

## INITIAL STATEMENT OF REASONS

Title 28, Code of Federal Regulations (CFR), Section 36.303 requires that health care providers offer appropriate auxiliary aids and services to their disabled patients to facilitate effective communication. Pursuant to Title 45, CFR, Section 84.52(d), the costs of these auxiliary aids and services are not reimbursable to providers with fifteen or more employees. Sign language interpreter services for deaf or hearing-impaired persons would be considered an auxiliary aid or service.

In February 2001, the Department of Health Services (Department) adopted Section 51503.3 in the California Code of Regulations (CCR), which allows the Medi-Cal program to reimburse Medi-Cal enrolled providers for the cost of sign language interpreter services provided to their deaf or hearing-impaired Medi-Cal beneficiaries. However, the reimbursement is currently limited to physicians and physician only groups employing fewer than fifteen employees. For other Medi-Cal enrolled providers, sign language interpreter services are currently not reimbursable by the Medi-Cal program, which creates a financial hardship for these providers. While physician services are typically the most critical health care service, there are many other health and related services where sign language interpreter services would be vital in treating beneficiaries. For example, sign language interpreter services would be very valuable with services provided by Medi-Cal enrolled providers such as physical therapists, dentists, and other providers specified in Section 51051.

If a Medi-Cal enrolled provider fails to provide sign language interpreter services, a deaf or hearing-impaired beneficiary may be discouraged from seeking medically necessary health care. If health care is delayed, it could result in more intensive and expensive hospital or emergency room care. Further, if health care is provided without a sign language interpreter present, it could result in inaccurate diagnoses or a misunderstanding of medical advice or instruction. In April of 2001, the Centers for Medicare & Medicaid Services (CMS) provided clarification to the Department that reimbursement for sign language interpreter services is not restricted to physicians. CMS specified that reimbursement may be expanded to "other Medicaid providers who are providing Medicaid services covered under the State Plan."

Therefore, this regulatory action proposes to include reimbursement for sign language interpreter services for other Medi-Cal enrolled providers who employ fewer than fifteen employees. This is consistent with Title 45, CFR, Section 84.22 that describes small health, welfare, or other social service providers as recipients of federal funds that employ fewer than fifteen employees. The Department has utilized this description as a reasonable determinate of what constitutes a "small" provider. Unlike "small" providers, "large" providers with fifteen or more employees have reimbursement for interpreter services built into the cost of the service so the interpreter services are not separately billable. Title 45, CFR, Section 84.52(d) specifies that a recipient (provider) that employs fifteen or more persons shall provide appropriate auxiliary aids, such as sign language interpreter services, to afford persons equal opportunity to benefit from the

service provided. This section also provides the Director with the discretion to require recipients with fewer than fifteen employees to provide auxiliary aids, which may include sign language interpreters, where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

#### Section 51098.5.

Non-substantive changes are proposed to this section, including the deletion of the existing subsection (a) because there is no subsection (b) following, and subsequently changing paragraphs (1) and (2) to subsections (a) and (b), respectively. In addition, the initial phrase "Sign language interpreter services" has been included within quotation marks to be consistent with the language for the other definitions in the CCR and the first letters of the words "certified" and "non-certified" have been changed to small case to be consistent with these terms as used throughout this regulatory action. Within the revised subsections (a) and (b), the phrase "physician or a member of a Medi-Cal enrolled physician group" is proposed to be changed to the word "provider" for consistency throughout the regulations and to clarify that Medi-Cal enrolled providers, including those specified in Section 51051, may be reimbursed for sign language interpreter services provided to Medi-Cal beneficiaries if those services are necessary to facilitate medically necessary health care services. Thus, this provision will no longer be restricted to physicians and physician groups. New subsection (a) additionally proposes to delete the word "medical" and add the phrase "medically necessary health care" to specify that all services must be medically necessary for Medi-Cal to provide reimbursement. New subsection (b) identifies the "adult" as the "representative of the Medi-Cal beneficiary" and proposes to include the phrase "medically necessary health care services to the beneficiary" to clarify that it is the beneficiary who is being provided the service and for consistency with the language in subsection (a). The phrase "on behalf of a beneficiary" is proposed to be deleted because it is incorporated in the suggested change above.

#### Section 51202.5.

This section establishes a procedural requirement and specifies the standards for persons who provide sign language interpreter services. The interpreter shall possess the certification or skills required to meet the language needs of the deaf or hearing-impaired beneficiary or beneficiary's representative.

Subsection (a) is proposed to be amended to clarify that interpreter services are available during the provision of medically necessary health care services, including physical therapy, case management, or dental services within a "health care setting," rather than being strictly available in a "medical setting," which was the phrase previously used. In addition, a non-substantive, grammatical change is proposed to correctly spell the word "possess" under subsection (a)(1)(C).

Subsection (c) describes the selection of a sign language interpreter by a beneficiary or Medi-Cal enrolled provider and is proposed to be divided into paragraphs (1) and (2) for

clarity and to create two distinct provisions related to sign language interpreter selection.

Under paragraph (2) the phrase “However, in” has been replaced with the term “In” to create a grammatically correct independent provision. For consistency within the regulations and to specify that sign language interpreter services can be utilized by other Medi-Cal enrolled providers, including those specified in Section 51051, this paragraph proposes to add the phrase “Medi-Cal enrolled” before the term “provider.” The phrase “selected by the beneficiary” has also been included to clearly specify that the interpreter referenced under this paragraph is one that was chosen by the beneficiary. Additionally, the phrase “the physician may override.....the interpreter” has been replaced with language that describes the circumstances under which a Medi-Cal enrolled provider is required to select an alternate interpreter. A Medi-Cal enrolled provider is considered to have the professional skills necessary to assess such a circumstance and make such a determination. Specifically, in an emergency or acute care situation or in the event a Medi-Cal enrolled provider determines the interpreter selected by the beneficiary does not communicate effectively, accurately or impartially, and may adversely affect the health and well-being of the beneficiary due to inaccurate diagnosis or misunderstanding of medical advice or instruction, the Medi-Cal enrolled provider is required to select a different interpreter. When a Medi-Cal enrolled provider acts pursuant to this paragraph, he or she shall also provide a written statement of reasons for the action and maintain this statement in the medical record of the beneficiary to demonstrate the basis of the statement and make it available to the state upon request pursuant to Title 22, CCR, Section 51476(g).

#### Section 51309.5

This section is proposed to be amended as it relates to the scope of services for which Medi-Cal will reimburse Medi-Cal enrolled providers who utilize sign language interpreter services. To better reflect the contents of this section the title is proposed to read “Scope of Sign Language Interpreter Services.”

Subsection (a) is proposed to be amended to clarify that sign language interpreter services may be utilized by Medi-Cal enrolled providers, including those specified in Section 51051, when necessary to facilitate “medically necessary health care services,” not strictly medical services. The word “interpretation” is proposed to be changed to the word “interpreter” for consistency in the regulations.

Under paragraph (5) an amendment is proposed to delete the word “complex” to clarify that all instructions regarding medication are considered medically necessary health care services, not only those that might be considered “complex.”

In addition, paragraph (6) and proposed paragraph (8) contain provisions that further expand the scope of services with which sign language interpreter services may be utilized. These two paragraphs describe sign language interpreter services in cases of self-care or therapy instruction for individuals discharged to an independent home

setting and with the delivery of case management services. Other similar medically necessary health care and related services would also be included within the scope of services specified in subsection (a). In addition, under paragraph (6), the word “medical” is proposed to be changed to the word “health care” for consistency within the regulations.

Subsection (b) is proposed to be changed to allow reimbursement for sign language interpreter services for other Medi-Cal enrolled providers with fewer than fifteen employees because reimbursement is not restricted to physicians and physician groups. This provision is consistent with the description of “small health, welfare, or other social service providers” found in Title 45, CFR, Section 84.22(c).

### Section 51503.3

This section is proposed to be amended as it pertains to reimbursement for sign language interpreter services. Reimbursement is limited to Medi-Cal enrolled providers as specified in Section 51309.5(b) of the regulations. Similar to Section 51309.5 above, it is proposed that the phrase “physicians or physician groups” is replaced with the phrase “Medi-Cal enrolled providers employing fewer than fifteen employees” to provide consistency in the regulation language and to clarify that other Medi-Cal enrolled providers can be reimbursed for sign language interpreter services.