

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. These proposed Foster Family Homes emergency regulations implement the provisions of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001), which is urgency legislation. This legislation ensures that California is in continuing compliance with the federal Adoptions and Safe Families Act of 1997, Public Law 105-89 (ASFA). The legislation clarifies the ongoing and compliance requirements of the Department with regards to ASFA, to employ the same standards to all foster family homes. Incidental to this, modifications of Personal Rights are being made pursuant to AB 899, (Chapter 683, Statutes of 2001).

It is California's position that licensing and approval of homes have required the same core health and safety standards prior to issuance of a license or approval of a foster family home since 1998. The legislative bases are found in AB 1544 (Chapter 793, Statutes of 1997), Senate Bill (SB) 645 (Chapter 949, Statutes of 1998) and AB 2773 (Chapter 1056, Statutes of 1998). Since that time, California law has required compliance with the same core health and safety standards for all foster family homes.

AB 1695 mandates that the standards used to evaluate and grant or deny approval of a relative or nonrelative extended family member's home shall be the same as the core health and safety standards for licensing foster family homes.

In addition, AB 1695 amended Health and Safety Code Section 1505 to allow exemption from licensing of an approved home of a nonrelative extended family member. Statute defines a nonrelative extended family member as any adult caregiver who has an established familial or mentoring relationship with the child. Prior to this provision these individuals were required to be licensed.

2. These proposed emergency regulations also incorporate the provisions of AB 899, (Chapter 683, Statutes of 2001). This legislation requires the Department to incorporate the 21 personal rights listed in Welfare and Institutions Code Section 16001.9 into regulations. The majority of these rights are contained in Foster Family Homes Regulations, Title 22, Division 6, Chapter 7.5.
3. AB 1695 requires implementation of regulations by July 1, 2002. The non-emergency rulemaking process provided by Government Code Section 11346 et seq. is sufficiently lengthy, making it impossible to implement regulation changes by the mandated implementation date of July 1, 2002.

4. There is a significant possibility of federal claims cuts and reduction in Title IV-E participation if regulations are not promulgated by July 1, 2002, to establish for federal review that California is, and has been, in continuous compliance with the federal Adoptions and Safe Families Act of 1997, Public Law 105-89.
5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are to clarify in statute that the state is in compliance with ASFA and entitled to continue claiming foster care administrative and maintenance payments under Title IV-E of the Social Security Act for relatives and nonrelative extended family member placements. It is necessary that this act take effect by July 1, 2002.

INFORMATIVE DIGEST

These proposed Foster Family Homes emergency regulations implement the provisions of AB 1695 (Chapter 653, Statutes of 2001). This legislation ensures that California is in continuing compliance with the federal Adoptions and Safe Families Act (ASFA) of 1997, Public Law 105-89. The legislation clarifies the ongoing and compliance requirements of the Department with regards to ASFA, to employ the same standards to all foster family homes. Incidental to this, modifications of Personal Rights are being made pursuant to AB 899, (Chapter 683, Statutes of 2001).

The Department's Community Care Licensing Division (CCLD) has re-organized and clarified language of the Title 22 Foster Family Homes regulations in conjunction with a workgroup of stakeholders. The workgroup included representatives from County Welfare Directors Associations (CWDA), California Youth Connection (CYC), the Department's Children and Family Services Division, and the Department's Legal Division. The emergency regulations are equally protective, less restrictive and more user friendly than current regulations.

It is California's position that licensing and approval of homes have required the same core health and safety standards prior to issuance of a license or approval of a foster family home since 1998. The legislative bases are found in Assembly Bill (AB) 1544 (Chapter 793, Statutes of 1997), Senate Bill (SB) 645 (Chapter 949, Statutes of 1998), and Assembly Bill (AB) 2773 (Chapter 1056, Statutes of 1998). Since that time, California law has required compliance with the same core health and safety standards for all foster family homes.

California core licensing/approval standards consist of four major areas: criminal records clearance, caregiver qualifications, safety of the physical environment and personal rights. These core health and safety requirements have not changed; however, they have undergone non-substantive modification to more clearly show the consistency with ASFA.

- A criminal record check, which includes a child abuse records check, is required for applicants and adults living in the home.
- Caregiver qualification standards focus on the caregiver's ability to provide supervision for the child, their ability to meet the needs of the child, and their ability to meet the child's needs based on others living in the home.

- Physical environment provides for the storage of weapons, poisons, medications, water safety, and a clean safe environment.
- Personal rights standards provide for safe, healthy, and comfortable accommodations, freedom from corporal punishment, ownership and use of own personal possessions, and a full statement of personal rights given to the child and foster parent at the time of placement.

To ensure continuous compliance with ASFA, the Title 22 Foster Family Homes regulations have been rewritten and renumbered. Further, throughout these proposed regulations the terms "licensee" is replaced with "caregiver" and "facility" with "home." Cross references are updated where necessary. The change in language supports the Departments position of modification to user friendly language. The language is more generic in nature and has been used to address licensees, and apply to relatives and the nonrelative extended family members using Foster Family Homes Regulations, Title 22, Division 6, Chapter 7.5, as a cross reference. In addition the language was clarified so that it would be consistent with ASFA terminology.

These regulations also clarify that relative and nonrelative extended family member's homes approved for placements must meet the same standards as licensed homes. This is consistent with ASFA and ongoing practice. ASFA also requires a state authority to be responsible for establishing and maintaining standards for foster family homes and applying these standards to any home that receives the Title IV-E funds whether licensed or approved.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

The regulations do not impose a mandate on local agencies or school districts. There are no state-mandated 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 Sections 1524, 1525, 1526, 1530, 1530.5, 1531, 1547, and 115926, Health and Safety Code; Sections 16001.9 and 17730, Welfare and Institutions Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Subject regulations implement and make specific Sections 1500, 1501, 1501.1, 1503, 1503.5, 1505(l), 1505.2, 1507, 1507.2, 1507.5, 1508, 1515.15, 1520, 1520.3, 1521.5, 1522, 1522.01, 1522.1, 1522.04, 1522.2, 1523.1, 1524, 1524.7, 1525.25, 1525.3, 1525.5, 1526.5, 1526.75, 1529.1, 1529.2, 1529.3, 1530, 1530.6, 1530.91, 1531, 1531.2, 1531.4, 1531.5, 1533, 1534, 1536.1, 1538, 1540, 1540.1, 1541, 1541.1, 1547, 1550, 1550.5, 1551, 1553, 1557.5, 1558, 1558.1, 1559.110, 1560, 1562, 1569 et seq., 1569.9 et. seq., 13131, 13143, 14564, 115921, and

115923, Health and Safety Code; Sections 62.7, 903.7, 11400, 11403, 16001.9, 16507.5, 16522, 17710(h) and (i), 17731, 17732, 17736, and 17736(b), Welfare and Institutions Code; Sections 136.1, 186.22, 187, 190 through 190.4, 192(a), 203, 206, 207, 208, 209, 209.5, 210, 211, 212, 212.5, 213, 214, 215, 220, 243.4, 261(a), (a)(1), (2), (3), (4), or (6), 262(a)(1) or (4), 264.1, 266, 266c, 266h(b), 266i(b), 266j, 267, 269, 272, 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994], 273d, 285, 286, 288, 288a, 288.2, 288.5(a), 289, 290(a), 311.2(b), (c), or (d), 311.3, 311.10, 311.11, 314(1) or (2), 347(a), 368(b) or (c) if after January 1, 1999, 417(b), 451(a) or (b), 460(a), 518, 647.6 or prior to 1987 former Section 647a, 653f(c), 664/187, 667.5(c)(7), (c)(8), (c)(13), (c)(14), (c)(22), 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.6, 11170, 12022.53, 12308, 12309, and 12310, Penal Code; Section 8712, Family Code; Sections 11500 et seq., 11506, 11522, and 15376, Government Code; Section 729, Business and Professions Code; and 42 USC Section 677 of the Social Security Act.