

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

ITEM # 2 Criminal Record Clearance/Exemption, AB 1240, SB 358, and Gresher v. Anderson Decision

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 March 15, 2006, as follows:

March 15, 2006  
Office Building # 9  
744 P St. Auditorium  
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 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 March 15, 2006.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such 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 attached. 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.

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## CHAPTERS

California Code of Regulations, Title 22, Division 6 Licensing of Community Care Facilities, Chapter 1 General Licensing Requirements, Sections 80019 (Criminal Record Clearance), 80019.1 (Criminal Record Exemptions), 80054 (Penalties); Chapter 8 Residential Care Facilities for the Elderly, Sections 87219 (Criminal Record Clearance), 87219.1 (Criminal Record Exemptions), 87454 (Penalties); Chapter 8.5 Residential Care Facilities for the Chronically Ill, Sections 87819 (Criminal Record Clearance), 87819.1 (Criminal Record Exemptions), 87854 (Penalties); Chapter 8.8 Foster Family Agencies, Section 88019 (Criminal Record Clearance); Division 12 Child Care Facility Licensing Regulations, Chapter 1 Child Care Center General Licensing Requirements, Sections 101170 (Criminal Record Clearance), 101170.1 (Criminal Record Exemptions), 101195 (Penalties); Chapter 3 Family Child Care Homes, Sections 102370 (Criminal Record Clearance), 102370.1 (Criminal Record Exemptions), 102395 (Penalties).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed regulations add or make changes to the Criminal Record Clearance sections in six regulation categories; add or make changes to the Criminal Record Exemption sections in five regulation categories; and add or make changes to the Penalties sections in five regulation categories. All revised or added regulations are mandated by Health and Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871, which were amended by Senate Bill (SB) 1240, Chapter 653, Statutes of 2004, Assembly Bill (AB) 358, Chapter 628, Statutes of 2004 and the Gresher v. Anderson decision (Alameda County Superior Ct. No. 8074577). SB 1240 increases an existing one-time civil penalty for allowing an individual to work or reside in a licensed facility without a criminal record clearance or exemption to an ongoing, per day civil penalty. SB 1240 also allows for the transfer of criminal history information between county and state licensing agencies. AB 358 expands the list of persons who are exempt from submitting fingerprints for a criminal background check. The Gresher v. Anderson Decision: permits certified family home employees to seek a criminal record exemption on their own behalf; permits terminated employees to seek a criminal record exemption after their employers received a notice from the licensing agency about his/her criminal history, without requiring that the notice caused the termination; requires that the licensing agency list the convictions that require a criminal record exemption; and requires that the licensing agency list the specific reason(s) the exemption was denied.

Sections 80019, 87219, 87819, 88019, 101170, and 102370 specifies: who must submit fingerprints for a criminal record review and who is exempt; that persons subject to a criminal record review be cleared or have a criminal record exemption prior to working or residing in a licensed facility; and the resulting civil penalty for violation of background check requirements. Sections 80054, 87454, 87854, 101195, and 102397 allow for the assessment of civil penalties for violation of licensing regulations. Section 80019 was amended to specify that certified foster parents, acting as a reasonable and prudent parent, may allow family, friends, parents of the foster child's friends and baby sitters to provide short term care without a background check. Section 88019 was amended to eliminate duplication of Section 80019. Section 102370 was amended to allow the transfer of criminal record clearance information between county and state licensing agencies. Sections 80019, 80054, 87219, 87454, 87819, 87854, 101170, 101195, 102370 and 102395 were amended to increase an existing one-time, \$100 background check violation civil penalty to a \$100 per day, for a maximum of five days civil penalty for initial violations and \$100 per day, for a maximum of 30 days, civil penalty for subsequent violations.

Sections 80019.1, 87219.1, 87819.1, 101170.1, and 102370.1 specifies the entire criminal record

exemption process. Regulations were amended to: allow certified family home employees to seek an exemption on their own behalf; permit terminated employees to seek an exemption after their employers received a notice from the licensing agency about his/her criminal history, without requiring that the notice caused the termination; require that the exemption needed notice, sent to the affected individual by the licensing agency, list the convictions that require an exemption; and require that exemption denial notices specify the reason the exemption was denied. Additionally, Section 102370.1 was amended to allow the transfer of criminal record exemption information between county and state licensing agencies.

#### COST ESTIMATE

1. Costs or Savings to State Agencies: Costs associated with AB 1240 implementation will be absorbed. Costs associated with implementation of Greshner v. Anderson decision have been approved (SFL # CDSS-100).
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact exists because this regulation does not affect any local entity or program.
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 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.

#### 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 there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

#### 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 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 1548, 1569.49, 1569.49(a), 1568.0822(e), 1596.98(c), 1596.81, 1596.893(b). Subject regulations implement and make specific Health And Safety Code Sections 1548, 1596.49, 1568.22, 1596.99, 1596.893, 1596.871, and Gresher v. Anderson (2005) 127 Cal. App. 4<sup>th</sup> 88.

#### CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

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