

## **FINAL STATEMENT OF REASONS**

Title XIX of the Social Security Act is a federal/state entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources. This program, known as Medicaid, became law in 1965 as a cooperative venture jointly funded by the federal and state governments to assist states in furnishing medical assistance to eligible needy persons. Medi-Cal is California's Medicaid program. It provides vital health and long-term care coverage to low-income children, their parents, elderly and disabled Californians. Medi-Cal is administered by the Department of Health Care Services (Department).

A Medi-Cal eligibility determination is made based on program rules, as to whether an individual qualifies for benefits under the program. An individual must not exceed the established property/assets limits in order to become Medi-Cal eligible. Income deductions are applied to an individual's countable income. The amount for home upkeep and repair is one of those deductions. The remaining income is compared to the appropriate maintenance need level to determine whether an individual has a share of cost. Maintenance need level, based upon federal law, is the amount of monthly income that a person or family is deemed to need for food, clothing, housing, etc.

Title 42, Code of Federal Regulations (C.F.R.) Section 435.725(d) sets forth an allowance for home maintenance (the individual can retain more countable income) if the amount is deducted for six months or less and a physician has certified the individual is likely to return home within this period. This proposed regulatory action amends Title 22, California Code of Regulations (CCR) Sections 50605(b) and (c) pertaining to the home upkeep needs for persons in long-term care (LTC), and will align this section with Title 42, C.F.R. Section 435.725(d).

### **Proposed Amendments: Section 50605:**

#### **Subsection (b)(1)**

The phrase "LTC patient's" is included to more clearly specify that this conditional provision pertains to the spouse of a LTC patient. The term "member" is included as well simply to indicate a "member" of the family cannot be living in the home as part of this condition. An "a" is included to provide accurate grammar and sentence structure.

#### **Subsection (b)(3)**

The term "will" is replaced with the phrase, "or when both spouses are in LTC, either spouse, is likely to," which will align this provision with Title 42, C.F.R. Sections 435.725(d)(2) and covers the situation if both spouses are in LTC at the same time.

Subsection (b)(4)

This provision is included to specify that the home upkeep allowance deduction cannot be taken for more than the referenced six-month period, which will align this subsection with Title 42, C.F.R. Section 435.725(d)(1).

Subsection (c)(3)

A non-substantial grammatical change has been made, replacing the phrase “have been” with “were.” The phrase “at the time either or both became inpatients” is included for clarification and is intended to effectuate the intent of Title 42, C.F.R. Section 435.725(d). The term “will” is removed and the phrase “either is likely to” is included to align this provision with Title 42, C.F.R. Section 435.725(d)(2), as described above. Only one spouse has to be “likely” to return home within this time period. The phrase “of the date LTC status was established” has been included to be consistent with the Subsection (b)(3) and clarifies when the six-month period begins.

Subsection (d)

A non-substantial grammatical change has been made, deleting “the” as it is currently placed (within the sentence), and reinserting (“the”) prior to the term “following” for grammatical clarity.

**PUBLIC PROCEEDINGS**

One comment was received during the public comment period, which commenced on February 4, 2011 and ended on March 25, 2011. See the *Addendum to the Final Statement of Reasons*, attached hereto, for a summary and response to the comment.

A public hearing was not requested.

**STATEMENTS OF DETERMINATION**

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 determined 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 the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

### Effect on Small Businesses

The Department has determined that the proposed regulations would not affect small businesses. This proposed regulatory action aligns Title 22, CCR Section 50605(b) and (c) with federal regulation regarding the allowance for upkeep of a home for individuals on Medi-Cal in a LTC facility. These regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

### Housing Costs Determination

The Department has made the determination that the proposed regulations would have no impact on housing costs.

Addendum to the Final Statement of Reasons

The written public proceeding (from 2/4/11 to 3/25/11) produced the following comment:

Commenter: Bill Taylor, Director, Intergovernmental Relations & Multimedia Services, County of Los Angeles, Department of Public Social Services

Comment: The new section 50605(b)(4) does not clearly state what happens if the patient has to stay longer than the original six-month medical determination period in the facility. Can the patient get a second six-month medical determination that will allow them another six months of Upkeep and Repair Deductions?

Response: Paragraph (b)(4) of Section 50605 aligns the section with Title 42, C.F.R. Section 435.725(d)(1), which specifies that the home maintenance allowance amount may be deducted for not more than a six-month period. Paragraph (b)(4) provides a cross reference to paragraph (b)(3) that specifies that the six-month period begins with the medical determination that the patient is likely to return home within six months of the date LTC patient status was established. Paragraph (b)(4) also requires that the income cannot be deducted for more than this specified six-month period. This limits the deduction to the six-month period following the date that the patient enters LTC.