

INITIAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 45-101(a)(2)

Specific Purpose:

This section is amended to comply with Welfare and Institutions Code, Section 309 which clarifies that approved foster care homes meet the same requirements as licensed foster care homes and Section 11402 which repeals certified, pending licensure homes from the Aid to Families with Dependent Children – Foster Care (AFDC-FC) Program.

Factual Basis:

Prior to the passage of Assembly Bill (AB) 1695, Chapter 653, Statutes of 2001, approved relative homes were exempt from licensure while meeting the same standards as licensed homes. AB 1695 amended Welfare and Institutions Code, Section 309 which clarifies that approved relative foster care homes must meet the same requirements as licensed foster care homes.

Section 309(d), "...The standards used to evaluate and grant or deny approval of the home of a relative or nonrelative extended family member... shall be the same standards set forth in regulations for licensing foster family homes."

In addition, AB 1695 repealed certified, pending licensure homes as an eligible foster care facility for the AFDC-FC Program [formerly Welfare and Institutions Code, Section 11402(e)]. Thus the amendments to this section are necessary to repeal language regarding exempt from licensure and certified, pending licensure homes.

Sections 45-101(a)(2)(A), (a)(2)(B), and (a)(2)(B)(Handbook)

Specific Purpose:

The existing language in Section 45-101(a)(2)(B) and Handbook is being repealed to comply with Welfare and Institutions Code, Section 11402 which repeals certified, pending licensure homes from the AFDC-FC Program.

Section 45-101(a)(2)(A) is amended and new language in Section 45-101(a)(2)(B) adopted to comply with Welfare and Institutions Code, Section 309 which clarifies that approved foster care homes meet the same requirements as licensed foster care homes and Section 11402(b)(2) which adds the approved home of a nonrelative extended family member as an

eligible facility for the AFDC-FC Program. Section 45-101(a)(2)(A) also repeals the home of a nonrelated legal guardian from the definition of an approved home.

Factual Basis:

Prior to the passage of AB 1695, approved relative homes were exempt from licensure while meeting the same standards as licensed homes. AB 1695 amended Welfare and Institutions Code, Section 309 which clarifies that approved relative foster care homes must meet the same requirements as licensed foster care homes.

Section 309(d), "...The standards used to evaluate and grant or deny approval of the home of a relative or nonrelative extended family member... shall be the same standards set forth in regulations for licensing foster family homes."

In addition, AB 1695 added Welfare and Institutions Code, Section 362.7 and amended Section 11402(b)(2) which created a new type of approved home, the nonrelative extended family member. Accordingly, the amendments to these sections are necessary to repeal language regarding approved homes being exempt from licensure and to add nonrelative extended family member to the definition of approved home.

Because AB 1695 clarifies that approved homes of relatives must meet the same licensing standards as foster family homes, but does not contain this requirement for legal guardians, legal guardians must be removed from the definition of approved homes. Welfare and Institutions Code, Section 309(d) (quoted above) does not mention legal guardians; it lists only relative and nonrelative extended family members. In addition, Welfare and Institutions Code, Section 11402(d) was NOT amended by AB 1695 to require the new approval process for legal guardian homes. Accordingly, it is necessary to remove legal guardians from these sections of regulation to clarify that the more formalized approval process, including fingerprinting and criminal background checks, does not apply to legal guardian homes.

Section 45-101(c)(3) (Repealed)

Specific Purpose:

Section 45-101(c)(3) is repealed to comply with Welfare and Institutions Code, Section 11402 which repeals certified, pending licensure homes from the AFDC-FC Program.

Factual Basis:

AB 1695 repealed "certified, pending licensure" homes as an eligible foster care facility for the AFDC-FC Program [formerly Welfare and Institutions Code, Section 11402(e)]. Thus the repeal of Section 45-101(c)(3) is necessary to repeal language regarding certified, pending licensure homes.

Sections 45-101(c)(4) through (7)

Specific Purpose/Factual Basis:

Sections 45-101(c)(4) through (7) are being renumbered to Sections 45-101(c)(3) through (6) because existing Section 45-101(c)(3) is being repealed by these regulations.

Section 45-101(n)(1)

Specific Purpose:

This section is adopted in order to comply with the addition of Welfare and Institutions Code, Section 362.7 and the amendment of Welfare and Institutions Code, Section 11402(b)(2) which added "nonrelative extended family member" as an eligible facility for the AFDC-FC Program.

Factual Basis:

AB 1695 adopted Welfare and Institutions Code, Section 362.7 and amended Section 11402(b)(2) which created a new type of approved home, the nonrelative extended family member. Accordingly, the adoption of this section is necessary to include nonrelative extended family member in the list of definitions.

Section 45-101(r)(1)(A)3.a. Handbook

Specific Purpose/Factual Basis:

Assembly Bill 2773 (Chapter 1056, Statutes of 1998) amended Welfare and Institutions Code, Section 11400(m) which changed the definition of relative for AFDC-FC Program purposes. The Norman v. McMahon lawsuit was an interpretation of an earlier version of the relative definition. Accordingly, this lawsuit is no longer applicable and this section is being deleted.

Section 45-101(t)(2)

Specific Purpose/Factual Basis:

This section is being adopted to comply with Welfare and Institutions Code, Section 11400(r)(1) which defines "Transitional Housing Placement Facility." Welfare and Institutions Code, Section 11400(r)(1) refers to facilities which accept foster children who are still dependents of the court. Welfare and Institutions Code, Section 11400(r)(2) is not applicable to this definition because it refers to the Transitional Housing Placement Plus program which is for children over 18 who are no longer dependents.

Section 45-201.111(c)(1)

Specific Purpose/Factual Basis:

This section is amended to update the out-of-date form reference of the FC 5 to the FC 2 as the FC 5 no longer exists.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the FC 2, Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC), Rev. 5/00. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586. In addition, the previous revision of the form, the FC 2 (Rev. 4/96), is available during the 45-day public comment period from the Department at (916) 657-2586.

Section 45-201.121

Specific Purpose:

This section is necessary to comply with the amendment of 42 United States Code (U.S.C.) 472(a) which increased the property limits in the AFDC-FC Program to \$10,000. This section is amended accordingly.

Factual Basis:

42 U.S.C. 672(a) provides that in order for a child to be eligible for federal AFDC-FC, the child must have "met the requirements of Section 406(a) or of Section 407 (as such sections were in effect on July 16, 1996) but for his removal from the home of a relative ..." This section means that in order for a child to be eligible for federal AFDC-FC, the child must be eligible to receive aid under the AFDC program that was in effect on July 16, 1996. The AFDC Program on July 16, 1996, provided that each child (or family) could only retain \$1,000 in personal property. 42 U.S.C. 672(a) was recently amended (The Foster Care Independence Act of 1999) to include the following language, "In determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources ... have a combined value of not more than \$10,000 shall be considered to be a child whose resources have a combined value of not more than \$1000 ..." In other words, the property limit for children in AFDC-FC has been raised to \$10,000.

Section 45-201.122

Specific Purpose/Factual Basis:

The repeal of this section is necessary to comply with the amendment of 42 U.S.C. 472(a) which increased the property limits in the AFDC-FC Program to \$10,000. This section is repealed accordingly.

Section 45-201.123 (Renumbered to Section 45-201.122)

Specific Purpose/Factual Basis:

Section 45-201.123 is being renumbered to Section 45-201.122 to accommodate the repeal of current Section 45-201.122 by these proposed regulations.

Section 45-202.412(a)(2)

Specific Purpose:

This section is being amended to comply with federal law.

Factual Basis:

The California Department of Social Services (CDSS) has recently been informed by the U.S. Department of Health and Human Services (DHHS) that this section of regulation is not consistent with federal statute. DHHS informed CDSS that 42 United States Code (U.S.C.) 672(a)(2) requires that the responsibility for placement and care reside with the state agency administering or supervising the administration of the Title IV-E State plan approved under Section 42 U.S.C. 671. A private adoption agency cannot have responsibility for placement and care of a child because it cannot administer the Title IV-E State plan; only the public agency can perform this function. Accordingly, this section is being amended to remove “private adoption agency.” This amendment also makes this section consistent with 45-202.6 which delineates what public agencies can have placement and care of a child.

Section 45-202.42

Specific Purpose/Factual Basis:

This section is amended to update the out-of-date form reference of the FC 5 to the FC 2 as the FC 5 no longer exists. This section also replaces the SOC 158A with the FC 2 as the SOC 158A does not contain the necessary information.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the FC 2, Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC), Rev. 5/00. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it

would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586.

Sections 45-202.511 and .518

Specific Purpose:

These sections are amended to comply with Welfare and Institutions Code, Section 11402(b)(2) which adds nonrelative extended family member as an eligible facility for the AFDC-FC Program.

Factual Basis:

AB 1695, Chapter 653, Statutes of 2001, added Welfare and Institutions Code, Sections 362.7 and 11402(b)(2) which created a new type of approved home, the nonrelative extended family member. Accordingly, these sections are amended to add nonrelative extended family member to the definition of approved home.

Amendments to these sections also include the consolidation of Sections 45-202.511 and .518. The current location of Section 45-202.518 results in the section being “lost” as it is at the end of a rather lengthy section of handbook [Section 45-202.517(c)(Handbook)]. Counties have requested that this section be moved to make it easier to find.

Section 45-202.512

Specific Purpose:

This section is being repealed to comply with Welfare and Institutions Code, Section 11402 which repeals certified, pending licensure homes from the AFDC-FC Program.

Factual Basis:

AB 1695 repealed “certified, pending licensure” homes as an eligible foster care facility for the AFDC-FC Program [formerly Welfare and Institutions Code, Section 11402(e)]. Thus this section repeals language regarding certified, pending licensure homes.

Sections 45-202.513 through .515 (Renumbered)

Specific Purpose/Factual Basis:

Sections 45-202.513 through .515 are renumbered to Sections .512 through .514 because existing Section 45-202.512 is being repealed by these regulations.

Section 45-202.515 (New)

Specific Purpose/Factual Basis:

This section is being adopted to comply with Welfare and Institutions Code, Section 11402(f) which defines Transitional Housing Placement Facility as an eligible facility for the AFDC-FC Program. This section is adopted to comply with statute.

Section 45-203.411

Specific Purpose:

This section is amended to clarify that the home of nonrelated legal guardians must be reviewed by a social worker or probation officer and determined to be suited to the needs of the child by the social worker or probation officer.

Factual Basis:

Because nonrelated legal guardians were removed from the definition of an approved home at Section 45-101(a)(2)(A), it is necessary to clarify in this section that the home must be determined to be suited to the needs of the child by the social worker or probation officer. While AB 1695 made changes to the approval process for approved relative homes, it did not also make these changes to the homes of legal guardians. Thus, this section is necessary to clarify that the older requirements apply to nonrelated legal guardian homes.

Section 45-203.412

Specific Purpose:

This section is amended to comply with Welfare and Institutions Code, Section 11402 which repeals certified, pending licensure homes from the AFDC-FC Program. This section is also amended to comply with Welfare and Institutions Code, Section 11402(b)(2) which adds nonrelative extended family member as an eligible facility for the AFDC-FC Program.

Factual Basis:

AB 1695 repealed certified, pending licensure homes as an eligible foster care facility for the AFDC-FC Program [formerly Welfare and Institutions Code, Section 11402(e)]. Thus this section repeals language regarding certified, pending licensure homes.

AB 1695 also added Welfare and Institutions Code, Sections 362.7 and 11402(b)(2) which created a new type of approved home, the nonrelative extended family member. Accordingly, this section is amended to add nonrelative extended family member to the definition of approved home.

Section 45-302.21

Specific Purpose:

This section is amended to correct a typographical omission and to clarify that a child cannot be placed back with the legal guardian from whom removed and receive AFDC-FC payments.

Factual Basis:

The editorial amendment to this section merely corrects a typographical omission by inserting the word “and.”

The further amendment of this section has been requested by county welfare departments. For foster care purposes, a child is removed from his parents or a relative with custody of the child and placed in to foster care. While in foster care, the child receives an AFDC-FC payment to meet his/her needs. Once the child returns home, the child loses AFDC-FC eligibility as the parents/relatives are then responsible for the child’s needs. Legal guardian was inadvertently left out of this section. The intent of this section is that AFDC-FC is to meet the needs of the child while he or she is in out-of-home care. Accordingly, if the child was removed from a legal guardian as permitted in Section 45-203.313(b), as opposed to a relative or parent, the child still should not receive AFDC-FC benefits once the child has returned home.

Section 45-302.251(g)

Specific Purpose:

This section is amended to comply with the amendment of Welfare and Institutions Code, Section 361.21 by AB 1659 (Chapter 881, Statutes of 1999) which requires that the court make certain findings in order for a child to be eligible for AFDC-FC benefits.

Factual Basis:

Senate Bill (SB) 933 (Chapter 311, Statutes of 1998) added Welfare and Institutions Code, Section 727.1 which requires that before a delinquent child can be placed in an out-of-state group home, a judge must make a finding that no in-state facilities are available or adequate to meet the child’s needs. AB 1659 amended Welfare and Institutions Code, Section 361.21 which mandated this requirement for dependent children as well. Thus the language limiting this requirement to delinquent children (those children whose placement and care is vested with the probation department) is repealed.

Sections 45-304 (Title) and 45-304.1

Specific Purpose:

These sections are amended to clarify that the new facility, nonrelative extended family members, is also governed by these sections of the regulations.

Factual Basis:

SB 1823 (Chapter 733, Statutes of 1998) created the overpayment system for foster care facilities other than group homes and foster family agencies. Since nonrelative extended family members did not exist at the time of the passage of SB 1823, they could not have been explicitly contained in that bill. However, the intent of the bill was to cover any non-corporate foster care facilities and a nonrelative extended family member would logically be included in this section.

Section 80-310f.(1)

Specific Purpose/Factual Basis:

This section is amended to update the revision date of the FC 2.

The California Department of Social Services (CDSS) is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the FC 2, Statement of Facts Supporting Eligibility for AFDC-Foster Care (FC), Rev. 5/00. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available during the 45-day public comment period from the Department at (916) 657-2586. In addition, the previous revision of the form, the FC 2 (Rev. 4/96), is available during the 45-day public comment period from the Department at (916) 657-2586.

b) Identification of Documents Upon Which Department Is Relying

- Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001)
- AB 1659 (Chapter 881, Statutes of 1999)
- AB 2773 (Chapter 1056, Statutes of 1998)
- Senate Bill (SB) 933 (Chapter 311, Statutes of 1998)
- SB 1823 (Chapter 733, Statutes of 1998)
- 42 U.S.C. 472(a)
- 42 U.S.C. 671 and 672(a)(2)
- Public Law 105-89, Adoptions and Safe Families Act of 1997

c) Local Mandate Statement

These regulations do constitute a mandate on local agencies, but not on local school districts. There are no reimbursable state-mandated costs because these regulations only make technical and clarifying changes.

d) Statement of Alternatives Considered

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.