

**State of California
Office of Administrative Law**

In re:
Department of Health Care Services

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections:
Amend sections: 51180, 51349
Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2015-1120-03

OAL Matter Type: Regular (S)

This rulemaking by the Department of Health Care Services amends sections in Title 22 of the California Code of Regulations regarding hospice benefits under the Medi-Cal program for certified terminally ill beneficiaries. This action clearly specifies the scope and duration of hospice care for Medi-Cal beneficiaries and that children under hospice care who are under the age of 21 are allowed curative care. With these changes, the Medi-Cal provisions will be consistent with federal law and the Medicare program.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2016.

Date: January 5, 2016

Original Signed

Beverly J. Johnson
Beverly J. Johnson
Deputy Director

For: DEBRA M. CORNEZ
Director

Original: Jennifer Kent
Copy: Kenneisha Moore

[Faint circular stamp]
JAN 10 2016
OFFICE OF ADMINISTRATIVE LAW
STATE OF CALIFORNIA

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-0713-02	REGULATORY ACTION NUMBER 2015-1120-035	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

<p>NOTICE</p>	<p>REGULATIONS</p>
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ENDORSED - FILED
 In the office of the Secretary of State
 of the State of California

JAN -5 2016

2:10 pm

2015 NOV 20 P 4: 08
 OFFICE OF
 ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY Department of Health Care Services	AGENCY FILE NUMBER (if any) DHCS-14-021
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2015, 30-2	PUBLICATION DATE 7/24/2015	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Hospice Care	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND 51180 and 51349
REPEAL
TITLE(S) 22

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Kenneisha Moore	TELEPHONE NUMBER (916) 440-7695	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Kenneisha.Moore@dhcs.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Original Signed [Redacted]	DATE 11/19/15
TYPED NAME AND TITLE OF SIGNATORY Jennifer Kent, Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
 JAN 03 2016
 Office of Administrative Law

(1) Amend Section 51180 as follows:

§ 51180. Hospice Care.

(a) Hospice care means the provision of palliative and supportive items and services described below to a terminally ill individual as defined in Section 51180.2, who has voluntarily elected to receive such care in lieu of curative treatment related to the terminal condition, by a hospice provider or by others under arrangements made by a hospice provider:

- (1) Nursing services;
- (2) Physical or occupational therapy, or speech-language pathology;
- (3) Medical social services under the direction of a physician;
- (4) Home health aide and homemaker services;
- (5) Medical supplies and appliances;
- (6) Drugs and biologicals;
- (7) Physician services;
- (8) Short-term inpatient care;
- (9) Counseling, including bereavement, dietary and spiritual counseling;
- (10) Any other item or service for which payment may otherwise be made

under the Medi-Cal Program.

(b) Hospice care for a child, under the age of 21, shall also include the items and services specified in subsection (a) for care related to curative treatment.

Note: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, and 14132, and 14132.74, Welfare and Institutions Code; and 42 U.S.C. Sections 1395d (a)(4), 1395d (d)(1), 1396d (o) and 1397jj (a)(23).

(2) Amend Section 51349 as follows:

§ 51349. Hospice Care.

Subsections (a) through (c) – No Changes

(d) An individual who elects to receive hospice care, or that individual's representative as defined in Section 51180.37 must file an election statement with the hospice providing the care. The election statement shall include:

(1) Identification of the hospice.

(2) The individual's or representative's acknowledgement that:

(A) ~~He or she has full understanding that the h~~Hospice care provided to adults shall given as it relates to the individual's terminal illness will be palliative rather than curative in nature, or-

(B) Hospice care provided to a child, under the age of 21, may be palliative and curative at the discretion of the treating physician.

~~(B)~~(C) For adults, cCertain Medi-Cal benefits as specified in subsection (f) are waived by the election.

(3) The effective date of the election.

(4) The signature of the individual or representative.

(e) Elections, as specified under subsection (d), may be made for up to two periods of 90 days each, one subsequent period of 30 days, and one 180-day extension of the 30-day period. Hospice services shall not be covered beyond 300 days, and for an unlimited number of subsequent periods of 60 days each.

(1) Payment shall be made for hospice care on behalf of an individual who voluntarily elects such care only during the two periods of 90 days each ~~and one subsequent period of 30 days and any subsequent extension~~ and during the unlimited number of subsequent periods of 60 days each during the individual's lifetime.

(2) An election period shall be considered to continue through the initial election period and through subsequent election periods as long as the hospice provider agrees to renew the election and as long as the individual:

- (A) Remains in the care of the hospice; and
- (B) Does not revoke the election.

(3) An individual's voluntary election may be revoked or modified at any time. To revoke the election of hospice care, the individual or representative must file a statement with the hospice that includes the following information:

(A) A signed statement that the individual or representative revokes the individual election for Medi-Cal coverage for the remainder of the election period.

(B) The effective date, which may not be earlier than the date the revocation is made.

(4) Revocation shall constitute a waiver of the right to hospice care during the remainder of the current 90 or ~~30~~ subsequent 60-day election periods ~~plus any extension~~.

Subsections (e)(5) through (j) – No changes

Note: Authority cited: Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code. Reference: Sections 14053, 14132, and 14132.74 and 14133.85, Welfare and Institutions Code; 42 U.S.C.

Sections 1395d (a)(4), 1395d (d)(1), 1396d (o) and 1397jj (a)(23); and 42 CFR Section 418.21.