d (d)(1), 1396d (o) and 1397jj (a)(23); and 42 CFR Section 418.21[end underline].