

**State of California
Office of Administrative Law**

NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION

Government Code Section 11349.3 OAL

Matter Number: 2015-1029-04

OAL Matter Type: Regular (S)

In re:

Department of Health Care Services

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections: 51190.4.1

Amend sections: 51231.1, 51231.2, 51323, 51360, 51491

Repeal sections: [Blank]

In this regulatory action, the Department adopts a section in title 22 of the California Code of Regulations to add a definition for the term "Local Education Agency (LEA) Specialized Medical Transportation Services." It also amends a number of other sections in order to have the regulations be consistent with the Welfare and Institutions Code and the Code of Federal Regulations.

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

Date: December 10, 2015

[Original Signed]

Thanh Huynh

Senior Attorney

For: DEBRA M. CORNEZ, Director

Original: Jennifer Kent

Copy: Lori Manieri

[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**- 2015-0715-01

REGULATORY ACTION NUMBER: 2015-1029-04S

EMERGENCY NUMBER: [Blank]

For use by Office of Administrative Law (OAL) only

NOTICE: [Blank]

REGULATIONS: [Date Stamp]

2015 OCT 29 P 1:35

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

DEC 10 2015

2:09 pm

AGENCY WITH RULEMAKING AUTHORITY: Department of Health Care Services

AGENCY FILE NUMBER (if any): DHCS-12-015

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 or Checked]

Approved as Modified: [Blank or Checked]

Disapproved/Withdrawn: [Blank or Checked]

NOTICE REGISTER NUMBER: 2015, 31-Z

PUBLICATION DATE: 07/31/2015

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATIONS: LEA Program Specialized Medical Transportation Services

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBERS:

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: 51190.4.1

AMEND: 51231.1, 51231.2, 51323, 51360 and 51491

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: Lori Manieri

TELEPHONE NUMBER: 916-650-6825

FAX NUMBER (Optional): [Blank]

EMAIL ADDRESS (Optional): lori.manieri@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: 10/26/15

For use by Office of Administrative Law (OAL) only

[Date Stamp]

Endorsed Approved

DEC 10 2015

Office of Administrative Law

METHOD OF INDICATING CHANGES

This Accessible PDF version reflects the Office of Administrative Law approved regulation text (including 15-Day changes) and includes the phrase [begin underline] at the beginning of each addition, [end underline] at the end of each addition, [begin strikethrough] at the beginning of each deletion, and [end strikethrough] at the end of each deletion.

A standard PDF version of this Office of Administrative Law approved regulation text is also available on the Department's Office of Regulations Internet site.

(1) Adopt Section 51190.4.1 to read:

[begin underline]§ 51190.4.1. Local Educational Agency (LEA) Specialized Medical Transportation Services.

“Local Educational Agency (LEA) Specialized Medical Transportation Services”

means medical transportation services provided to an LEA eligible beneficiary who requires a specially adapted vehicle or use of specialized equipment, including but not limited to lifts, ramps or restraints, to accommodate the LEA eligible beneficiary’s disability.

Note: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14115.8, 14124.5 and 14132.06, Welfare and Institutions Code. Reference: Sections 14115.8, 14132 and 14132.06, Welfare and Institutions Code; Section 300.34, Title 34 Code of Federal Regulations; and Sections 431.53 and 440.130, Title 42 Code of Federal Regulations. [end underline]

(2) Amend Section 51231.1 to read:

§ 51231.1. Litter Van Requirements.

No changes to Subsections (a) through (e)

(f) (1) All litter van patients shall be secured to a gurney by restraining belts while

being loaded, unloaded and transported.

(2) LEA specialized medical transportation services shall not be subject to subsection (f)(1) if the LEA eligible beneficiary's medical or physical condition does not require the use of a gurney.

No changes to Subsections (g) through (h)

Note: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14124.5, and 14132.06, Welfare and Institutions Code. Reference: Section s 14115.8, 14132, and 14132.06, Welfare and Institutions Code.

(3) Amend Section 51231.2 to read:

§ 51231.2. Wheelchair Van Requirements.

No changes to Subsections (a) through (d)

(e) (1) All wheelchair passengers must be secured to wheelchairs while being loaded, unloaded or transported.

(2) LEA specialized medical transportation services shall not be subject to subsection (e)(1) if the LEA eligible beneficiary's medical or physical condition does not require the use of a wheelchair.

No changes to Subsections (f) through (g)

Note: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105, 14115.8, ~~and~~ 14124.5 and 14132.06, Welfare and Institutions Code. Reference: Section s 14115.8, 14132, and 14132.06, Welfare and Institutions Code.

(4) Amend Section 51323 to read:

§ 51323. Medical Transportation Services.

(a) Ambulance, litter van and wheelchair van medical transportation services are covered when the beneficiary's medical and physical condition is such that transport by ordinary means of public or private conveyance is medically contraindicated, and transportation is required for the purpose of obtaining needed medical care.

(1) Ambulance services are covered when the patient's medical condition contraindicates the use of other forms of medical transportation.

(2) Litter van services are covered when the patient's medical and physical condition:

(A) 1. Requires that the patient be transported in a prone or supine position, because the patient is incapable of sitting for the period of time needed to transport.

2. LEA specialized medical transportation services shall not be subject to subsection (a)(2)(A)1.

(B) Requires specialized safety equipment over and above that normally available in passenger cars, taxicabs or other forms of public conveyance.

(C) Does not require the specialized services, equipment and personnel provided in an ambulance because the patient is in stable condition and does not need constant observation.

(3) Wheelchair van services are covered when the patient's medical and physical condition:

(A) Renders the patient incapable of sitting in a private vehicle, taxi or other form of public transportation for the period of time needed to transport.

(B) 1. Requires that the patient be transported in a wheelchair or assisted to and from residence, vehicle and place of treatment because of a disabling physical or mental limitation.

2. LEA specialized medical transportation services shall not be subject to subsection (a)(3)(B)1.

(C) Requires specialized safety equipment over and above that normally available in passenger cars, taxicabs or other forms of public conveyance.

(D) Does not require the specialized services, equipment and personnel provided in an ambulance, because the patient is in stable condition and does not need constant observation.

No changes to Subsections (b) through (c)

Note: Authority cited: Section 20, Health and Safety Code; and Section s 10725, 14115.8, 14124.5 and 14132.06, Welfare and Institutions Code. Reference: Sections 14115.8, 14132, 14132.06 and 14136.3, Welfare and Institutions Code.

(5) Amend Section 51360 to read:

§ 51360. Local Educational Agency (LEA) Services.

(a) Local Educational Agency (LEA) Services, as defined in Section 51190.4, are covered to the extent specified in this section. Frequency limitations are set forth in Section 51535.5.

(b) LEA Services shall include (1) through (8) below:

(1) LEA health and mental health evaluation and health and mental health education services, which include any or all of the following:

(A) Nutritional assessment and nutrition education, consisting of assessments and non-classroom nutrition education delivered to the LEA eligible beneficiary based on the outcome of the nutritional health assessment (diet, feeding, laboratory values, and growth).

(B) Vision assessment, consisting of examination of visual acuity at the far point conducted by means of the Snellen Test.

(C) Hearing assessment, consisting of testing for auditory impairment using at-risk criteria and appropriate screening techniques as defined in Title 17, California Code of Regulations, Sections 2951(c).

(D) Developmental assessment, consisting of examination of the developmental level by review of developmental achievement in comparison with expected norms for age and background.

(E) Assessment of psychosocial status, consisting of appraisal of cognitive, emotional, social, and behavioral functioning and self-concept through tests, interviews, and behavioral evaluations.

(F) Health education and anticipatory guidance appropriate to age and health status, consisting of non-classroom health education and anticipatory guidance based on age and developmentally appropriate health education.

(2) LEA physical therapy, which consists of physical therapy services as set out in Section 51309(b) when provided by an LEA practitioner to an LEA eligible beneficiary.

(3) LEA occupational therapy, which consists of physical therapy services as set out in Section 51309(c) when provided by an LEA practitioner to an LEA eligible beneficiary.

(4) LEA speech pathology and audiology services, which consist of: speech pathology services as defined in Section 51096, and audiology services as defined in Section 51098 when provided by an LEA practitioner to an LEA eligible beneficiary.

(5) LEA psychology and counseling services, consisting of diagnosis and psychological counseling of LEA eligible beneficiaries with identified mental health, substance abuse, behavioral adjustment, or social problems.

(6) LEA nursing services, consisting of preventive and medically necessary nursing services rendered at the school site. Services for accompanying the LEA eligible beneficiary off-campus for delivery of health services are also reimbursable if specified as medically necessary in the Individualized Education Plan (IEP), as defined in Education Code, Section 56340 et seq.; or in the Individualized Family Service Plan (IFSP), as set forth in Government Code, Section 95020~~;~~ ~~or Individualized Health and Support Plan (IHSP), as set forth in Section 51535.5(f)(2)(C)~~ [end strikethrough].

(7) LEA school health aide services, consisting of the direct provision of specialized physical health care services rendered at the school site. Services for accompanying the LEA eligible beneficiary off-campus for delivery of health services are also reimbursable if specified as medically necessary in the child's IEP, as set forth in Education Code, Section 56340 et seq.; or in the IFSP, as set forth in Government Code, Section 95020~~]; or IHSP, as set forth in Section 51535.5(f)(2)(C)~~ [end strikethrough].

(8) (A) LEA specialized medical transportation services ~~], which consists of medical transportation as described in Section 51323(a),~~ and the associated mileage.

~~](A) For beneficiaries without an IEP or IFSP, services are limited to trips between the school site and a location at which health services are rendered.~~ [end strikethrough]

(B) For LEA eligible beneficiaries with an IEP or IFSP, LEA specialized medical transportation services may include trips to and from the residence, school site or other sites of service when all of the following conditions are met on the day of service:

1. The LEA eligible beneficiary receives a Medicaid covered service other than LEA specialized medical transportation services at the site being transported to; and

2. Both, the Medicaid covered service and LEA specialized medical transportation services are included in the LEA eligible beneficiary's IEP or IFSP.

Note: Authority cited: Section 20, Health and Safety Code; and Sections 10725, ~~and~~ 14115.8, and 14124.5, Welfare and Institutions Code. Reference: Sections 14115.8, 14124.5, 14131, 14132, 14132.06, 14132.15, 14133, 14133.1, 14133.3, 14133.6 and 14133.9, Welfare and Institutions Code; Section 56340 et seq., Education Code; ~~and~~ Section 95020, Government Code; and Section 300.34, Title 34 Code of Federal Regulations.

(6) Amend Section 51491 to read:

§ 51491. Local Educational Agency (LEA) Eligibility for Payment.

Reimbursement for LEA Services shall be limited to those services provided to an LEA Eligible Beneficiary, by an LEA Practitioner, through an LEA Provider.

No changes to Subsections (a) through (g)

(h) LEA specialized medical transportation services and associated LEA mileage ~~;~~ shall be reimbursable only if all vehicles, drivers and attendants meet the standards specified in Sections 51231, 51231.1 and 51231.2.

(i) LEA Services shall be reimbursable only when provided at one of the following sites:

(1) At a school site within the LEA Provider's domain in accordance with Section 51270;

(2) In the office or normal place of business of an LEA Practitioner; or

(3) For authorized LEA specialized medical transportation services and associated LEA mileage, between a school site and a location at which health services are rendered to the LEA eligible beneficiary ~~except as provided in Section 51360(b)(8)~~.

Note: Authority cited: Sections Section 20, Health and Safety Code; and 10725, 14105, 14115.8 and 14124.5, Welfare and Institutions Code. Reference: Sections 14000, 14018.2, 14053, 14059, 14100.2, 14105, 14115.8, 14124.1, 14124.5, 14132, 14132.06, 14133, 14136.5 and 14170, Welfare and Institutions Code; Sections 500 et seq., 4980 and 4981, Business and Professions Code; Sections 44225(b)(4), 44268, 44874, 44877, 49600, 49422, 49423.5 and 49426, Education Code; ~~and~~ Sections 1685 and 1686, Health and Safety Code ; and Section 300.34, Title 34 Code of Federal Regulations.