

### **INITIAL STATEMENT OF REASONS**

The In-Home Supportive Services (IHSS) program has provided in-home care services to aged, blind, and disabled individuals since 1973. These services assist individuals in their daily chores and have enabled these individuals to remain in their homes and communities and thereby avoid institutional care. Prior to August 1, 2005, there were two IHSS programs: the IHSS Residual program and Personal Care Services (PCS). The IHSS Residual program is a state and county funded program. PCS is funded with state, county, and federal funds. IHSS Residual and some PCS recipients received IHSS eligibility determinations by IHSS Social Workers using Supplemental Security Income program rules. Some IHSS recipients were assessed an IHSS share of cost.

Because of a budget shortfall in FY 2004/05, these IHSS Residual and PCS recipients were in danger of losing their non-federally funded IHSS. In order to continue providing these much needed services, the State of California sought federal approval to implement the IHSS Plus Demonstration Project Waiver (IHSS Plus Waiver) that provides Federal Financial Participation (FFP) for the IHSS Plus Waiver recipients. When the Centers for Medicare & Medicaid Services (CMS) reviewed the IHSS Waiver application, it was determined by CMS that the State of California was not in compliance with 42 CFR, Section 430.10, which states that only the single state agency, Title XVI or Title IV-A agency, can determine eligibility for Medicaid (known as Medi-Cal in California). As required by 42 Code of Federal Regulations (CFR) Section 431.10, California has designated, in the California State Plan, Section 1, pages 1 through 2, effective January 1, 1993, that the Department of Health Care Services (Department) be the single state agency to administer the Medi-Cal program. The State Plan describes the responsibilities and relationships pertaining to Medi-Cal eligibility as required by 42 CFR Section 431.10. The Department has delegated individual case eligibility determinations, redeterminations, and record maintenance to county welfare departments' (CWDs) Medi-Cal eligibility workers (EWs). Yet, IHSS social workers funded by Title XX were providing the IHSS eligibility determinations and granting full-scope Medi-Cal for those who were IHSS eligible. In order for the Department to be compliant with 42 CFR Section 431.10, IHSS social workers are no longer permitted to complete Medi-Cal eligibility determinations and grant full-scope Medi-Cal for IHSS eligibles.

As a condition of the IHSS Plus Waiver, CMS required California to conduct Medi-Cal eligibility determinations on all IHSS/PCS cases that had not yet received one. These eligibility determinations were to be completed by county Medi-Cal EWs in the county Medi-Cal chain of command using Medi-Cal rules and share of cost (SOC).

The purpose of this regulation package is to make amendments to the California Code of Regulations (CCR) to reflect that Medi-Cal eligibility is not automatic with IHSS eligibility and that Medi-Cal eligibility requires a Medi-Cal application and Medi-Cal eligibility determination. There is no longer automatic Medi-Cal eligibility under the IHSS program. IHSS recipients must be evaluated for the appropriate Medi-Cal program, using Medi-Cal rules and applied a

Medi-Cal share of cost, if any. Title 22, CCR Sections 50035.5, 50145, 50179.5, 50183, and 53845 are proposed to be amended and Section 50245 is proposed to be repealed to comply with federal regulations (42 CFR Section 431.10) and to maintain State eligibility for FFP.

### **Section 50035.5. County Cash-Based Medi-Cal Eligibility**

The purpose of amending this section is to remove “or IHSS.” Pursuant to 42 CFR, Section 430.10, individuals applying for Medi-Cal are required to have a Medi-Cal eligibility determination by a county Medi-Cal EW under the county’s Medi-Cal chain of command using Medi-Cal rules and applied a Medi-Cal SOC, if any. In order to comply with 42 CFR, Section 430.10 and for the State to receive FFP, an IHSS application is no longer considered a Medi-Cal application.

### **Section 50145. Medi-Cal Applications for Persons Applying for a Cash Grant**

The purpose of amending this section is to remove “or In-Home Supportive Services” from the title and from Subsection (a). Pursuant to 42 CFR, Section 430.10, individuals applying for Medi-Cal are required to have a Medi-Cal eligibility determination by a county Medi-Cal EW under the county’s Medi-Cal chain of command using Medi-Cal rules and applied a Medi-Cal SOC, if any. In order to comply with 42 CFR, Section 430.10 and for the State to receive FFP for these individuals, an IHSS application is no longer considered a Medi-Cal application.

Although some Aid to Families with Dependent Children (AFDC) and Supplemental Security Income or State Supplementary Payment Program eligible individuals are not required to have a separate Medi-Cal eligibility determination and application under federal regulation, IHSS recipients are required to have a separate determination application.

### **Section 50179.5. Notice of Action—County Cash Assistance Determinations or Redeterminations Which Affect County Cash-Based Medi-Cal Eligibility.**

The purpose of amending this section is to remove “or IHSS notice” from Subsections (b)(1), (2), and “or IHSS” from Subsection (c)(4). Pursuant to 42 CFR, Section 430.10, individuals applying for Medi-Cal are required to have a Medi-Cal eligibility determination by a county Medi-Cal EW under the county’s Medi-Cal chain of command using Medi-Cal rules and applied a Medi-Cal SOC, if any. In order to comply with 42 CFR, Section 430.10 and for the State to receive FFP, an IHSS application is no longer considered a Medi-Cal application.

### **Section 50183. Transfer Between Programs**

The purpose of amending this section is to remove “or IHSS” from Subsection (b)(3). IHSS recipients now receive their Medi-Cal coverage through the Medi-Cal program. If an IHSS recipient loses IHSS because of non-cooperation, his or her Medi-Cal eligibility is separate and not affected. A comma has been included under Subsections (a)(1) and (a)(3) as a non-substantive change for consistency and correct punctuation.

**Section 50245. In-Home Supportive Services**

The purpose of repealing this section is to remove the provisions related to an IHSS application process for Medi-Cal. Pursuant to 42 CFR, Section 430.10, individuals applying for Medi-Cal are required to have a Medi-Cal eligibility determination by a county Medi-Cal EW under the county's Medi-Cal chain of command using Medi-Cal rules and applied a Medi-Cal SOC, if any.

In order to comply with 42 CFR, Section 430.10 and for the state to receive FFP, an IHSS application and eligibility determination are no longer considered a Medi-Cal application and eligibility determination.

**Section 53845. Enrollment Criteria.**

The purpose of amending this section is to remove "but excluding those in the In-Home Supportive Services category, section 50245" from Subsection (a)(4)(D) and to remove "category, as specified in section 50245" from Subsection (b)(3)(G). Pursuant to 42 CFR, Section 430.10, individuals applying for Medi-Cal are required to have a Medi-Cal eligibility determination by a county EW under the county's Medi-Cal chain of command using Medi-Cal rules.

**MATERIALS RELIED UPON**

*California State Plan*, Section 1, pages 1 through 2; effective 1/1/93. Please refer to the following Web site for a copy of this document:

<http://www.dhcs.ca.gov/formsandpubs/laws/Pages/StatePlanDocuments2.aspx>

**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 the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

**Local Mandate Determination**

The Department has determined that the proposed regulations would not impose a new 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 Statement

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 that the proposed regulations would not significantly affect the following:

- (A) the creation or elimination of jobs within the State of California,
- (B) the creation of new businesses or the elimination of existing businesses within the State of California, or
- (C) the expansion of businesses currently doing business within the State of California.

### Effect on Small Businesses

The Department has determined that the proposed regulations would not affect small businesses. This 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.

### Housing Costs Determination

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