

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, California 95814



August 8, 2005

ALL COUNTY LETTER NO. 05-17

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY CHILD CARE COORDINATORS  
ALL COUNTY CHILD WELFARE SERVICES PROGRAM MANAGERS  
ALL COUNTY CHIEF PROBATION OFFICERS

**REASON FOR THIS TRANSMITTAL**

- State Law Change  
 Federal Law or Regulation Change  
 Court Order  
 Clarification Requested by One or More Counties  
 Initiated by CDSS

SUBJECT: GRESHER V. ANDERSON IMPACT ON LICENSED FOSTER FAMILY HOMES AND FAMILY CHILD CARE HOMES, AND ON THE RELATIVE/NON-RELATIVE EXTENDED FAMILY MEMBER (NREFM) CAREGIVER APPROVAL

This letter addresses a number of changes to the policies and procedures used to conduct background checks for licensed Foster Family Homes, Family Child Care Homes, and relative/NREFM caregiver approvals that are necessitated by the Court of Appeals ruling in the Gresher v. Anderson court case.

On February 24, 2005, the California Court of Appeal issued a decision in Gresher v. Anderson. Pursuant to that decision, the California Department of Social Services (CDSS) must modify its systems for reviewing and granting criminal record exemptions for the following:

- individuals who are seeking to be licensed to operate a community care facility (including Foster Family Homes and Family Child Care Homes)
- individuals who are to work or reside in a licensed facility
- and individuals who are seeking initial and ongoing approval as relative/NREFM caregivers

The court found that current practices did not provide adequate due process.

**POLICY FOR LICENSED FOSTER FAMILY HOMES AND FAMILY CHILD CARE HOMES**

Specifically, the court directed that:

- The individual who is required to obtain an exemption must be notified of the specific convictions listed in the summary criminal history received from the California Department of Justice;

- The licensing agency must notify persons convicted of a felony or misdemeanor and subsequently denied an exemption to work in a community care facility, of the basis for the denial in terms sufficiently specific to permit a reasonably informed decision on whether to pursue an administrative appeal;
- Individuals who are terminated from working in a facility after receiving notice of the need for an exemption must be allowed to seek an exemption on their own behalf whether or not the termination occurred because of the need for the exemption, and
- Individuals who are in a deferred judgment or pretrial diversion program and are not awaiting trial, are not disqualified from applying for an exemption. The application must be processed in the normal manner.

As a result of this decision, the Community Care Licensing Division (CCLD) Evaluator Manual has been updated to reflect the new requirements and the updated template forms for county use. New template forms for use in the background check process are included in the CCLD Evaluator Manual, Background Check Procedures, Sections 7-1710 and 7-1740.

#### Initial Notice of Need for Exemption

The revised process will require that, when the letter informing the licensee of the need for an exemption is sent, a second letter must be sent at the same time to the individual needing the exemption. The letter to the individual who needs the exemption must list the specific convictions listed on their criminal history summary provided by the Department of Justice. Even in cases in which there are two individuals who are joint licensees, only one of whom is required to obtain an exemption, the licensing agency will still need to send the "exemption needed" letter to the licensees jointly. In addition, a second letter addressed to the individual needing the exemption that includes a listing of the specific convictions must be sent.

#### Denial of Exemption

Instructions for sending letters to individuals who have been denied a criminal record exemption are also being revised to include additional information regarding the licensing agency's rationale for denying the exemption. When a determination is made to deny an exemption, the licensing agency must include sufficient detail in the denial letter to allow the individual to make an informed decision as to whether to appeal the decision. The letter informing the individual of the denied exemption must include the specific licensing regulation referenced in making the denial decision and the reason why the individual did not meet the regulatory standard. The denial letter should not contain specific information about the criminal conviction(s).

- For cases in which the denial is due to the fact that the individual did not meet the regulatory standards for the required time frames since conviction, the letter should indicate how the standard is not met and should state that there was not sufficient evidence of rehabilitation presented to overcome the regulatory presumption that the exemption should be denied.
- For cases in which the denial is based on insufficient evidence of rehabilitation, the letter should indicate in general terms the areas in which the applicants' proof of his rehabilitation was insufficient.

### **POLICY FOR RELATIVE/NREFM CAREGIVER APPROVAL**

Specifically, the court directed that:

- The individual who is required to obtain an exemption must be notified of the specific convictions listed in the summary criminal history received from the California Department of Justice; and
- The approving agency must notify the applicant of the criminal record exemption denial which includes the basis for the denial in terms sufficiently specific to permit a reasonably informed decision on whether to pursue a grievance review.

As a result of this decision, the CCLD Evaluator Manual has been updated to reflect the new requirements and also updated are the letter template forms. Counties may wish to use the letter template forms with appropriate modifications for relative/NREFM caregiver approvals. The sample letters can be found at the following link:  
<http://ccl.dss.cahwnet.gov/res/pdf/05APX-03H.pdf>.

#### **Initial Notice of Need for Exemption**

The revised process requires that a letter be sent to inform the prospective relative caregiver of the need for an exemption. At the same time, a second letter must be sent to the individual needing the exemption. The letter to the individual who needs the exemption must list the specific convictions on his/her criminal history summary provided by the Department of Justice. In cases in which there are two individuals jointly applying for relative caregiver approval, only one of whom is required to obtain an exemption, the county will send a joint letter to the individuals informing them of the need to request an exemption, and a second letter addressed to the individual needing the exemption that includes a listing of the specific convictions.

#### **Denial of Exemption**

When a determination is made to deny a request for an exemption, the county must send a denial letter that includes sufficient detail to allow the individual to make an informed decision as to whether to file a grievance. The letter informing the individual

of the denied exemption request must include the specific terms of the denial that is used in making the decision and sufficient detail regarding how the individual did not meet the standard. The denial letter should not contain specific information about the criminal conviction(s).

- For cases in which the denial is due to the fact that the individual did not meet the standards for the required time frames since conviction, the letter should indicate how the standard is not met and should state that there was not sufficient evidence of rehabilitation presented to overcome the presumption that the exemption should be denied.
- For cases in which the denial is based on insufficient evidence of rehabilitation, the letter should indicate in general terms the areas in which the applicants' proof of his rehabilitation was insufficient.

If you have any questions regarding the implementation of this letter for relative/NREFM caregiver approvals please contact the Kinship Care Policy and Support Unit at (916) 657-1858. Questions regarding county licensing should be directed to the designated county liaison.

Sincerely,

*Original Document Signed By*

JO FREDERICK  
Deputy Director  
Community Care Licensing Division

*Original Document Signed By*

BARBARA EATON  
Acting Deputy Director  
Children and Family Services Division

c: CWDA