

INITIAL STATEMENT OF REASONS

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

Section 102416.5(a)

Specific Purpose:

This section is amended to clarify that the capacity determination is based on the number of children present at the facility at any one time. At any one time the provider may only care for the number of children that the license authorizes.

Factual Basis:

This amendment is necessary to bring Section 102416.5(a) into conformity with the current definition of "capacity" in Section 102352(c)(2), which states "capacity" means the maximum number of children for whom care is authorized at any one time." Further, it has been the Department's experience that there has been some confusion with regard to determining the capacity because of the omission of "at any one time" from Section 102416.5(a). Thus, the proposed amendments to this section are necessary to clarify how the capacity determination is applied.

Section 102416.5(b)

Specific Purpose:

This section is amended to clarify that the capacity determination for a Small Family Child Care Home is based on the number of children present at the facility at any one time. At any one time, the provider may only care for the number of children that the license authorizes.

This section is amended to be consistent with the Health and Safety (H&S) Code section 1596.78(c) to use the word "reside" instead of "live" to describe certain children at the home who are counted toward capacity.

Factual Basis:

This amendment is necessary to bring Section 102416.5(b) into conformity with the current definition of "capacity" in Section 102352(c)(2), which states: "Capacity" means the maximum number of children for whom care is authorized at any one time." Further, it has been the Department's experience that there has been some confusion with regard to determining capacity because of the omission of "at any one time" from

Section 102416.5(b). Thus, the proposed revisions to this section are necessary to clarify how the capacity determination is applied.

This amendment is necessary to be consistent with H&S Code section 1596.78(c), which states: "small family day care home" means a home that provides family day care for eight or fewer children, including children under the age of 10 years who *reside* at the home as set forth in Section 1597.44 and as defined in regulations."

Section 102416.5(b)(3)

Specific Purpose:

This section is adopted to clarify that more than six and up to eight children may be cared for in a Small Family Child Care Home without an additional adult attendant if one child is enrolled in and attending kindergarten or elementary school and one child is at least six years of age and certain requirements are met.

Factual Basis:

This section is necessary to conform to H&S Code section 1597.44 as amended by Assembly Bill (AB) 529, Chapter 744, Statutes of 2003.

Section 102416.5(c)

Specific Purpose:

This section is adopted to clarify the maximum licensed capacity for a Small Family Child Care Home if requirements are met.

Factual Basis:

This section is necessary to provide clarity with regard to maximum licensed capacity and to ensure consistency with H&S Code sections 1596.78(c) and 1597.44.

Handbook Section 102416.5(c)

Specific Purpose/Factual Basis:

The handbook numbering is struck because it is erroneously numbered.

The handbook is amended to conform to H&S Code section 1597.44 as amended by AB 529, Chapter 744, Statutes of 2003.

In addition, the lettering is amended for consistency.

Section 102416.5(d)

Specific Purpose:

This section is amended to clarify that the capacity determination for a Large Family Child Care Home is based on the number of children present at the facility at any one time. At any one time the provider may only care for the number of children that the license authorizes.

This section is amended to conform to H&S Code section 1596.78. Section 1596.78(b) of the H&S Code uses the word "reside" instead of "live" to describe certain children at the home who are counted toward capacity. In addition, Section 102416.5(d) is renumbered from Section 102416.5(c) for clarity and consistency.

Factual Basis:

This amendment is necessary to be consistent with the definition of "capacity" in Section 102352(c)(2), which states: "'Capacity' means the maximum number of children for whom care is authorized at any one time." Further, it has been the Department's experience that there has been some confusion with regard to determining capacity because of the omission of "at any one time" from Section 102416.5(d). Thus, the proposed revisions to this section are necessary to clarify how the capacity determination is applied.

This revision is necessary to be consistent with H&S Code section 1596.78(b), which states: "'Large family day care home' means a home that provides family day care for 7 to 14 children, inclusive, including children under the age of 10 years who *reside* at the home, as set forth in Section 1597.465 and as defined in regulations."

In addition, Section 102416.5(d) is renumbered from Section 102416.5(c) for clarity and consistency.

Section 102416.5(e)

Specific Purpose:

This section is adopted to clarify that if no assistant provider is present at a Large Family Child Care Home, then the licensee shall comply with the capacity requirements for a Small Family Child Care Home as specified in subsection (b) and (c) of this section.

Factual Basis:

This section is necessary to clarify the capacity requirements for a Large Family Child Care Home when no assistant provider is present and to ensure consistency with H&S Code sections 1596.78(b), 1597.44 and 1597.465.

Section 102416.5(f)

Specific Purpose:

This section is adopted to clarify the maximum licensed capacity for a Large Family Child Care Home.

Factual Basis:

This section is necessary to clarify the total licensed capacity and to ensure consistency with H&S Code sections 1596.78(b) and 1597.465.

Handbook Section 102416.5(f)

Specific Purpose/Factual Basis:

The handbook numbering is struck because it is erroneously numbered. Also, the handbook is amended to conform to H&S Code section 1597.465 as amended by AB 529, Chapter 744, Statutes of 2003.

In addition, the lettering is amended for consistency.

Section 102416.5(g)

Specific Purpose:

This section is adopted to require verification of enrollment and attendance at kindergarten, including transitional kindergarten, or elementary school for the purpose of meeting the criteria to care for up to two additional children in a small or large Family Child Care Home. This section requires that the verification of enrollment and attendance be maintained in the child's record at the facility and cross-references Section 102421 (Child's Records).

Factual Basis:

This section is necessary to implement H&S Code sections 1597.44 and 1597.465 as amended by AB 529, Chapter 744, Statutes of 2003. Sections 1597.44 and 1597.465 permit a small and a large Family Child Care Home to care for up to two additional children if at least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years old. Without a verification and document retention requirement, the Department is unable to efficiently check that the Family Child Care Home is complying with these statutory requirements.

It has been the Department's experience that it is very difficult to verify enrollment and attendance at kindergarten, including transitional kindergarten, or elementary school

because there is no requirement to maintain verification on file at the facility. Currently, the Department verifies the age of a six year-old using the date of birth. Absent the proposed documentation requirement, there is no way to verify a child is "school-age" if he/she is under six years old but is attending kindergarten, including transitional kindergarten, or elementary school; therefore, this section is necessary to implement the statutes.

Senate Bill (SB) 1381, Chapter 705, Statutes of 2010 amended Education Code (EC) sections 46300, 48000 and 48010 to change the required birthday for admission to kindergarten and first grade and establish a transitional kindergarten program beginning in the 2012-2013 school year. According to EC section 48000(d), transitional kindergarten is the first year of a two year kindergarten program and according to EC section 48000(a) and (c), children in kindergarten or transitional kindergarten are likely younger than six years old. Therefore, it is necessary to clarify that the licensee shall obtain verification of enrollment and attendance for a child enrolled in and attending kindergarten, including transitional kindergarten.

Section 102416.5(h)

Specific Purpose:

This section is adopted to require that if a Family Child Care Home is caring for up to two additional children pursuant to H&S Code section 1597.44 or 1597.465, the licensee shall maintain proof that the parents of children in care have been notified that the facility is caring for additional children.

Factual Basis:

This section is necessary to implement Sections 1597.44 and 1597.465 as amended by AB 529, Chapter 744, Statutes of 2003 and permits the Department to verify that the licensee has complied with the statutory notification requirements. If a Family Child Care Home licensee seeks to care for more than six and up to eight children for a Small Family Child Care Home or for more than 12 and up to 14 children for a Large Family Child Care Home they must meet all of the requirements in H&S Code section 1597.44 (Small Family Child Care Home) or 1597.465 (Large Family Child Care Home). One of the requirements is that the licensee notify parents of children in care that the licensee is caring for two additional school-age children and that there may be up to seven or eight children (Small Family Child Care Home) or 13 or 14 children (Large Family Child Care Home) in the home at one time. However, there is no statutory requirement to maintain proof that parents have been notified. Thus, the Department has no way of verifying notification other than contacting each parent. Therefore, this section is necessary because it enables the Department to verify that the licensee has complied with the statutory notification requirements.

Section 102416.5(i)

Specific Purpose:

This section is adopted to define "school age child" as used in Section 102416.5 for the purpose of meeting the criteria in H&S Code sections 1597.44 and 1597.465.

Factual Basis:

This section is necessary for consistency with Section 1597.44, which states in part that:

"A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

- (a) At least *one child is enrolled in and attending kindergarten or elementary school and a second child is* at least six years of age.

...

- (c) The licensee notifies each parent that the facility is caring for two additional school age children and that there may be up to seven or eight children in the home at one time.

..."

In addition, the section is necessary for consistency with H&S Code section 1597.465, which states in part that:

"A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- (a) At least *one child is enrolled in and attending kindergarten or elementary school and a second child is* at least six years of age.

...

- (c) The licensee notifies a parent that the facility is caring for two additional school age children and that there may be up to 13 or 14 children in the home at one time.

..."

Thus, this section clarifies that, for purposes of meeting the criteria in Sections 1597.44 and 1597.465 as amended by AB 529, Chapter 744, Statutes of 2003, "school age child" means that the child is enrolled in and attending kindergarten, including transitional kindergarten, or elementary school or the child is at least six years of age.

If a Family Child Care Home licensee seeks to care for more than six and up to eight children for a Small Family Child Care Home or for more than 12 and up to 14 children for a Large Family Child Care Home they must meet certain requirements in H&S Code section 1597.44 (Small Family Child Care Home) or Section 1597.465 (Large Family Child Care Home). One of the requirements is that at least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age. And the licensee must notify ". . . a parent that the facility is caring for two additional school-age children."

SB 1381, Chapter 705, Statutes of 2010 amended the EC sections 46300, 48000 and 48010 to change the required birthday for admission to kindergarten and first grade and establish a transitional kindergarten program beginning in the 2012-2013 school year. According to EC section 48000(d), transitional kindergarten is the first year of a two-year kindergarten program. Therefore, it is necessary to clarify that a child enrolled in and attending transitional kindergarten shall be treated the same as a child enrolled in and attending traditional kindergarten and the child will be counted as a "school-age child" for purposes of meeting the requirements in Sections 1597.44 or 1597.465 permitting a Family Child Care Home to care for up to two additional children without an additional provider if certain requirements are met.

Section 102417(o)

Specific Purpose:

This section is amended to correct the grammatical structure and clarify the phrase "proof of control of property," including clarification that "the licensee shall maintain proof of control" means that the licensee shall maintain "*documentation* of proof of control of property."

Factual Basis:

These amendments are necessary to clarify the references to "proof of control of property," including clarification that "the licensee shall maintain proof of control" means that the licensee shall maintain "*documentation* of proof of control of property."

Section 102417(p)

Specific Purpose:

This section is adopted to clarify the obligation of a prospective or, in some cases, current family day care home provider who resides in a rental property to notify his/her landlord or owner of the rental property pursuant to H&S Code section 1597.40(d). In order for the Department to verify compliance with the landlord/property owner notification requirements, this proposed section requires the licensee to maintain proof of this notification (LIC 9151, incorporated by reference) at the Family Child Care Home.

Factual Basis:

This section is necessary to require that proof of landlord/owner notification be maintained at the facility. The H&S Code section 1597.40(d) requires prospective, and in some cases, current Family Child Care Home licensees to notify the property owner/landlord of their intent to operate a Family Child Care Home and provides timeframes for doing so. However, Section 1597.40(d) does not require that proof of landlord notification be maintained at the facility. Therefore, this section is necessary to require that such proof of notification be maintained at the facility. Proof is necessary to enable the Department to verify compliance without having to contact the landlord.

Handbook Section 102417(p)

Specific Purpose:

The handbook is necessary to cross reference the statutory authority referenced in New Section 102417(p).

Factual Basis:

Section 1597.40(d) of the H&S Code is added to the handbook as reference.

Section 102417(q)

Specific Purpose/Factual Basis:

This section is amended to have Section 102417(q) renumbered from Section 102417(p) for consistency and clarity, correct the cross-reference from Section 102416.5(c) to Section 102416.5(d), correct formatting and grammar and to require and incorporate by reference LIC 9149 as proof of the written consent of the property owner/landlord.

Section 102417(r) renumbered from Section 102417(q)

Specific Purpose/Factual Basis:

This section has been renumbered for consistency and clarity.

Section 102417(s) renumbered from Section 102417(r)

Specific Purpose/Factual Basis:

This section has been renumbered for consistency and clarity.

Sections 102421(a)(1) and (b)

Specific Purpose/Factual Basis:

These sections are amended to correct formatting and grammar.

Section 102421(c)

Specific Purpose:

This section is adopted to require that the licensee maintain documentation, in the child's record, verifying that a child is enrolled in and attending kindergarten, including transitional kindergarten, or elementary school when the provider seeks to care for more than six and up to eight children in a Small Family Child Care Home or more than 12 and up to 14 children in a Large Family Child Care Home consistent with Section 102416.5(g).

Factual Basis:

This section is necessary to implement H&S Code sections 1597.44 and 1597.465 and permits the Department to verify a Family Child Care Home licensee's compliance with these statutes by requiring a copy of documentation verifying the child's enrollment and attendance at kindergarten, including transitional kindergarten, or elementary school as required in Section 102416.5(g).

Section 102421(d)

Specific Purpose:

This section is adopted to require that the licensee maintain proof, in the child's record, of parent notification that the facility is caring for an additional child consistent with Section 102416.5(h). Also, this section is necessary to require that the facility maintain proof of the parent notification and requires and incorporates by reference LIC 9150 as proof of this notification.

Factual Basis:

This section is necessary to implement H&S Code sections 1597.44 and 1597.465 as amended by AB 529, Chapter 744, Statutes of 2003 and permits the Department to verify a Family Child Care Home licensee's compliance with these statutes. Also, this section is necessary to require that the facility maintain proof of the parent notification in order to enable the Department to verify the facility's compliance with these statutes. Thus, it requires and incorporates by reference LIC 9150 as proof of the parent notification.

Section 102421(e) has been renumbered from Section 102421(c)

Specific Purpose/Factual Basis:

This section is renumbered for consistency and clarity and amended to correct formatting.

Section 102352(f)(1)(A)

Specific Purpose:

This section is amended to correct formatting and grammar and to make language consistent with H&S Code section 1596.78(c) and Section 102416.5(b).

Factual Basis:

This amendment is necessary to correct formatting and grammar and to make language consistent with H&S Code section 1596.78(c) and Section 102416.5(b). H&S Code section 1596.78(c) uses the word "reside" not "live" to describe certain children in the home who are counted toward capacity.

Section 102352(f)(1)(B)

Specific Purpose:

This section is amended to correct the cross-reference because of the proposed amendments to Section 102416.5. This section is amended to make language consistent with H&S Code section 1596.78(b) and Section 102416.5(d).

Factual Basis:

This amendment is necessary to correct the cross-reference because of the revisions to Section 102416.5. This section is revised to make language consistent with H&S Code section 1596.78(b) and Section 102416.5(d). H&S Code section 1596.78(b) uses the word "reside" not "live" to describe certain children in the home who are counted toward capacity.

b) Identification of Documents Upon Which Department is Relying

- (1) AB 529, Chapter 744, Statutes of 2003.
- (2) SB 1381, Chapter 705, Statutes of 2010.

c) Local Mandate Statement

These regulations do not impose a mandate.

d) Statement of Alternatives Considered

The CDSS did not identify any reasonable alternatives other than the regulatory action proposed because regulations are necessary to implement H&S Code sections 1597.40(d), 1597.44 and 1597.465. Factors considered by the Department in determining that the proposed regulations are necessary to implement Sections 1597.44 and 1597.465 include that the revisions conform current regulation to these statutes (as amended by Chapter 744 § 1 and 2, Statutes of 2003 [AB 529]). Also, the proposed recordkeeping requirements are necessary to enable the Department to verify compliance with statute, including verifying compliance with H&S Code section 1597.40(d) (landlord notification of intent to operate a Family Child Care Home). The addition, a definition for "school age child" for the purposes of meeting the criteria of H&S Code sections 1597.44 and 1597.465 as amended by AB 529, Chapter 744, Statutes of 2003 is necessary to clarify the statutory requirements. Further, it has been the Department's experience that there has been confusion with regard to determining capacity. Thus, the proposed regulatory action is necessary to clarify licensed capacity as it is applied to Family Child Care Homes. There were no other alternatives brought to the attention of the Department.

e) Statement of Significant Adverse Economic Impact On Business

The 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. This determination was made because this regulatory action only conforms regulation to statute and clarifies what documentation the Family Child Care Home is required to maintain so CDSS may verify that the home is complying with existing law when it cares for up to two additional children. In addition, this regulatory action clarifies, consistent with existing law, how the capacity is determined, when an assistant provider is required to be present in a Family Child Care Home, and the requirements for landlord notification. Also, this regulatory action specifies the documentation that a Family Child Care Home is required to maintain so that the Department may verify that the home is complying with existing law.

f) Economic Impact Assessment

The proposed amendments are not expected to have a direct impact on the creation or elimination of jobs nor result in the elimination or expansion of existing businesses within the State of California.

The Creation or Elimination of Jobs Within the State of California

These proposed regulations aim to conform with AB 529 and SB 1381 and to clarify capacity requirements for Family Child Care Homes. Specifically, the proposed regulations do the following: clarify the notification and documentation requirements for licensees that wish to care for more than six and up to eight children in a Small Family Child Care Home and more than 12 and up to 14 children in a Large Family Child Care Home; clarify which children are counted in the capacity; clarify when an assistant provider must be present in a Family Child Care Home; clarify that the capacity specified on the license shall be for the maximum number of children for whom care may be provided at any one time; and specify landlord notification and documentation requirements for licensees that operate in a rental property in conformity with section 1597.40 (d) of the H&S Code. Therefore, Child Care Licensing has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

These proposed regulations aim to conform with AB 529 and SB 1381 and to clarify capacity requirements for Family Child Care Homes. Specifically, the proposed regulations do the following: clarify the notification and documentation requirements for licensees that wish to care for more than six and up to eight children in a Small Family Child Care Home and more than 12 and up to 14 children in a Large Family Child Care Home; clarify which children are counted in the capacity; clarify when an assistant provider must be present in a Family Child Care Home; clarify that the capacity specified on the license shall be for the maximum number of children for whom care may be provided at any one time; and specify landlord notification and documentation requirements for licensees that operate in a rental property in conformity with Section 1597.40(d) of the H&S Code. Therefore, Child Care Licensing has determined that this regulatory proposal will not have an impact on the creation or elimination of existing businesses within the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

These proposed regulations aim to conform with AB 529 and SB 1381 and to clarify capacity requirements for Family Child Care Homes. Specifically, the proposed regulations do the following: clarify the notification and documentation requirements for licensees that wish to care for more than six and up to eight children in a Small Family Child Care Home and more than 12 and up to 14 children in a Large Family Child Care Home; clarify which children are counted in the capacity; clarify when an assistant provider must be present in a Family Child Care Home; clarify that the capacity specified on the license shall be for the maximum number of children for whom care may be provided at any one time; and specify landlord notification and documentation requirements for licensees that operate in a rental property in conformity with Section 1597.40(d) of the H&S Code. Therefore, Child Care

Licensing has determined that this regulatory proposal will not have an impact on the expansion businesses within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The regulation changes are anticipated to benefit family child care providers by correcting, clarifying and providing statewide consistency and interpretation of the Title 22 regulations. In addition, these regulations will incorporate transitional kindergarten established by SB1381, Chapter 705, Statutes of 2010, to be included in school age children ratios. This will benefit Child Care Providers by eliminating previous confusion on existing regulations.

Documents relied upon in proposing the regulatory action:

- (1) AB 529, Chapter 744, Statutes of 2003.
- (2) SB 1381, Chapter 705, Statutes of 2010.

g) **Benefits Anticipated from Regulatory Action**

This regulatory action will benefit licensees of Family Child Care Homes because it will clarify the documentation requirements related to caring for up to two additional children and to notifying the property owner/landlord, as well as clarify how capacity is determined and when an assistant provider is required to be present at a Family Child Care Home.

The regulatory action will benefit licensees and families of children in care at licensed Family Child Care Homes because this action will clarify what is required of a licensee when he/she seeks to care for up to two additional children.

Also, this regulatory action will increase protection of health and safety in Family Child Care Homes. It will help the Department staff tasked with monitoring and enforcing the H&S Code and associated regulations via licensing visits because these revisions will clarify how to determine licensed capacity, when an assistant provider is required and will establish record keeping requirements.

h) **Statement of Specific Technology or Equipment**

This regulatory action will not mandate the use of new, specific technologies or equipment.