

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. The passage of Assembly Bill (AB) 1752 (Chapter 225, Statutes of 2003) made changes to the rate application submission requirement applicable to group home and foster family agencies. The legislation mandates that the California Department of Social Services (CDSS) determine the rate for care and supervision of children in foster care on a biennial basis according to a schedule to be determined by CDSS, effective immediately upon passage of the Bill on August 11, 2003. The legislation states that implementation of that mandate be done by adoption of regulations on an emergency basis.
2. The current regulations require that after initial establishment of a foster care rate for a group home program or foster family agency, the rate is "renewed" on an annual basis. Each year a provider of a group home program or foster family agency submits a rate application on or before a specified date. Current regulations require submission of a rate application from a foster family agency on or before April 1 of each year, and a group home program to submit on or before May 1 of each year.
3. There is convincing evidence that the non-emergency rulemaking process provided by Government Code Section 11346 et seq. is sufficiently lengthy, making it impossible to implement regulation changes to avoid risk to the health and safety of the public. The legislation that established the biennial rate application submission requirement become effective almost simultaneously with the due date for submission of the foster family agency rate application and very near to the date for submission of the group home program rate application. Adoption of regulations on an emergency basis is the only mechanism to make providers aware of the new statutory requirement.
4. Without such regulations providers would not have an operable process by which to "renew" the group home or foster family agency rate, which would at a minimum jeopardize the provision of care and service to children or ultimately result in termination of the provider's payment rate, causing the child in their care to be moved to a new placement. Further, the emergency regulations would ensure that providers have a clear understanding of the new processes for which they would be held responsible.
5. Further, changes in the penalty regulations are necessary because current penalties as tied to an annual COLA and to the State's fiscal year. Providers submitting late biennial applications would receive disparate penalties. The changes in regulation closely approximate the current penalties but apply them equally and on a biennial basis tied to the provider's fiscal year.

6. Similarly, overpayment and audit regulation stay substantially the same, however, amendments were made to bring them in line with biennial requirements.
7. Forms are those currently in use, the information is currently required elsewhere in regulation. The forms were updated to reflect the submission of information covering a biennial period based on the provider's fiscal years rather than annual based on the State's fiscal year. The forms were also renamed to allow for ease of use by the providers with all group home forms being located together, and Foster Family Agency forms similarly located.

INFORMATIVE DIGEST

These proposed regulations amend specific provisions and adopt new language in the California Department of Social Services Manual of Policies and Procedures (MPP) Sections 11-400 et seq., 11-402 et seq., 11-403 et seq., and 11-406 et seq.

The proposed emergency regulations will implement the provisions of Welfare and Institutions Code Sections 11462(a)(3), 11463(i) and 11466.2(a). Welfare and Institutions Code Section 11462(a)(3) requires CDSS to determine the rate classification level (RCL) for each group home program on a biennial basis according to a schedule established by CDSS. Similarly, Welfare and Institutions Code Section 11463(i) requires CDSS to determine the rate category for each foster family agency on a biennial basis according to a schedule established by CDSS. Welfare and Institutions Code Section 11466.2(a) specifies that a non-provisional program audit period may be less than the period for which the rate is established.

Currently, the RCL for a group home program and the rate category for a foster family agency is established on an annual basis. Existing regulations contain provisions regarding the rate application/request due date, what constitutes a complete rate application, when a rate become effective, penalty provisions for submission of an incomplete or late rate application/request, procedures for requesting a "good cause" extension to the rate application/request due date, and the rate termination and reinstatement process. These regulations constitute a scheme for setting rates on an annual basis.

The proposed regulations will amend existing policies and procedures pertaining to the current annual system and adopt additional regulations to implement a biennial system as required by statute. Proposed regulations will revise the rate application/request due date and rate effective date, revise the penalty provisions, revise the due dates related to "good cause" extensions, and add three definitions necessary for clarity. These regulatory amendments are necessary to implement a biennial rate setting system that is coherent and equitable to the persons who are subject to them.

COST ESTIMATE

1. Costs or Savings to State Agencies: Savings of approximately \$4,298,240 in the current State Fiscal Year.
2. Costs to Local Agencies or School Districts: N/A

3. Nondiscretionary Costs or Savings to Local Agencies: Savings of approximately \$1,842,124 in the current State Fiscal Year.
4. Federal Funding to State Agencies: Savings of approximately \$6,140,364 in the current State Fiscal Year.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies but not upon school districts. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the California Constitution because implementation of the regulations will result in savings.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553, 10554, 11462(a)(3)(B), and 11463(i)(2). Subject regulations implement and make specific Welfare and Institutions Code Sections 11462(a)(3), 11462.06(d)(1) and (2), and 11463(i); and Section 4980.08 Business and Professions Code.