

FINAL STATEMENT OF REASONS

Title 28, Code of Federal Regulations (CFR), Section 36.303 requires that health care providers offer appropriate auxiliary aids and services to their disabled patients to facilitate effective communication. Pursuant to Title 45, CFR, Section 84.52(d), the costs of these auxiliary aids and services are not reimbursable to providers with fifteen or more employees. Sign language interpreter services for deaf or hearing-impaired persons would be considered an auxiliary aid or service.

In February 2001, the Department of Health Care Services (Department) adopted Section 51503.3 in the California Code of Regulations (CCR), which allows the Medi-Cal program to reimburse Medi-Cal enrolled providers for the cost of sign language interpreter services provided to their deaf or hearing-impaired Medi-Cal beneficiaries. However, the reimbursement is currently limited to physicians and physician only groups employing fewer than fifteen employees. For other Medi-Cal enrolled providers, sign language interpreter services are currently not reimbursable by the Medi-Cal program, which creates a financial hardship for these providers. While physician services are typically the most critical health care service, there are many other health and related services where sign language interpreter services would be vital in treating beneficiaries. For example, sign language interpreter services would be very valuable with services provided by Medi-Cal enrolled providers such as physical therapists, dentists, and other providers specified in Section 51051.

If a Medi-Cal enrolled provider fails to provide sign language interpreter services, a deaf or hearing-impaired beneficiary may be discouraged from seeking medically necessary health care. If health care is delayed, it could result in more intensive and expensive hospital or emergency room care. Further, if health care is provided without a sign language interpreter present, it could result in inaccurate diagnoses or a misunderstanding of medical advice or instruction. In April of 2001, the Centers for Medicare & Medicaid Services (CMS) provided clarification to the Department that reimbursement for sign language interpreter services is not restricted to physicians. CMS specified that reimbursement may be expanded to "other Medicaid providers who are providing Medicaid services covered under the State Plan."

Therefore, this regulatory action proposes to include reimbursement for sign language interpreter services for other Medi-Cal enrolled providers who employ fewer than fifteen employees. This is consistent with Title 45, CFR, Section 84.22(c) that describes small health, welfare, or other social service providers as recipients of federal funds that employ fewer than fifteen employees. The Department has utilized this description as a reasonable determinate of what constitutes a "small" provider. Unlike "small" providers, "large" providers with fifteen or more employees have reimbursement for interpreter services built into the cost of the service so the interpreter services are not separately billable. Title 45, CFR, Section 84.52(d) specifies that a recipient (provider) that employs fifteen or more persons shall provide appropriate auxiliary aids, such as sign language interpreter services, to afford persons equal opportunity to benefit from the

service provided. This section also provides the Director with the discretion to require recipients with fewer than fifteen employees to provide auxiliary aids, which may include sign language interpreters, where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

The Department did not receive a request for a public hearing.

The specific purpose and rationale for each of the proposed changes to Title 22 CCR, Sections 51098.5, 51202.5, 51309.5 and 51503.3 are identified below.

Section 51098.5

Non-substantive changes are proposed to this section, including the deletion of the existing subsection (a) because there is no subsection (b) following, and subsequently changing paragraphs (1) and (2) to subsections (a) and (b) respectively. In addition, the initial phrase "Sign language interpreter services" has been included within quotation marks to be consistent with the language for the other definitions in the CCR and the first letters of the words "certified" and "non-certified" have been changed to small case to be consistent with these terms as used throughout this regulatory action. Within the revised subsections (a) and (b), the phrase "physician or a member of a Medi-Cal enrolled physician group" is proposed to be changed to the word "provider" for consistency throughout the regulations and to clarify that Medi-Cal enrolled providers, including those specified in Section 51051, may be reimbursed for sign language interpreter services provided to Medi-Cal beneficiaries if those services are necessary to facilitate medically necessary health care services. Thus, this provision will no longer be restricted to physicians and physician groups. New subsection (a) additionally proposes to delete the word "medical" and add the phrase "medically necessary health care" to specify that all services must be medically necessary for Medi-Cal to provide reimbursement.

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.

New subsection (b) identifies the "adult" as the "representative of the Medi-Cal beneficiary" and proposes to include the phrase "medically necessary health care services to the beneficiary" to clarify that it is the beneficiary who is being provided the service and for consistency with the language in subsection (a). The phrase "on behalf of a beneficiary" is proposed to be deleted because it is incorporated in the suggested change above.

In response to a 45-day public 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.

Section 51202.5

This section establishes a procedural requirement and specifies the standards for persons who provide sign language interpreter services.

Subsection (a) is proposed to be amended to clarify that interpreter services are available during the provision of medically necessary health care services, including physical therapy, case management, or dental services within a “health care setting,” rather than being strictly available in a “medical setting,” which was the phrase previously used. In addition, a non-substantive, grammatical change is proposed to correctly spell the word “possess” under subsection (a)(1)(C).

In response to 45-day public comments, the 15-day public availability proposed to preclude non-certified sign language interpreters from participation in the Medi-Cal program. However, upon review of a comment presented through the 15-day public availability and further consideration the Department decided to maintain the existing regulatory language (the inclusion of all references to non-certified sign language interpreters and related language under Sections 51098.5, 51202.5, and 51503.3). See the explanation under Section 51098.5.

Subsection (c) describes the selection of a sign language interpreter by a beneficiary or Medi-Cal enrolled provider and is proposed to be divided into paragraphs (1) and (2) for clarity and to create two distinct provisions related to sign language interpreter selection.

Under paragraph (2) the phrase “However, in” has been replaced with the term “In” to create a grammatically correct independent provision. For consistency within the regulations and to specify that sign language interpreter services can be utilized by other Medi-Cal enrolled providers, including those specified in Section 51051, this paragraph proposes to add the phrase “Medi-Cal enrolled” before the term “provider.” The term “that” has been included as a non-substantive post-proceeding addition between the terms “determines” and “the” to provide clarity and accurate grammar. The phrase “selected by the beneficiary” has also been included to clearly specify that the interpreter referenced under this paragraph is one that was chosen by the beneficiary. Additionally, the phrase “the physician may override.....the interpreter” has been replaced with language that describes the circumstances under which a Medi-Cal enrolled provider is required to select an alternate interpreter. A Medi-Cal enrolled provider is considered to have the professional skills necessary to assess such a circumstance and make such a determination. Specifically, in an emergency or acute care situation or in the event a Medi-Cal enrolled provider determines the interpreter selected by the beneficiary does not communicate effectively, accurately or impartially, and may adversely affect the health and well-being of the beneficiary due to inaccurate interpretation of a diagnosis or a misunderstanding of medical advice or instruction, the Medi-Cal enrolled provider is required to select a different interpreter. As a post proceeding non-substantive change the term “interpretation” along with other supplemental terms have been added to bring further clarification to the meaning and the intent of paragraph (2), by more clearly presenting the flaw in interpretation services rather than medical services. When a Medi-Cal enrolled provider acts pursuant to this paragraph, he or she shall also provide a written statement of reasons for the action and maintain this statement in the medical record of the beneficiary to demonstrate the basis of the statement and make it available to the State upon request pursuant to Title 22,

CCR, Section 51476(g). A post proceeding non-substantive capitalization correction to the term "State" is also included.

Section 51309.5

This section is proposed to be amended as it relates to the scope of services for which Medi-Cal will reimburse Medi-Cal enrolled providers who utilize sign language interpreter services. To better reflect the contents of this section the title is proposed to read "Scope of Sign Language Interpreter Services."

Subsection (a) is proposed to be amended to clarify that sign language interpreter services may be utilized by Medi-Cal enrolled providers, including those specified in Section 51051, when necessary to facilitate "medically necessary health care services," not strictly medical services. The word "interpretation" is proposed to be changed to the word "interpreter" for consistency in the regulations.

Under paragraph (5) an amendment is proposed to delete the word "complex" to clarify that all instructions regarding medication are considered medically necessary health care services, not only those that might be considered "complex."

In addition, paragraph (6) and proposed paragraph (8) contain provisions that further expand the scope of services with which sign language interpreter services may be utilized. These two paragraphs describe sign language interpreter services in cases of self-care or therapy instruction for individuals discharged to an independent home setting and with the delivery of case management services. Other similar medically necessary health care and related services would also be included within the scope of services specified in subsection (a). In addition, under paragraph (6), the word "medical" is proposed to be changed to the word "health care" for consistency within the regulations.

Subsection (b) is proposed to be changed to allow reimbursement for sign language interpreter services for other Medi-Cal enrolled providers with fewer than fifteen employees because reimbursement is not restricted to physicians and physician groups. This provision is consistent with the description of "small health, welfare, or other social service providers" found in Title 45, CFR, Section 84.22(c).

In subsection (c) the term "care" is added between the terms "health" and "facility" as a non-substantive post-proceeding change. This addition will provide consistency in referencing the phrase "health care" throughout the regulations.

Section 51503.3

This section is proposed to be amended as it pertains to reimbursement for sign language interpreter services. Reimbursement is limited to Medi-Cal enrolled providers as specified in Section 51309.5(b) of the regulations. Similar to Section 51309.5 above, it is proposed that the phrase "physicians or physician groups" is replaced with the

phrase “Medi-Cal enrolled providers employing fewer than fifteen employees” to provide consistency in the regulation language and to clarify that other Medi-Cal enrolled providers can be reimbursed for sign language interpreter services.

In response to 45-day public comments, the 15-day public availability proposed to preclude non-certified sign language interpreters from participation in the Medi-Cal program. However, upon review of a comment presented through the 15-day public availability and further consideration the Department decided to maintain the existing regulatory language (the inclusion of all references to non-certified sign language interpreters and related language under Sections 51098.5, 51202.5, and 51503.3). See the explanation under Section 51098.5.

NOTE

A non-substantive post-proceeding addition is included under the NOTE. Section 20 of the Health and Safety (H&S) Code is included as an Authority citation under Sections 51098.5, 51202.5, 51309.5, and 51503.3. H&S Code Section 20 was amended as a result of the California Public Health Act of 2006 (SB 162, Chapter 241, Statutes of 2006), and specifies that any reference to the former State Department of Health Services regarding a function not vested by Chapter 2 (commencing with Section 131050) of Part 1 of Division 112, in the State Department of Public Health, is deemed to, instead, refer to the State Department of Health Care Services. Section 20 is included as an Authority citation because it clearly acknowledges the renaming of the Department of Health Services as the Department of Health Care Services, showing that the Department of Health Care Services existed as the Department of Health Services and demonstrating the allowance for the Department of Health Care Services to adopt, amend or repeal regulations.

Statement of Determinations

Alternatives Considered

The Department has determined that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Local Mandate Determination

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7, (commencing with Section 17500) of Division 4 of the Government Code.

Economic Impact Statement

The Department has made the determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

- 1) The creation or elimination of jobs within the State of California.
- 2) The creation of new businesses or elimination of existing businesses within the State of California.
- 3) The expansion of current businesses within the State of California.

Effect on Small Business

The Department has determined that these regulations may affect small businesses. Some Medi-Cal providers that offer sign language interpreter services would derive a benefit from the implementation of these regulations because of the expansion of reimbursable services. The Medi-Cal Program is a voluntary program for providers who elect to participate.

Housing Costs Determination

The Department has determined that the proposed regulations will have no impact on housing costs.

Final Statement of Reasons Addendums

Addendum I provides a list of persons who submitted written comments during the 45-day public proceedings. Addendum II provides a summary of the 45-day public comments and responses to these comments. Addendum III provides a list of persons who submitted written comments during the 15-day public proceedings. Addendum IV provides a summary of the 15-day public comments and responses to these comments.