

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

ITEM #2 COMMUNITY CARE LICENSING LAW ENFORCEMENT CONTACTS

The 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 September 7, 2016, as follows:

Office Building # 9
744 P Street, Room 202
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 September 7, 2016.

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 (i.e., text of the regulations) and the Initial Statement of Reasons (ISOR) are available from the office listed below. This notice, the ISOR and the text of the proposed regulations are available on the internet at [Public Hearings \(http://www.dss.cahwnet.gov/ord/pg615.htm\)](http://www.dss.cahwnet.gov/ord/pg615.htm). 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

California Code of Regulations (CCR) Title 22, Division 6, Chapter 1 (General Licensing Requirements), Chapter 5 (Group Homes) and Subchapter 3 (Emergency Intervention in Group Homes) and Chapter 7 (Transitional Housing Placement Programs).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed regulations amend and adopt language within the CCR Title 22, Division 6, Chapters 1 (General Licensing Requirements), Chapter 5 (Group Homes) and Subchapter 3 (Emergency Intervention in Group Homes) and Chapter 7 (Transitional Housing Placement Programs), which regulate community care facilities in order to implement Assembly Bill (AB) 388 (Chapter 760, Statutes of 2014) and clarify Health and Safety Code sections 1536 and 1538.7 and Welfare and Institutions Code section 11469.

Current group home and transitional housing placement provider (THPP) regulations require licensees to report specified incidents to the California Department of Social Services (CDSS). Generally, such reports are required for incidents in which the health or safety of a child in care is threatened. AB 388 added Section 1538.7 to the Health and Safety Code to require group homes and THPPs to make reports on all incidents in which law enforcement is contacted. Although many incidents that entail law enforcement contact already fall under existing regulatory reporting requirements, those addressed here do not.

These proposed regulatory changes clarify Health and Safety Code section 1538.7 presented by AB 388 and allow CDSS to more effectively operationalize the bill's intent:

AB 388 specified timeframes for making reports, which are subject to interpretation. It requires that an initial report be made "upon the occurrence" of an incident, but does not define that term. The proposed regulations would, following standard CDSS practice, interpret this term as meaning that an initial report must be filed no later than the next business day following the incident. AB 388 also required a follow-up report for each incident "At least every six months." This could be interpreted to require an individual follow-up report on each incident within six months or a six-month interval aggregate report to collect follow-up data on each incident occurring within the preceding six-month interval. The CDSS will clarify this concern in the proposed regulations by this provision requiring an individual follow-up report for each incident within six months of the occurrence of the incident. The provision will also specify that the follow-up report requirement can be satisfied immediately when the incident is resolved and has no pending outcomes.

AB 388 specifies a number of data elements associated with the incident to be reported. However, the language of the statute lists these elements as requirements of the six month follow-up report, rather than as part of an initial report, even though some or all of the information may be known to the licensee. Furthermore, even if a licensee voluntarily supplies additional information during the initial report, the licensee would be required to report that information again as part of the follow-up report. The proposed regulations will interpret this provision of law as requiring that information known to the licensee at the time of making an initial report be included in the initial report, and that such information need only be provided in the follow-up report if it has changed since the initial report.

The proposed regulations specify that reports made in accordance with AB 388 requirements also satisfy any other existing regulatory reporting requirement as long as all required information for each reporting requirement is provided. This will prevent licensees from being required to report the same incident twice. For example, when there is no additional required information, an incident as a reportable unusual incident and as one involving contact with law enforcement would only need to be reported once.

AB 388 does not define the term "law enforcement." The proposed regulations interpret it inclusively to mean any public official or agency acting in a law enforcement role, but also clarify that the reporting requirements for "contacts with law enforcement" do not extend to routine interactions between probation officers and the children they are supervising in placement in the affected facilities.

In accordance with statute [Welfare and Institutions Code section 11469(f)], the Department consulted with specified stakeholders to develop performance standards and outcome measures that require group homes to implement programs and services intended to minimize law enforcement contacts and delinquency petitions arising from incidents at group homes. The proposed regulations include amendments based on recommendations from stakeholder workgroups. While performance standards required by AB 388 apply only to group homes, the practices developed through the workgroup have been applied to THPPs where appropriate in order to ensure consistency among facility types that are required to report law enforcement contacts.

SPECIFIC BENEFITS ANTICIPATED

The CDSS anticipates these regulations to benefit California residents by improving the health and safety in the affected children's residential facilities and minimizing unnecessary interactions between law enforcement and foster youth for behavioral issues and minor infractions that could result in delinquency petitions. They will also facilitate the collection of data in order to determine, which facilities inordinately or inappropriately contact law enforcement to address incidents involving residents as well as clarify ambiguities in statute.

The regulations may also ultimately lead to ongoing cost savings in the criminal justice system by reducing the number of minors who transition from dependency to delinquency jurisdiction and may also improve worker safety by ensuring that that affected children's residential facilities have sufficient plans for when and how to involve law enforcement in response to incidents and by identifying facilities that use their local law enforcement agencies as a substitute for adequate staffing.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS

These regulations are neither inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect licensed youth facility law enforcement contacts, CDSS has concluded that these are the only regulations that concern this area.

COST ESTIMATE

1. Costs or Savings to State Agencies: Funding for Fiscal Year (FY) 2015-16 is \$726,000, FY 2016-17 is \$601,000, FYs 2017-18 and ongoing is \$197,000; 100 percent General Fund.
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: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on 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

These regulations codify statute as well as implement proposals that came out of the discussions with stakeholders – including service providers – mandated by AB 388. Providers and their representatives reviewed and offered feedback to these regulations in draft form and did not express any alternatives to these regulations as presented or would cause a significant or detrimental economic impact to their businesses. Therefore, 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

These regulations will impact group homes and transitional housing program providers that are operating as small businesses, however, complying with them will have little to no cost impact on these providers. For more detail, see Statement of Significant Adverse Economic Impact on Business above.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The CDSS has made the initial determination that the adoption of these regulations 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. These regulations should benefit California residents by improving the health and safety in the affected children's residential facilities and minimizing unnecessary interactions between law enforcement and foster youth for behavioral issues and minor infractions that could result in delinquency petitions and by clarifying ambiguities in statute. The regulations may also ultimately lead to ongoing cost savings in the criminal justice system by reducing the number of minors who transition from dependency to delinquency jurisdiction. The regulations may also improve worker safety by ensuring that the affected children's residential facilities have sufficient plans for when and how to involve law enforcement in response to incidents and by identifying facilities that use their local law enforcement agencies as a substitute for adequate staffing. The regulations have no impact on the state's environment.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

The 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Workgroups were convened in the development of these proposed regulations. No reasonable alternatives have been presented to CDSS for review.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Health and Safety Code section 1530. Subject regulations implement and make specific Health and Safety Code section 1538.7.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person:	Kenneth Jennings	(916) 657-2586
Backup:	Ying Sun	(916) 657-2586