

## Explanation of Changes without Regulatory Effect

The Department of Health Care Services (DHCS) proposes changes without regulatory effect that would amend Title 22 of the California Code of Regulations (CCR), Section 50273 – Medi-Cal Ineligibility Due to Institutional Status. The proposed amendments contained in the accompanying regulation text are changes without regulatory effect pursuant to Title 1, CCR, Section 100(a)(6).

Title 1, CCR, Section 100(a)(6) allows for making a regulatory provision consistent with a changed California statute if both of the following conditions are met:

1. The regulatory provision is inconsistent with and superseded by a changed statute, and
2. The adopting agency has no discretion to adopt a change that differs in substance from the one chosen.

### Background

Title XIX of the Social Security Act provides for the federal Medicaid Program, which in California is known as the California Medical Assistance Program, or Medi-Cal, and is administered by DHCS. Medi-Cal is a cooperative venture, jointly funded by federal and state governments to assist states in providing health care services to eligible low-income individuals. In order to qualify for federal matching funds, referred to as federal financial participation (FFP) for the Medicaid Program, each state must establish a Medicaid state plan (State Plan) that includes eligibility standards, provider requirements, and the types of health care services to be provided. The State Plan, including any amendments thereto, must be approved by the federal Centers for Medicare & Medicaid Services. DHCS's adherence to Medicaid laws and the approved State Plan is required to continue receiving FFP for Medi-Cal.

In order to facilitate the administration of Medi-Cal, DHCS has adopted regulations in the CCR under Title 22 – Social Security, Division 3 – Health Care Services, Subdivision 1 – California Medical Assistance Program. Included in these regulations, are provisions specifying eligibility requirements for Medi-Cal services.

Currently, Title 22, CCR, Section 50273 establishes the provisions for Medi-Cal Ineligibility Due to Institutional Status as follows:

- Subsection (a) states that inmates of a public institution are not eligible for Medi-Cal services and further clarifies the types of individuals, who are considered inmates of a public institution.
- Subsection (b) establishes the period of ineligibility for Medi-Cal services relative to the inmate's institutional status.
- Subsection (c) describes those individuals, who are not considered inmates of a public institution and therefore eligible for Medi-Cal services if all requirements for eligibility are satisfied.

Assembly Bill 396 (Chapter 394, Statutes of 2011) added Sections 14053.8 and 14053.9 to the Welfare and Institutions (W&I) Code. These new sections provide for Medi-Cal eligibility to a juvenile inmate that is receiving inpatient hospital services at a medical institution off the grounds of the correctional facility.

(W&I) Code Section 14053.8

Subdivision (b) states that “A juvenile inmate who is an inpatient in a medical institution off the grounds of the correctional facility shall not be denied eligibility for Medi-Cal benefits under this section because of his or her institutional status as an inmate of a public institution.” This language is explicit that Medi-Cal eligibility shall not be denied to a juvenile inmate who is also an inpatient in a medical institution based on the juvenile’s institutional status.

Subdivision (k) defines the term “juvenile inmate” for the purposes of Medi-Cal eligibility to mean “an individual under 21 years of age who is involuntarily residing in a public institution, including state and local institutions.”

Subdivision (d) carves out an exception to DHCS's authority to suspend or terminate Medi-Cal eligibility pursuant to (W&I) Code Section 14011.10. (In relevant part, subdivision (a) of (W&I) Code Section 14011.10, states that “Except as provided in Section 14011.11, benefits provided under this chapter to an individual under 21 years of age who is an inmate of a public institution shall be suspended in accordance with Section 1396d(a)(28)(A) of Title 42 of the United States Code as provided in subdivision (c).) Subdivision (d) provides for an exception to (W&I) Code Section 14011.10 that applies to “such times that the juvenile inmate is receiving acute inpatient hospital services or inpatient psychiatric services pursuant to subdivision (b).”

(W&I) Code Section 14053.9

Subdivision (b) states that “Any juvenile inmate in the Division of Juvenile Facilities who is an inpatient in a medical institution off the grounds of the correctional facility shall not be denied eligibility for Medi-Cal benefits under this section because of his or her institutional status as an inmate in the Division of Juvenile Facilities.” This language is explicit that Medi-Cal eligibility shall not be denied to a juvenile inmate, who is also an inpatient in a medical institution, based on the juvenile’s institutional status in the Division of Juvenile Facilities.

Subdivision (j) defines the term “juvenile inmate” for the purposes of Medi-Cal eligibility to mean “an individual under 21 years of age who is involuntarily residing in a public institution, including state and local institutions.”

Accordingly, DHCS proposes a change without regulatory effect pursuant to Title 1, CCR, Section 100(a)(6) to make a regulatory provision (Title 22, CCR, Section 50273) consistent with changed California statutes (enactment of (W&I) Code Sections 14053.8 and 14053.9) since it meets both of the following conditions:

1. The current regulatory provision is inconsistent with and superseded by a changed statute. Currently, Section 50273 does not provide for the express exemption for “a juvenile inmate who is an inpatient in a medical institution off the grounds of the correctional facility” as required by (W&I) Code Sections 14053.8 and 14053.9. Therefore, Section 50273 is inconsistent with and superseded by (W&I) Code Sections 14053.8 and 14053.9.
2. DHCS has no discretion to adopt a change which differs in substance from the one chosen. The state statutes ((W&I) Code Sections 14053.8 and 14053.9) are explicit with regard to the exemption for “a juvenile inmate who is an inpatient in a medical institution off the grounds of the correctional facility.” DHCS has no discretion to deny Medi-Cal coverage to a “juvenile inmate who is receiving acute inpatient hospital services” solely because the juvenile is an inmate in a public institution.

Specifically, the proposed amendment to Section 50273 adds “acute inpatient hospital services and/or” to the current language of Subsection (c)(12) in order to include the express exemption for “inpatient hospital services for individuals under 21 years of age, who are inmates of a public institution. Therefore, a youth remains eligible for Medi-Cal coverage of “inpatient hospital services and/or inpatient psychiatric hospital services” even though the youth is incarcerated, but only for the period that the youth is receiving these inpatient services. The proposed revision for paragraph (12) of Subsection (c) is as follows:

(12) An individual under 21 years of age, who is receiving acute inpatient hospital services and/or inpatient psychiatric hospital services while an inmate of a public institution.

The above proposed amendment and the update of the reference note make Section 50273 consistent with state statutes. DHCS requests this amendment as a change without regulatory effect, as it does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.