

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

ITEM # 2: Family Child Care Home Capacity

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 February 11, 2015 as follows:

Office Building # 8
744 P St. Room 103
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 February 11, 2015.

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 and the Initial Statement of Reasons are available from the office listed below. 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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California Department of Social Services
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CHAPTERS

Title 22, Division 12, Chapter 3, Sections 102351.1 et seq.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed regulations revise specific provisions and adopt new language in Title 22, Division 12, Chapter 3, Section 102351.1 et. seq. (Family Day Care Homes for Children). The California Child Day Care Facilities Act provides for the licensing and regulation of child day care facilities, including Family Child Care Homes, by CDSS. In 2003, the legislature enacted Assembly Bill (AB) 529 (Chapter 744, Statutes of 2003), which amended Sections 1597.44 and 1597.465 relating to the number of children permitted to be cared for at any one time in small and large Family Child Care Homes. In 2010, the legislature enacted Senate Bill (SB) 1381 (Chapter 705, Statutes of 2010), which amended Sections 46300, 48000 and 48010 of the Education Code relating to kindergarten and establishing “transitional kindergarten” as the first year of a two-year kindergarten program.

Section 1597.44 of the Health and Safety (H&S) Code authorizes a Small Family Child Care Home to provide child care for more than six and up to eight children if certain conditions are met. Section 1597.465 of the H&S Code authorizes a Large Family Child Care Home to provide child care for more than 12 children and up to 14 children if certain conditions are met. Prior to AB 529, one of these conditions applicable to both small and large Family Child Care Homes was that at least two of the children be at least six years of age. AB 529 changed the law to permit the aforementioned condition to be met if at least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.

These proposed regulations aim to conform to 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.

In addition, the proposed regulations define “school-age child” for the purpose of meeting the criteria in Sections 1597.44 and 1597.465 of the H&S Code only (caring for two additional children), clarify that “enrolled in and attending kindergarten” includes transitional kindergarten for the purpose of meeting the criteria in Sections 1597.44 and 1597.465 of the H&S Code and require that verification of kindergarten/elementary school enrollment/attendance and parent notification of additional children in care be kept on file.

During the process of developing these regulations and amendments, CDSS has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Anticipated Benefits

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.

COST ESTIMATE

1. Costs or Savings to State Agencies: The funding was budgeted in the 2014 May Revision under the CCL – Family Child Care Homes premise.
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: The funding was budgeted in the 2014 May Revision under the CCL – Family Child Care Homes premise.
4. Federal Funding to State Agencies: The funding was budgeted in the 2014 May Revision under the CCL – Family Child Care Homes premise.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate.

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 conforms regulation to statute and clarifies what documentation the Family Child

Care Home is required to maintain so that 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 CDSS may verify that the home is complying with existing law.

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

The CDSS has determined that the proposed regulations will affect small businesses. The California Child Day Care Facilities Act provides for the licensing and regulation of child day care facilities, including Family Child Care Homes, by CDSS. The proposed regulations amend and adopt new language in Title 22, Division 12, Chapter 3, Section 102351.1 et. seq. (Family Day Care Homes for Children).

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

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.

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 clarifying 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 CDSS 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.

STATEMENT OF EFFECT ON HOUSING COSTS

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

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.

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.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in H&S Code section 1596.81.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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