

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. In December, 1998, the Youth Law Center sought to compel the California Department of Social Services (CDSS) to promulgate regulations to implement Health and Safety Code Sections 1502.3 and 1502(a)(11), which created a children's short term residential care facility category designated as a transitional shelter care facility (Booraem v. Orangewood, et al., Orange County Superior Court No. 798871.) Prior to the final promulgation of the transitional shelter care regulations, on December 8, 2000, the Youth Law Center filed another suit against CDSS to compel CDSS to license all county shelters (Warren v. Saenz, San Francisco Superior Court No. 317487.) The San Francisco Superior Court issued a writ compelling CDSS to license all the county shelters within a reasonable time from the issuance of the court's amended order, which was entered on April 17, 2001 [Peremptory Writ of Mandate, filed May 1, 2001].
2. In the process of issuing provisional licenses to eight shelters owned and operated by counties, pursuant to the court's order in Warren, CDSS reevaluated the proposed transitional shelter care regulations, in order to accommodate the need for regulations that can address the exigent circumstances of all of the county- operated shelter facilities.
3. These proposed transitional shelter care facility regulations will allow CDSS to comply with both the Booraem litigation demands, and the immediate need for regulations that will govern the daily procedures in all of the county shelters subject to the Warren writ.
4. The non-emergency rulemaking process set forth in the Administrative Procedure Act is sufficiently lengthy to preclude timely implementation of these regulations which are critical for the protection of children in these short-term residential programs.
5. Without the guidance provided by these regulations, CDSS will be unable to enforce the counties' compliance with assessment, reporting, and capacity requirements unique to shelters receiving children in transition.
6. Without these regulations, transitional children will continue to be at risk of not receiving adequate services, necessary assessments, and the personal rights to which they are entitled pursuant to licensing standards and court orders.

## INFORMATIVE DIGEST

The Youth Law Center filed a suit to compel the Department of Social Services (CDSS) to create regulations to implement Health and Safety Code Sections 1502.3 and 1502(a)(11), which created a children's short term residential care facility category designated as a transitional shelter care facility (Booraem v. Orangewood, et al., Orange County Superior Court No. 798871.) Prior to the final promulgation of the transitional shelter care regulations, the Youth Law Center filed another suit to compel the Department to license all county shelters (Warren v. Saenz). The court's amended order for the Department to license all county shelters was entered on April 17, 2001. These regulations respond to the court order and implement Assembly Bill 1334, Chapter 950, of the Statutes of 1994, which amended Section 1502 and added Section 1502.3 to the Health and Safety Code. Health and Safety Code Section 1502(a)(11) requires CDSS to adopt regulations and develop standards that govern Transitional Shelter Care Facilities (TSCFs). The characteristics of a TSCF are:

- Must be licensed by the Department.
- Population served includes but is not limited to children who have been placed in the facility from another community care facility and are awaiting placement appropriate to their needs.
- Must have a service component outlined in the plan of operation that states that the facility will provide a program of transitional care services, within the first 90 days after admission.
- Must have a service component that addresses the special needs of transitional children from a prior living arrangement who are awaiting another placement.
- Is county owned and operated or run by a nonprofit organization under contract with the county as per Health and Safety Code Sections 1502.3(a) and 1502.3(e).
- Provides 24-hour nonmedical short-term care for children under 18, or up to age 19 if the child meets the requirements of Welfare and Institutions Code Section 11403, who are in need of personal services, supervision, assistance essential for daily living, and protection as per Health and Safety Code Section 1502.3(b).
- Provides short-term transitional shelter care services, provided within the first 90 days of admission to the facility, to children described in Health and Safety Code Section 1502.3(c), who have been removed from their homes based on neglect, abuse, and for children who are seriously emotionally disturbed who are wards or dependents of the court. Short term means the same as in Health and Safety Code Section 1502.3(b).

Currently, children in need of short-term care, removed from their homes or placement in community care facilities and awaiting subsequent placement in other community care facilities, are placed in licensed group homes or county operated emergency shelter care facilities. In 1985, the Director of the Department exempted from group home licensure emergency shelter care facilities operated by counties, pursuant to Health and Safety Code Section 1505(o). The lack of regulations addressing specific needs of these children in temporary care has led to overcrowding, improper placement of children and mixing of populations, which created a risk of harm to children in these facilities. The intent of creating Transitional Shelter Care Services is to strengthen the operation of public children's shelters for abused and neglected children. Since these children are emotionally disturbed, neglected or abused, they are not easy to place and have special needs. The intent of these regulations is to ensure that the county finds the best placement for the child and to prevent further unsuccessful placements, and to ensure the protection and safety of children in transitional care.

## COST ESTIMATE

1. Costs or Savings to State Agencies: Undetermined. It is anticipated that State agencies will be able to absorb these additional costs within their existing budgets and resources.
- 2.
3. Costs to Local Agencies or School Districts: There should be minimal, if any, additional costs because these facilities are already licensed as group homes and these regulations will offer greater flexibility than the regulations the shelters are currently following
- 4.
3. Nondiscretionary Costs or Savings to Local Agencies: Minimal if any in the current State Fiscal Year which are not reimburseable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation implements the court mandate set forth by the December, 1998 court in the case of Booraem vs. Orangewood et. al. and the December 2001 court case of Warren v. Saenz.
- 4.
4. Federal Funding to State Agencies: Undetermined. There should be a minimal, if any, additional costs because these facilities are already licensed and these regulations will offer greater flexibility than the regulations the shelters are currently following.

#### LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

#### AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code Sections 1501, 1502, 1502(a)(11), 1502.3, 1502.3(f), and 1530. Subject regulations implement and make specific Health and Safety Code Sections 1501, 1502, 1502(a)(11), 1502.3, 1511, 1523, 1524, 1528, 1531, 1556, 13108, 13143, 13143.6, and 13211; and Welfare and Institutions Code Sections 10554, 11403, 11465, and 16501.