

EXPLANATION OF CHANGES WITHOUT REGULATORY EFFECT

Introduction

The Department of Health Care Services (Department) proposes changes without regulatory effect to repeal California Code of Regulations, title 22, section 53872, and to amend section 53861(a)(2), which cross-references section 53872. The proposed amendments qualify as changes without regulatory effect under California Code of Regulations, title 1, section 100 because the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. The proposed repeal of section 53872 is in accordance with California Code of Regulations, title 1, section 100(a)(2), which allows a state agency to delete “a regulatory provision for which all statutory or constitutional authority has been repealed.” The proposed amendment to section 53861(a)(2) is in accordance with California Code of Regulations, title 1, section 100(a)(4), which permits “revising structure, syntax, cross-reference, grammar, or punctuation.”

Background

The Department administers the Medi-Cal program, which provides comprehensive health care services for low-income individuals, including families with children, pregnant women, seniors, persons with disabilities, and children in foster care. The Department’s Managed Care Quality and Monitoring, and Managed Care Operations Divisions are responsible for the monitoring and oversight of Medi-Cal managed care plans and prepaid health plans. California Code of Regulations, title 22, section 53872, gives the Director of the Department (Director) authority to impose civil penalties on Medi-Cal managed care plans and prepaid health plans for noncompliance with applicable statutes or regulations, or the terms of the plan’s contract with the Department. Assembly Bill (AB) 1642 (Wood, Ch. 465, Statutes of 2019) repealed Welfare & Institutions (W&I) Code section 14304, which provided statutory authority for the Director to impose the subject civil penalties in section 53872; and replaced it with W&I Code section 14197.7. W&I Code section 14197.7 expands the Director’s sanction authority from Medi-Cal managed care plans and prepaid health plans, to “any entity that contracts with the department for the delivery of health care services (contractor), including a Medi-Cal managed care plan or a prepaid health plan.”

Proposed Changes

California Code of Regulations, title 22, section 53872

The Department proposes to repeal the entirety of California Code of Regulations, title 22, section 53872. This section provides the Director the authority to impose civil penalties on a noncompliant plan including accompanying provisions that establish the amount of these penalties; describe the method for counting violations for the purposes of the section; set the requirement that penalties imposed under subsection (a) follow administrative proceedings; and require that the Department issue a letter of noncompliance and the contents of this letter.

As described above, AB 1642 made two significant changes to this sanction authority: (1) it repealed W&I Code section 14304; and (2) it enacted W&I Code section 14197.7.

California Code of Regulations, title 22, section 53872 derived its authority from W&I Code section 14304, which authorized the Director to impose “civil penalties,” including monetary sanctions, against a noncompliant contractor “in lieu of contract termination.” The repeal of W&I Code section 14304 effectively repeals the authority for California Code of Regulations, title 22, section 53872.

The Department proposes to repeal California Code of Regulations, title 22, section 53872 because its statutory authority, W&I Code section 14304, was repealed. Specifically, the repeal of section 53872 is in accordance with California Code of Regulations, title 1, section 100(a)(2), which allows a state agency to delete “a regulatory provision for which all statutory or constitutional authority has been repealed.”

California Code of Regulations, title 22, section 53861

The Department also proposes to amend California Code of Regulations, title 22, section 53861(a)(2) because the cross-reference to section 53872 is inaccurate; it should instead reference section 53862.

In developing this proposal and in review of the existing cross-reference within California Code of Regulations, title 22, section 53861 (to section 53872), it was discovered that this cross-reference is inaccurate.

The intended cross-reference is *California Code of Regulations, title 22, section 53862 – Reporting*, addressing reporting requirements, which are the subject of section 53861(a)(2). This proposed amendment to fix the cross-reference is in accordance with California Code of Regulations, title 1, section 100(a)(4), which permits “revising structure, syntax, cross-reference, grammar, or punctuation.”

The proposed changes above are changes without regulatory effect and do not need to comply with the full rulemaking procedures specified in Article 5 of the Administrative Procedure Act because they do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.