

Explanation of Changes Without Regulatory Effect

Background

The federal Medicaid Program in California is called Medi-Cal and is administered by the Department of Health Care Services (DHCS). Medi-Cal provides health care including medical, dental, mental health, substance use treatment services, and long-term care to eligible low income families, children, pregnant women, seniors and persons with disabilities. Medi-Cal also provides other remedial care, not necessarily medical care. Other remedial care may include treatment by prayer or healing by spiritual means in the practice of the religion of any church or religious denomination.

Welfare and Institutions (W&I) Code Sections 10725 and 14124.5, authorizes DHCS' director to adopt, amend, or repeal regulations, as necessary and proper, to carry out the purpose and intent of the laws enforced by DHCS. Specifically, W&I Code, Chapter 7, Basic Health Care, Section 14000, states the purpose of this chapter is to afford qualifying individuals health care services. The uniform schedule of health care benefits under Medi-Cal is described under W&I Code Section 14131, et seq. W&I Code Section 14059 specifies the types of services to be provided under Chapter 7 (including remedial care).

Summary

DHCS proposes changes without regulatory effect that would amend Title 22 of the California Code of Regulations (CCR), under the following sections:

- Section 51051. Provider, which includes Christian Science Facilities and Christian Science Practitioners as providers under Medi-Cal.
- Section 51135. Healing by Prayer or Spiritual Means, which defines "Healing by prayer or spiritual means," as services of Christian Science Practitioners.
- Sections 51221 and 51222, which specify standards of participation under Medi-Cal for Christian Science Facilities and Christian Science Practitioners.

All references and provisions related to "Christian Science Facilities," and "Christian Science Practitioners," are proposed to be removed from these CCR sections, and where applicable replaced with "Religious Nonmedical Health Care Institutions."

The proposed amendments are without regulatory effect, because the changes would not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provisions. The proposed amendments as contained in the accompanying regulation text are without regulatory effect because of the following:

- The regulatory provisions are inconsistent with and superseded by state and federal laws; and
- The adopting agency has no discretion to adopt changes that differ from that provided in state and federal laws.

These proposed amendments are necessary, because the existing narrow reference to "Christian Science Facilities," and "Christian Science Practitioners," within these CCR sections, is inconsistent with state and federal laws. W&I Code Sections 14004 and

14059, allow for the provision of “remedial care,” including treatment by prayer or healing by spiritual means in the practice of the religion of any church or religious denomination. DHCS is only authorized to allow that any church or religious denomination be a provider of service. These statutes do not limit the provision of services to any one specific religious denomination and instead authorize any church or religious denomination to provide services. W&I Code Section 14059 authorizes DHCS to provide for any church or religious denomination provide services, therefore, DHCS has no discretion to specify and limit that only Christian Science Practitioners and Facilities may be providers of service.

Federal law, Balanced Budget Act of 1997, Section 4454 - Social Security Act (SSA), Section 1902(a) {Title 42, U.S.C., Section 1396a(a)}, removed Christian Science Sanitoria as an optional Medicaid service and instead substituted coverage of nonmedical health care institutions, as defined in the SSA, Section 1861(ss)(1) {Title 42, U.S.C. Section 1395x(ss)(1)}. These statutory changes were necessary to replace this specific religious affiliation designation (Christian Science) with a neutral religious affiliation accommodation (Religious Nonmedical Health Care Institution). Standards for “Religious Nonmedical Health Care Institutions,” are contained in federal regulation under Title 42, C.F.R. Section 440.170(b) and (c).

In the letter addressed to State Medicaid Directors, dated October 1, 1997, all state agencies providing Medicaid services were notified that federal law was removing language that authorized “Christian Science Sanitoria as an optional Medicaid service.” DHCS is required to follow federal laws in the administration of the Medi-Cal program and therefore, must implement this change. Accordingly, DHCS has no discretion and is not authorized to specify and limit that only Christian Science Practitioners and Facilities may be providers of service. DHCS is required to comply with these federal laws in the provision of Medicaid program services and this change is necessary to meet this requirement to receive federal funding for these services.

Relevant Laws

W&I Code Section 14004 specifies:

“If any individual in good faith adheres to the teachings of any bona fide church, sect, denomination, or organization, and in accordance with its principles depends for healing entirely upon prayer or spiritual means, no medical examination shall be required to receive health care authorized by this chapter, but in lieu thereof the certificate of a practitioner of such bona fide sect, denomination, or organization approved and authorized by the department, shall be accepted as to the need of such individual for service. No rule or regulation shall be adopted or continued in force which discriminates against such an individual.”

W&I Code Section 14059 specifies:

“Health care provided under this chapter may include diagnostic, preventive, corrective, and curative services and supplies essential thereto, provided by qualified medical and related personnel for conditions that cause suffering, endanger life, result in illness or

infirmity, interfere with capacity for normal activity including employment, or for conditions which may develop into some significant handicap.

Medical care shall include, but is not limited to, other remedial care, not necessarily medical. Other remedial care shall include, without being limited to, treatment by prayer or healing by spiritual means in the practice of the religion of any church or religious denomination.”

Title 42 USC Section 1395x(ss)(1)) specifies:

“The term “religious nonmedical health care institution” means an institution that-

(A) is described in subsection (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under subsection (a) of such section;

(B) is lawfully operated under all applicable Federal, State, and local laws and regulations;

(C) provides only nonmedical nursing items and services exclusively to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs;.....”

Conclusion

Medi-Cal provides for remedial care, including treatment by prayer or healing by spiritual means in the practice of the religion of any church or religious denomination. The amendments outlined below will replace the specific religious affiliation designation (Christian Science) with a neutral religious affiliation accommodation (Religious Nonmedical Health Care Institution), and make the regulations consistent with W&I Code Sections 14004 and 14059; and Title 42, U.S.C. Section 1395x(ss)(1). DHCS has no discretion to adopt changes that differ in substance from those intended by W&I Code Sections 14004 and 14059. Additionally, DHCS has no discretion to implement changes that differ from that specified under federal law.

Specific Amendments

Section 51051

- Subsection (b): Remove the phrases “Christian Science Facilities,” and “Christian Science Practitioners,” to be consistent with the above referenced state and federal laws.
- Remove the term “Centers,” from the phrase “Centers Renal Dialysis Centers and Community Hemodialysis Units,” this is a typographical error that resulted in the redundant use of this word.
- Add the phrase “Religious Nonmedical Health Care Institutions,” as a provider under Medi-Cal, to be consistent with above referenced state and federal laws.

Section 51135

- Remove the phrase “of Christian Science Practitioners,” and add the phrase “furnished in religious nonmedical health care institutions,” to be consistent with above referenced state and federal laws.

Sections 51221 and 51222

- Repeal these two sections to be consistent with above referenced state and federal laws and the proposed amendments under Sections 51051 and 51135.

Document Relied Upon

Center for Medicaid and State Operations Letter Dated October 1, 1997