

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:

- (A) the regulatory provision is inconsistent with and superseded by a changed statute, and
- (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

Background

Title XIX of the federal Social Security Act provides for the federal Medicaid Program. In California, the federal Medicaid Program is known as the California Medical Assistance Program, or Medi-Cal, and is administered by DHCS. This program is a cooperative venture, jointly funded by the 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 Medicaid, 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' 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) specifies 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.

Explanation of Changes Without Regulatory Effect

In 2008, the Legislature enacted Senate Bill 1147 (Statutes of 2008, Chapter 546, Section 3), which in part added Section 14011.10 to the Welfare and Institutions (W&I) Code. Subdivision (a) provides for the suspension of Medi-Cal benefits to an individual under 21 years of age who is an inmate of a public institution, in accordance with Section 1396d(a)(28)(A) of Title 42 of the United States Code (USC). (Section 1396d, paragraph (a)(28) has since been re-numbered to paragraph (a)(29) and thus will be referenced as such from this point forward.)

Title 42, USC, Section 1396d(a)(29)(A), specifies that “except as otherwise provided in paragraph (16), such term [“medical assistance,” which means the payment of part or all of the cost of care and services] does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution) . . .”

Title 42, USC, Section 1396d(a)(16) provides that “inpatient psychiatric hospital services for individuals under age 21 as defined in [Section 1396d(h)]” are services included under “medical assistance.”

Therefore, the suspension of Medi-Cal benefits pursuant to W&I Code Section 14011.10 must be in accordance with Title 42, USC, Section 1396d(a)(29)(A). Although Title 42, USC, Section 1396d(a)(29)(A) clearly excludes medical assistance for an inmate in a public institution, it also provides for an express exemption for “inpatient psychiatric hospital services for individuals under age 21.”

Accordingly, DHCS proposes a change without regulatory effect pursuant to Title 1, CCR, Section 100(a)(6) to make a regulatory provision (Section 50273) consistent with a changed California statute (enactment of W&I Code Section 14011.10) since it meets both of the following conditions:

- (A) The regulatory provision is inconsistent with and superseded by a changed statute. Currently, Section 50273 does not provide for the express exemption for “inpatient psychiatric hospital services for individuals under age 21” as required by W&I Code Section 14011.10. Therefore, Section 50273 is inconsistent with and superseded by W&I Code Section 14011.10.
- (B) DHCS has no discretion to adopt a change that differs in substance from the one chosen. The underlying federal law (Title 42, USC, Section 1396d(a)(29)(A)) and state statute (W&I Code Section 14011.10) are explicit with regard to the exemption for “inpatient psychiatric hospital services for individuals under age 21.” DHCS has no discretion to deny inpatient psychiatric hospital services to an otherwise eligible individual under age 21 because the individual is an inmate in a public institution.

Explanation of Changes Without Regulatory Effect

Specifically, the proposed amendment to Section 50273 adds paragraph (12) to subsection (c) to provide for the express exemption for “inpatient psychiatric hospital services for individuals under age 21”, who are inmates of a public institution. Therefore, a youth remains eligible for Medi-Cal coverage of “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 language for paragraph (12) of subsection (c) is as follows:

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

This proposed Rule 100 amendment is further supported by the ruling in a case entitled, *City and County of San Francisco, County of Santa Clara v. State of California, Department of Health Care Services, Superior Court of San Francisco, Case No. 468-241*. [See court order]

In the court’s ruling, Judge Peter Busch held that federal Medicaid law in Title 42, USC, Section 1396d(a)(28)(A) [now (a)(29)] barring federal funds for medical services provided to inmates of a public institution is subject to an exception for inpatient psychiatric hospital services for persons under 21. “In other words, this statutory framework provides FFP for *inpatient* psychiatric hospital services provided to youths even during their detention.” [Order at page 3].

Furthermore, the court’s ruling stated, “The prohibition in Welfare & Institutions Code § 14011.10(d) for health care services provided to only ‘inmates of public institutions’ evidences the Legislature’s intent that the prohibition not extend to a detained youth, who becomes an inpatient in a medical institution. Welfare & Institutions Code § 14011.10 therefore neither conflicts with Welfare & Institutions Code §§ 11016 or 14053, or Penal Code § 4011.1, nor prohibits Medi-Cal coverage of inpatient psychiatric hospital services for youths in custody.” [Order at page 6]

The court order at pages 7-8 further states that DHCS “may not deny Medi-Cal coverage of inpatient psychiatric hospital services provided to an otherwise eligible individual under age 21 on the ground that the individual is in the custody of or detained by a city or a county or by the State.” This order became final on May 25, 2011. DHCS indicated it would amend the applicable regulation (Section 50273) to conform to the court’s order in the Declaration of René Mollow, MSN, RN, Chief, Medi-Cal Eligibility Division, in support of the Return on the writ dated July 14, 2011.

Therefore, this change without regulatory effect makes Section 50273 consistent with federal and state laws and the court’s order.

Explanation of Changes Without Regulatory Effect

The NOTE is amended to reflect updated “Reference” citations. Specifically, Title 42, USC, Section 1396d(a)(24)(A) is now designated as Title 42, USC, Section 1396d(a)(29)(A).

As noted above, upon enactment of Senate Bill 1147 (Statutes of 2008, Chapter 546, Section 3 that includes W&I Code Section 14011.10) and at the time of the court order, the relevant section of Title 42, USC, was Section 1396d(a)(28)(A) and has subsequently been re-numbered as Section 1396d(a)(29)(A).

Additionally, within the NOTE, 42 Code of Federal Regulations, Sections 435.1008 and 435.1009 have been updated to Sections 435.1009 and 435.1010, respectively.