

ADDENDUM TO THE FINAL STATEMENT OF REASONS

Section 82000

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following change has been made to Section 82000:

- 1) Section "1502(a)(2)" has been underscored to correct an oversight and to clearly identify this language as new.

Handbook Section 82001(e)(5)(A)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Handbook Section 82001(e)(5)(A):

- 1) Corrections have been made to more accurately reflect Health and Safety Code Section 1522(g)(1).

Section 82001(s)(1) and Handbook Section 82001(s)(1)(A)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82001(s)(1):

- 1) Non-substantive language corrections have been made to refer specifically to adult day programs for consistency.
- 2) The word "Handbook" has been deleted in Handbook Section 82001(s)(1)(A) to correct a handbook reference and clarify that Section 82051 does not contain a handbook.

Section 82003

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82003:

- 1) No change was made to (a)(1) of this section or LIC 195. The LIC 195 form that was originally noticed for the August 17, 2005 Public Hearing was outdated and non-substantively revised to eliminate the reference to Health and Safety Code Section 1596.805. This reference requires a child day care facility to obtain a "special permit" to provide "specialized services" which is not applicable to the LIC 195 that prohibits a facilities unlicensed operation. The LIC 195 form with a revision date of (10/05) is current and does not have any missing language. The LIC 195 was revised while this package was going through the regulatory process as specified in the Final Modification of the Final Statement of Reasons for Section 82003.

- 2) LIC forms 309 and 9054 have been included in the rulemaking file and are incorporated by reference in this section. Section 82003(a)(8) through (a)(14) have been renumbered for purposes of clarity and ease of use.

Section 82007

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82007:

- 1) The reference in Section 82007(a)(2) has been changed from Health and Safety Code 1202 to 1200 for purposes of "clarity" and "consistency" as defined in the Administrative Procedure Act, Government Code Section 11349(c) and (d), respectively. This change is necessary to clarify that the definition of "clinic" is found in Section 1200 of the Health and Safety Code.
- 2) Sections 82007(a)(4) and (a)(5) are amended to meet the "consistency" standard of the Administrative Procedure Act, Government Code Section 11349(d), by making this regulation consistent with Health and Safety Code Section 1505(k). OAL's concern with this subsection was that it was not "entirely consistent with Subdivision (k) of Health and Safety Code Section 1505." New language has been adopted to make this subsection consistent with statute. Health and Safety Code Section 1505(k) uses separate language for "any arrangement for the receiving of care of persons by a relative" with no conditions, compared to "any arrangement for the receiving of care of persons by a close friend" followed by specified conditions "as defined by regulations by the department" already specified in subsections (a)(5)(A) through (a)(5)(C).

Section 82018

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Section 82018 has been amended and renumbered for purposes of clarity. No new requirements have been adopted; this section has been revised to more accurately reflect the information on LIC 200, and supplemental documents (LIC 309 and LIC 9054) and supporting information necessary for the application process. LIC forms 309 and 9054 have been included in the rulemaking file and are incorporated by reference in this section and Section 82003 of the proposed regulations. Additionally, Section 82018(c)(10) is adopted because it is applicable to Adult Day Programs and is based on the General Licensing Standards Section 80018(d)(16) that Adult Day Care and Adult Day Support facilities were required to follow. The adoption of this regulation is not a new requirement and is necessary based on the adoption of Section 82025 and 82026; please find the rationale for the adoption of these two sections below. Sub-Section 82018(c)(7) has been revised to eliminate the reference to "telephone number" in an effort to be consistent with LIC 9054.

Section 82019

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82019:

- 1) Section 82019(d)(3) has been amended to correct a reference error. The reference has been changed from "82019(f)" to "82019(e)" for purposes of clarity.
- 2) Handbook Section 82019(f)(4)(A) is amended to be consistent with Health and Safety Code Section 1522(h)(2).
- 3) Section 82019(g) et seq. is amended to be consistent with the Criminal Record Clearance/Exemption, AB 1240, SB 358, and Gresher v. Anderson Decision Regulations [(ORD #1105-17) OAL No. 06-0622-01S], that were approved by OAL on July 11, 2006. Since subsection 80019(g) of the General Licensing Requirements was amended in regulation package ORD #1105-17 to comply with the provisions of AB 1240, Chapter 653, Statutes of 2004; the same changes applies to Adult Day Programs because Section 82019 is based on 80019. Additionally, Handbook is no longer necessary because the provisions of Health and Safety Code 1522(c)(2) are explained in regulation.
- 4) Section 82019(i) has been amended to correct a reference error. The reference "82019.1(a)" has been changed to "82019.1(k)" to clearly explain the criteria the Department considers in granting a criminal record exemption. Section 82019(i)(2) is amended to correct a grammatical error by adding a comma for purposed of clarity and ease of use. Section 82019(i)(4) has been amended to correct a grammatical error by replacing "in" with "at" and to correct the reference at the end of the sentence to refer to "if the individual continues to reside at the day program" instead of "if the individual continues to provide services in the day program."
- 5) Section 82019(j) is repealed to be consistent with the Criminal Record Clearance/Exemption, AB 1240, SB 358, and Gresher v. Anderson Decision Regulations [(ORD #1105-17) OAL No. 06-0622-01S], that were approved by OAL on July 11, 2006. Subsection 80019(j) of the General Licensing Requirements was repealed in ORD #1105-17 for purposes of moving this subsection to the criminal exemption section; the same change applies to Adult Day Programs. The handbook has been renumbered for clarity and ease of use.
- 6) Sections 82019(k), (l), and (m) have been renumbered for purposes of clarity and ease of use.

Section 82019.1

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82019.1:

- 1) Section 82019.1(d) et seq. is amended and renumbered for clarity and consistency with the Criminal Record Clearance/Exemption, AB 1240, SB 358, and Gresher v. Anderson Decision Regulations [(ORD #1105-17) OAL No. 06-0622-01S], that were approved by OAL on July 11, 2006. Since Section 80019.1(d) of the General Licensing Requirements was amended in regulation package ORD #1105-17 to comply with the provisions of the Gresher v. Anderson decision; the same changes apply to Adult Day Programs because

Section 82019.1 is based on 80019.1. Additional grammatical changes have been made to Section 82019.1(d)(3)(B) and (d)(3)(C) for purposes of clarity and ease of use.

- 2) Section 82019.1(h) is amended to adopt 82019.1(h)(1) for consistency with the Criminal Record Clearance/Exemption, AB 1240, SB 358, and Greshner v. Anderson Decision Regulations [(ORD #1105-17) OAL No. 06-0622-01S], that were approved by OAL on July 11, 2006. Since Section 80019.1(h) of the General Licensing Requirements was amended in regulation package ORD #1105-17 to comply with the provisions of the Greshner v. Anderson decision; the same changes apply to Adult Day Programs because 82019.1 is based on 80019.1.
- 3) Section 82019.1(i) is amended to repeal "facility" and replace it with "day program" for purposes of consistency with the rest of the Adult Day Program Regulations. Additional grammatical changes were made to Sections 82019.1(j)(1)(B) and (w) for consistency, as well as clarity and ease of use.

Sections 82025 and 82026

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Sections 82025 and 82026 are being adopted. OAL questioned that a reference to "82026(h) through (k)" did not exist. The Department realized that Sections 80025 (Bonding) and 80026 (Safeguards for Cash Resources, Personal Property and Valuables) of the General Licensing Requirements applied to both the Adult Day Care and Adult Day Support facilities and should apply to Adult Day Programs. The Department did not originally include these sections because it was thought that these programs did not handle client's cash resources, personal property or valuables. However, although rare, some of these programs do care for clients' cash resources for purposes of field trips or similar activities. Based on this information, it is necessary to include these sections to provide standards for the safety of client's cash or valuables and also include bonding standards for programs that choose to provide this service. Sections 82025 and 82026 are based on the applicable provisions of Sections 80025 and 80026 of the General Licensing requirements and do not represent new requirements. Adopting these sections will also correct the reference error cited in OAL's disapproval notice.

Section 82035(c)(2)(A)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations; no change has been made to this regulation based on the fact that the instructions on the back of the LIC 200 require completion of additional forms and information that are not required in this regulation as specified.

Section 82052(e)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Section 82052(e) is necessary to allow Adult Day Program licensees the ability to complain about the any misapplication, misinterpretation or mal-enforcement of regulations by a licensing representative without fear of retribution. This regulation is also necessary to meet the "necessity" and "consistency" standards of the Administrative Procedure Act, Government Code Sections 11349(a) and (d), respectively, by being consistent with Section 1530 of the Health and Safety Code that requires, in part, the Department to develop "...such reasonable rules,

regulations, and standards as may be necessary to carry out the purpose and intent of this chapter..."

Section 82054

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82054:

- 1) Section 82054(a) has been amended to adopt Health and Safety Code Section 1548(b) in Handbook for purposes of clarity and consistency. This amendment is a non-substantive change.
- 2) Section 82054(b) et seq. is amended and renumbered for consistency with the Criminal Record Clearance/Exemption, AB 1240, SB 358, and Greshner v. Anderson Decision Regulations [(ORD #1105-17) OAL No. 06-0622-01S], that were approved by OAL on July 11, 2006. Since Section 80054(b) of the General Licensing Requirements was amended in regulation package ORD# 1105-17 to comply with the provisions AB 1240, Chapter 653, Statutes of 2004; the same changes apply to Adult Day Programs because Section 82054 is based on 80054.
- 3) Sections 82054(c) and (c)(1) are combined for clarity.
- 4) Section 82054(e) is amended to clarify the correct dollar amount of civil penalties assessed for deficiencies repeated within a 12-month period. This amendment is necessary to comply and be consistent with subdivision (d) of Health and Safety Code Section 1548.
- 5) Section 82054(f)(1) is amended to include subsection "(e)." The requirements of Section 82054(f)(1) apply to subsection (e) and not including this requirement was an oversight. This amendment is also necessary to comply with OAL's "Decision of Disapproval of Regulatory Action" that identified this error.

Section 82058(c)(2)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Subsection 82058(c)(2) is amended to correct a reference error. The reference "82058(b)" is changed to "82058(c)" for purposes of clarity.

Section 82061(a)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Section 82061(a) has been repealed for purposes of clarity. The Department agrees that this regulation is vague, and unnecessary and therefore is repealed. Sections 82061(b) through (f) have been renumbered for purposes of clarity and ease of use. Additionally, the references found in renumbered Section 82061(a) have been amended for clarity and ease of use.

Section 82064(b)

Section 82064(b) has been amended to allow for the grandfathering in of current Administrators in both Adult Day Care and Adult Day Support facilities that do not meet the minimum Administrator requirements for Adult Day Programs. This regulation is necessary because the minimum qualifications for administrator were elevated as a result of the statutorily mandated workgroup meetings with the Department, providers and advocacy groups. This regulation is also necessary to be consistent with Section 1530 of the Health and Safety Code that requires the Department to develop reasonable regulations and standards necessary to carry out the purpose in intent of the Community Care Facilities Act.

Section 82065

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82065:

- 1) Section 82065(e)(2) has been amended to include clarifying language that is intended to give persons directly affected by this regulation an idea of the type of agencies that provide valid water safety certificates.
- 2) The Department was also required to explain to OAL the "necessity" of the regulations found in Sections 82065(f)(8) and (f)(9). The purpose of both these regulations is to promote health and safety to clients in Adult Day Program facilities. Section 82065(f)(8) is necessary to ensure that staff have training or experience in "Emergency Procedures." Section 82065(f)(9) is necessary to ensure that staff have training or experience in being mandated reporters. Both regulations are necessary to be consistent with Health and Safety Code Section 1501(b)(5) that requires, in part, that community care facilities be adequate and safe. Section 82065(f)(9) is necessary to be consistent with Welfare and Institutions Code Section 15630(b) that provides mandated reporter requirements for dependent adult and elder abuse.
- 3) Lastly, the disapproval notice explains that 42001 of the Vehicle Code found in the reference section, does not meet the "reference" standard of the Administrative Procedure Act. The Department agrees and is repealing this reference. The Department has adopted the reference to Section 15630 of the Welfare and Institutions Code to comply with the "reference" standard of the Administrative Procedure Act, Section 11349(e) of the Government Code.

Section 82065.1

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the Department is required to explain the "necessity" of the regulations found in subsection 82065.1(d)(1). This regulation is necessary to ensure that staff receive at a minimum 8 hours of continuous annual training for the purpose of promoting health, safety and quality of care for clients served in Adult Day Programs. This regulation is also necessary to be consistent with Section 1531 of the Health and Safety Code that requires, in part, "...regulations for a license shall prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services based upon the category of licensure." This regulation is also necessary to be consistent with Section 1530.1 that required the Department to

meet with "providers, consumers, and other interested parties, to combine adult day care and adult day support centers licensing categories..." During the meetings with providers, consumers, and interested parties, the 8-hour continuous training for these programs was determined to be reasonable and sufficient.

Section 82066(a)(12)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Section 82066(a)(12) has been amended to correct a reference error. Section 82019(b) is changed to Section 82019(a) for purposes of clarity.

Section 82068

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82068:

- 1) Section 82068(d) is amended to correct a reference error. The reference "82068(d)" is changed to "82068(c)" for purposes of clarity and ease of use.
- 2) Lastly, the disapproval notice explains that 4803 of the Welfare and Institutions Code found in the reference section does not meet the "reference" standard of the Administrative Procedure Act. The Department agrees and is repealing this reference.

Section 82068.2

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82068.2:

- 1) Section 82068.2(e) is amended to correct a reference error. The reference "82068.2(a)(f)" is changed to "82068.2(f)" for purposes of clarity.
- 2) Section 82068.2(g) is not consistent with Health and Safety Code 1507(c)(2)(A) because the "needs and services plan" and the "individualized health care plan" are completely separate plans. Only the "individualized health care plan" applies to 1507(c)(2)(A) of the Health and Safety Code. Because they are different plans, no change has been made to this regulation.

Section 82070

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82070:

- 1) The reference to Section 82026(h) through (k) in Section 82070(b)(13) has been corrected by adopting Section 82026. The necessity of adopting Sections 82025 and 82026 are explained above.
- 2) Sections 82070(d)(1)(G) and (H) are being repealed because they do not apply to Adult Day Programs. "Functional Assessment" is a requirement that applies to Adult Residential and Social Rehabilitation Facilities, not Adult Day Programs. Similarly "Mental Health

Assessment" is a requirement that only applies to Adult Residential Facilities. No such records are required to be kept by Adult Day Programs. Section 82070(d)(1)(I) is being renumbered to (d)(1)(G) for clarity and ease of use.

Section 82075

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82075:

- 1) OAL questions the consistency of Section 82075(b)(1) with Health and Safety Code 1507. The Department agrees that Sections 82075(b)(1), (b)(1)(A) and (b)(1)(B) as written are not consistent with the provisions of Health and Safety Code 1507(c)(2)(B) and is repealing language allowing training of facility staff by a client's family member or primary caregiver. By repealing this language, these subsections meet the "consistency" standard of the Administrative Procedure Act, Government Code Section 11349(d), by making this regulation consistent with Section 1507 of the Health and Safety Code.
- 2) OAL's "Decision of Disapproval of Regulatory Action" questions the "clarity" of Section 82075(f) that requires "Staff... receive and maintain current training in first aid and cardiopulmonary resuscitation from persons qualified by agencies including, but not limited to, the American Red Cross." In researching this language, regulations promulgated for other community care facility categories currently have exact or similar language. In the Department's experience, this language has not been problematic for field staff in the past, nor have licensees complained about the meaning or application of this language; it has never been an issue. Based on this rationale, the Department feels that the meaning of this regulation is clear and does meet the "clarity" standard of the Administrative Procedure Act. The Department recommends leaving the language without amendment.

Section 82076

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 82076:

- 1) Subsection 82076(a)(8) has been amended to add clarifying language so that persons affected by this regulation can easily understand that milk given to clients shall be pasteurized. The language addressing "Raw" milk is being repealed because it is not defined in Title 15 of the Food and Agriculture Code and because it unnecessarily complicates this regulation. A comma has also been added to this section to correct a grammatical error and for clarity and ease of use.
- 2) Section 82076(a)(10) has been amended to prohibit the use of home canned foods in Adult Day Program facilities. The Department chose to adopt this prohibitive language because the "University of California Agricultural Extension Service" standards document could not be found and similar documents issued by the University of California Cooperative Extension Services and the USDA are so convoluted that expecting licensees to follow these procedures and licensing staff to ensure proper procedures were followed would be unreasonably arduous. In order to satisfy OAL's "Incorporation by Reference" concerns, the

the Department has repealed the reference to the "University of California Agricultural Extension Service" document.

Section 82086(c)

Section 82086(c) is repealed because it is not regulatory, does not add any clarifying information, or give any significant direction. Furthermore, informing licensees that state and local law may require building permits prior to construction, has nothing to do with licensing of Adult Day Programs.

Section 82091(a)(5)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Section 82091(a)(5) has been amended to clarify that "health facility" is defined in Health and Safety Code Section 1250 not 1202.

Section 82092.2(a)(6)

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Section 82092.2(a)(6) has been amended to require that the plan for clients with restricted health conditions be reassessed at least every 12 months. This language was adopted for consistency with Section 1507(c)(2)(B) of the Health and Safety Code. Health and Safety Code Section 1507 is adopted in the Authority Section in order to meet the "Authority" standard of the Administrative Procedure Act, Government Code Section 11349(b).

Section 82092.9

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, Section 82092.9(a)(3)(B) is repealed to meet the "consistency" standard of the Administrative Procedure Act, Government Code Section 11349(d), by making this regulation consistent with Section 1507 of the Health and Safety Code. This regulation is repealed because it allowed a client's family or primary caregiver to train facility staff on the changing of wound dressings, and Health and Safety Code 1507 requires this training be done by a licensed health care professional. Additionally, Section 82092.9(a)(3) has been reworded for clarity.

Section 80027

In response to OAL's "Decision of Disapproval of Regulatory Action" for Adult Day Program Regulations, the following changes have been made to Section 80027:

- 1) Section 80027(e) is being repealed because it is unnecessary and does not add any clarity for persons affected by these regulations. This section is being repealed as it does not impose any requirements on licensees, facility staff, or the public and only explains the licensing agencies internal procedures for application review. This language is only informational.
- 2) Section 80027(f) is being renumbered to Section 80027(e) for purposes of clarity and ease of use.

- 3) Lastly, the Department is repealing 1523 of the Health and Safety Code from the Authority section because this section no longer exists and underscoring .1 of 1523.1 in the Reference section to show the .1 as newly adopted language. These changes are necessary to comply with the "authority" and "reference" standards of the Administrative Procedure Act, Government Code Section 11349(b) and (e), respectively.

Second 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a second 15-day renotice and complete text of modifications made to the regulations were made available to the public following OAL's disapproval of the regulations package. No written testimony on the modifications renoticed for public comment from October 17 to November 1, 2006 was received and therefore no further modifications were made to the regulations.