



State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Sign Language Interpreter Services, R-28-02

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: The Americans with Disabilities Act (ADA) of 1990, Title 42 of the United States Code (USC), Sections 12101-12213 ensures equality of opportunity, full participation, independent living and economic self-sufficiency for individuals with disabilities. Title 28, Code of Federal Regulations (CFR), Section 36.303, interprets and makes specific the requirements under the ADA with respect to the auxiliary aids and services that must be provided by public accommodations to disabled individuals to ensure those individuals are not excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services. The professional office of a health care provider is included within the definition of a "public accommodation," as that term is defined in Title 42, USC, Section 12181(7)(F). Under federal law, Title 28, CFR, Section 36.303 a public accommodation must provide appropriate auxiliary aids and services where necessary, to ensure effective communication with individuals with disabilities, unless the public accommodation can demonstrate that taking those steps would result in an undue burden, such as significant difficulty or expense. The terms auxiliary aids and services are defined to include "qualified interpreters" (Title 42, USC, Section 12102(1)(A)).

Existing State law, Section 54.1(a)(1) and (d) of the Civil Code, specifies that "individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices . . .," and states that a violation of the right of any individual under the ADA shall also constitute a violation of Section 54.1.

The Department of Health Services (Department) proposes to amend Title 22, California Code of Regulations (CCR) to reimburse Medi-Cal enrolled providers, as specified in

Section 51051, for the cost of sign language interpreter services used during the provision of medically necessary health care services that are provided in accordance with State Plan requirements and federal guidelines.

This regulatory action proposes to:

- 1) Amend Section 51098.5 to define sign language interpreter services as those services provided by a certified or non-certified interpreter, meeting the specified standards set forth in Section 51202.5, during the provision of medically necessary health care services provided by a Medi-Cal enrolled provider, such as those specified in Section 51051.
- 2) Amend Section 51202.5 to specify that in the circumstance where a Medi-Cal enrolled provider has determined that the interpreter selected by the beneficiary does not communicate effectively and the result may be an adverse effect for the beneficiary, the provider is required to select an alternate interpreter. In addition, the Medi-Cal enrolled provider must maintain a written statement of reasons for this action in the beneficiary's medical record, to be available pursuant to Section 51476(g).
- 3) Amend Section 51309.5 to expand the scope of the health care and related services for which Medi-Cal will reimburse enrolled providers for utilizing sign language interpreter services. These expanded services include the following:
 - a) Providing instructions regarding all medication,
 - b) Explaining instructions for self-care and/or for therapy activities, upon discharge from a health care facility to an unsupervised home setting, and
 - c) Obtaining or providing case management information.
- 4) Amend Section 51503.3 to include reimbursement for sign language interpreter services for Medi-Cal enrolled providers that employ fewer than fifteen employees.

AUTHORITY: Sections 10725 and 14105, Welfare and Institutions Code.

REFERENCE: Section 54.1, Civil Code; Section 14000, Welfare and Institutions Code; 42 USC Sections 12101 et seq.; 28 CFR Sections 35.130(a) and (b) and 36.303; and 45 CFR Sections 84.22 (c), and 84.4(a) and (b), and 84.52(d).

COMMENTS: Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on April 20, 2007, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-

7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or

2. By fax transmission: (916) 440-7714; or

3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-28-02" in the subject line to facilitate timely identification and review of the comment), or

4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES: Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Lilia Coleman of the Medi-Cal Benefits Branch at (916) 552-9579.

All other inquiries concerning the action described in this notice may be directed to Lynette Cordell of the Office of Regulations at (916) 650-6827, or to the designated backup contact person, Chuck Smith at (916) 440-7695.

CONTACTS: In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-28-02.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulation@dhs.ca.gov, or write to the Office of

Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS: The Department has determined that the 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.

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

The Department has determined that the 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 the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would 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.

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

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(13) the Department must determine 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 the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Linda Tutor, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7695 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

DEPARTMENT OF HEALTH SERVICES

Original Signed

Tom McCaffery for

Sandra Shewry
Director

R-28-02

Dated: January 29, 2007