

**Addendum II Preface**  
**Response to Comments**  
**R-28-02, Sign Language Interpreter Services**  
**Post 45-Day**

Addendum II (Response to 45-Day Comments) of the FSOR provides the following information: the commenter number, the subject, the comment, and the response to comment. Under the comment column, different comments presented by a commenter are designated through the addition of a number after the Commenter #. For example, the different comments presented by Commenter #2 are designated as 2.1, 2.2 and 2.3 which demonstrate the three different comments presented by the commenter. All of the comments received during the 45-day public proceedings were written testimony.

**Response to Comments  
R-28-02, Sign Language Interpreter Services  
Post 45-Day**

**List of Commenters**

1. Cris Eggers
2. Marilyn Holle
3. Sandra E. Bressler
4. Mary C. Harris

**Commenter #1**

**Subject**

Section 51202.5

(Sign Language Interpreters – Standards of Participation)

**Comment**

1.1. I am in favor of the proposed changes to R-28-02 with one very critical exception. Section 51202.5 2, b (sic) says that an interpreter may "Be non-certified".

Using a non-certified interpreter is completely antithetical to the intention of the provision of qualified interpreters. Given that their training is in medicine and not interpreting, most if not all medical providers have no way of ascertaining whether or not an interpreter is qualified.

Requiring a RID certification or NAD level IV or V or an interpreting degree (AA or BA) from a college or university would be more appropriate than allowing the use (and risk) of a non-certified interpreter.

**Response to Comment**

1.1 Thank you for your comment. The assumption has been made that this comment pertains to Section 51202.5(a)(2) as originally noticed, not Section 51202.5 2, b as indicated in the comment. In response to 45-day public comments that discuss qualified interpreters the Department proposed through the 15-day public availability to delete the references to non-certified sign language interpreters under Sections 51098.5, 51202.5 and 51503.3, allowing only certified sign language interpreters to participate in the Medi-Cal program. However, upon review of a comment presented through the 15-day public availability and further consideration the Department has decided to maintain the existing regulatory language (the inclusion of all references to non-certified sign language interpreters and related language under these three sections).

Precluding non-certified sign language interpreters from the Medi-Cal Program could reduce access to health care for Medi-Cal beneficiaries requiring sign language interpretive services, when a sign language interpreter certified in the specific language spoken by the beneficiary is not available.

The inclusion of non-certified sign language interpreters will not only encourage beneficiaries to seek necessary health care and ensure greater access to health care, it is also consistent with 1) provisions under Civil Code, Section 54.1 and Title 28, CFR Section 36.303 that specify individuals with disabilities are entitled to the full and equal access to accommodations and to effective communication between a public accommodation (provider) and an individual with a disability, and 2) the Department's mission to preserve and improve the health of Californians, while ensuring access to comprehensive health services.

**Commenter #2**

**Subject**

Section 51098.5  
(Sign Language Interpreter Services – Definition)

**Comment**

2.1. Medi-Cal covers services to someone other than the Medi-Cal beneficiary when it is for the benefit of the beneficiary and medically necessary. The services or training provided to a third person are for services provided to the beneficiary. The third person's Medi-Cal eligibility is not relevant to payment for the service because the service including training is to benefit the beneficiary and would be paid under the beneficiary's Medi-Cal number. This person may or may not be the beneficiary's representative. The regulations should make it clear that if the person being trained or receiving services to benefit the beneficiary is deaf or hearing impaired, then Medi-Cal funded interpreter services would be available.

Additional recommendations for Section 51098.5 include adding a subsection (c) and further amending proposed subsection (b) as follows:

(b) a deaf or hearing impaired adult representative of the Medi-Cal beneficiary and a Medi-Cal enrolled provider when necessary to facilitate the provision of medically necessary health care services to the beneficiary- or

(c) a deaf or hearing impaired individual who receives services or training as part of the medically necessary medical or remedial services provided to the Medi-Cal beneficiary.

2.2. Recommends that the proposed amendments make clear that Medi-Cal enrolled providers serving beneficiaries who are covered by Medi-Cal and other health coverage also may be reimbursed for interpreter services, which will encourage retention of other health care coverage. Further, absent Medi-Cal funded interpreter services to beneficiaries with other health care coverage, other health care may not be available to the beneficiary to the same extent geographically. The consequence would be a shift to Medi-Cal of the sole responsibility for health care. Propose that Section 51202.5(a) (sic) be further amended as follows: Sign language interpreter services, as set forth in Section 51098.5, are covered as part of the Medi-Cal enrolled provider service subject to the limitation specified in subsection (b). Interpreter services are covered even when the enrolled provider does not bill Medi-Cal because the provider service is paid for by other health care coverage. Sign language interpreter services may be utilized for medically necessary health care services and related services as such, or similar to:

2.3. In Section 51503.3 (a), it appears there was an oversight in not striking through the phrase “physicians or physicians groups”.

2.4 Endorse the proposed amendments extending sign language interpreter services to enable beneficiaries to access all small Medi-Cal providers. The extension to all Medi-Cal enrolled providers brings the State into compliance with State and Federal disability equal access laws.

2.5 Pleased that DHS continues to recognize that Med-Cal beneficiaries may opt for non-certified interpreters. This is important for beneficiaries who learned sign language in another country and for whom there may be no effective certified interpreter.

#### **Response to Comment**

2.1. Thank you for your comment which is the impetus for the post 45-Day public notice change as subsequently described. In response to this comment that proposed the inclusion of the following phrase: “, or (c) a deaf or hearing impaired individual who receives services or training as part of the medically necessary medical or remedial services provided to the Medi-Cal beneficiary,” amendments are proposed to Section 51098.5. A new subsection (c) is proposed that would support the context of the comment as presented and the recommendation to expand the type of persons between which sign language interpreter services may be utilized, but the language as proposed to be adopted would contain some modifications from that suggested through the comment. The language as proposed including such modifications would read as follows: “, or (c) a deaf or hearing impaired adult who receives services or training on behalf of the Medi-Cal beneficiary and the Medi-Cal enrolled provider when necessary to provide medically necessary health care services to the beneficiary.” This language provides sentence structure that is similar to that under (a) and (b) regarding who the communication is “between” and specifically includes the phrase “Medi-Cal enrolled provider.” This proposal would also offer consistent language structure under this section and throughout the regulations. Specifically, the phrase “medically necessary health care services” would replace “medically necessary medical or remedial services,” which was suggested through the comment and the term “adult” would replace “individual,” which was suggested through the comment. Provisions set forth at Civil Code, Section 54.1 and Title 28 CFR, Section 36.303 specify that individuals with disabilities are entitled to full and equal access to accommodations and to effective communication between a public accommodation (a provider) and an individual with a disability, respectively. To correspond with and to facilitate these mandates the term “adult” is proposed to ensure that the recipient of the communication, in this circumstance, is at the age of legal majority and is considered to have the level of maturity necessary to comprehend and receive services or training through interpretation that is necessary to provide medically necessary health care services to a beneficiary.

2.2. The assumption has been made that this comment pertains to Section 51309.5(a) not 51202.5(a), as indicated in the comment. The Medi-Cal Program is prohibited by federal law (Title 42, USC, Section 1396b (o)) from paying for services for beneficiaries enrolled in other healthcare coverage (OHC) when services are covered by those plans. As specified at W&I Code Section, 14124.795 Medi-Cal is the payer of last resort, which means that in order for there to be payment of services rendered

for a Medi-Cal beneficiary who also has OHC the Medi-Cal enrolled provider would have to document that OHC has been fully utilized before billing the Medi-Cal program. The provider would submit the claim initially to the OHC and then submit a denial notice to the Medi-Cal program to receive reimbursement for services. As with other Medi-Cal services, if sign language interpreter services are not covered by OHC then the claim for these services could be presented to Medi-Cal for payment. Because of such payment constraints and processing procedures that pertain to the Medi-Cal program, the language proposed through this comment has been determined to be unnecessary. Additionally, this language as presented would not be of use because it is unclear if the Medi-Cal enrolled provider is actually seeking reimbursement for sign language interpreter services through Medi-Cal. There is no expectation that the provision of sign language services in relation to these billing procedures would result in a shift in health care services from OHC to Medi-Cal.

2.3. The phrase “physicians or physicians groups” was stricken from the regulation text as originally noticed.

2.4 The Department appreciates this comment of support.

2.5 See the Department’s response to comment 1.1 above. Reimbursement for the provision of sign language interpreter services as described in Section 51309.5 may be sought for both certified and non-certified interpreters who meet the standards set forth in Section 51202.5.

## **Commenter #2**

### **Subject**

Section 51309.5 (Scope and Duration of Benefits)

### **Comment**

3.1. In order to assure clarity that these changes remain within the authority of the Department and do not expand the scope of practice of Medi-Cal enrolled providers who are not physicians, we believe Section 51309.5 needs further amendment. The examples of services in this section were originally constructed with physicians in mind, and some of them are solely within the scope of a physician’s practice. Therefore we recommend the following amendment to Section 51309.5: (a) Sign language interpreter services, as set forth in Section 51098.5, are covered as part of the Medi-Cal enrolled ~~covered~~ ~~physician~~ provider service subject to the limitation specified in subsection (b) and the scope of practice of the provider. Sign language interpretation services may be utilized for...

3.2. We appreciate that the regulations address provider's responsibilities in emergency or acute care situations where the interpreter is not effectively communicating. However, we believe that, as written, providers who make good faith efforts to replace the interpreter may be subject to discipline or liability if, despite their best efforts, they are unable to locate another interpreter. We suggest that the regulations set forth a good faith requirement and recommend the following amendment to section 51202.5(c) (2):

(2) ~~However,~~ in an emergency or acute care situation or in the event the Medi-Cal enrolled provider determines the interpreter selected by the beneficiary does not communicate effectively, accurately or impartially, ~~the physician may override the beneficiary's selection and select the interpreter.~~ and may adversely affect the health and well-being of the beneficiary due to inaccurate diagnosis or misunderstanding of medical advice or instruction, the Medi-Cal enrolled provider is required to **make a good faith effort** to select a different interpreter or otherwise communicate with the beneficiary. Whenever a Medi-Cal enrolled provider acts pursuant to this paragraph, he or she shall provide a written statement of reasons for the action. The Medi-Cal enrolled provider shall maintain this statement in the medical record of the beneficiary and make it available to the state upon request pursuant to Section 51476 (g).

#### **Response to Comment**

3.1. Thank you for your comment. The intent of the proposed changes to this section are simply to expand the scope of health care and related services for which sign language interpreter services may be utilized and for which Medi-Cal will reimburse enrolled providers that employ fewer than fifteen employees. This non-exhaustive listing of medically necessary services merely provides examples of the types of services for which sign language interpreter services may be utilized. Neither these regulations nor changes proposed through this regulatory action would affect a provider's scope of practice, which is directed by the appropriate regulatory body under the Department of Consumer Affairs such as the Medical Board of California or the California Board of Registered Nursing. It is assumed that Medi-Cal enrolled providers practice within their scope of practice/licensure. Communication occurring through the provision of sign language interpreter services will be relevant to the health care or related service being provided by a Medi-Cal enrolled provider. The Department does not provide scope of practice oversight for health care providers, or by extension for sign language interpreters, thus the language as suggested is not necessary under the regulations.

3.2. It is believed that locating an alternate sign language interpreter would not be problematic. The inclusion of the phrases "make a good faith effort" and "Or otherwise communicate with the beneficiary," are immeasurable and lack clarity, and thus are not being incorporated in the regulations.

**Commenter #4**  
**Subject**

**Comment**

- 4.1. San Diego County Child Welfare Services recommends an increase in the reimbursement rate offered, especially for bi-lingual interpreters. Specialty interpreters can be difficult to arrange without appropriate reimbursement. By comparison, the Medi-Cal rate is half of the standard community rate for the first 2 hours. For an additional hour the Medi-Cal rate is \$25.44/hr compared to the standard rate in the San Diego community at \$65 /hr, and Child Welfare Services, San Diego County at \$65/hr.
- 4.2. This regulatory action proposed to include reimbursement for sign language interpreter services for other Medi-Cal enrolled providers who employ fewer than fifteen employees. What regulations ensure the requirements for “large” providers to offer interpreter services? Since “Large” agencies do not get reimbursed from Medi-Cal, they tend to notify Deaf clients that they simply can’t afford an interpreter and the Deaf client is denied that right (as per Title 28, Section 36.303 regarding “unless the [provision of a sign language interpreter] would result in an undue burden, such as a significant difficulty or expense”) San Diego County Child Welfare Services recommends a stronger mandate for the larger agencies to provide interpreting services.
- 4.3. The proposal discusses “qualified interpreters” but does not delineate whether or not they are certified. Certification makes a difference in the quality of interpretation and lessens the chance of erroneous information being relayed. San Diego County Child Welfare Services recommends that all interpreters be certified and/or that all interpreters (certified or not) be registered with the Registry of Interpreters for the Deaf (RID) for quality assurance.

**Response to Comment**

- 4.1 Thank you for your comment. Changes to reimbursement rates are not within the scope of this regulatory action.
- 4.2. Thank you for your comment. “Large” agencies have reimbursement for sign language interpreter services built into the cost of the service so the interpreter services are not separately billable. Such large agencies are subject to the provisions under title 45, CFR, Section 84.52(d) that requires a recipient (provider) with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills as well as provisions set for the at Title 28, CFR, Section 36.303, which specifies a public accommodation shall furnish appropriate auxiliary aids and services when necessary to ensure effective communication. The Department of Justice (DOJ) provides enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the DOJ and complaints of related violations may be filed in accordance with Title 28, CFR, Section 39.170.
- 4.3. See the Department’s response to comment to 1.1 above.