

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #2 Smoking Prohibition in Community Care Licensing Facilities

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held August 12, 2009, as follows:

August 12, 2009
Office Building # 8
744 P St., Room 105
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 12, 2009.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Office of Regulations Development
California Department of Social Services
744 P Street, MS 8-4-192
Sacramento, California 95814

TELEPHONE: (916) 657-2586 FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Title 22, Division 6, Chapter 4 (Small Family Homes), Section 83074 (Transportation) and Section 83087 (Buildings and Grounds); Chapter 5 (Group Homes), Section 84074 (Transportation) and Section 84087 (Buildings and Grounds); Chapter 5 (Group Homes), Subchapter 2 (Group Homes for Children Under the Age of Six Years), Section 84274 (Transportation); Chapter 7 (Transitional Housing Placement Program), Section 86074 (Transportation) and Section 86087 (Buildings and Grounds); Chapter 7.3 (Crisis Nurseries), Section 86574 (Transportation), and Chapter 8.8 (Foster Family Homes), Section 89374 (Transportation)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, only two licensed children's residential facility categories, Group Homes that care for children under the age of six years and Crisis Nurseries prohibit smoking within the facility and on the facility grounds.

A Report of the United States (U.S.) Surgeon General entitled, "*The Health Consequences of Involuntary Exposure to Tobacco Smoke*" (2006), concluded that "there is no risk-free level of exposure to secondhand smoke." Also, the U.S. Environmental Protection Agency found that each year in the U.S., secondhand smoke exposure is responsible for 150,000 to 300,000 new cases of bronchitis and pneumonia in children aged less than 18 months resulting in 7,500 to 15,000 hospitalizations annually.

Senate Bill 7 (Oropeza) Statutes of 2007 added Health and Safety Code Section 118948 which made it unlawful to smoke a pipe, cigar or cigarette containing tobacco or any other plant material in a motor vehicle whether in motion or at rest in which there is a minor. These proposed regulations will implement this statute and make the nonsmoking requirement mandatory for all children's residential facilities' buildings and grounds.

Therefore, it is the intent of the Department of Social Services, based on its broad authority through Health and Safety Code Sections 1501 and 1530 to promulgate regulations that ensure children in foster care have the right to be accorded safe, healthful and comfortable home accommodations and be free of the risks and toxic exposure of secondhand smoke.

COST ESTIMATE

1. Costs or Savings to State Agencies: No fiscal impact on State Government.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact exists because this prohibits smoking in children's facilities only.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

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.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that the proposed regulations will affect group homes which the state considers small businesses. Children's residential program regulations will be amended to implement statutes pursuant to the applicable provisions of Senate Bill 7, Chapter 425, Statutes of 2007.

These regulations will not have a significant, statewide adverse economic impact directly affecting small businesses.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

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 as and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code Sections 1501 and 1530. Subject regulations implement and make specific Health and Safety Code Sections 1501, 1531, and 118948, and "*The Health Consequences of Involuntary Exposure to Tobacco Smoke*": A Report of the Surgeon General (2006).

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED
REGULATION

Contact Person: Robin Garvey (916) 657-2586
Backup: Sandra Ortega (916) 657-2586