

Explanation of Changes Without Regulatory Effect

Background

Medi-Cal, California's Medicaid Program, is administered by the Department of Health Care Services (Department). The Medi-Cal program provides comprehensive health care services including medical, dental, mental health, substance use disorder, and long-term care alternatives for low-income individuals including families with children, pregnant women, seniors, persons with disabilities and children in foster care.

Welfare and Institutions Code (WIC) Sections 10725 and 14124.5, authorize the Director of the Department to adopt, amend, or repeal regulations, as necessary and proper, to carry out the purpose and intent of the laws enforced by the Department. Specifically, WIC, Chapter 7, Basic Health Care, Section 14000 states the purpose of this chapter is to afford qualifying individuals health care services.

The Patient Protection and Affordable Care Act (ACA) requires that the Medi-Cal program provide ten essential health care benefits, including hospital inpatient and outpatient care, nursing services, physician services, laboratory services and maternity and newborn care services. In addition to these mandatory benefits, the state provides optional benefits such as outpatient drugs, home and community-based services, hospice care, early and periodic screening, diagnostic and treatment services, and medical equipment services. The uniform schedule of health care benefits under Medi-Cal is described under WIC Section 14131, et seq., and includes a description of the Comprehensive Perinatal Services Program (CPSP) and related health care providers and practitioners, as specified under WIC Sections 14132(u) and 14134.5.

Summary

WIC Section 14134.5 was recently amended by Senate Bill (SB) 407, Chapter 313, Statutes of 2015 to add licensed midwives to the list of Comprehensive Perinatal Practitioners (CPPs), who are practitioners that a health care provider can employ or contract with to provide pregnancy-related services as a part of the CPSP. This proposed change without regulatory effect would amend Title 22 of the California Code of Regulations (CCR), Section 51179.7 to add licensed midwives to the list of CPPs. Title 22, CCR, Section 51179.7 defines CPPs and specifies respective qualifications to become a CPP. Currently, Section 51179.7 does not list a licensed midwife as a CPP. The amendment proposed through this regulatory action will add licensed midwives to the list of CPPs. These proposed changes are without regulatory effect, pursuant to Title 1, CCR, Section 100(a)(6), which allows for making a regulatory provision consistent with a change in California statute if both of the following conditions are met:

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

The proposed amendment is without regulatory effect because the change would not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provisions.

Relevant Laws

WIC Section 14132(u) specifies in part:

“The following is the schedule of benefits under this chapter:

.....(u) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.....”

WIC Section 14134.5 specifies, in part:

“All of the following provisions apply to the provision of services pursuant to subdivision (u) of Section 14132:

(e) (1) Except where existing law prohibits the employment of physicians, a health care provider may employ or contract with all of the following medical and other practitioners for the purpose of providing the comprehensive services delineated in this section:

(A) Physicians, including a general practitioner, a family practice physician, a pediatrician, or an obstetrician-gynecologist.

(B) Certified nurse midwives.

(C) Licensed midwives.

(D) Nurses.

(E) Nurse practitioners.

(F) Physician assistants.

(G) Social workers.

(H) Health and childbirth educators.

(I) Registered dietitians.

The department shall adopt regulations that define the qualifications of any of these practitioners who are not currently included under the regulations adopted pursuant to this chapter. Providers shall, as feasible, utilize staffing patterns which reflect the linguistic and cultural features of the populations they serve.

Patient Protection and ACA, Section 1302 [Title 42 of the United States Code (USC) Section 18022] states, in part:

“(b) Essential Health Benefits

(1) In general...such benefits shall include at least the following general categories and items and services covered within these categories:...

(D) Maternity and newborn care.”

Conclusion

WIC Section 14134.5, as recently amended through SB 407, Chapter 313, Statutes of 2015, includes a licensed midwife as a practitioner that a health care provider can employ or contract with to provide pregnancy-related services as a part of the CPSP. Current regulations are now in conflict with this enacted legislation. As a result, this proposed amendment aligns the regulation with the new law. This amendment is also consistent with the provisions related to comprehensive perinatal services and maternity and newborn care as specified under WIC Section 14132(u) and 42 USC Section 18022, respectively.

Amendment to Section 51179.7 includes:

- Adopting Subsection (a)(12) to include a licensed midwife as a CPP.