

INITIAL STATEMENT OF REASONS

Title XIX of the Social Security Act provides for the federal Medicaid Program. In California, the federal Medicaid Program is known as the California Medical Assistance Program, or the Medi-Cal Program and is administered by the Department of Health Care Services (Department). The Medi-Cal Program provides qualified low-income Californians (primarily families, children, pregnant women, persons with disabilities and seniors) with vital health care services.

Statement of Purpose and Rationale/Problem Being Addressed

The Local Educational Agency Medi-Cal Billing Option Program (LEA Program), established in 1993, in conjunction with the California Department of Education (CDE), offers health care services including related services, such as specialized medical transportation services for LEA eligible beneficiaries within the school environment. Under the LEA Program, enrolled school districts and county offices of education, choosing to participate, are reimbursed by the federal government for services provided to LEA eligible beneficiaries. The LEA Program is locally funded. Local Educational Agencies fund the state share of Medicaid expenditures through a Certified Public Expenditures (CPE) program, in accordance with Title 42, Code of Federal Regulations (CFR), Section 433.51.

Since the 1970s, schools have been mandated by the Individuals with Disabilities Education Act (IDEA), as set forth in Title 20, United States Code (USC), Section 1400 et seq., to provide appropriate educational services to all children with disabilities. Specialized medical transportation services to Medicaid-eligible children under IDEA can be claimed under the Medicaid Program, as stated in the Centers for Medicare & Medicaid Services' (CMS) Medicaid and School Health: A Technical Assistance Guide, August 1997 (p. 59), when the following conditions are met:

- The child receives transportation to obtain a Medicaid-covered service (other than transportation).
- Both the Medicaid-covered service and the need for transportation are included in the child's Individualized Education Program (IEP) or Individualized Family Services Plan (IFSP).

Assembly Bill (AB) 2608, (Chapter 755, Statutes of 2012), amended Welfare and Institutions (W&I) Code, Sections 14115.8 and 14132.06 to require, among other provisions, that the Department ensure schools receive reimbursement for all eligible services they provide by eliminating any regulatory constraints that exceed federal requirements pertaining to the LEA Program. This proposed regulatory action will align state regulations with W&I Code Sections 14115.8 and 14132.06. These regulations are also consistent with the description of related services (including transportation services) under Title 34, CFR, Section 300.34, and with the requirements under the IDEA to provide appropriate educational services to children with disabilities.

Anticipated Benefits or Goals of the Regulations

This regulatory proposal supports the intent of the initiating legislation as specified under W&I Code Section 14000, which states the purpose of Chapter 7, Basic Health Care, is to afford qualifying individuals (such as the aged or disabled) employment of health care services in a manner equitable to the general public and without duplication of benefits available under other federal or state laws.

Within Chapter 7, Section 14124.5 further specifies that the Director may establish regulations as are necessary or proper to carry out the purpose and intent of this Chapter, which includes outlining the uniform schedule of health care benefits under the Medi-Cal program, as described under Section 14131, which includes medical transportation in Section 14132.06.

The amendments proposed through this regulatory action will address the matter of establishing a clear definition for “Local Educational Agency (LEA) Specialized Medical Transportation Services” and will include related regulatory amendments that promote the availability of these vital school-based health related services and consistency with state and federal mandates. Accessibility to LEA specialized medical transportation services directly benefits LEA eligible beneficiaries by allowing them access to critical LEA services. In addition to meeting the goals of the authorizing statutes as described above, these proposed regulations ensure the proper and efficient administration of the Medi-Cal Program and the LEA Program in accordance with the federal and state laws that govern both of these Program’s rules of participation and funding.

The specific purpose and rationale for each proposed change under Title 22, California Code of Regulations (CCR), Chapter 3, are identified below.

Section 51190.4.1 – Local Educational Agency (LEA) Specialized Medical Transportation Services

Section 51190.4.1 is proposed to be adopted to define “Local Educational Agency (LEA) Specialized Medical Transportation Services.” This definition is necessary to establish a clear and consistent meaning for this term as it is used throughout other CCR sections.

This definition is written specifically to pertain to “LEA eligible beneficiaries” and is consistent with transportation services for disabled children as described in Title 34 CFR, Section 300.34(c)(16)(iii), which describes the use of specialized equipment for transportation (i.e. an adapted bus, lifts, ramps) necessary to provide transportation to meet the specific medical or physical disability of a child.

This definition is also consistent with the CMS State Medicaid Director’s Letter, dated May 21, 1999, related to school-based transportation services and the CMS, Medicaid and School Health: A Technical Assistance Guide, August 1997 (p. 59), which states that transportation services to Medicaid-eligible children under IDEA can be claimed

under the Medicaid Program, when the child receives transportation to obtain a Medicaid-covered service (other than transportation), and both the Medicaid-covered service and the need for transportation are included in the child's IEP or IFSP.

Section 51231.1 – Litter Van Requirements

Subsection (f) is proposed to be amended. A designation of (1) is included following (f) because of newly proposed subsection (f)(2).

Subsection (f)(1) is amended to include an “a” between “to” and “gurney” for accurate grammar.

Subsection (f)(2) is necessary to clearly exclude the requirements under subsection (f)(1) from applying to LEA specialized medical transportation services provided to an LEA eligible beneficiary whose medical or physical condition does not require the use of a gurney. This amendment is consistent with W&I Code Section 14132.06(f)(2)(A)(iii), which specifies that the provisions of Section 51231.1(f) shall not apply to students whose medical or physical condition does not require the use of a gurney. This amendment ensures that the regulation is not more stringent than federal law and regulation, located in Title 20, USC, Section 1400 et seq. and Title 34, CFR, Section 300.34, which would restrict school districts from obtaining federal reimbursement for LEA specialized medical transportation services. This proposed amendment is also consistent with W&I Code Section 14115.8(a)(4), which requires that the Department remove unnecessary regulatory requirements that exceed federal requirements.

Section 51231.2 – Wheelchair Van Requirements

Subsection (e) is proposed to be amended. A designation of (1) is included following (e) because of newly proposed subsection (e)(2).

Subsection (e)(2) is necessary to clearly exclude the requirements under subsection (e)(1) from applying to LEA specialized medical transportation services provided to an LEA eligible beneficiary whose medical or physical condition does not require the use of a wheelchair. This amendment is consistent with W&I Code Section 14132.06(f)(2)(A)(iv), which specifies that the provisions of Section 51231.2(e) shall not apply to students whose medical or physical condition does not require the use of a wheelchair. This amendment ensures that the regulation is not more stringent than federal law and regulation, located in Title 20, USC, Section 1400 et seq. and Title 34, CFR, Section 300.34, which would restrict school districts from obtaining federal reimbursement for LEA specialized medical transportation services. This proposed amendment is also consistent with W&I Code Section 14115.8(a)(4), which requires that the Department remove unnecessary regulatory requirements that exceed federal requirements.

Section 51323 – Medical Transportation Services

Subsection (a)(2)(A) is proposed to be amended. A designation of 1. is included following (A) because of newly proposed subsection (a)(2)(A)2.

Subsection (a)(2)(A)2. is necessary to clearly exclude the requirements under Subsection(a)(2)(A)1. from applying to LEA specialized medical transportation services provided to an LEA eligible beneficiary. This amendment is consistent with W&I Code Section 14132.06(f)(2)(A)(i), which specifies that the provisions of Section 51323(a)(2)(A) shall not apply to LEA eligible beneficiaries. This amendment ensures that the regulation is not more stringent than federal law and regulation, located in (Title 20, USC, Section 1400 et seq. and Title 34, CFR, Section 300.34), which would restrict school districts from obtaining federal reimbursement for LEA specialized medical transportation services. This proposed amendment is also consistent with W&I Code Section 14115.8(a)(4), which requires that the Department remove unnecessary regulatory requirements that exceed federal requirements.

Subsection (a)(3)(B) is proposed to be amended. A designation of 1. is included following (B) because of newly proposed subsection (a)(3)(B)2.

Subsection (a)(3)(B)2. is necessary to clearly exclude the requirements under subsection (a)(3)(B)1. from applying to LEA specialized medical transportation services provided to an LEA eligible beneficiary. This amendment is consistent with W&I Code Section 14132.06(f)(2)(A)(ii), which specifies that the provisions of Section 51323(a)(3)(B) shall not apply to LEA eligible beneficiaries. This amendment ensures that the regulation is not more stringent than federal law and regulation, located in (Title 20, USC, Section 1400 et seq. and Title 34, CFR, Section 300.34), which would restrict school districts from obtaining federal reimbursement for LEA specialized medical transportation services. This proposed amendment is also consistent with W&I Code Section 14115.8(a)(4), which requires that the Department remove unnecessary regulatory requirements that exceed federal requirements.

Section 51360 – Local Educational Agency (LEA) Services

Subsection (a) is proposed to be amended to correct a typographical error, specifically adding a “5” to Section “51190.4.”

Subsection (b)(1)(C) is proposed to be amended to correct an error: the “s” is removed from the term “Section.”

Subsections (b)(6) and (b)(7) are proposed to be amended to exclude the reference to an Individualized Health and Support Plan (IHSP), which is consistent with the CMS, Medicaid and School Health: A Technical Assistance Guide, August 1997 (p. 59), that specifically states that transportation services to Medicaid-eligible children under IDEA can be claimed under the Medicaid Program, when the child receives transportation to obtain a Medicaid-covered service (other than transportation), and both the Medicaid-

covered service and the need for transportation are included in the child's IEP or IFSP (the IHSP is not specifically listed). This exclusion of an IHSP is also consistent with W&I Code Section 14132.06, under which the reference to IHSP was removed in 2006 (per Stats.2006, c. 581 (AB 2837), §2.)

Also, within subsections (b)(6) and (b)(7), the phrase "or in the" was included for purposes of sentence structure.

Subsection (b)(8) is proposed to be amended to include (A) following (8) because of newly proposed subsection (b)(8)(B).

Subsection (b)(8)(A) is proposed to be amended to remove the current reference to "...medical transportation as described in Section 51323(a)" and instead to specify "LEA specialized medical transportation services" under this listing of LEA services, which is consistent with the use of this defined term throughout the regulations.

Existing subsection (b)(8)(A) is repealed to be consistent with the CMS, Medicaid and School Health: A Technical Assistance Guide, August 1997 (p. 59), that specifically states that transportation services to Medicaid-eligible children under IDEA can be claimed under the Medicaid Program, when the child receives transportation to obtain a Medicaid-covered service (other than transportation), and both the Medicaid-covered service and the need for transportation are included in the child's IEP or IFSP.

Subsections (b)(8)(B), (b)(8)(B)1., and (b)(8)(B)2. are proposed to be amended to include the terms "LEA eligible beneficiary" and "LEA specialized medical transportation services," to be consistent with the use of these terms, which are defined in regulation (Sections 51190.1 and 51190.4.1[proposed], respectively) and used throughout the regulations.

Also, within subsection (b)(8)(B)2. a comma is removed for correct punctuation.

Section 51491 – Local Educational Agency (LEA) Eligibility for Payment

Subsections (h) and (i)(3) are proposed to be amended to include the term "specialized" to be consistent with the newly defined term "LEA specialized medical transportation services." The term "associated" is added in front of "LEA mileage" to be consistent with similar references under other sections (i.e. 51360(b)(8)). Also, a comma is removed after the term "mileage" for accurate punctuation.

Subsection (i)(3) is amended to include "LEA eligible" in front of the term "beneficiary" to reflect this term as it is defined in Section 51190.1 and used throughout the regulations. In addition, subsection (i)(3) is amended to remove the phrase "except as provided in Section 51360(b)(8)" because Section 51360(b)(8) has also been amended so this cross reference is no longer accurate. LEA specialized medical transportation services are reimburseable in accordance with Section 51491; there are no other exceptions related to eligibility for payment.

Documents Relied Upon

- 1) CMS, Medicaid and School Health: A Technical Assistance Guide, August 1997.
http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Financing-and-Reimbursement/Downloads/School_Based_User_Guide.pdf
- 2) CMS, State Medicaid Director's Letter: May 21, 1999.
<http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD052199.pdf>

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 regulatory action was taken, would be as effective and less burdensome to affected private persons than the regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Regulations related to the LEA Program are located in Title 22, CCR, Chapter 3, Health Care Services. Using this regulatory proposal to make amendments related to LEA specialized medical transportation is the most effective and convenient method to provide current information to those affected by the regulations. This proposed regulatory action will align state regulations with W&I Code Section 14115.8. These regulations are also consistent with the description of related services (including transportation services) under Title 34, CFR, Section 300.34, and with the requirements under the IDEA to provide appropriate educational services to children with disabilities.

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 Analysis/Assessment

The Department has made an initial 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:

- The creation or elimination of jobs within the State of California.

- The creation of new businesses or the elimination of existing businesses within the State of California.
- The expansion of businesses currently doing business within the State of California.

Impact on Jobs and Businesses

Participation in the LEA Program is voluntary for LEA's, LEA service providers and LEA eligible beneficiaries. The proposed regulations would likely increase the amount of LEA specialized medical transportation services provided to LEA beneficiaries. This increase in services would raise the amount of claims submitted by LEAs for reimbursement of LEA specialized medical transportation services. This in turn will increase the amount of federal reimbursement provided to LEAs as well as the amount of reimbursement to the provider of the LEA specialized medical transportation services. However, it is not anticipated that this increase in reimbursement would have a significant impact on the creation or elimination of jobs, the creation of business, the elimination of existing business or the expansion of businesses in California.

Benefits of the Proposed Regulation

The Department has determined that the proposed regulations will not affect worker safety or the state's environment. However, the proposed regulations will benefit the health and welfare of California residents, specifically California children with disabilities (LEA eligible beneficiaries). The proposed regulations will promote the availability of critical school based health related services, specifically LEA specialized medical transportation services. This regulatory action also aligns state regulations with provisions under W&I Code Sections 14115.8 and 14132.06; Title 20, USC, Section 1400 et seq.; and Title 34, CFR Section 300.34.

Effect on Small Business

The Department has determined that the proposed regulations would only affect small businesses or contracted service providers that choose to provide LEA specialized medical transportation services through the LEA Program.

Housing Costs Determination

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