

## FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

In this regulations package there are references to "future date" which will be the effective date of these proposed regulations. The effective date will be the first of the month following the 30th day after the approval and filing of these regulations with the Secretary of State by the Office of Administrative Law (OAL). The Department will coordinate with OAL so that before OAL files these regulations with the Secretary of State, the "future date" will be replaced by the actual effective date of these regulations and the handbook language will disappear.

**As a result of the 15-day renote, comments were received on the effective date of these regulations and therefore the Department has decided to move the effective date one month after originally projected.**

Post-hearing ModificationSection 47-110(e)(2)Specific Purpose/Factual Basis:

**This section has been amended to add a cross reference to the family day care home regulations to clarify that these regulations apply to license-exempt family day care homes.**

Sections 47-260.13 and .14

Specific Purpose:

These amendments are proposed to increase the health and safety of the children who are receiving government subsidized child care services. To address this health and safety issue, the proposed regulations stipulate that license-exempt providers applying for Trustline registration will not be paid while the application process is pending and reflect the effective date of the proposed changes. Specifically, these sections would be amended to conform policy to statute and to prevent a provider from being compensated with a government subsidy prior to being Trustline registered.

Factual Basis:

Current regulations are inconsistent with Health and Safety Code Sections 1596.60-1596.68. Existing statute requires that license-exempt child care providers who receive compensation for services provided for a California Work Opportunity and Responsibility

to Kids (CalWORKs) client must be Trustline registered before payment commences. However, current policy allows the counties and contractors to issue payment prior to registration. The California Department of Social Services (CDSS) is requesting non-emergency regulations to increase the safety of the children receiving subsidized child care by implementing the process changes and updating the Manual of Policies and Procedures (MPP) related to the Trustline Program to conform policy to the existing statute.

**Final Modification:**

**A technical change was made in the last line of Section 47-260.14 by striking out the word "unless" and replacing it with the word "until." This language change adds clarity to this section.**

**As a result of public testimony Section 47-260.14 was further amended to allow a license-exempt provider who has a Trustline application pending on the date the regulations become effective to continue receiving payment until a decision is made. The purpose of this amendment is to prevent a CalWORKs client from losing child care and negatively impacting welfare-to-work participation rates.**

Sections 47-260.2 et seq.

Specific Purpose:

These sections would be added in order to relocate information regarding Trustline-exempt child care providers from Section 47-610.11 and .12 which deals with eligible providers. The proposed regulations would remove the exemption for great-grandparents, great-aunts, and great-uncles. In addition, handbook material from Section 47-610.111 and .112 would be placed into regulation as Sections 47-260.211 and .212.

Factual Basis:

The proposed amendments relocate these sections so that all eligibility criteria for child care providers are in the same section. The relocation of these sections allow for clarity and accessibility of pertinent information. Existing regulations exempt great-grandparents, great-aunts, and great-uncles from being Trustline registered. Disallowing the exemption for these individuals will conform with Health and Safety Code Section 1596.67.

Sections 47-260.3 through 47-260.58

Specific Purpose:

These sections have been renumbered for formatting purposes.

Factual Basis:

These nonsubstantive amendments are necessary to maintain consistency in formatting and for clarity.

Sections 47-301.1 through 47-301.271(a)

Specific Purpose:

"Family" or "applicant/recipient" would be changed to "client" throughout the proposed regulations to be consistent with the terminology used in other sections of the CalWORKs regulations.

Factual Basis:

The regulations would be amended to provide uniform terminology among the various sections of the CalWORKs regulations.

**Final Modification**

**A technical change was made in the second sentence of Section 47-301.1 by striking out the word "families" and adding the word "clients." This change maintains consistency within CalWORKs regulations.**

Sections 47-301.1 through 47-301.22(e)

Specific Purpose:

The proposed regulations would require the informing notice to include a statement that: (a) license-exempt providers must be Trustline registered in order to be reimbursed for child care services; (b) a client may pay for child care, but the county will only pay the provider; (c) the provider may receive 60 days of retroactive payment once Trustline registered; and (d) as soon as child care services begin, a client must tell their provider to submit a Trustline application and Health and Safety Certification.

Factual Basis:

Clients need to be informed about the Trustline process so that they may understand who needs to be Trustlined and the potential liability of choosing a provider who cannot be Trustline registered in a timely manner, if at all. These amendments are proposed to provide that information.

**Final Modification:**

**As a result of public testimony the word "may" was changed to "shall" in these sections to ensure that clients are informed that retroactive payment for child care services provided prior to Trustline registration is required after Trustline**

registration for up to 120 days. The number of retroactive payment days allowed was increased to 120 calendar days due to public comment and to ensure that providers are paid for child care services provided. Section 47.301.22(b) that allowed counties the option of reimbursing a client for out-of-pocket costs that occur prior to Trustline registration was deleted. Deleting this section will ensure that payment for child care services prior to Trustline registration are paid for the maximum time allotted under the regulations. Sections 47-301.22(c) through 47-301.22(n) have been renumbered for formatting purposes. These nonsubstantive amendments are necessary to maintain consistency in formatting and for clarity. A handbook section was added to encourage providers to submit a completed Trustline application package and Health and Safety Certification as soon as possible. The handbook section defines a completed Trustline application package. Technical changes were also made to these sections for clarity and to maintain consistency.

Sections 47-430.1 through 47-430.22

Specific Purpose:

"Family" or "applicant/recipient" would be changed to "client" throughout the proposed regulations to be consistent with the terminology used in other sections of the CalWORKs regulations.

Factual Basis:

The regulations would be amended to provide uniform terminology among the various sections of the CalWORKs regulations.

Section 47-430.2

Specific Purpose:

In order to increase the health and safety of the children receiving government subsidized child care services, the proposed regulations prohibit subsidized payments to child care providers who are required to, but have not been, Trustline registered. Language would be added to allow counties to issue retroactive payments for up to 60 calendar days, from the date that child care services were requested, if the provider becomes Trustline registered. If the child care services were provided in the client's home, payment may be made directly to the client as the employer. If the provider fails to submit the Trustline application and the Health and Safety Certification within seven days after child care services were requested, the provider, upon becoming Trustline registered, shall be paid retroactively, only for the period beginning the date the county or contractor receives the Trustline application.

Factual Basis:

Current regulations are inconsistent with Health and Safety Code Sections 1596.60-1596.68. Existing statute requires that license-exempt child care providers who receive compensation for services provided for a CalWORKs client must be Trustline registered before payment commences. However, current policy allows the counties to issue payment prior to registration, thereby allowing payment to be made even when children are placed in potentially unsafe environments. Authorizing counties to issue retroactive payments will allow eligible providers to be reimbursed for child care services while preventing providers from being reimbursed prior to being Trustline registered. Education Code Section 8357(e) allows direct payments to be made to the client as the employer if child care is provided in the home. The seven day requirement will expedite the Trustline and Health and Safety Certification processes process, thereby allowing CalWORKs clients to obtain needed child care services in a timely manner.

**Final Modification:**

**This section has been reformatted. The first paragraph of Section 47-430.2, labeled (a), has been moved to be a part of Section 47-430.21. These nonsubstantive amendments are necessary to maintain consistency in formatting and for clarity. As a result of public comment, this section was amended to allow for up to 120 calendar days of retroactive payment to providers who become Trustline registered. This will help ensure that providers are paid for child care services provided. Also, as a result of public comment, the word "may" was changed to "shall." This amendment will ensure that counties are paying providers retroactively when appropriate. Section 47-430.2(d) was deleted and a handbook Section 47-301.22(c)(1) was added which encourages providers to submit a completed Trustline Application package and a Health and Safety Certification as soon as possible to facilitate retroactive payments in a timely manner. Other nonsubstantive amendments to the language were made for clarity.**

Section 47-601.1

Specific Purpose:

In order to increase the health and safety of the children who are receiving government subsidized child care services, this section would be amended to establish that license-exempt providers be cleared through the Trustline process prior to receiving payment for child care services.

Factual Basis:

Current regulations are inconsistent with Health and Safety Code Sections 1596.60-1596.68. Existing statute requires that license-exempt child care providers who receive compensation for services provided for a CalWORKs client must be Trustline registered before payment commences. However, current policy allows the counties to issue payment prior to registration, thereby authorizing payment even when children are placed in a

potentially unsafe environment. CDSS is proposing these non-emergency regulations to help ensure the safety of the children receiving subsidized child care and to implement the process changes and update the MPP related to the Trustline Program to conform policy to the existing statute.

### **Post-hearing Modification**

#### **Section 47-602, Introductory Sentence**

##### **Specific Purpose/Factual Basis:**

**The introductory sentence was amended to correctly reference the cross reference mentioned.**

##### Section 47-602(r)

##### Specific Purpose:

This definition is being adopted to increase the health and safety of the children who are receiving government subsidized child care services by clearly defining a registered Trustline child care provider as a person whose background check has been completed and approved.

##### Factual Basis:

The proposed regulations define a registered Trustline child care provider as specified by Health and Safety Code Section 1596.605(b).

##### Section 47-602(t)

##### Specific Purpose:

This definition is being amended to expand the definition of Trustline registry.

##### Factual Basis:

The proposed regulations define the Trustline registry as specified by Health and Safety Code Section 1596.607.

Section 47-610 et seq.

Specific Purpose:

This section would be repealed. Sections 47-610.1 through .12 would be relocated to Sections 47-260.2 through .22. Sections 47.610.2 through .22 would be repealed as the Prior Income Disregard Reimbursement no longer applies.

Factual Basis:

Regulation Sections 47-610.1 through .12 will be relocated so that all eligibility criteria for child care providers are located in the same section. This relocation allows for clarity and accessibility of pertinent information. The Prior Income Disregard Reimbursement was repealed by Assembly Bill 1542, Chapter 270, Statutes of 1997, which became effective January 1, 1998.

Section 47-620.1

Specific Purpose:

"Families" has been changed to "clients" to be consistent with the terminology used in other sections of the CalWORKs regulations. The proposed regulations also repeal the requirement that counties or contractors provide criminal background check cards to Trustline applicants and includes a self-disclosure statement, and LiveScan forms and instructions, and specifies that the client must provide the Trustline application package and information to the provider of their choice.

Factual Basis:

The regulations have been changed to provide uniform terminology among the various sections of the CalWORKs regulations. Repealing the requirement that counties or contractors provide criminal background check cards to Trustline applicants is necessary, as the Department of Justice no longer accepts fingerprint cards to conduct background checks. Welfare and Institutions Code Section 11324 requires counties and contractors to obtain a self-disclosure statement from the provider as to his or her criminal background. Language was added as LiveScan automated fingerprinting process is currently being used to process Trustline applications. Since the client is given the Trustline application package by the county or contracting agency, language was added to direct the client to provide the Trustline application package to the provider of their choice.

**Final Modification:**

**This regulation section has been amended for clarity.**

Section 47-620.11

Specific Purpose:

To increase the health and safety of children who are receiving government subsidized child care, this section would be amended to expedite the Trustline application process. The number of days a provider has to submit a completed Trustline application would be reduced from 28 days to seven days from the date that child care services begins. Trustline applicants who reside in counties that have limited access to the automated fingerprint and application process are given an additional seven days to submit a completed Trustline application.

Factual Basis:

Existing regulations allow child care providers 28 days to submit a Trustline application. Limiting the time period during which child care is provided by a person who has not submitted a Trustline application reduces a potential risk to children's health and safety. In addition, the seven day application requirement will expedite the Trustline process, thereby allowing CalWORKs clients to obtain needed child care services in a timely manner so that they can participate in their required welfare-to-work activities. However, some counties do not have access to the automated fingerprinting system. In these counties, additional time is needed, as the applications are processed by mail. Limiting retroactive payments prohibits a child care provider from being paid retroactively for an extended period of care prior to being Trustline registered pursuant to Health and Safety Code Sections 1596.60-1596.68.

**Final Modification:**

**As a result of public comments, this regulation was amended to clarify that the Trustline Application Package must be submitted to the local child care resource and referral program (R&R).**

Section 47-620.111 and .112

Specific Purpose:

To ensure the health and safety of the children receiving government subsidized child care services, the time period within which a provider must submit a completed Trustline application would be decreased to seven days. Therefore, the language that allows counties to establish a shorter time period to process Trustline applications would be repealed, as it is no longer necessary. In addition, the language requiring counties to provide temporary child care and discontinue child care if the Trustline application is not received by the 28th day from the date that child care services began would also be repealed, as it is also no longer necessary.

Factual Basis:

Section 47-620.11 of the proposed regulations states that providers will have seven days from the date that child care services began to submit a Trustline application. This will not apply to providers residing in counties that have limited access to the automated fingerprinting process, in which case an additional seven days are granted. These timeframes are reasonable for both Trustline applicants and CalWORKs families accessing child care services.

New Handbook Section 47-620.111

Specific Purpose:

This handbook section was added to state the importance of a provider submitting a completed Trustline application so that the client does not incur additional child care costs. This section also reminds counties that providers can only be paid retroactively for child care services up to 60 days from the date that child care services began as long as the provider becomes Trustline registered.

Factual Basis:

The proposed handbook section is for informational purposes.

**Final Modification:**

**As a result of public comment the section was amended to allow for 120 days of retroactive payment to providers who become Trustline registered. Also, as a result of public comment the section was amended to change the word "may" to "shall" in reference to retroactive payments. This will ensure that providers are receiving payment for child care services provided prior to Trustline registration and that each county is allowing retroactive payments.**

Sections 47-620.2 through 47-620.32

Specific Purpose:

In order to increase the health and safety of the children receiving subsidized child care services, the proposed regulations prohibit subsidized payments to child care providers who are required to, but have not been, Trustline registered. These sections would be added to authorize counties and contractors to issue child care payments to providers only after they have been Trustline registered and to allow counties to issue retroactive payments for up to 60 calendar days, from the date that child care services were requested. If child care was provided in the client's home, in some counties the child care payment may be made directly to the client as the employer. The client is responsible for child care costs until the provider becomes Trustline registered.

Factual Basis:

Current regulations are inconsistent with Health and Safety Code Sections 1596.60-1596.68. Existing statute requires that license-exempt child care providers who receive compensation for services provided for a CalWORKs client must be Trustline registered before payment commences. However, current policy allows the counties to issue payment prior to registration. Education Code Section 8357(e) allows payments to be made to the client as the employer if the child care is provided in the client's home. CDSS is proposing these non-emergency regulations to ensure the health and safety of the children receiving subsidized child care services and to implement the process changes and update the Manual of Policies and Procedures related to the Trustline Program to conform policy to the existing statute.

**Final Modification:**

**As a result of public comment Section 47-620.31 was amended to allow for 120 calendar days of retroactive payment to providers when they become Trustline registered. Nonsubstantive amendments were made for clarity.**

Current Sections 47-620.2 through 47-620.5

Specific Purpose:

These sections have been renumbered for formatting purposes.

Factual Basis:

These nonsubstantive revisions are necessary to maintain consistency in formatting.

**Final Modification:**

**Current Section 47-620.31 has been renumbered and reinstated as Section 47-620.44. The side heading has been changed for clarity.**

Sections 47-620.4 and .41

Specific Purpose:

These sections would increase the health and safety of the children receiving government subsidized child care services. Language has been added to allow counties to immediately cease or prevent payment to providers when the county receives a certified copy of the court's judgment of conviction that states that the provider has been convicted of a crime specified in section 1596.871(f)(1)(A) and (B) of the Health and Safety Code thus protecting children from being placed in potentially harmful situations.

Factual Basis:

License-exempt providers must be Trustline registered or exempt from the Trustline in order to receive payment for child care services pursuant to Health and Safety Code Section 1596.67(a). In order to be registered with the Trustline, the individual cannot be convicted of a crime, unless the individual receives an exemption, pursuant to Health and Safety Code Section 1596.871(f).

**Final Modification:**

**Nonsubstantive amendments were made to Section 47-620.4 for clarity.**

Existing Section 47-620.3

Specific Purpose:

This section would repeal language requiring counties to issue payments for child care services once the Trustline application has been received by the Resource and Referral agency.

Factual Basis:

This language would no longer be necessary as these proposed regulations not allow payment until the provider is Trustline registered. Current regulations are inconsistent with Health and Safety Code Sections 1596.60-1596.68. Health and Safety Code Section 1596.66 existing statute requires that license-exempt child care providers who receive compensation for services provided for a CalWORKs client must be Trustline registered before payment commences.

New Section 47-620.5

Specific Purpose:

Counties would be required to immediately cease or prevent payment to providers who have been convicted of a crime specified in Section 1596.871(f)(1) of the Health and Safety Code thus prohibiting government funds from being used to compensate a provider who has failed to receive a background clearance.

Factual Basis:

This section would be adopted to increase the health and safety of the children receiving government subsidized child care services. License-exempt providers must be Trustline registered or exempt from the Trustline in order to receive payment for child care services pursuant to Health and Safety Code Section 1596.67(a). In order to be registered with the Trustline, the individual cannot be convicted of a crime, unless the individual receives an exemption, pursuant to Health and Safety Code Section 1596.871(f).

**Final Modification:**

**This section was amended for clarity.**

Section 47-620.6

Specific Purpose:

This section would be amended to increase the health and safety of the children receiving government subsidized child care services. The proposed regulations require the county or contractor to notify the client immediately upon approval of their child care provider's Trustline application. This will allow the client to know that their child is in a safe and healthy environment.

Factual Basis:

Currently, counties are required to inform clients only when their providers are denied Trustline registration or the case file has been closed or revoked. The proposed regulations would also require counties to notify clients when their child care provider's Trustline application has been approved so that clients may continue using the provider.

**Final Modification:**

**"Recipient" has been changed to "Client" to be consistent with the terminology used in other sections of the CalWORKs regulations. The regulations are being amended to provide uniform terminology among the various sections of the CalWORKs regulations.**

Section 47-630.1

Specific Purpose:

This section would be amended to increase the health and safety of children in care that is reimbursed with government subsidies. The proposed regulations reduce the number of days a provider has to submit a completed Health and Safety Certification from 28 days to seven days from the date that child care services begins.

Factual Basis:

Existing regulations allow child care providers 28 days to submit a Health and Safety Certification. Limiting the time period during which child care is provided by a person who has not submitted a Health and Safety Certification reduces a potential risk to children's health and safety. In addition, the seven day application requirement will expedite the Health and Safety Certification process, thereby allowing CalWORKs clients to obtain needed child care services in a timely manner so that they may participate in their required Welfare-to-Work activities.

Section 47-630.11

Specific Purpose:

This section would be amended to increase the health and safety of children in care that is reimbursed with government subsidies. The proposed regulations would remove the exemption for great-grandparents, great-aunts, and great-uncles.

Factual Basis:

Existing regulations exempt great-grandparents, great-aunts, and great-uncles from completing a Health and Safety Certification. Disallowing the exemption for these individuals will conform the Health and Safety Certification requirement with the Trustline registry requirement.

b) Identification of Documents Upon Which Department Is Relying

Health and Safety Code Sections 1596.60 through 1596.68.

“Improving Protection for Children Receiving Child Care from Unlicensed Providers,” The Report of the California Performance Review - Government for the People for a Change Health and Human Services (HHS 05). August 2004.

c) 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 175000) of Division 4 of the Government Code or Article XIII B, Section 6 of the California constitution, because implementation of the regulations will result in costs that are minor.

d) Statement of Alternatives Considered

The following are the alternatives considered to this proposal:

1. To continue current practices and allow payments for up to 28 days prior to submitting the Trustline application. This alternative was rejected due to the fact that it did not meet the Department's goal of increasing protections to children receiving care from license exempt providers.
2. The second option was to disallow payment of Trustline providers for any period of care occurring before they become registered. This alternative was rejected because it is unlikely that providers would be willing to provide care without the possibility of eventual payment. This could result in parents being unable to participate in their welfare to work activities.
3. Another alternative was to conduct a brief preliminary background check using CLETS or CACI. However, only entities with peace officer designations have access to those systems and only for situations specifically identified as "urgent".

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined 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.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on November 29, 2006 in Sacramento, California. Oral and/or written testimony was received at the public hearing and written testimony was received during the 45-day comment period from October 13, to 5:00 p.m. November 29, 2006.

The following testifiers submitted written testimony.

- Grace Cainoy, Executive Director, Child Care Alliance of Los Angeles
- Kevin Aslanian, Coalition of California Welfare Rights Organizations, Inc., Sacramento, CA
- Frank J. Mecca, Executive Director, County Welfare Directors Association of California, Sacramento, CA
- Nancy Diaz, Chief and Maggie Forney, County of Los Angeles - Department of Public Social Services, Intergovernmental & Interagency Relations Division, City of Industry, CA
- Trinka Landry, Program Specialist, County of San Bernardino, Human Services System, San Bernardino, CA
- Connie Balram, Resource & Referral Trainer, Solano Family & Children's Services

Grace Cainoy, Executive Director, Child Care Alliance of Los Angeles submitted the following comments: (Comment 1 - 7)

1. Comment:

1. **Section 47-260.1.14** states that "A license-exempt provider required to be a registered Trustline child care provider shall **not receive a subsidized payment** unless Trustline registration has occurred." Also, **Section 47-301.2.22(a)** states that "Counties or contracted payment agencies shall not be permitted to begin **payments** until the license-exempt provider is a registered Trustline child care provider" and **Section 47-620.2** states that counties/agencies "shall issue child care payments only after the license-exempt provider...[is] registered Trustline child care provider."

The word "payment" is a little unclear. Is it referring to the approval of a case or the actual issuing of a check? In other words, can counties/agencies approve child care and hold the provider check until their Trustline is cleared or should counties/agencies not **approve** a case until the provider has been registered with Trustline? If counties/agencies are not to approve such cases until the provider is registered with Trustline, should the request be denied right away and re-opened once the provider has been cleared or should it be kept open until Trustline has cleared the provider, which can be about 60 days?

Response:

CalWORKs recipients are eligible to receive CalWORKs child care as long as the criteria specified in Section 47-220.2 are met. However, with the proposed regulations, any provider who is required to be Trustline registered must be cleared prior to receiving payment. "Payment," as used in Sections 47-260.14, 47-301.22(a) and 47-630.2 refers to the actual issuing of a check.

2. Comment:

2. On **Section 47-260.2.21.213** Can counties/agencies require more than a self-certification from a provider to substantiate the relationship of the provider to the child.

Response:

The counties have the maximum flexibility to develop processes to serve the large populations of immigrants and refugee groups who have no documentation of relationship to their children; and even less to extended family.

3. Comment:

3. **Sections 47-301.2.22(c) and Section 47-430.2(b)** state that a client who selects a license-exempt provider who is required to be Trustlined may receive "retroactive payment for up to 60 calendar days from the date **child care services were requested and services were provided...**" This may be two different days. The client may have requested child care services on 11/1/06 but child care services did not begin until 11/10/06 or vice versa (i.e. child care requested on 11/10/06 but began on 11/1/06). If the dates differ, should counties/agencies use the later of the two dates?

Response:

Both provisions must be met; the child care must have been requested and the services must have been provided. In the event that the dates differ, the commencement date is the latter of the two dates. Please note that the regulations have been amended to increase the retroactive payment period to 120 days.

4. Comment:

4. **Section 47-301.2.22 (e) and (g) AND Section 47-430.2 (a) and (b)** It appears that counties/agencies can pay 30 days of retroactive child care for clients who selected licensed providers and Trustline-exempt providers, but 60 days of retroactive child care for Trustline-registered providers. If the purpose is to allow time for providers to be cleared by Trustline, the 60 days should not be counted from the date of the child care request, but rather 60 days from the date the application is submitted to the agency. Perhaps, counties/agencies could be allowed to approve child care for a Trustline-registered provider for up to 60 days prior to them submitting the Trustline application or the day are actually registered, not to exceed the 30 days prior to the date of the child care request.

Response:

The regulations have been amended to allow for up to 120 days of retroactive payment for providers who must become Trustline registered and to clarify which providers can receive 30 versus 120 calendar days of retroactive payments.

Any provider who is licensed, Trustline-exempt, or Trustline registered at the time child care services began, will be eligible for no more than 30 calendar days of retroactive payment prior to the client's request for child care. The 30 day retroactive time period begins from the date child care is requested. In this group, the 30 day retroactive period is to cover child care costs that were accrued prior to the client's request for child care. There would be no additional time needed for the provider to submit background or licensing information.

Providers that are required to be Trustline registered in order to receive payment but are not already Trustline registered at the time child care is requested shall receive up to 120 calendar days of retroactive payments upon Trustline registration. The 120 day retroactive period begins when child care is both requested and received. In this group time is allowed for the Trustline application process.

The change from 60 to 120 days of retroactive payment is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process. The retroactive payment cannot be used to reimburse providers for services prior to the request for and receipt of child care.

CalWORKs recipients are eligible to receive CalWORKs child care as long as the criteria specified in Section 47-220.2 are met. However, with the proposed regulations, any provider who is required to be Trustline registered must be cleared prior to receiving payment.

5. Comment:

5. **Section 47-430.2(d)** requires that providers submit the Trustline application, within 7 days of the child care request date. In our county, agencies have 4 days to respond to a child care request and send the Trustline application to the client. This would mean that we would only be giving providers 3 days to complete the application. Also, Livescan sometimes requires that providers schedule an appointment to complete their Livescan and this may not be sufficient time for providers to complete this process. Can we change the timeframe for submitting the Trustline application to 10 days from the date the information is sent or given to the client or provider?

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. Providers are encouraged to submit their completed Trustline application as soon as possible in order to maximize their ability to receive up to 120 calendar days of retroactive payment. In accordance with Section 47-620.11 R&R's Receipt of Completed Application Package, providers in counties that have limited access to LiveScan fingerprinting will be given seven additional calendar days to submit the completed Trustline application to the county or contractor. To ensure the safety of the children in care, the regulations establish a process that encourages Trustline-required providers to submit their Trustline application immediately.

6. Comment:

6. **Section 47-620:** This section states that providers must submit a completed Trustline application "within 7 calendar days from the **date they began to provide child care.**" This is different from the date specified in **Section 47-430.2(d)** which counts the seven days from the "**date child care services were requested**" Also, in our county we often get child care requests from clients who have been using a provider that needs to be Trustlined, for more than 7 days. Example: Child care services started on 11/1/06 but the client did not request child care until 11/20/06. At that point, the county/agency can send the Trustline application for the provider, but since the 7 days "from the date they began to provide child care" has already passed, what timeframe should counties/agencies give the provider to submit their application?

Response:

Section 47-620.11 has been amended to state that providers must submit a completed Trustline application package within seven calendar days from the receipt of the Trustline Application Package. In addition, the regulations were amended to delete Section 47-430.2(d).

7. Comment:

7. Likewise, **Section 47-630** requires that providers submit the Health & Safety self-declaration within **7 days from the first day that child care services began**. In our county we often get child care requests from clients who have been using a provider that needs to be Trustlined, for more than 7 days. Example: Child care services started on 11/1/06 but the client did not request child care until 11/20/06. At that point, the county/agency can send the Health & Safety Self-Declaration for the provider, but since the 7 days "**from the first day that child care services began**" has already passed, what timeframe should counties/agencies give the provider to submit their documentation?

Response:

Section 47-630.1 was amended to require providers to submit the Health and Safety Self-certification to the county within seven calendar days from receipt of the form.

Kevin Aslanian, Coalition of California Welfare Rights Organizations, Inc., Sacramento, CA submitted the following comments: (Comments 8 - 13)

8. Comment:

These regulations conflict with the assurances that child care will be paid provided if CalWORKs participants participate in the WtW program. There is nothing in the WtW 1 or WtW 2 that informs WtW participants that when a WtW county worker states "we will be paying for your child care" is lying. The honest statement is "we will not pay for child care until the provider has cleared Trustline which can take months.

Honesty is a good policy and these regulations mean that county workers will be LYING to participants.

Response:

These regulations do not affect a CalWORKs client's eligibility for child care.

9. Comment:

§ 47-301.1(b) states that "there is no requirement that the county or contracted agency pay the client for out-of-pocket costs" is incorrect. Counties are required to pay ancillary costs or participation in the WtW program to meet the federal participation (FPR) rates. If DSS and counties want to meet the FPR, then they should be glad to pay for the trust line costs to make sure that participants have safe child care to protect the children, the alleged primary reason for these anti-family and anti-child regulations designed solely to terrorize poor families and steal money from the working poor providing child care to welfare moms.

Response:

If the comment is to Section 47-301.22(b), the regulations have been amended to delete this paragraph.

10. Comment:

§ 47-301.1( c ) provides that the counties may make the retroactive child care payments to the provider and not the participant. What if the participant has already paid the provider? The child care scheme is that the WtW participant hires the person and DSS pays. What kind of employer is the WtW participant? For DSS the WtW participant is a second class employer. DSS treats participants as deviants in these regulations and tries to demean them by not even allowing them to pay the person they hire. What respect would be employer have for the employee when they are not even paid by the employee?

Response:

Assuming this comment is referring to Section 47-301.22 (c), if the client has made payment to the provider, then the client will be paid when the provider becomes Trustline registered. No provider shall be paid prior to achieving Trustline registration in accordance with section 1596.66 of the Health and Safety Code: "(a) Each license-exempt child care provider, as defined pursuant to Section 1596.60, who is compensated, in whole or in part, with funds provided pursuant to the Alternative Payment Program, Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code or pursuant to the federal Child Care and Development Block Grant Program, except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 1596.603 and 1596.605 in order to be eligible to receive this compensation."

This remainder of this comment fails to articulate any relevant or cogent question or concern that would enable and/or require the department to formulate a response under the Administrative Procedure Act.

11. Comment:

47-430.2 contains a 7 day limit on filing an application to receive payments for work done in reliance on DSS and CWD lies that child care will be paid. Where did the 7 days come from? Trustline is not an easy process. Providers, the working poor work, may work many many hours to put food on the table and do not have all of the time in the world that the writers of these regulations have to deal with this Trustline bureaucracy designed solely to steal money from the working poor by conning them into working and not paying them for their work through this sick Trustline scheme designed by people who could care less about the safety of children, contrary to the false assertions thereto scattered all over these regulations alleging that these regulations "are proposed to increase the health and safety of the children who are receiving government subsidized child care services." In fact these regulations make

this false allegation in 11 different places as if maybe people reading the same lie 11 times will believe that a department that refuses to verify that the participant has safe and secure child care before threatening participants with reducing their fixed income by 25% of more, fixed income which is at the same level that welfare recipients in California received in 1990, cares about the health and safety of children, is laughable to say the least, if not insulting to the intelligence of people reading these CDSS LIES.

Response:

The regulations have been amended to delete Section 47-430.2(d).

12. Comment:

47-620.11 provides that in counties that do not have Live Scan providers will be given more than 7 days. The regulations are vague, confusing and unclear. Will white providers get 10 days and blue providers 20 days? How about red providers? Will they get 60 days because they are red providers?

Response:

This comment fails to articulate any relevant or cogent question or concern that would enable and/or require the department to formulate a response under the Administrative Procedure Act.

13. Comment:

In summary these regulations would actually increase the harm that the WtW program imposes on the health and safety of poor children by (1) forcing their parents to participate in WtW activities without safe and adequate child care; (2) by not giving the participant the money to pay for the child care they received, (3) by treating parents are second class employers, (4) by being forced to leave their children at home alone once the word gets out that welfare moms do not pay for child care and the welfare department LIES when they say we will pay for child care and omit the bureaucratic Trustline process before paying.

Protect children – verify adequate child care before requiring WtW participants to participate in any WtW activity – protect the safety of children.

Response:

The priority of these regulation changes is to increase the safety of children in subsidized child care. CDSS is not denying any benefits to the clients. Clients may have to make other choices in selecting providers so that they do not choose a provider that will not meet the Trustline requirements. The Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to

concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

The remainder of this comment fails to articulate any relevant or cogent question or concern that would enable and/or require the department to formulate a response under the Administrative Procedure Act.

Frank J. Mecca, Executive Director, County Welfare Directors Association of California, Sacramento, CA submitted the following comments: (Comments 14 - 28)

14. Comment:

The County Welfare Directors Association of California (CWDA) objects to the proposed regulatory changes regarding the Trustline process. The proposed regulations will not enhance safety, but will severely hinder families we serve from obtaining needed child care services to meet their welfare-to-work requirements. We believe these proposed regulations contradict legislative intent and state statute while unfairly targeting one population of families who are receiving welfare benefits. CWDA is concerned that the current automation and processing of Trustline applications cannot accommodate the proposed regulatory changes and we believe that the California Department of Social Services (CDSS) failed to consider other viable alternatives to this proposal.

Response:

The Department appreciates your comments; however, the regulations are being revised to increase the safety of the children in subsidized care and make current regulations consistent with Health and Safety Code Sections 1596.60-1596.68. Please refer to responses to Comments 15-27.

With the proposed regulations, license-exempt/Trustline required child care providers will be treated similarly to licensed child care providers in that they will not receive payment until they have cleared a background check and are Trustline registered. Similarly, licensed providers do not receive payment until they have met all of the licensing requirements and have become licensed.

Retroactive payments for providers that are required to be Trustline registered have been increased to 120 calendar days to allow for processing time.

15. Comment:

1. Regulations do not address child safety and potentially will place more children at risk.

CWDA considers child safety to be a top priority and strongly supports measures to assure child safety. However, this proposed regulation does nothing to enhance child safety and in fact, may place more children in harm's way. The proposed regulation deals strictly with the timing of the payment to the license-exempt provider by delaying the payment until the license-exempt provider is Trustline registered. We believe the regulations will have the ultimate effect of limiting parental choice because the providers of first choice—friends, neighbors, relatives and other trusted individuals known to the family—will be reluctant to provide care without guarantee of compensation. Licensed child care options often cannot meet families' needs for a variety of reasons, including the need for flexible and non-traditional hours, transportation barriers, etc. As a result, families participating in welfare-to-work activities may feel compelled to choose far less-desirable options that put their children at greater risk, including leaving children at home alone.

Response:

The Department of Social Services is changing the regulations to increase the safety of the children in subsidized care and to make regulations consistent with Health and Safety Code Sections 1596.60-1596.68. Existing statute requires that license-exempt child care providers who receive compensation for services provided for a California Work Opportunity and Responsibility to Kids (CalWORKs) client must be Trustline registered before payment commences.

Furthermore, the Federal and State references to the scope and degree of parental choice are not without limits or boundaries. If this were true, then under the reasoning of the comment, the CDSS would be without authority to impose any health and/or safety licensing requirements as a condition of receiving Stage 1 compensation. Such, however, is not the spirit or the letter of Federal or State law.

16. Comment:

2. Questionable need for these proposed regulations and potentially contrary to Health and Safety Code.

CDSS notes these proposed regulations are necessary to be consistent with state policy that requires license-exempt child care providers to be registered in order to receive compensation under Stage 1 child care (WIC 1596.60-68). WIC 1596.67 requires "active Trustline registration" for Stage 1 payment; however this term is not defined in statute. In addition, Health and Safety Code 1596.67 provides for the payment of Stage 1 child care funding unless a criminal conviction is found.

*(b) Payment provided pursuant to subdivision (a) shall cease if the provider has a criminal conviction for which the department has not granted a criminal record exemption pursuant to subdivision (f) of Section 1596.871. [Health and Safety Code 1596.67]*

Health and Safety Code Section 1596.67 strongly suggests that payment is presumed to take place during the processing of a Trustline application and cease upon a finding of criminal conviction. We also note that CDSS originally created the Trustline regulations in 1998 based on a reading of this statute, and this statute has not been subsequently altered or amended by legislation to warrant a change in regulation. CDSS (and OAL) promulgated the original regulations based on a reading of the current law, and the regulations have presumably operated within the existing statutory requirements. Thus we find no basis or need for this proposed change in regulations that will result in a dramatic shift in how payments are made to license-exempt providers. We further believe the proposed regulation goes beyond the simple reading of the law and is contrary to its intent.

Response:

Under Health and Safety code section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a “Trustline applicant” and a “registered Trustline provider”. In subdivision (b)(1), a registered Trustline provider is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety code section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be “registered” under sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be “registered” as set out in 1596.605 above. In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline “applicants” however are not eligible until their application is “approved”. If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

17. Comment:

3. Contrary to legislative intent for a "seamless" child care delivery system.

California provides subsidized child care to cash aid recipients under the California Work Opportunity and Responsibility to Kids (CalWORKs) program, as well as those transitioning from CalWORKs, and to other low-income families who meet eligibility requirements. These proposed regulations apply to Stage 1 child care, which was established by AB 1542 (Chapter 270, Statutes of 1997) as a supportive service for families to participate in welfare-to-work activities under the CalWORKs program. A family typically remains in Stage 1 child care until their child care or work activity is stabilized, then moves to Stage 2 and ultimately to either Stage 3 child care or the general child care subsidy program. In establishing child care for CalWORKs recipients, the Legislature expressly intended that CalWORKs recipients have the same access to child care as other low-income families:

*In order to move welfare recipients and former recipients from their relationship with county welfare departments to relationships with institutions providing services to working families, it is the intent of the Legislature that families that are former recipients of aid, or are transitioning off aid, receive their child care assistance in the same fashion as other low-income working families. [Education Code 8354(b)]*

As proposed, this regulation would impact families in Stage 1 child care only. There are no changes currently proposed for families in Stages 2 or 3 child care, which also serve current and former CalWORKs recipients, nor are there changes proposed for low-income families served by the Alternative Payment Program (APP), which also serves former CalWORKs recipients and families who might need cash aid if these child care services were not available (i.e. clients "diverted" from cash aid). CDSS administers Stage 1 Child Care through local county welfare departments, while Stages 2 and 3 are administered by agencies contracted with the California Department of Education (CDE). The CDE has not proposed regulatory changes that would mirror the proposed Trustline regulatory changes by CDSS. As a result, families in Stages 2, 3 and the APP will retain payment authorization for license-exempt care while they await Trustline registration, but families in Stage 1 will not have paid child care until after the Trustline process is complete. We also note that it is not uncommon for a family who moves from Stage 1 to Stage 2 or even Stage 3 child care to change their child care provider. This is particularly true for CalWORKs families using license-exempt care since work activities can frequently change.

The result will exacerbate the bifurcation between CDSS and CDE-funded child care programs and create confusion for families as they move from one stage of child care to the next. This proposed change is unnecessary and contrary to the Legislature's desire for equal treatment of families across child care programs.

Response:

The intent of these regulations is not to create a bifurcated child care system. Since the intent of the CalWORKs child care system is to be seamless, we would assume that CDE will adopt our regulations.

18. Comment:

4. Reduces "parental choice" in child care.

The proposed regulation limits parental choice in that many families will struggle to find a child care provider who is willing to care for children without any guarantee of payment while awaiting the outcome of the Trustline process. CalWORKs clients often work evening and weekend hours, times when licensed child care options such as center-based care and family day care, are unavailable. Access to transportation is another barrier for CalWORKs clients, and transporting children to child care, then getting to and from work or educational activities, can be extremely difficult. The transportation problem can be exacerbated with school-age children who also need transportation between school and child care while a parent is working. License-exempt care provides maximum parental choice because it can most effectively and efficiently accommodate parents' needs.

Education Code Section 8208.1 specifically addresses parental choice:

*Child care exempt from licensure is a valid parental choice of care for all programs provided under this part, and no provision of this part shall be construed to exclude or discourage the exercise of that choice.*

In addition, Education Code Section 8352 specifies that families in Stage 1 child care may access license-exempt care (emphasis added):

*(a) As soon as appropriate, a county welfare department shall refer families needing child care services to the local child care resource and referral program funded pursuant to Article 2 (commencing with Section 8210). Resource and referral program staff shall colocate with a county welfare department's case management offices for aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, or arrange other means of swift communication with parents and case managers of this aid. The local child care resource and referral program shall assist families to establish stable child care arrangements as soon as possible. These child care arrangements may include licensed and license-exempt care.*

License-exempt child care providers are often better able to accommodate the flexible schedules and frequent changes experience by our CalWORKs Stage 1 families. These families are just beginning their welfare-to-work activities and may be participating in a number of activities to help them find and retain gainful employment, such as training, volunteer work, job club/job search, and participation in mental health or

alcohol and drug treatment programs. It is our belief that license-exempt providers will be unwilling and/or unable to forgo payment while they await Trustline clearance. Since relatively few child care centers and licensed family day care homes offer child care during weekends and evenings, nor are these providers in locations easily accessible to CalWORKs recipients, this proposal will greatly limit parental choice.

Response:

CalWORKs clients may choose a provider that is licensed, Trustline-exempt, or required to be Trustline registered. The department is protecting the health and safety of children; therefore, it must balance the possibility of a provider not receiving payment against the potential harm to children.

The Federal and State references to the scope and degree of parental choice are not without limits or boundaries. If this were true, then under the reasoning of the comment, the CDSS would be without authority to impose any health and/or safety licensing requirements as a condition of receiving Stage 1 compensation. Such, however, is not the spirit or the letter of Federal or State law.

The preamble to the Federal regulations establishing the Child Care and Development Fund (CCDF) permit, and indeed, encourage states to balance the health and safety of children with parental choice.

The goals of CCDF in 45 C.F.R. Part. 98.1(a) are to:

(The following page numbers refer to the federal Department of Health and Human Services (DHHS) response(s) to public comment on the final federal rules in the federal register of July 24, 1998 that implemented 45 C.F.R. Parts 98 and 99 on the use of CCDF)

- (1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;
- (2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;
- (3) Encourage States to provide consumer education information to help parents make informed choices about child care;
- (4) Assist States to provide child care to parents trying to achieve independence from public assistance; and
- (5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

Criminal background checks are encouraged as part of the CCDF health and safety standards where DHHS responds:

"We would agree with the commenter that it is appropriate to encourage States to adopt criminal background checks as part of their effort to meet CCDF health and safety standards." (Page 39956).

And in response to Parental Choice and the option of providing cash to a provider, likewise DHHS stated:

"If, nevertheless, a Lead Agency chooses to provide cash, it must be able to demonstrate that: (1) CCDF funds provided to parents are spent in conformity with the goals of the child care program as stated at section 658A of the Act, i.e., that the money is used for child care; and (2) that child care providers meet all applicable licensing and health and safety standards, as required by section 658E(c)(2)(E) and (F) of the Act. Lead Agencies, therefore, may wish to consider having parents who receive cash attest that the funds were used for child care and to identify the provider. Such a statement would help assure that the funds were expended as intended by the statute and lessen the possibilities for fraud. Finally, Lead Agencies are reminded that they must establish procedures to ensure that all providers, including those receiving cash payments from parents, meet applicable health and safety standards." (Emphasis added). (Page 39949)

DHHS also recognized that by giving Lead Agencies complete latitude to impose conditions and restrictions on in-home care may affect parents' ability to make satisfactory child care arrangements and thus their ability to participate in work, education or training. (Page 39950)

And in response to the applicability of health and safety requirements to in-home care providers, DHHS responded:

"In-home care must meet the requirements established by the Lead Agency for protecting the health and safety of children pursuant to Sec. 98.41. In-home care, as a category of care, is not exempt from health and safety standards. And, relatives who provide in-home care are not exempt from health and safety requirements unless the Lead Agency specifically chooses to exempt them, as provided for at Sec. 98.41(a)(1)(ii)(A)." (Page 39950)

Finally, DHHS reminded a commenter that:

"The regulations at Sec. 98.54(a)(2) (regarding the restriction on the use of federal funds) require that CCDF funds 'shall be expended in accordance with applicable State and local laws.' Payments made to parents or providers who are not in compliance with applicable laws are subject to disallowance in accordance with Sec. 98.66." (Page 39950)

Given the broad authority and flexibility these regulations vest in state agencies, and the recognition by DHHS of the importance of applying health and safety rules, the proposed Trustline registry regulations present a balanced and measured approach designed to meet the Federal goals of allowing parental choice with the need to protect the health and safety of children.

Therefore, the proposed Trustline registry requirements are consistent with Federal regulations and do not impermissibly restrict parental choice.

19. Comment:

5. Contrary to state law that promotes welfare-to-work activities.

This proposed rule will hinder families from participating in welfare-to-work activities, is contrary to legislative intent to move families as expeditiously as possible towards self-sufficiency and will potentially cost the state millions of dollars in federal penalties. State law also promotes universal engagement in welfare-to-work activities within 90 days of a parent being found eligible for CalWORKs:

*WIC 11325.21 (a) Any individual who is required to participate in welfare-to-work activities pursuant to this article shall enter into a written welfare-to-work plan with the county welfare department after assessment as required by subdivision (b) of Section 11320.1, but no more than 90 days after the date that a recipient's eligibility for aid is determined or the date the recipient is required to participate in welfare-to-work activities pursuant to Section 11320.3. The recipient and the county may enter into a welfare-to-work plan as late as 90 days after the completion of the job search activity, as defined in subdivision (a) of Section 11320.1, if the job search activity is initiated within 30 days after the recipient's eligibility for aid is determined. The plan shall include the activities and services that will move the individual into employment.*

During this 90 day period, CalWORKs recipients participate in numerous activities including appraisal, assessment, case plan development, etc. During this time CalWORKs recipients are eligible to receive child care services to provide them with sufficient time to participate in their case planning. For example, a CalWORKs recipient who is escaping domestic violence may require an in-depth assessment for counseling or other services that may require multiple trips to a local CalWORKs office. This recipient would be eligible for paid child care under Stage 1, and the recipient may desire license-exempt care because of the flexibility this type of care affords to enable the recipient to meet multiple appointments at different days and hours in the day.

State law establishes child care as a core support service for families and allows families who do not have access to child care to receive a "good cause" exemption from participation in welfare-to-work activities [reference WIC 11323.2]. A CalWORKs client may have "good cause" for non participation until the Trustline process is completed; however this time counts against the recipient's total time on aid. And if a CalWORKs recipient forgoes child care during the initial 90 day period, there is no guarantee that the Trustline process will be completed within this time, although the CalWORKs recipient will be required to participate in activities pursuant to their welfare-to-work plan at the conclusion of this 90 day period.

Response:

The Department believes that these changes may effect only a small number of clients as the time it takes to become Trustline registered is short enough not to effect a client's long term needs. The Department must balance the needs of the client against the health and safety of children.

20. Comment:

6. Fiscal penalties will diminish funding for other needed services to families:

The proposed regulation could diminish funding for other needed services for CalWORKs recipients and other families at risk of or transitioning from cash assistance. Recent changes to federal regulations in the Temporary Assistance for Needy Families (TANF) program will require states to meet increased work participation rates or face fiscal sanctions. The proposed regulation will make it more difficult for California to meet the new federal targets. Even families who receive a good cause exemption from participation due to lack of child care would count against the state's welfare-to-work participation rate and as a result, California could lose millions of dollars in federal TANF funding, which supports the CalWORKs program. The loss of federal funding means California would be forced to backfill with State General Fund dollars. This funding backfill will ultimately reduce available funding for other supportive services relied upon by low income families.

Response:

The vast majority of providers that are required to become Trustline Registered will be able to do so in the time frames proposed by the regulations. The goal of the proposed regulations is to increase the safety of children in subsidized child care.

21. Comment:

7. Creates a fiscal burden for CalWORKs families.

Immediate access to paid child care is a cornerstone of California's CalWORKs program because timely access enables clients to access needed services, including training programs or counseling services, which can be barriers to self-sufficiency. TANF and CalWORKs provide for 60 months time on aid, after which time the adult is discontinued permanently from receiving welfare aid. Since time is extremely limited and some families face incredible obstacles to self-sufficiency, access to child care from the outset is imperative for families and their ability to participate in welfare-to-work activities. Families who cannot access child care can receive a "good cause" exemption but will still have lost this time on their 60 month time lamed aid.

In addition, State law provides that:

*(a) Payments for supportive services, as described in Section 11323.2, shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for the services. Payments*

*shall be made in accordance with Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code. [WIC 11323.4]*

First, the proposed regulations are contrary to this State law, which provides for the advance payment of child care services and other supportive services as identified by WIC 11323.2. This proposed regulation allows for only retroactive payments of 60 days. Families whose license-exempt providers are not cleared within the 60 day window for retroactive payments may be faced with the burden paying for child care expenses out of their own pockets for care provided beyond the 60 days. Second, this regulation will pose a cost burden that few low-income families can afford. There is no mechanism proposed by these regulations to ensure that families receive reimbursement for their out-of-pocket expenses beyond the 60 days that child care was provided, even though these families may have been otherwise following the requirements of the CalWORKs program and dutifully participating in welfare-to-work activities.

Response:

The Department appreciates this comment. Child care subsidies do not fall under this definition of payment for supportive services. WIC 11323.4(a) states "...Payments for child care services shall be made in accordance with Article 15.5 of Chapter 2 of part 6 of the Education Code." Section 42-750.21, specifically states "payment for supportive services, except child care as described in Chapter 47-100, shall be made in advance." The changes will not prohibit work participation. CDSS is not denying any benefits to the clients. Clients may have to make other choices in selecting providers so that they do not choose a provider that will not meet the Trustline requirements. The Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process. Current practice demonstrates that clients are contracting with providers without advanced payment of any kind.

22. Comment:

8. Trustline program improvements and automation changes are exaggerated.

CDSS asserts that "program improvements and automation changes of submitting the (Trustline) application and fingerprints have reduced the need for the 28 day time period" (CA Regulatory Notice Register 2006, Vol. No 41-Z, page 1539). While the majority of Trustline applications will be approved within 60 days, our county welfare agencies report that many are not approved within this timeframe. Some Trustline applications have taken 120 to 180 days to process, and a few have taken six months or longer to process.

The Legislature considered proposals in the 2006-07 legislative session that dealt with the Trustline processing of applications. Based on information provided to the Legislature, the Trustline process is not always capable of clearing individuals within

the 60-day timeframe. For example, a Senate Human Services Committee analysis of AB1601 (Laird) notes:

*In most cases, the fingerprints are submitted through the LiveScan process, so the Department of Justice begins the database inquiries (state criminal database, FBI database, and Child Abuse Central Index). In 85 percent of the cases, there is no criminal record; in 8 percent of the cases, there is a match with a criminal record; in the remaining 7 percent of cases, there is a match with incomplete information, **which can take from one month to a year or longer to process** [emphasis added] depending on the ability of local agencies to provide the missing information [page 7].*

The analysis further notes:

*"Sometimes an application or a set of fingerprints is lost, or other data are misfiled. The California Child Care Resource and Referral Network reports that missing (or lost) materials can cause delays of several weeks." [page 7]*

*"If a person has a criminal record, although no conviction for a crime that is on the list of instant disqualification, that record is reviewed by DSS personnel and, in some cases, an exemption is granted and in other cases, DSS offers the applicant an opportunity to provide information supporting his or her good character. The individual is given 45 days to provide that information and DSS takes an additional 15 days to review it before granting an exemption or denial." [page 7-8]*

The proposed regulations do not take into consideration extreme variation in the processing time for applications. Some applicants may be cleared immediately while others are not cleared for months. Unfortunately, this leaves Stage 1 families in limbo—unable to engage in welfare-to-work activities with the clock ticking against their total time on aid (60 months) until the Trustline process is complete. The proposed 60 day retroactive period may provide families with a false assumption that all applications are approved or disapproved within the 60 days.

Response:

The Department appreciates this comment and is amending the regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration.

23. Comment:

9. Other alternatives not considered.

As stated earlier, CWDA considers child safety to be a top priority and strongly supports measures to assure child safety. This proposed regulation does nothing to enhance child safety and in fact, may place children in harm's way. CWDA believes the Department failed to consider other alternatives that would have more effectively supported this objective.

Of concern is the absence of any language in these proposed regulations to hold the Department of Social Services responsible to a 60-day review timeline. CalWORKs recipients and license-exempt child care providers who comply with all program requirements should not be limited to a 60-day payment window if CDSS is unable to clear the applicant within this time period. A more appropriate remedy is to add a requirement that all applications to be cleared and approved or disapproved within the 60-days, or to allow retroactive payment to the date that child care services began (and consistent with current regulations which provides a 30-day limit from date child care services were provided and when child care services were requested).

Another alternative, contained in part in AB 1601 (Laird), would have permitted payment to license-exempt providers unless a criminal conviction was discovered or declared on the application. At that point, the payment would immediately cease/not commence while CDSS reviewed the criminal history and determined whether or not to provide an exemption.

According to information submitted by CDSS to the Legislature, approximately 85 percent of Trustline applicants have no criminal history and are cleared relatively quickly—within 3 days; an extremely small percentage—approximately 1 percent—are ever denied due to a non-exemptible criminal record (AB 1601 analysis). The CDSS proposed regulations would therefore create a new regulation that purportedly protects an extremely small proportion of the population, while creating hardship for all families in the Stage 1 program.

Response:

The Department appreciates this comment. Although other alternatives were considered, including AB 1601 and SB 539, the Department chose to amend the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

24. Comment:

**COMMENTS SPECIFIC TO THE PROPOSED REGULATIONS:**

47-301.2.22(c) *Retroactive Payment Limit—Informing Notice*  
47-430.2(b) *Retroactive Payment Limit*  
47-620.1.11.111 *Trustline Application Requirements*  
47-620.3.31 *Provider Reimbursement Limit*

**CWDA Comment:** Delete the 60-calendar day limit for retroactive payment. For Trustline applicants who are cleared and registered, allow for retroactive payment to the date that child care services began (and limited to 30 days from the date child care services were requested). Payments should be provided to applicants who, through not fault of their own, experience delays in the processing of their Trustline application. Alternatively, permit payments to license-exempt providers until a criminal conviction is identified, as contained in the AB 1601 proposal.

Response:

The Department appreciates this comment and is amending the regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

25. Comment:

47-301.2.22(b) *Informing Notice Content*

**CWDA Comment:** For clients choosing to pay a license-exempt provider for child care services with the client's own monies, although there is no requirement that the county or contracted payment agency pay the client for such expenses, agencies may do so. These regulations are silent of what level of documentation would be needed to establish an out-of-pocket expense. County agencies should have maximum flexibility to determine the level of acceptable documentation.

Response:

The Department appreciates this comment and this concern. The fact that the department is silent regarding the level of documentation needed to establish an out-of-pocket expense, allows counties maximum flexibility in this area. However, counties should maintain documentation of the evidence on which it has made a determination to pay out-of-pocket expenses. Additionally, the regulations were amended to delete section 47-301.22(b).

26. Comment:

47-301.2.22(d) *Informing Notice Content*  
47-430.2(d) *Retroactive Payment Limit*

**CWDA Comment:** Please clarify if the "seven days" and "seventh day" are business days or calendar days.

Response:

The Department appreciates this comment. The regulations have been amended to add the word "calendar" to both sections.

27. Comment:

47.630.11 *Exemptions*

**CWDA Comment:** *Exempt great-grandparents, great-aunts, and great-uncles who are currently providing from these requirements in order to minimize disruption in child care for these families, or at minimum allow for continued payment while these individuals undergo the Trustline process.*

Response:

The Department appreciates this comment and has amended the regulations so that upon implementation of the regulations only new great-grandparents, great-aunts, and great-uncles will be required to become Trustline registered prior to receiving payment for child care. Existing great-grandparents, great aunts, and great uncles will continue to receive payment and will not be required to become Trustline registered.

28. Comment:

CWDA appreciates this opportunity to comment on the proposed regulations and would value an opportunity to work with CDSS and other stakeholders to discuss alternatives that would enhance child safety and support the goals of CalWORKs families in achieving self-sufficiency.

Response:

The Department appreciates CWDA's input on these regulations and will keep in mind their offering.

Nancy Diaz, Chief and Maggie Forney, County of Los Angeles - Department of Public Social Services, Intergovernmental & Interagency Relations Division, City of Industry, CA submitted the following comments: (Comments 29 - 36)

29. Comment:

Section 47-260.1.14 - Trustline Requirement

This new policy will require license-exempt providers who are not exempt from the Trustline process to be a registered Trustline child care provider before receiving subsidized child care payments. Additionally, great-grandparents/aunts/uncles who were previously exempt from Trustline would now be required to be Trustline registered. Since many (about 70%) of our CalWORKs participants use license-exempt child care providers of whom many are now Trustline-exempt under the current regulations, this new requirement would have the following negative impacts:

- Access to child care may become more limited.
- The participant's right to parental choice would be limited.
- Delaying payment until the provider is a registered Trustline child care provider may create barriers to welfare-to-work (WtW) participation due to the lack of availability for immediate, paid child care of choice.
- Participants may be unable to find suitable child care and be subject to sanctions for failure to participate in mandatory WtW activities, which would also negatively impact our WtW participation rates.

Response:

The Department has amended the regulations so that only new great-grandparents, great-aunts, and great-uncles will be required to become Trustline registered prior to receiving payment for child care upon implementation of the proposed regulations. Existing great-grandparents, great aunts, and great uncles will continue to receive payment and will not be required to become Trustline registered.

Although access to child care may be limited in some instances, the priority of these regulation changes is to increase the safety of children in subsidized child care.

The regulations do not limit a client's parental choice. Clients may still choose from licensed child care providers, Trustline-exempt child care providers, or a different Trustline registered child care provider.

The regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

Client's that cannot find suitable child care are eligible for good cause and would not be sanctioned as specified in MPP Section 42-713.23.

30a. Comment:

Section 47-301.2.22(c) - Informing Notice Content; 47-430.2(b) - Retroactive Payment Limit; 47-620.111 - Trustline Application Requirements; and 47-620.3 - Provider Reimbursement Limit

1. For each of the sections referenced above, we recommend that the language be revised to replace "retroactive" with "delayed." The use of the term retroactive would have a negative impact on our payment and reporting methods, since we distinguish between retroactive payments and delayed payments. Since the intent of the regulatory changes is for child care providers to be Trustline-registered before payment is made for up to 60 calendar days from the date the child care was requested, we believe "delayed" payment would be more appropriate language.

Response:

The Department appreciates this comment but is not amending the regulations as suggested. In the context of the proposed regulations, the term "retroactive" is used to mean that providers, upon Trustline Registration, can be paid for services provided from the date their application is received. The term "delayed payment" would indicate that the provider was receiving a late payment.

30b. Comment:

2. We suggest eliminating the 60 calendar day time period for payment and that once a provider has been cleared and Trustline registered, the delayed payment is made back to the date child care services started. Since providers who are not exempt from the Trustline process may not be paid until the provider is Trustline registered, having no time limit would address any delays in fingerprint processing that may be beyond the provider's control. Some fingerprint clearances may take more than 60 days and yet the provider may still be cleared and Trustline registered at the end of the clearance process. In these instances, a 60-calendar day limit may unfairly penalize the participant and provider who have submitted documents timely, but have no control over the Trustline clearance processing time. An alternative suggestion is that the 60 calendar days be changed to 120 calendar days, which would more equitably allow for any delay in the clearance processing time.

Response:

The Department appreciates this comment and is amending the regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration.

31. Comment:

Section 47-301.2.22(d) - Informing Notice Content

Please clarify if the seven days are business or calendar days.

Response:

The Department appreciates this comment. The regulations have been amended to use the word "calendar" in this section.

32. Comment:

Section 47-430.2(c) - Retroactive Payment Limit and 47-620.31 - County Responsibility

This paragraph includes language that reads: "The retroactive payment may be made by the county or contracted payment agency to the client, as the employer, if care is provided in the home..." It is not clear to what the words "as the employer" refer. If the intent is to say the client is the provider's employer, then that should be stated more clearly. If the intent is something else, please clarify.

Response:

The Department appreciates this response and will amend the regulations to read "retroactive payment may be made by the county or contracted payment agency to the client, as the provider's employer, if care is provided in the home...".

33. Comment:

Section 47-430.2(d) - Retroactive Payment Limit

Please clarify whether "the seventh day" is a business or calendar day.

Response:

The Department appreciates this comment. The regulations have been amended to add the word "calendar" to this section.

34. Comment:

Section 47-620.111 - Trustline Application Requirements

Please insert "calendar" between "60 days" in the next to last sentence, i.e., "...in no event would payment exceed 60 **calendar** days regardless of..."

Response:

The Department appreciates this comment. The regulations have been amended to add the word "calendar" to this section. Additionally, the proposed regulations were amended to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

35. Comment:

Section 47-620.6 - Immediate Notification to the Recipient

For consistency, we suggest replacing "Immediate Notification to the Recipient" with "Immediate Notification to the **Client.**"

Response:

The Department appreciates this comment. The regulations have been amended to replace the word "recipient" in this section, with the word "client."

36. Comment:

Section 47-630.1.11 - Exemptions

We recommend grandfathering-in existing great-grandparents, great-aunts and great-uncles to minimize the impact these changes will have on current cases.

Response:

The Department appreciates this comment and has amended the regulations so that upon implementation of the regulations only new great-grandparents, great-aunts, and great-uncles will be required to become Trustline registered prior to receiving payment for child care. Existing great-grandparents, great aunts, and great uncles will continue to receive payment and will not be required to become Trustline registered.

Trinka Landry, Program Specialist, County of San Bernardino, Human Services System, San Bernardino, CA submitted the following comments: (Comments 37 - 40)

37. Comment:

San Bernardino County disagrees with the proposed regulatory changes regarding the Trustline process. The proposed regulations will cause a hardship to applicants/recipients requesting child care services in order to meet their welfare-to-work requirements under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. In addition, the proposed regulations go against the legislative intent and state statute, while wrongly affecting of the families receiving welfare benefits.

Response:

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in Section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

The regulations do not cause a hardship to clients who request child care services to meet their welfare-to-work requirements because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

38a. Comment:

1. Section 47-260.13 Trustline Requirements  
Section 47-620.2 Payment Eligibility

The proposed regulations will hinder families from participating in welfare-to-work activities and is contrary to legislative intent to move families as quickly as possible towards self-sufficiency. Health and Safety Code Section 1596.67 indicates that child care is presumed to take place during the processing of a Trustline application and allows for Stage 1 payment unless a criminal conviction is found.

Response:

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in Section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

38b. Comment:

(b) Payment provided pursuant to subdivision (a) shall cease if the provider has a criminal conviction for which the department has not granted a criminal record exemption pursuant to subdivision (f) of Section 1596.871.

The need for paid child care services is an essential part of San Bernardino County's CalWORKs program. Child care need can be a barrier toward self-sufficiency and meeting welfare-to-work requirements. Many families are just beginning their welfare-to-work activities and may be participating in a number of activities to help them find and retain gainful employment, such as training, volunteer work, job club/job search, and participating in mental health or alcohol and drug treatment programs. These families have difficulty trying to find a child care provider who is willing to care for children without guarantee of payment, while awaiting the outcome of the Trustline process.

Response:

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider

is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in Section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

The regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

39. Comment:

2. Section 47-301.2.22(a)(b)(c)(d) Informing Notice Content

The proposed regulations limit parental choice, as many CalWORKs families often work evening and weekend hours when licensed child care options such as center-based care and family day care, are unavailable. License-exempt providers are often able to accommodate the flexible schedules and frequent changes in work hours experienced by CalWORKs families. Education Code Section 8208.1 specifically addresses parental choice:

*Child care exempt from licensure is a valid parental choice of care for all programs provided under this part, and no provision of this part shall be construed to exclude or discourage the exercise of that choice.*

Transportation is another barrier for CalWORKs families. Many parents do not have a means of transportation. It can become extremely difficult trying to locate a child care provider within route to and from work or educational activities. License-exempt care provides maximum parental choice because it can most effectively and efficiently accommodate parents' needs. In establishing child care for CalWORKs families, the Legislature clearly intended that CalWORKs applicants/recipients have the same access to child care as other families:

*In order to move welfare recipients and former recipients from their relationship with county welfare departments to relationships with institutions providing services to working families, it is the intent of the Legislature that families that are former recipients of aid, or are transitioning off aid, receive their child care assistance in the same fashion as other low-income working families. [Education Code 8354(b)]*

Response:

In reference to the parental choice issue, please see response number 18. In reference to the regulations creating barriers to participation in welfare-to-work activities, please see response number 29. In reference to treating former recipients of CalWORKs child care the same as current recipients as it relates to child care, please see response number 17.

40. Comment:

3. Section 47-620.3.31.32 Client Responsibility

This proposed regulation would create a cost burden that very few CalWORKs – Stage One families can afford. There is no allowance proposed by these regulations to ensure families receive reimbursement for their out-of-pocket expenses beyond the 60 days, even though these families may have been otherwise following the requirements of the CalWORKs program and participating as required in welfare-to-work activities.

**Recommendation:** Allow child care payment for license-exempt providers unless a criminal conviction was discovered or declared on the application. Once identified, payment would cease or not be made until license-exempt provider becomes Trustline registered.

Response:

The following responses are assuming the comment is referring to Section 47-620.31 and 47-620.32.

The proposed regulations have been amended to delete any language that would require clients to pay an out-of-pocket expense for child care.

The proposed regulations were amended to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

Current regulations are inconsistent with Health and Safety Code Sections 1596.60-1596.68. Existing statute requires that license-exempt child care providers who receive compensation for services provided for a California Work Opportunity and

Responsibility to Kids (CalWORKs) client must be Trustline registered before payment commences.

Connie Balram, Resource & Referral Trainer, Solano Family & Children's Services submitted the following comment: (Comment 41)

41. Comment:

As a Resource and Referral Program Specialist, working for 12 years in the field, I have seen hundreds of Exempt Providers apply for Trustline. They have been allowed to care for one families children as they were awaiting an answer from Trustline. Sometimes the clearances would be delayed, due to issues with background and criminal history. For the most part, these providers were ultimately closed due to their history and felonies against them. All along they were caring for children, and placing them in possible danger. I support the new proposed change of requiring Trustline providers to be cleared prior to care of subsidized families. Although families will have to choose another provider while they wait, they will not jeopardize their child's safety while they wait. In addition, we have more than 800 licensed providers in Solano County, who are cleared, licensed, and many have multiple openings for all days and hours of care.

Response:

The Department appreciates your comment and the expressed concern for the health and safety of children in CalWORKs subsidized child care.

The following testifiers submitted written and oral testimony.

- Stephen Sanders, Administrator, Division of Child Development and Family Services, Kern County Superintendent of Schools, Bakersfield, CA
- Supervisor Ray Watson, Vice Chair, Kern County Board of Supervisors, Bakersfield, CA
- Eric Peterson, Bananas Inc., Oakland, CA
- Eve R. Hershkopf, Senior Staff Attorney, Child Care Law Center, San Francisco, CA
- Dora Luna, Attorney at Law and Mike Herald, Legislative Advocate, Western Center on Law and Poverty, Los Angeles, CA (written)
- Mike Herald, Western Center on Law and Poverty, Sacramento, CA (oral)
- Patty Siegel, Executive Director and Cindy Mall, Senior Program Manager - Trustline, California Child Care Resource & Referral Network, San Francisco, CA (written)
- Donna Sneeringer, California Child Care Resource and Referral Network, Sacramento, CA (oral)

Stephen Sanders, Administrator, Division of Child Development and Family Services, Kern County Superintendent of Schools, Bakersfield, CA submitted the following written testimony which he also read at the public hearing almost word for word: (Comment 42)

42. Comment:

Thank you for the opportunity to comment today on the proposed regulations governing the use of Trustline for child care providers who receive child care subsidies. I am Steve Sanders, Administrator for the Division of Child Development and Family Services in the Kern County Superintendent of Schools Office. We operate Community Connection for Child Care, Kern's child care subsidy organization. We handle child care subsidies in all Stages of CalWorks and send out approximately \$3.5 million per month in child care payments to providers.

I want to begin by expressing appreciation to the Governor, Senator Ashburn and Dr. Larry Reider, Kern County Superintendent of Schools, for highlighting the current lack of adequate protection for children receiving care from unlicensed, state subsidized child care providers. I also appreciate Mr. Ray Watson, a member of the Kern County Board of Supervisors, for being here today and for the Board's unwavering support in trying to better protect children.

Kern County unfortunately has seen its share, as have other counties, of children killed at the hands of abusers, many of whom have had criminal backgrounds and violent pasts. For example, in the mid-1990's, eight Kern County children died at the hands of abusers, all of who were live-in boyfriends who were not the biological father of the victim. We had a similar streak of child deaths two years ago. These experiences have taught us that we must always place the protection of children above all other priorities.

While we certainly agree that the system must work to increase the ability of adults to move seamlessly from welfare to work, nothing is as important as protecting innocent children from harm. Common sense and experience tell us that California must no longer condone the placement of innocent children with potentially violent and criminal child care providers, and it's time to raise the bar in California by sending the message to parents that the safety of their children is paramount. A reading of the list of 50 non-exemptible crimes that would cause a Trustline denial is frightening: murder and attempted murder, rape, carjacking, sexual battery, sexual exploitation of a minor, and so on. We're not talking about jaywalking or a parking ticket.

In 2004 the California Performance Review recommended immediate changes to the Trustline system. They agreed that California legislators fully intended that background checks would be done on child care providers prior to paying childcare subsidies to that provider.

On behalf of Dr. Larry Reider, the Kern County Superintendent of Schools, I want to communicate our strong support for the revised DSS regulations. These regulations are necessary -- and are needed now.

In Kern County, the data regarding payments to license-exempt provider applicants, ultimately determined to be ineligible, mirrors the statewide data uncovered by the California Performance Review Team.

As I mentioned, the Kern County Superintendent of Schools, through a contract with the Kern County Department of Human Services, processes payments to CalWORKs child care providers.

Our data shows that over the past 7 years, approximately 12% of the individuals who apply to the Trustline registry were ultimately denied eligibility as a result of prior criminal or child abuse history. Consistent with the statewide data discovered by the California Performance Review Team, there are many Kern County cases in which a denial report from the Department of Justice was not received until more than one year from the date of application, and our County is not unique. Records kept by our office indicates that this has resulted in the release of child care provider payments totaling well over \$3,000,000 since 1998 to people who were ultimately deemed a potential threat to the safety of children and ineligible to receive such payments.

The safety of children in Kern County and throughout California would be best served by withholding payment until a provider achieves registered Trustline child care provider status, demonstrating the required lack of a criminal history. The proposed regulations also allow for retroactive payment to a provider who ultimately is cleared so that they are not penalized by the slow Trustline process.

I anticipate we will hear from some today who will claim these proposed regulations will be difficult to implement, that the 60-day retro pay is too hard to manage, etcetera. First, from someone who runs one of the largest child care subsidy organizations in California, let me say that we can and will implement these new regulations quickly. Trust me, our field has implemented much more difficult policies and emergency regulations than what are proposed here. Second, I would make a plea to all of us that we have no choice but to make sure the system works to protect children first and foremost – even if changing the system is hard work. We must make the system work for the benefit of children – not for our benefit as public servants.

Again, thanks to those of you who have helped to shed light on this issue. It is our sincere hope that the proposed regulations are put into effect as soon as possible and before a child is killed by a provider with a violent past. Thank you for attention.

Response:

The Department appreciates your comment and the expressed concern for the health and safety of children in CalWORKs subsidized child care. The proposed regulations were amended to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

Supervisor Ray Watson, Vice Chair, Kern County Board of Supervisors, Bakersfield, CA submitted the following written testimony which he also read at the public hearing almost word for word: (Comment 43)

43. Comment:

I appreciate the opportunity to comment today on the proposed regulations governing the use of Trustline for unlicensed child care providers who receive child care subsidies. I am Ray Watson, Vice Chair of the Kern County Board of Supervisors.

Kern County supported Senator Ashburn's legislation requiring unlicensed caregivers who are not close relatives to clear a criminal background investigation before they can receive State subsidies. We did so because the County has a critical responsibility to protect the safety of children that goes hand-in-hand with our mandate to help families become self-sufficient through work.

For our Board, the issue is very clear: Children must come first. We assume the Legislature intended to require unlicensed child care providers to pass a criminal background check before they can be paid with taxpayer funds. The Legislature approved Health and Safety Code Section 1596.605 requiring caregivers who are not aunts, uncles, or grandparents to clear comprehensive background checks in order to be registered Trustline providers. The Trustline legislation also specifies in Section 1596.66 that only registered Trustline providers are eligible to receive State payments for child care.

By our reading of this statute, "registered" does not mean that you applied; it means you passed, and it means that only those who pass a background check can be paid.

But current regulations allow people with violent and abusive criminal histories who have no business being anywhere near children to receive State funds for supervising those children while their parents are at work. Yes, unlicensed providers submit fingerprints and undergo criminal background checks, but the regulations don't prohibit them from being paid by the State to deliver child care to CalWORKs recipients while they are being investigated.

Criminals are taking advantage of that, as numerous cases have documented. Sometimes many months and even years can pass before the State identifies and denies payments to caregivers whose criminal backgrounds disqualify them.

I cannot believe that was the Legislature's intent when it put Trustline requirements in place. The legislators who authored the welfare-to-work law have stated that they intended providers to clear a background check before receiving State subsidies. The California Performance Review found the same thing, recommending that the Trustline system be strengthened.

The Kern County Board of Supervisors agrees with that assessment. If Trustline was intended to be a security gate, then let's fix the gate. If we are going to require criminal background checks for child care providers in the first place, we should at least ensure that these people clear the required investigation in order to receive taxpayer dollars for that care.

The proposed regulations do that without locking out qualified caregivers. By allowing retroactive reimbursement for up to 60 days, the regulations allow caregivers who are qualified to receive subsidies to start right away in the certainty that they will be paid when the background check is done. Those with nothing to hide know they will be paid; those with something to hide know they will not.

As California enters the next phase of welfare reform, we must improve our performance in moving families from dependency to the self-sufficiency that enables so many other social benefits. But we cannot lose sight of the entire reason for these programs: our children. If counties meet welfare-to-work goals, yet fail to protect children in the process, we will have failed utterly in one of the most important mandates of a civilized society.

We can protect children from potentially violent and criminal child care providers without penalizing families who need subsidized child care. The proposed regulations will do that - and we need them now. On behalf of the Kern County Board of Supervisors, I urge the Administration to implement these Trustline regulations as proposed. Thank you.

Response:

The Department appreciates your comment and the expressed concern for the health and safety of children in CalWORKs subsidized child care. The proposed regulations were amended to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process. The proposed regulations were also amended so that upon implementation of the regulations only new great-grandparents, great-aunts, and great-uncles will be required to become Trustline registered prior to receiving payment for child care. Existing great-grandparents, great aunts, and great uncles will continue to receive payment and will not be required to become Trustline registered.

Eric Peterson, Bananas Inc., Oakland, CA submitted the following written testimony:  
(Comments 44 - 48)

44. Comment:

Intro - We want the CalWORKs child care system to be consistent throughout the Stages and transparent and understandable to all parent and providers. Our recommendation is to mandate clearance of all exempt providers before being paid for

doing care and to allow up to 60 days retro payment. If CDSS passes regulations which allows for retro payments and CDE does not Parents and Providers will be confused and unequally treated. We would further recommend that DSS require Trustline for all great grandparents, great uncles and great aunts to be consistent with CDE rules.

Response:

The Department appreciates this comment. The amended regulations include great-grandparents, great-aunts, and great-uncles in the Trustline registration requirement. The intent of these regulations is not to create a bifurcated child care system. Since the intent of the CalWORKs child care system is to be seamless, we would assume that CDE will adopt our regulations.

45. Comment:

Concern # 2 - We would like CDSS to mandate consistency among all counties regarding a clear date for determining when the 60 days starts and ends. In Alameda County we still get requests that go back more than 60 days from the CalWORKs workers at the county. We know this is true in several other counties as well. Our preference would be that the 60 days begin from the date the family started their activity not from the date the County actually gets the case. This would be in the best interest of the families.

Response:

The proposed regulations indicate a specific date by which retroactive payment begins; i.e. the date from the day child care was requested and provided as long as the Trustline application is submitted within 7 days of providing child care. Please see the response to comment number 4 for clarification between the 30 days of retroactive payment versus the 120 days of retroactive payment.

46. Comment:

Concern # 3 - We are concerned about the administrative cost incurred by the 60 day retro change. Agencies would do all the work of enrolling a provider and waiting up to 60 days to possibly find out the provider does not qualify. The agency will have provided the administrative service but not be compensated for the services. This would have to be considered and worked out before implementing the change.

Response:

The Department appreciates this comment. CDSS understands that the population of providers that will be denied is small and those costs can be absorbed within existing resources.

47. Comment:

Concern # 4- We are concerned that implementation of this change will slow down the progress of CalWORKs participation.

Response:

The priority of these regulation changes is to increase the safety of children in subsidized child care. The changes will not prohibit work participation. Please see the response to comment number 29 regarding barriers to welfare to work requirements.

48. Comment:

Lastly, there should be legal research to explain why CDSS thinks it is acceptable to make retro payments and why CDE thinks they are forbidden to make retro payments. Families' future success is at the mercy of purely bureaucratic idiosyncrasies.

Response:

Please see the response to comment number 17.

Mr. Peterson submitted the following oral testimony at the public hearing: (Comment 49)

49. Comment:

Good morning, thank you for hearing me this morning. I am here from Bananas. I have been in the field for a little over twenty years, four years as a childcare teacher and the last sixteen years working for APR&R, the last fourteen years at Bananas, also representing the Northern Director's Group today. I was also on the Cal Works Advisory Group that was working on these regulations. I just wanted to point out that it was kind of abruptly that they were abruptly moved our meetings, and I want to reiterate that we would like to meet again and talk about this one more time.

I'd like to start and mirror what just about everybody has said here, and that is the safety of our children is number one, and that we strongly believe at Bananas that all exempt childcare providers should be fingerprinted and Trustlined. As mountains of research has already shown, the majority of abuse that happens to children happens from relatives and people that are close friends. So, it is unexcusable that we don't Trustline everybody who is going to be watching the children as the state is going to be paying for it.

Second, we would like CalWORKs childcare system to be consistent throughout the stages, one, two, and three, and transparent and understandable to all childcare providers and all parents.

If CDSS passes regulations, we would like CDE to pass similar regulations, actually exactly the same which allows for retro payments. This way parents won't be confused, providers won't be confused, and they won't be unequally treated.

Or we think it should be a high priority that CDSS is fully staffed to take care of this. We want to make sure that the application is processed in a timely manner, that TARP works smoothly in all areas of the state, including rural parts of the state.

The next thing or lastly actually, I'll just kind of cut it short because a lot of people have already stolen my thunder, so that is good. We would like to see some legal research and a real explanation as to why CDSS thinks it is unacceptable to make retro payments and why CDD thinks they are forbidden to make retro payments and CDSS thinks that they can. There has to be something that can be worked out to make these systems work together. There is no good explanation to me why they can't.

Future success is at the mercy of purely bureaucratic idiosyncracies, and we think that you guys need to work it out for the benefit of the parents and for the benefit of childcare providers, and that's it.

Response:

Please see responses to comment numbers 17 and 49.

Eve R. Herschopf, Senior Staff Attorney, Child Care Law Center, San Francisco, CA submitted the following written testimony: (Comments 50- 72)

50. Comment:

The Child Care Law Center is a public interest, nonprofit law firm that uses legal tools to work toward making child care available to every family who needs it, including applicants and recipients of CalWORKs Child Care program subsidies, and the providers who care for their children. We have concerns regarding several elements of the proposed regulations. We are particularly concerned with the core change to the regulations which will now require license-exempt providers to have their Trustline registration fully processed before being eligible to receive payment for any care they provide to a subsidized family. We oppose the provisions which limit retroactive payment to 60 days, and which allow counties and contractors discretion in deciding whether to provide retroactive payment to providers or reimbursement to parents. We question the validity of these proposed changes and believe the restrictions will result in very negative consequences for many impoverished CalWORKs families and the license-exempt providers they've selected to care for their children. We also oppose the removal of great grandparents, great aunts and great uncles from those who are exempt from Trustline registration requirements.

Response:

The priority of these regulation changes is to increase the safety of children in subsidized child care. The changes will not prohibit work participation. CDSS is not denying any benefits to clients. Clients may have to make other choices in selecting providers so that they do not choose a provider that will not meet the Trustline requirements.

The proposed regulations were amended changing "may" to "shall" requiring counties to pay providers retroactively rather than giving counties the discretion.

The Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

The removal of great-grandparents, great-aunts, and great-uncles, aligns regulations with statute. The proposed regulations have been amended so that upon implementation of the regulations only new great-grandparents, great-aunts, and great-uncles will be required to become Trustline registered prior to receiving payment for child care. Existing great-grandparents, great aunts, and great uncles will continue to receive payment and will not be required to become Trustline registered.

51. Comment:

**A. The proposed regulations undermine families' ability to maintain their children in safe care arrangements.**

We appreciate the importance of ensuring the safety of children in care, and for that reason we strongly oppose the proposed changes to the regulations. The proposed regulations will not result in increased child safety. They deny payment to family, friend and neighbor caregivers selected by parents, but do nothing to ensure that every family has appropriate, safe child care in place when parents are required to immediately participate in Welfare-to-Work activities.

The registration requirement and limitations on retroactive payment will undermine the efforts of many CalWORKs families to find and maintain appropriate care arrangements for their children. CalWORKs parents must have access to child care in order to participate in Welfare-to-Work activities and have a chance of successfully transitioning from cash assistance to paid employment. These families generally have very limited options and must rely on family, friends and neighbors to provide care for their children due to their non-traditional work hours, rotating shifts, geographic isolation, transportation limitations, language barriers, and the special needs of their children with disabilities and medical problems.

The proposed regulations purport to safeguard children by protecting them from being cared for by individuals who are ineligible to be registered on Trustline due to a criminal background. But that is not the real effect of the proposed regulations. The proposed regulations do not ensure safe, appropriate care for children in CalWORKs

families. Instead, they make it nearly impossible for CalWORKs families to choose to use license-exempt care. Rather than making children safer in care, the regulations will leave low income parents who cannot possibly afford to pay for care themselves and who are unable to make use of available licensed care little choice than to rely on far less desirable options – to leave children home alone or with a slightly older sibling in charge, to take children to their work sites and leave them sleeping in the car, or to simply give up on trying to transition from welfare to work and slip deeper and deeper into poverty.

CCLC has serious concerns that requiring license-exempt providers to complete Trustline registration before being paid, and limiting retroactive payment, will result in CalWORKs recipients having even greater difficulty in locating appropriate care for their children in a timely manner.

For these reasons we urge CDSS to maintain the CalWORKs Stage 1 Trustline regulations in their current form and require application, not completion of Trustline registration, in order for a license-exempt provider to be paid for care. In the alternative, we urge CDSS to revise the statute and regulations governing welfare-to-work requirements to guarantee that parents shall not be required to participate in work or any other activity until the CWD has confirmed that the families have been successful in securing appropriate child care for each child, and to stop the running of the 60 month time limit on assistance until the family has been successful in locating appropriate care.

Response:

The regulations do not limit a client's parental choice. Clients may still choose from licensed child care providers, Trustline-exempt child care providers, or a different Trustline registered child care provider.

The regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are

similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in Section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

52. Comment:

**B. The effect of the proposed regulations restricts parental choice regarding use of license-exempt providers to such a significant extent that the regulations may be impermissible under federal and state law.**

The potential impact of the proposed regulations on families exercising their right of "parental choice" in selecting a license-exempt child care provider is so significant that they may be impermissible under the federal Child Care and Development Fund regulations, as well as State law.

The Child Care and Development Fund regulations govern the use of federal funds which make up a significant portion of the monies California uses to provide child care subsidies to CalWORKs and other low-income families. The applicable regulations can be found in the Federal Register, Friday, July 24, 1998, Part II, Department of Health and Human Services, Administration for Children and Families, 45 CFR Parts 98 and 99, Child Care and Development Fund; Final Rule, Volume 63, No. 142/Rules and Regulations, Sections 98.15 (a) (5); 98.30 (f); and 98.41(b).

The CCDF regulations impose significant limitations on state regulations in order to insure that parental choice is safeguarded. Under §98.41(b), Lead Agencies may not set health and safety standards and requirements that are inconsistent with the parental choice safeguards in §98.30(f). Section 98.30(f) states that, "CCDF funds will not be available to a [state] if State or local rules, procedures or other requirements ... significantly restrict parental choice by:

- (1) Expressly or effectively excluding:
  - (i) Any category of care or type of provider, as defined in Sec. 98.2; or
  - (ii) Any type of provider within a category of care; or
- (2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in Sec. 98.2; or
- (3) Excluding a significant number of providers in any category of care or of any type as defined in Sec. 98.2."

It appears that the proposed regulations likely would have the effect of limiting parental access to all types of license-exempt providers, including those license-exempt caregivers who provide care in their own homes (who are defined as "family child care providers" under the federal regulations), as well as those "in-home" child care providers who offer care in the child's home.

Under Sec. 98.15(a)(5), the state must assure that, "With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and **registration requirements**, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to Sec. 98.30(f)." (emphasis added.)

Given these provisions in the federal regulations, we question whether the proposed regulations' denial of payment to license-exempt caregivers until they have been registered with Trustline is permissible under the federal regulations, or whether, in fact, this will significantly and impermissibly restrict parental choice by having "the effect of limiting parental access to or choice from among categories of care or types or providers." Even though the regulations allow for the option of 60 days of retroactive payment, that provision does not seem sufficient to overcome the clear mandate of the federal regulations. Requiring parents to quickly locate providers who will be willing and able to work for 60 days before being paid, and who may work additional days for which they will never be paid, would appear to have "the effect of limiting parental access to" license-exempt care. This is particularly true with respect to license-exempt providers who provide care in their own homes (defined as "family child care providers" under the federal regulations) because the regulations are stringent in prohibiting limitations on access to this form of child care.

The federal regulations permit states to place some limitations on in-home care under Sec. 98.30(e)(1)(iv). However, in commentary to that section of the regulations, the federal Department of Health and Human Services noted the significance of license-exempt care and the need for caution in limiting parental access to in-home care:

... While in-home care represents only a small proportion of all available care in most communities, it may be the best or only option for some families and may prove valuable, necessary and cost-effective when compared to other options. There are a number of situations in which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts, weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements. Part-time employees often find it more difficult to make child care arrangements than do those who work full-time. Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes. Given the general scarcity of school-age child care in many

communities, in-home care may enable some families to avoid latchkey situations before school, after school, and when school is not in session. For many families, in-home care by relatives also reflects important cultural values and may promote stability, cohesion and self-sufficiency in nuclear and extended families.

...

**However, since in-home care has proven to be an important resource, we expect Lead Agencies to consider family and community circumstances carefully before limiting its availability. For that reason, CCDF Plans must specify any limitations placed on in-home care and the reasons for those limitations.** (emphasis added.) Federal Register, Vol. 63, No. 142, p.39949-39950, July 24, 1998.

It should be noted that state law similarly enshrines the importance of "parental choice" in the selection of child care, and supports the option of license-exempt care. Education Code §8352(a) states, "As soon as appropriate, a county welfare department shall refer families needing child care services to the local child care resource and referral program . . . The local child care resource and referral program shall assist families to establish stable child care arrangements as soon as possible. These child care arrangements may include licensed and license-exempt care. Education Code §8208.1 specifically addresses license exempt care and states,

"Child care exempt from licensure is a valid parental choice of care for all programs provided for under this part, **and no provision of this part shall be construed to exclude or discourage exercise of that choice.**" (emphasis added.)

Regulations that have the effect of excluding or discouraging parents' selection of license-exempt care are impermissible under state as well as federal law. There is no question that the proposed regulations which withhold payment from license-exempt providers as they undergo Trustline registration will have a significantly discouraging effect on parents' ability to choose that form of care. We believe the effect will be so significant as to be impermissible under state and federal law.

Response:

The Federal and State references to the scope and degree of parental choice are not without limits or boundaries. If this were true, then under the reasoning of the comment, the CDSS would be without authority to impose any health and/or safety licensing requirements as a condition of receiving Stage 1 compensation. Such, however, is not the spirit or the letter of Federal or State law.

The preamble to the Federal regulations establishing the Child Care and Development Fund (CCDF) permit, and indeed, encourage states to balance the health and safety of children with parental choice.

The goals of CCDF in 45 C.F.R. Part. 98.1(a) are to:

(The following page numbers refer to the federal Department of Health and Human Services (DHHS) response(s) to public comment on the final federal rules in the federal register of July 24, 1998 that implemented 45 C.F.R. Parts 98 and 99 on the use of CCDF)

(1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;

(2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

(3) Encourage States to provide consumer education information to help parents make informed choices about child care;

(4) Assist States to provide child care to parents trying to achieve independence from public assistance; and

(5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

Criminal background checks are encouraged as part of the CCDF health and safety standards where DHHS responds:

"We would agree with the commenter that it is appropriate to encourage States to adopt criminal background checks as part of their effort to meet CCDF health and safety standards." (Page 39956).

And in response to Parental Choice and the option of providing cash to a provider, likewise DHHS stated:

"If, nevertheless, a Lead Agency chooses to provide cash, it must be able to demonstrate that: (1) CCDF funds provided to parents are spent in conformity with the goals of the child care program as stated at section 658A of the Act, i.e., that the money is used for child care; and (2) that child care providers meet all applicable licensing and health and safety standards, as required by section 658E(c)(2)(E) and (F) of the Act. Lead Agencies, therefore, may wish to consider having parents who receive cash attest that the funds were used for child care and to identify the provider. Such a

statement would help assure that the funds were expended as intended by the statute and lessen the possibilities for fraud. Finally, Lead Agencies are reminded that they must establish procedures to ensure that all providers, including those receiving cash payments from parents, meet applicable health and safety standards." (Emphasis added). (Page 39949)

DHHS also recognized that by giving Lead Agencies complete latitude to impose conditions and restrictions on in-home care may affect parents' ability to make satisfactory child care arrangements and thus their ability to participate in work, education or training. (Page 39950)

And in response to the applicability of health and safety requirements to in-home care providers, DHHS responded:

"In-home care must meet the requirements established by the Lead Agency for protecting the health and safety of children pursuant to Sec. 98.41. In-home care, as a category of care, is not exempt from health and safety standards. And, relatives who provide in-home care are not exempt from health and safety requirements unless the Lead Agency specifically chooses to exempt them, as provided for at Sec. 98.41(a)(1)(ii)(A)." (Page 39950)

Finally, DHHS reminded a commenter that:

"The regulations at Sec. 98.54(a)(2) (regarding the restriction on the use of federal funds) require that CCDF funds 'shall be expended in accordance with applicable State and local laws.' Payments made to parents or providers who are not in compliance with applicable laws are subject to disallowance in accordance with Sec. 98.66." (Page 39950)

Given the broad authority and flexibility these regulations vest in state agencies, and the recognition by DHHS of the importance of applying health and safety rules, the proposed Trustline registry regulations present a balanced and measured approach designed to meet the Federal goals of allowing parental choice with the need to protect the health and safety of children.

Therefore, the proposed Trustline registry requirements are consistent with Federal regulations and do not impermissibly restrict parental choice.

Additionally, the proposed regulations were amended to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

53. Comment:

**C. CDSS has not provided sufficient reasons for the proposed changes to the regulation.**

As noted above, in order to meet the requirements of federal regulations, state agencies must be very careful in restricting license-exempt care in the provider's home, and consider family and community circumstances carefully before limiting the availability of care provided in the child's home. When significant restrictions are placed on these forms of care, such as those in the proposed regulations, state agencies must provide reasons for those limitations. The proposed regulations do not make a distinction between these forms of license-exempt care.

In the Initial Statement of Reasons, the Specific Purpose for the changes to the regulations is stated: "These amendments are proposed to increase the health and safety of the children who are receiving government subsidized child care services. To address this health and safety issue, the proposed regulations stipulate that license-exempt providers applying for Trustline registration will not be paid while the application process is pending...Specifically, these sections would be amended to conform policy to statute and to prevent a provider from being compensated with a government subsidy prior to being Trustline registered." The Factual Basis similarly states, "The California Department of Social Services (CDSS) is requesting non-emergency regulations to increase the safety of the children receiving subsidized child care by implementing the process changes and updating the Manual of Policies and Procedures (MPP) related to the Trustline Program to conform policy to the existing statute."

The current Trustline regulations, MPP §47-260 et. seq., became effective 12/29/98, shortly after the CalWORKs child care program was originally put into place. It is significant that there has been no recent change to the statutory framework that would require a concomitant change in the regulations. To the contrary, the State and the Counties have been operating with the current system for nearly eight years, long enough to have a great deal of experience with the current system, and to document any instances in which the health and safety of children in license-exempt care was compromised by the fact that the provider had been paid before Trustline registration was completed. There is nothing in the Initial Statement of Reasons to indicate that the health and safety of children has been placed at risk by the current Trustline registration and payment process operating under existing regulations. Nor will the proposed changes to the Trustline regulations increase children's safety since the sole issue they address is the timing of payment for care.

We understand that over the years some providers who were paid ultimately did not qualify for Trustline registration, and so public dollars were spent on providers who were found to be ineligible. We agree that such expenditures are undesirable, but question whether they resulted in risks to children. Similarly, we understand there have been instances in which ineligible providers have defrauded the CalWORKs child care program. This is a separate issues, and we think it is important to take appropriate

steps to address fraud in subsidized child care. However, the basis on which CDSS has proposed these changes to the regulations is children's health and safety and, as noted in section A, the proposed regulations will have the opposite effect of undermining the safety of children.

Response:

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

54. Comment:

**D. The proposed changes to the regulations may be inconsistent with provisions of the Health and Safety Code.**

In the Initial Statement of Reasons, CDSS states that "...these sections would be amended to conform policy to statute..." and "Current regulations are inconsistent with Health and Safety Code Sections 1596.60-1596.68." We disagree. Health and Safety Code §1596.67 governs Trustline registration for CalWORKs Stage 1 child care. Again, we note that there has been no recent change to the statutory framework that would require a concomitant change in the regulations.

This complex section of the law must be read carefully in order to determine whether, in fact, the proposed changes to the regulations are consistent with the strictures of this provision. It should first be noted that subsection (a) of §1596.67 begins with the phrase, "To the extent permitted by federal law..." As stated above, we believe there is a significant question whether federal law permits the extensive restrictions on out-

of-home and in-home license-exempt child care contemplated by the proposed changes to the regulations. Clearly, the Health and Safety Code recognizes that federal law governs what restrictions may be placed on various forms of subsidized care, including registration requirements. It affirmatively acknowledges that the requirements of this section are limited to those permitted by federal law. The current regulations are consistent with both the statute and with federal law in that they require Trustline registration but allow for payment to providers pending completion of the Trustline process.

The language of subsection (a) initially states, "**To the extent permitted by federal law**, each child care provider...who receives compensation, in whole or in part, under Stage 1 of the CalWORKs child care program...for providing child care for a recipient or former recipient...shall be registered ...in order to be eligible to receive this compensation." (emphasis added.) This sentence implies but does not require the provider to have completed registration before payment can commence.

The next sentence in subsection (a) states, "Active Trustline registration is required for providers who receive compensation under Stage 1 of the CalWORKs Child Care Program pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, for providing child care for a recipient or former recipient **only to the extent permitted by that law and the regulations adopted pursuant thereto.** (emphasis added.) There is nothing in Article 15.5 of the Education Code, or in the regulations adopted pursuant thereto, that addresses "active Trustline registration" nor that confirms that such registration can be required in order for providers to receive compensation. Like CDSS, the policies and practices of the Department of Education since the initiation of the CalWORKs child care program have been to allow license-exempt providers to receive payment for their services while their Trustline registration was pending. In fact, 5 CCR §18411, which addresses eligibility for providers for CalWORKs Stage 2 states that a license-exempt provider must "(c) **Apply for** or be registered for Trustline or be exempt from Trustline Registry, pursuant to Health and Safety Code section 1596.605(a)." (emphasis added.), and implies that application for registration on Trustline is sufficient to initiate payment for care by the license-exempt provider.

Subsection (b) of §1596.67 amplifies the language of subsection (a), and appears to confirm that completed Trustline registration is not required prior to payment. Subsection (b) states,

(b) Payment provided pursuant to subdivision (a) shall cease if the provider has a criminal conviction for which the department has not granted a criminal record exemption pursuant to subdivision (f) of Section **1596.871**.

The implication of subsection (b) is that payment may be made to a license-exempt provider who is in the process of Trustline registration, and that such payment shall cease if there is a determination that the provider has a criminal conviction for which a criminal record exemption has not been granted.

Response:

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in Section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

The preamble to the Federal regulations establishing the Child Care and Development Fund (CCDF) permit, and indeed, encourage states to balance the health and safety of children with parental choice. The fifth goal of CCDF in 45 C.F.R. Part. 98.1(a) is to: Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

55. Comment:

**E. The proposed regulations shift the pressure of meeting Work Participation Rates and the initial burden of paying for care from County Welfare Departments to low income CalWORKs parents and their family, friend and neighbor caregivers.**

We recognize the significant pressures placed on the Department of Social Services and the County Welfare Departments by the federal changes to the TANF program, and the financial penalties that will be imposed on the State and the Counties if California fails to meet the new, greatly increased Work Participation Rate. There are pressures on CalWORKs administrators to have cash aid recipients immediately and consistently engaged in Welfare to Work activities. With these proposed regulations, the financial responsibility for license-exempt care is initially transferred to CalWORKs parents who must quickly find care for their children so they can go

through appraisal and assessment, enter training, accept job offers, address substance abuse and domestic violence issues, work non-traditional and rotating shifts, and make rapid transitions in order to maintain their tenuous hold in the job market.

We know that parents generally select license-exempt providers who have a relationship with the family, and who parents believe will offer safe, familiar care for the children. CDSS must also recognize this reality because these proposed regulations do not prohibit parents from using license-exempt care while Trustline registration is pending. Rather, they simply shift the burden of paying for care while the Trustline application is being processed from the counties (who are funded and legally obligated to provide supportive services) to the low income parents who have a 60 month time clock ticking on their cash assistance. Most CalWORKs families simply cannot afford to pay for care while the Trustline application is pending – after all, they are so poor that they qualify for CalWORKs cash aid. Therefore, CDSS must assume that their license-exempt providers will simply take on the burden of providing care for months without payment. But that assumption is totally without basis.

The family members, friends and neighbors CalWORKs families select to provide care are often also low income people. Frequently they agree to care for a relative or friend's child because they want to help the family in making the transition from acute financial distress to self-sufficiency by providing care for a cousin or godchild. The welfare system relies on these individuals to "step into the gap" to make it possible for CalWORKs families to participate in required activities. Families' need for care often arises on very short notice, as they get accepted into a training program or locate an odd-hour job that requires them to start immediately. The caregivers they select have not previously been part of the subsidized care system, and so they must register with Trustline. These low income family members, friends and neighbors are often unable to survive if required to work for two months before getting paid, so for many it simply won't be an option to provide care without timely payment, even though they are willing and otherwise able to do so.

Providers who are required to register with Trustline can immediately submit a completed application and all necessary paperwork, but they have absolutely no control over the length of time state and federal bureaucracies take to process their applications, and they simply cannot afford to wait to get paid for their work. As CDSS is aware, in some instances the processing of Trustline applications can take many months, far more than the 60 days which is the maximum period for retroactive payments contemplated by these regulations. While the first two months present real difficulties, the very real possibility the registration process will take more than two months through no fault of the provider, and the reality that they will not be paid at all for those additional weeks or months of care, makes it completely untenable for potential license-exempt providers to agree to provide child care for a friend or relative in need of this support.

Under the proposed regulations, these providers would essentially "work for free" if they provided care for a period of more than 60 days while their application for Trustline registration was being finalized. Even worse, the parents who are cash aid

recipients and entitled to supportive services would have financial responsibility for any care provided beyond the 60 day maximum retroactive period. CDSS must remove any limit on retroactive payment to a provider who provides care while Trustline registration is pending if the delay in processing the application is due to administrative issues, rather than inaction on the part of the provider.

Counties must also be required to reimburse parents for payments made to license-exempt providers while their providers are undergoing the Trustline registration process. It is perplexing that CDSS has taken a permissive approach to retroactive payment and reimbursement of clients since the purported goal of these proposed regulations is to better protect the health and safety of children.

It is unjust to allow CalWORKs clients to spend their limited resources to hold onto their preferred child care provider while engaged in work or county-approved activities, and then to give counties discretion to decide on a case-by-case basis whether to reimburse the clients for payments made to an eligible provider. It is similarly inequitable to permit low income providers who become Trustline registered to provide months of care with no guarantee of ever being paid, even after they become eligible for retroactive payment. It is one thing to deny retroactive payment to a provider who does not ultimately qualify for Trustline registration. It is simply wrong to deny retroactive payment to a Trustline registered provider, or to deny reimbursement to the CalWORKs client who has paid for care while their provider's Trustline registration was pending. This cannot be discretionary. The counties/contractors must be mandated to make payment in every instance.

Response:

The Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

The proposed regulations were amended changing "may" to "shall" requiring counties to pay providers retroactively rather than giving counties the discretion.

The proposed regulations have been amended to delete any language that would require clients to pay an out-of-pocket expense for child care.

56. Comment:

**F. Automation and other improvements to the Trustline registration process have not provided effective, consistent results; balanced alternative approaches to registration and payment must be implemented.**

Although CDSS has made genuine efforts to implement the Trustline Automated Registration Process (TARP) and other improvement to the Trustline registration process, the reality is that technological complexity, understaffing at CDSS Caregiver Background Check Bureau and Information Services Division, and other problems have resulted in significant administrative delays in the processing of Trustline applications. These problems were detailed this past year in legislative analysis and testimony presented by CDSS, the Resource & Referral Network and others as the Legislature considered AB 1601, a bill authored by Assemblymember Laird which provided a balanced alternative approach to Trustline registration and payment.

Given the pressure to immediately engage CalWORKs recipients in Welfare-to-Work activities, we urge CDSS to maintain the Trustline regulations in their current form while at the same time significantly increasing investment in the Trustline system. Once the Trustline system is upgraded to a level of efficiency that enables every license-exempt provider to complete registration within a day or two, the proposed revisions to the Trustline system will be permissible. An acceptable alternative would be to implement the balanced approach of AB 1601 (passed by the Legislature, vetoed by the Governor) which allowed payments to license-exempt providers while undergoing Trustline registration unless there was information that indicated the possibility of criminal history, in which case payment was suspended until the provider completed Trustline registration.

If Trustline registration continues to operate as it currently does with many cases taking months to resolve, and if CDSS implements these proposed regulations that prohibit payments to license-exempt providers until registration is completed, then CDSS and the County Welfare Departments simply cannot require parents to engage in work and work activities unless they ensure that every family has been able to exercise parental choice, has appropriate, safe child care in place for each child, and the running of the 60 month time clock is stopped in the interim. In addition, to mitigate some of the harm these proposed regulations are likely to impose, CDSS must remove any limit on retroactive payment to a provider who provides care while Trustline registration is pending if the delay in processing the application is due to administrative issues, rather than inaction on the part of the provider, and mandate that counties/contractors provide retroactive payments to providers or reimbursement to parents for the care provided while the provider's Trustline registration was pending.

Response:

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider

is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in Section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

Based upon the comments that we have received, the Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process. The vast majority of applicants with no criminal history are likely registered within 120 days.

57. Comment:

**Recommendations:**

- 1. Maintain the current payment system to providers as they undergo the Trustline registration process;**
- 2. In the alternative, move to the balanced registration and payment approach set forth in AB 1601.**
- 3. If the proposed regulations to restrict payments until a license-exempt provider has completed Trustline registration are adopted, mandate counties/contractors to make full retroactive payments to Trustline registered providers and full reimbursement to clients for payments made while the provider's registration was pending. Do not impose a time limit on retroactive payments to providers or reimbursements to parents.**

Response:

All issues are addressed in the response to comment number 56.

58. Comment:

**Specific Comments:**

1. Subsection §47-260.14: The reference to the definition of registered Trustline child care provider in Health & Safety Code §1596.605(b)(1) is helpful. Reference should also be made to the definition in §47-602(r)(1).

Response:

The Department appreciates this comment but will not be amending the regulations as suggested because Section 47-602(r)(1) summarized Health and Safety Code Section 1596.605(b)(1).

59. Comment:

2. Subsection §47-260.2: It is not apparent how removal of great grandparents, great aunts and great uncles from those exempt from Trustline registration increases the health and safety of children. We disagree with this public policy decision and believe that it will have precisely the opposite effect. The inclusion of these "great" relatives is certainly consistent with the intent of Health & Safety Code §1596.792 to allow families to select trusted relatives as caregivers without those close relatives having to undergo Trustline registration. Also, the deletion of the "great" relatives has a particular discriminatory impact on families that come from cultures in which it is typical for several generations of extended families to provide support for one another, and in which great grandparents, great aunts and great uncles are willing and available to provide care for the children of younger relatives. It seems particularly punitive to clients and to these close relatives to require them to undergo Trustline registration at the same time that significant restrictions are being placed on payment to providers who are required to be Trustlined. This restriction further narrows the pool of familiar providers that CalWORKs families can access quickly and easily.

Response:

Health and Safety Code 1596.792 was referenced in the comment above. This code refers to license-exempt child care. It does not pertain to Trustline.

Under Health and Safety Code Section 1596.605, the CDSS is required to establish a Trustline registry. This section also distinguishes between a "Trustline applicant" and a "registered Trustline provider." In subdivision (b)(1), a registered Trustline provider is one whose Trustline application has been approved by the CDSS after checking, among other things, the criminal history and child abuse indexes.

Under Health and Safety Code Section 1596.67 to the extent permitted by Federal law, certain enumerated Stage 1 child care providers must be "registered" under Sections 1596.603 and 1596.605 in order to be eligible to receive Stage 1 compensation. This statutory language is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation. That is; a provider must be "registered" as set out in 1596.605 above. In this regard, these Trustline providers are

similar to other child care providers who must meet the regular and more rigorous licensing requirements. Trustline "applicants" however are not eligible until their application is "approved." If this were not the case then the distinction between the status of being a Trustline applicant and a registered provider in Section 1596.67 would be meaningless.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation. The statute does not extend Trustline registration exemption to "great" relatives.

60. Comment:

3. Subsection §47-301.1: This is a crucial section of the regulations. Although this section mandates counties to ensure that families have access to child care subsidies when needed as a result of employment or other county-approved activities, the regulation should be revised to require counties to ensure that clients actually have subsidized care when needed, or that clients have affirmatively chosen not to use subsidized care.

There are two other crucial elements of the County Welfare Department Responsibility that must be added to this section: First, counties/contractors shall pay a Trustline-registered license-exempt provider for care provided. Second, counties/contractors shall pay retroactively for services once the provider completes Trustline registration. (See discussion in next section on mandating rather than allowing retroactive payment.) Merely including these requirements in the regulations that address the contents of the Informing Notice is insufficient; these are responsibilities the counties/contractors must be clearly mandated to perform. In addition, "county-approved activities" should be defined in §47-602 or referenced to a definitional section elsewhere in the CalWORKs regulations so there is no question that clients must be ensured subsidized child care for activities such as orientation, assessment, appraisal, etc.

Response:

The issues regarding county-approved activities are beyond the scope of these CalWORKs regulations.

The proposed regulations were amended changing "may" to "shall" requiring counties to pay providers retroactively rather than giving counties the discretion.

61. Comment:

4. Subsection §47-301.2 should require counties to inform applicants/recipients orally as well as in writing about the availability of child care subsidies and about Trustline registration requirements for license-exempt providers. This subsection should also incorporate the requirements of MPP §21-115.2 and ACL 00-03 and require the informing notice to be in the client's primary language.

Subsection §47-301.22(b) and (c): As we noted above in Section E, the requirements in both of these sections must be mandatory rather than permissive for counties/contractors. Counties must be required to retroactively pay license-exempt providers who complete Trustline registration for care provided during the Trustline registration process, and reimburse clients who pay for care while their provider's Trustline registration is pending.

Equally importantly, the 60 calendar day limit on retroactive payments referenced in §47-301.22(c), §47-430(b), §47-620.1 and §47-620.3 should be deleted. Retroactive reimbursement should be given to providers who complete Trustline registration from the date child care services began. Counties/contractors should be required to fully reimburse providers (or the clients who have paid them in the interim) for all care provided while the provider's Trustline registration was pending, so long as any delay in completing the Trustline process was not due to inaction on the part of the provider.

Response:

All CalWORKs programs are mandated to provide notices in accordance with MPP Section 21-115.2 as stated in ACL 00-03.

The proposed regulations were amended changing "may" to "shall" requiring counties to pay providers retroactively rather than giving counties the discretion.

Based upon the comments that we have received, the Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

The proposed regulations have been amended to delete any language that would require clients to pay an out-of-pocket expense for child care.

62. Comment:

5. Subsection §47-301.22(d): This regulation places responsibility on the client to "instruct" the license-exempt provider of the Trustline and Health and Safety certification requirements, and that these documents must be submitted within seven days. The county/contractor should also be held responsible for providing this

information to the client's selected provider as soon as the client has identified the provider to the county/contractor.

Response:

Current practice allows counties the authority and flexibility to establish processes and procedures that allow the parent to exercise responsibility for choosing a provider as well as instructing that provider of the necessary requirements.

63. Comment:

6. Subsection §47-301.22(h) should explicitly state the requirements that the child care provider must meet. This section should also use language consistent with the other sections regarding the registration process; for example, it is not clear whether the term "determined ineligible" means that the provider has been denied Trustline registration, has failed to complete the registration process, etc. This term should be defined in §47-602.

Response:

The Department appreciates this comment and has amended the regulations for clarity by adding Section 47-602.r(1), the definition of a Registered Trustline Provider.

64. Comment:

7. Subsection §47-301.22(i) requires a client to inform the county "each time they change child care providers" but does not set forth what information must be provided nor designate a timeframe within which this information must be given to the county.

Response:

The issues regulating the frequency at which counties are required to inform clients is beyond the scope of this CalWORKs Trustline proposed regulation package.

65. Comment:

8. Subsection §47-301.22(k) should include information notifying the client of the various types of licensed child care, of Trustline requirements and the registration process for license-exempt providers who are subject to Trustline; and retroactive and other payment issues. Clients should be informed of the Trustline exemption for relatives, and of the good cause exception available for clients who are unable to locate appropriate child care. As noted in our general comments, we urge a change in policy to mandate counties to ensure that the client has secured appropriate care before requiring the client to engage in work or welfare-to-work activities.

Response:

The issues regarding the informing notice and mandating counties to ensure clients have secured child care before welfare-to-work requirements are beyond the scope of this CalWORKs Trustline regulations package.

66. Comment:

9. Subsection §47-301.25 should make it mandatory rather than permissive upon counties to provide the informing notice to clients at every point listed in this section.

Response:

The issues regulating the frequency at which counties are required to inform clients is beyond the scope of this CalWORKs Trustline proposed regulation package.

67. Comment:

10. Subsection §47-430.2(b) and (c): As noted above in comments on subsections §47-301.22(b) and (c), counties must be required to retroactively pay license-exempt providers who complete Trustline registration for care provided during the Trustline registration process, and counties must be required to reimburse clients for payments to their license-exempt providers while the providers were undergoing the Trustline registration process. These reimbursements should be mandatory; the counties/contractors should not be given discretion to make case-by-case determinations as to whether to reimburse providers for their services or clients for payments made for those services.

Response:

The proposed regulations were amended changing "may" to "shall" requiring counties to pay providers retroactively rather than giving counties the discretion.

68. Comment:

11. Subsection §47-602(r)(1): This definition of Registered Trustline Child Care Provider seems unnecessarily convoluted, and does not clarify at what point in the registration process a Trustline applicant becomes a registered provider. An earlier version of the definition was clearer and more succinct: A registered Trustline child care provider is one for whom the background check process has been completed and approved.

Response:

We regret that the definition of Registered Trustline Child Care Provider seems convoluted; however, the definition is pursuant to statute.

69. Comment:

12. Subsection §47-620.1 should be worded so it is clear that it is the license-exempt provider, not the client, who is subject to Trustline registration. As noted above, clients should be provided with a Trustline Registry application package written in their primary language.

Response:

The Department appreciates this comment and has amended the language for clarity. All CalWORKs programs are mandated to provide notices in accordance with MPP Section 21-115.2 as stated in ACL 00-03.

70. Comment:

13. Subsection §47-620.2: The phrase "granted registration" is confusing. This section would be clearer and more accurate if it used the term "Registered Trustline Child Care Provider" as defined in §47-602(r)(1).

Response:

The Department appreciates this comment and has amended the regulations to strike out "granted registration" and add the term "Registered Trustline Child Care Provider."

71. Comment:

14. Subsection §47-620.3: As noted above in comments on subsections §47-301.22(b) and (c), counties must be required to retroactively pay license-exempt providers who complete Trustline registration for care provided during the Trustline registration process, and counties must be required to reimburse clients for payments to their license-exempt providers while the providers were undergoing the Trustline registration process. These reimbursements should be mandatory; the counties/contractors should not be given discretion to make case-by-case determinations as to whether to reimburse providers for their services or clients for payments made for those services.

Response:

The Department appreciates this comment and has replaced the word "may" with "shall" in reference to retroactive payments throughout the regulations.

72. Comment:

15. Subsection §47-620.6: (Note: the title of this section should insert "Client" for "Recipient.") This subsection requires immediate notification of the client if the provider's application for Trustline Registry is approved or denied, or if the case file is closed or registration is revoked. The proposed regulations continue former section

§47-620.5 which included requirements for the issuance of timely Notices of Action prior to discontinuing child care payment. That section should be clarified to require counties/contractors to issue a timely Notice of Action to both the client and the provider in each of these instances so that the client and/or the provider have the opportunity to contest the action taken.

Response:

The Department appreciates this comment. The regulations will be amended to replace the word "recipient" in this section, with the word "client." Current practice regarding the issuing of a Notice of Action (NOA) will continue to be followed. Current practice does not entitle a child care provider to receive a NOA. See MPP Section 47-420.3 Notice for Payment.

Ms. Hershcopf submitted the following oral testimony at the public hearing: (Comment 73)

73. Comment:

Good morning, my name is Eve Hershcopf. I'm a staff attorney with the Childcare Law Center. I've submitted written testimony and want to take the opportunity this morning really to emphasize two points. One is we were very involved at the Law Center in supporting Assembly Member Laird's Bill AB1601, which we believe took a much more balanced approach to this problem than what is currently in the proposed regulations, and we would urge the department to take another look at a more balanced approach.

If the department in fact goes forward with the policy that it is proposing in these regulations, one of our major concerns has to do not only with the length of time for retroactive payment, which others have commented on, but also that the department is making retro payment permissive rather than mandatory for the county, both with respect to payments to providers who have provided care during the period that the Trustline application was pending and to parents who may have paid those providers during that time.

It would be our strong recommendation that the department make retro active payment mandatory in those instances where a provider had lied and then been cleared for Trustline. Thank you.

Response:

The Department appreciates this comment and has replaced the word "may" with "shall" in reference to retroactive payments throughout the regulations.

Based upon the comments that we have received, the Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to

concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

It seems the comment is more aimed at taking issue with the underlying statutory policy of requiring registration instead of allowing a Trustline applicant to be eligible for Stage 1 compensation. The Department is without authority to change this statutory requirement through regulation.

Dora Luna, Attorney at Law and Mike Herald, Legislative Advocate, Western Center on Law and Poverty, Los Angeles, CA submitted the following comments: (Comments 74 - 78)

74. Comment:

The Western Center on Law and Poverty (WCLP) hereby submits comments to the proposed changes to Trustline regulations, ORD #0906-07. WCLP advances and enforces the rights of low-income Californians, including recipients of CalWORKs child care affected by changes to Trustline rules, the subject of the proposed regulation changes. In addition, WCLP supports the comments submitted by the County Welfare Directors Association ("CWDA") and the Child Care Law Center.

Given the delays in the processing on Trustline applications, the 60 day retroactive limit is inadequate. As noted in the comments submitted by the CWDA, a Senate Human Services Committee analysis of AB 1601 provides that some Trustline applications can take from one month to *a year or longer* to process depending on the ability of local agencies to provide the missing information. Hence, CalWORKs recipients and child care providers are inconvenienced because of the inadequacies in the Trustline application processing system. The result is that child care providers will not care for children if providers believe that Trustline processing may take longer than 60 days. Without child care services CalWORKs recipients will not be able to participate in welfare-to-work activities. And this lack of participation makes it more difficult for California to meet its new work participation rates.

Response:

The Department appreciates your comment and is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

The vast majority of providers that are required to become Trustline Registered will be able to do so in the time frames proposed by the regulations. The need of the client to find a provider and participate in their welfare-to-work activity must be balanced against the health and safety of children.

75. Comment:

## The Proposed Regulations Interfere with Participation in Welfare-to-Work Activities

New CalWORKs applicants, delays in the processing of Trustline applications may violate Welfare and Institutions Code ("WIC") § 11325.21(a), which requires counties to proceed with universal engagement within 90 days of a recipient's eligibility for aid. Without child care services, a recipient may not be able to attend appraisal, assessment, or any of the other activities required to be completed during these initial 90 days. A county's failure to engage recipients timely violates WIC § 11325.21(a).

In addition, the lack of child care services makes it almost impossible for CalWORKs recipients to participate in welfare-to-work activities generally. While the law provides certain safeguards such as good cause for not participating in welfare-to-work activities when child care is not available (WIC § 11320.3(f)(3)), these safeguards are insufficient. For example, good cause does not stop the 60 month clock. This means that if it takes 10 months to process a Trustline application, a CalWORKs recipient could lose up to 10 months in which s/he could have progressed towards self-sufficiency by participating in a welfare-to-work activity. A recipient enrolled in school may have to drop out of the program. And the student who drops out of a competitive program, such as nursing, may not be able to resume participation in the program for months or years.

### Response:

The Department appreciates this comment but will not be amending the proposed regulations as suggested.

The regulations do not limit a client's parental choice. Clients may still choose from licensed child care providers, Trustline-exempt child care providers, or a different Trustline registered child care provider.

The regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

The vast majority of providers that are required to become Trustline Registered will be able to do so in the time frames proposed by the regulations. Client's that cannot find suitable child care are eligible for good cause and would not be sanctioned as specified in MPP Section 42-713.23.

76. Comment:

The Proposed Regulations Increase the Likelihood of Federal Penalties

Further, recent changes to the federal regulations in the Temporary Assistance for Needy Families (TANF) program require that states meet increased work participation rates or face fiscal sanctions. For example, individuals who do not meet the required hours of participation and individuals with good cause for non-participation are not counted towards the federal work participation rate.

Under TANF a state may have its federal block grant amount reduced by an amount of up to 5 percent if the state fails to meet federal work participation requirements. If a state is penalized it is required to make up the difference in order to draw down the remaining portion of the federal block grant. For California a 5 percent reduction would eliminate \$180 million from the \$3.7 billion federal TANF block grant.

WIC § 10544(a) (AB 1808) provides that

If the state does not achieve the outcomes required by federal law, and as a result, is subject to a fiscal penalty, the penalty shall be shared equally by the state and the counties after exhaustion of all reasonable and available federal administrative remedies. If a county's single allocation pursuant to Section 15204.2 is reduced by the state to offset the county's share of any federal penalty imposed pursuant to this section, the county shall be required to utilize county general funds to replace the offset amount, so the total funding remains equal to the county's single allocation.

New changes to the TANF statute eliminate most of the caseload reduction credit previously available to states and greatly enhance the likelihood of a federal penalty for FY07. Actions taken by the state that erect new barriers to meeting work participation requirements as these regulations would do, increase even further the possibility of federal penalties. These penalties have been the subject of legislation and administrative action throughout 2006 and thus the likelihood of penalties is well known among all stakeholders, including the California Department of Social Services ("CDSS").

Response:

The priority of these regulation changes is to increase the safety of children in subsidized child care. The regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

77. Comment:

The Proposed Regulations Were Issued in Violation of the Administrative Procedures Act

Government Code § 11349.1(d)(2) requires the Office of Administrative Law to return any proposed regulation that does not provide notice as required by Government Code § 11346.5. Accordingly, the notice of proposed regulations must include

An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

Government Code §11346.5(a)(6).

The notice prepared by CDSS failed to provide proper notice in that it failed to estimate (1) the cost or savings to any state agency, (2) the nondiscretionary cost or savings imposed on local agencies and (3) the cost or savings in federal funding to the state. Because CDSS failed to meet the requirements of Government Code § 11346.5(a)(6), the Office of Administrative Law must return the regulations to CDSS as prescribed by Government Code § 11349.1(d)(2).

Response:

The Notice of Proposed Changes to Regulations prepared by CDSS was in accordance with Government Code Section 11346.5. The notice was submitted to the Office of Administrative Law for review and approval and subsequently published in the California Notice Register 2006, No. 41-Z, dated October 13, 2006. CDSS identified only minor and absorbable costs to the state and federal government.

78. Comment:

The Proposed Regulations Violate WIC § 11323.2

The proposed regulations violate WIC § 11323.2, which provides that child care payments "shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for the services." Advance payment, authorized by statute, will be nullified in those cases where the Trustline applications are delayed. If applied in this manner, the Trustline regulations impermissibly limit the scope of the advance payment statute, and are illegal.

Response:

In accordance with the CDSS Manual of Policies and Procedures (MPP) Section 42-750.21, "Payments for supportive services, except child care as described in Chapter 47-100, shall be advanced to the participant when necessary and desired by the participant so that the participant need not use personal funds to pay for these services."

Mike Herald, Western Center on Law and Poverty, Sacramento, CA submitted the following oral testimony at the public hearing: (Comment 79)

79. Comment:

My name is Mike Herald, and I am with the Western Center on Law and Poverty. Our focus is the CalWORKs Program today. Much of the testimony that has been presented so far has really focused primarily on the childcare side of this equation. I think that while these are obviously childcare regulations, they also have a significant impact on the state's CalWORKs Programs and indeed on the counties themselves who are accountable for the substantial federal penalties that could be imposed on the state if we fail to meet the federal work participation rate going forward.

What I think is not accounted for in these regulations is the fact that the federal government changed the TANF Program earlier in 2006, now requirement states that you get many many more families to work. Essentially, the State of California will have to double the number of CalWORKs recipients who are meeting work participation rates in order to avoid federal penalties.

Those federal penalties could start at \$185 million in the federal fiscal year 2008, that is beginning with next October. Counties are in the midst of ramping up their programs right now to try to respond to this. The Legislature made a number of significant changes in the budget and in policy in this arena this year, and counties and the state have been endeavoring. I can tell you that I am at DSS almost everyday now for meetings to implement these proposals, and we are working very hard to do that.

Our view is that these regulations will set back the state's progress and the county's progress in meeting work participation rates. You know, I want to emphasize that this is not a small portion of the population that we are talking about. According to DSS data that I pulled off your guy's website this week, 61 percent of the CalWORKs Stage One use licensed exempt childcare in this state. Maybe those percentages have slightly changed since that data went up, it is a couple of years old, but I think the point is the impact of these regulations are going to be substantial on CalWORKs recipients in Stage One. I believe those impacts have been largely overlooked in these regulations.

While I appreciate the regulations attempt to respond to this by permitting retro payments of up to 60 days, I would suggest that in practice that is not going to work very well for CalWORKs families on the ground. They are going to have to go out and

find someone who can wait for that 60-day period if they don't have the money, which, let's face it, in most cases CalWORKs recipients are very poor. We don't allow them to have any assets to get on the program. They have almost no income if they are not working, except for their grant payments. They cannot make these kind of childcare payments. They will have a difficult time being able to accept and keep work.

Which brings up the question of whether or not those families will get a sanction or they will end up getting good cause from the county, but in either case, the reality will be that they will not go into the work participation rate if they have to turn down a job because they could not get license exempt childcare in a timely fashion.

So, we set up a scenario in which we are creating a higher possibility of federal penalties in the future because of this unbalanced policy. I want to note that one of the things that was done in the Legislature this year is that AB1808 very clearly made counties half responsible for penalties going forward from failure to meet federal work participation rates.

So, as you know, as this policy gets implemented, counties should be concerned that these penalties will end up getting paid by them. While we are concerned about the safety of children, I guess these regulations tend to just look only at one side of that equation and does seem a more balanced approach might have a better impact.

Lastly, let me just note too that to the degree to which the state makes policy choices within CalWORKs that impact work participation rates, and I would suggest these regulations very much do that, that the state has to pay for those policy choices in any federal penalty for failure to meet work participation rates and TANF.

So, I would at least question whether DSS has fully assessed the fiscal impact of that policy choice and its impact on the state budget. Thank you.

Response:

Based upon the comments that we have received, the Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The change from 60 to 120 days is in response to concerns that 60 days may not provide adequate time for an individual to complete the Trustline process.

The regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

The vast majority of providers that are required to become Trustline Registered will be able to do so in the time frames proposed by the regulations. Clients that cannot find suitable child care are eligible for good cause and would not be sanctioned as specified in MPP Section 42-713.23.

Patty Siegel, Executive Director and Cindy Mall, Senior Program Manager - Trustline, California Child Care Resource & Referral Network, San Francisco, CA, submitted the following comments: (Comments 80 - 94)

80. Comment:

**Introduction**

The California Child Care Resource and Referral Network (Network), in coordination with the child care resource and referral programs, has administered the public's access to Trustline under contract with the State of California since 1992. We have an in-depth understanding of the technical aspects of the Trustline Registry as well as personal contact with thousands of parents, child care providers, and local agencies each year that use Trustline. Our comments to the proposed regulations reflect the wealth of experience and information we uniquely have about the operation of the Trustline Registry.

In California, both the California Department of Social Services (CDSS) and the California Department of Education (CDE) administer child care subsidy programs. It is important that there is consistency in the regulations that govern the child care subsidy programs administered by both CDSS and CDE so that all families are treated equally and that the local administration of subsidy dollars is done effectively and efficiently. From the information we have obtained from representatives at CDE, that department is not allowed to provide retroactive payments of subsidy dollars.

**Recommendation:** The Network recommends that both CDSS and CDE work together to develop regulations that will apply equally and consistently to all families receiving subsidy child care vouchers prior to any regulations be implemented for only one segment of this population.

Response:

The intent of these regulations is not to create a bifurcated child care system. Since the intent of the CalWORKs child care system is to be seamless, we would assume that CDE will adopt our regulations.

81a. Comment:

**General Comments to the Proposed Regulations - Changes to Trustline**

47-430 Retroactive Payments. Proposed regulations allow for up to 60 days of retroactive payment. Our concern is that the Trustline process for a person with nothing in his/her criminal or child abuse history may exceed 60 days. It appears that the proposed regulations assume that 1) the entire Trustline background check process can be completed in 60 days and 2) that the Trustline Automated Registration Process (TARP) is fully implemented. The TARP, which will eventually be available in 25 California counties, allows the information from the Trustline application form to be

sent electronically to CDSS at the same time the fingerprint images are sent to DOJ. Because the applicant information is sent electronically, no data entry is required at CDSS. Therefore, TARP will increase efficiencies at CDSS and decrease the turn-around time between the time an applicant submits his/her application and fingerprints to Trustline and the time s/he is registered (cleared) on Trustline. Currently, TARP is being piloted in one county of California.

Delays can occur at any point in the Trustline application process. The Trustline application process involves the following general steps for most applicants.

- Applicant (child care provider) receives the Trustline application form.
- Applicant obtains a fingerprint appointment and has his/her prints scanned.
- Applicant completes the application form and takes it along with the proof of fingerprinting to the local Child Care Resource and Referral Program (R&R).
- The local R&R sends the Trustline application to CDSS - including mail time.
- CDSS opens the mail and enters the application.
- DOJ sends results of the background check to CDSS.

When approximately 77% of applicants registered (cleared) on Trustline have nothing disqualifying in their background, the Network strongly believes that delays caused by the administration of the Trustline application process should not be balanced on the backs of parents trying to meet their work requirements or on low income child care providers.

Response:

In response to public comment, the Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration to ensure sufficient time for application processing.

81b. Comment:

Delays at CDSS. There have been times in the last three years that the California Department of Social Services has taken up to three (3) months to enter Trustline applications - a statutorily required component of the Trustline registry - which must be completed prior to an individual being registered (cleared) on Trustline. It would not be fair to the child care provider who has nothing disqualifying in his/her background and in good faith completed his/her part of the application process as quickly as possible to lose money for services provided because the state of California was delayed in entering applications. Furthermore, it is not fair to the parent who is trying to comply with his/her Welfare to Work requirements. The parent, who is trying to get off of welfare is trying to keep his/her job and does not want to be sanctioned, may also suffer the consequences of his/her provider not being cleared within 60 days.

Response:

Please see the response to comment 81a.

81c. Comment:

Minimizing Delays at CDSS. To ensure that the Trustline application process works efficiently and 75-80% of the Trustline applicants are registered on Trustline in 60 days the following must occur:

1. The California Department of Social Services, Caregiver Background Check Bureau must have the appropriate resources and be staffed sufficiently to make sure that from the time CDSS receives the Trustline application form until it is entered on the Caregiver Background Check (CBC) computer system, no more than 14 calendar days elapses.
2. The Trustline program's computer-related automation and programming needs must be met promptly by the California Department of Social Services, Information Services Division (ISD). Either the Trustline computer programming work must be the top priority within the Department for ISD or there needs to be increased staffing to meet the Trustline program's computer-related needs. These proposed regulations are built upon the assumption that the Trustline application process operates efficiently and effectively. To create the most efficient Trustline system at CDSS, the automation demands of TARP, the computer program improvements needed for CDSS staff using the CBC system, and the ability of CDSS to provide enhanced data to their contractor, the CA Child Care R&R Network, requires dedicated assistance from ISD.
3. Implementation of the Trustline Automated Application Process (TARP). The TARP process is currently being piloted in Kern County only. There are plans to expand the pilot to San Bernardino County in December. As of November 7th, we are experiencing computer-related and training-related challenges in implementing TARP in Kern County. Kern County is a very simple county meaning that one agency administers all of the voucher child care dollars (CalWORKs Stage 1, Stage 2, Stage 3, the Block Grant and the general fund Alternative Payment Program). San Bernardino is more complicated. Not only is it a bigger county geographically but also there are additional agencies involved in administering the voucher dollars. It is unknown at this time how quickly a successful TARP will be rolled out to the 25 counties able to administer TARP. When TARP is fully operational, there will be staffing efficiencies at CDSS. Until that time, however, CDSS will need maintain or increase staff appropriately to meet the demands placed upon them with these regulations.

**Recommendations:**

- Prior to the regulations being implemented, assure that CDSS has the staffing, resources, and computer capabilities to process all applications received within 14 calendar days.
- Increase resources to implement the TARP process and/or provide a phase-in of the regulations by piloting them in counties with operational TARP systems.
- Extend the number of days retroactive payment is allowed.
- Place "trigger" language in the regulations that allows an extended number of days of retroactive payment to be allowed if and when CDSS is taking 35 days or more to enter the majority of Trustline application forms.
- Allow payment programs flexibility in extending the 60 day limit on retroactive payment when documented delays outside of the applicant's control impact one or more applicants (i.e. Live Scan access is limited due to snowy road conditions).

Response:

The Department appreciates these comments. The Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration.

The Department monitors its workload and computer capabilities on an ongoing basis. As work volume increases or significant programmatic changes occur affecting the work, appropriate resources will be requested to ensure timely processing within statutory requirements.

82. Comment:

On a final policy note, if the goal of these regulations is for the health & safety of all children, then all license-exempt providers who receive a child care subsidy must be Trustlined including grandparents, aunts and uncles.

Response:

In accordance with Section 1596.66 of the Health and Safety Code: "(a) Each license-exempt child care provider, as defined pursuant to Section 1596.60, who is compensated, in whole or in part, with funds provided pursuant to the Alternative Payment Program, Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code or pursuant to the federal Child Care and Development Block Grant Program, except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 1596.603 and 1596.605 in order to be eligible to receive this compensation."

83. Comment:

**Technical Comments and Questions to the Proposed Regulations - Changes to Trustline**

1. 47-301 Administration of Child Care Services. Section .22 (d). Wording in this Section is confusing. "...no later than the first day child care services began to instruct the license-exempt provider of choice to submit a completed Trustline application..." The use of the phrase "of choice" is confusing. Is the intent to say that "the client must instruct their chosen license-exempt provider...?"

Response:

The Department appreciates this comment but will not be amending the proposed regulations as suggested because we think the term "of choice" is clear.

84. Comment:

2. 47-301 Administration of Child Care Services. Section .22 (e). This section should include Registered Trustline Providers. "(e) A statement that child care payments in CalWORKs Stage One shall not be made for services provided by a licensed or Trustline-exempt child care provider or a Trustline registered provider more than 30 calendar days prior to the client's request for child care...." There are some providers that are already registered on Trustline and are immediately eligible for payment and for the 30 days of retroactive payment and should be included in this Section.

Response:

The Department appreciates this comment, and has amended the language to include providers that are Trustline registered prior to the time child care services are provided.

85. Comment:

3. 47-430 Retroactive Payments. Section .2 Retroactive Payment Limit (a). This section should include Registered Trustline Providers. "(a) Licensed or Trustline-Exempt Providers or Registered Trustline Providers." There are some providers that are already registered on Trustline and are immediately eligible for payment and should be included in this Section.

Response:

The Department appreciates this comment and has amended the regulations as suggested to include providers that are Trustline registered prior to the time child care services are provided.

86. Comment:

4. 47-430 Retroactive Payments. Section .2 Retroactive Payment Limit (b). This Section says, "After (future date) clients may be entitled to receive retroactive payment..." With the use of the word "may" when will and when won't clients be entitled to retroactive payment? This section is open to interpretation and needs clarification.

Response:

The Department appreciates this comment and has replaced the word "may" with "shall" in reference to retroactive payments throughout the regulations.

87. Comment:

5. 47-430 Retroactive Payments Section .2 (d). This section and Section 47-620, .11 are inconsistent. Does the provider have seven days from the date child care services were requested or does the provider have seven days from the date child care services were requested and provided or does the provider have seven days from the date the child care services were provided? Please clarify.

Response:

The proposed regulations were amended to delete Section 47.430.2(d). Section 47-620.11 has been amended to clarify that a provider has seven calendar days from the date they receive the Trustline application package to submit a completed package to the California Resource and Referral agency.

88. Comment:

6. 47-602 Definitions, r. (1) Registered Trustline Provider. There seems to be a discrepancy between this regulation and the Health and Safety Code Section 1596.605. In Section 1596.605. (a) (1) of the Health & Safety Code it states, "The department shall establish a Trustline registry pursuant to this chapter and shall continuously update the registry information. Upon submission of the Trustline application and fingerprints or other identification documents pursuant to either subdivision (a) or (e) of Section 1596.603, the department shall enter into the Trustline registry the provider's name, identification card number, and an indicator that the provider has submitted an application and fingerprints or identification documentation. This provider shall be known as a "Trustline applicant." Regulation 47-602, r. (1) makes it sound like the applicant would only need to submit his/her fingerprints and have the background check completed in order to be registered when the applicant must also submit a completed application form. Please clarify this in the regulation.

Response:

The definition in 47-602(r)(1) was written pursuant to statute and requires more than fingerprinting and a background check.

89. Comment:

7. 47-620 Trustline Registry Application Requirements, .11. This section says "The provider shall submit a completed Trustline application package within seven calendar days from the date they began to provide child care services..." What are the consequences if they don't provide the application packages? Is the only consequence that their retroactive payments will begin only when they turn in the application package? Are there other consequences? Also, clarify that the application should be submitted to the local child care resource and referral agency.

Response:

Section 47-620.11 has been amended to clarify that a provider has seven calendar days from the date they receive the Trustline application package to submit a completed package to the California Resource and Referral agency. If the provider delays returning their completed Trustline package, it could limit the time for which they may receive retroactive payment as provided for in these regulations.

90. Comment:

8. 47-620 Trustline Registry Application Requirements, .11. This section goes on to provide an exception. It says "Providers in counties that have limited access to Live Scan fingerprinting will be given no more than seven additional calendar days to submit the completed Trustline application to the county or contractor." There are some counties in which applicants have good access to Live Scan fingerprinting in the urban areas but not good access in the rural areas. Recommendation: Add language like - "Providers in counties or sub-county areas that have limited access..."

Response:

The Department appreciates your comment, but will not be amending the regulations because the counties have the flexibility to administer their own Trustline application process allowing for no more than the additional 7 days to submit the completed Trustline application.

91. Comment:

9. 47-620 Trustline Registry Application Requirements, .11. This section goes on to provide an exception. It says "Providers in counties that have limited access to Live Scan fingerprinting will be given no more than seven additional calendar days to submit the completed Trustline application to the county or contractor ." Why is the Trustline application now being directed to the county or contractor instead of the local

child care resource and referral agency? Recommendation: Have the Trustline application returned to the local child care resource and referral agency.

Response:

Section 47-620.11 has been amended to clarify that a provider has to submit a completed package to the California Resource and Referral agency.

92. Comment:

10. 47-620 Trustline Registry Application Requirements, .43. The Community Care Licensing Division of the California Department of Social Services uses both the term "denied" and the term "revoked" to mean a Trustline registration that has been closed due to subsequent, disqualifying criminal or child abuse information being received. The current programming contained on the CBC computer system does not allow staff to select the "revoked" status for Trustline applicants. Therefore, the term "denied" will be used when informing local agencies that a previously registered Trustline applicant's cleared status is revoked. Therefore, both the status of "denied" as well as "revoked" should be included in Section .43 or a section should be added that includes the term "denied" as a possible status of an applicant whose application was initially approved and subsequently "denied" or "revoked."

Response:

The Department appreciates this comment and has amended the regulations to add the word "denied" in Section 47-620.43.

93. Comment:

11. 47-620 Trustline Registry Application Requirements, .5. This section says "Upon notification that a provider has subsequently been convicted of a crime as specified in subdivision (f)(1) of Section 1596.871 of the Health and Safety Code, the county shall, within two business days, cease payment." First, who is providing this notification - doesn't it need to be a reliable source? Second, how is the parent notified? Does s/he receive a notice of action? Having only two days notification prior to cease of payment doesn't provide the parent enough time to secure new child care arrangements and may impact his/her ability to retain his/her employment.

Response:

Section 47-620.6 specifies that the county or contractor will notify the client when the Trustline Registration application is denied, case file is closed, or registration is revoked. Current practice allows counties the flexibility in the manner of notification as long as it is immediate. The proposed regulations will not alter this current practice.

94. Comment:

12. 47-620 Trustline Registry Application Requirements, .6. In the title "Immediate Notification to the Recipient." Shouldn't it read "Immediate Notification to the Client"?

Response:

The Department appreciates this comment. The proposed regulations have been amended to replace the word "recipient" in this section, with the word "client."

Donna Sneeringer, California Child Care Resource and Referral Network, Sacramento, CA submitted the following oral testimony at the public hearing: (Comment 95)

95. Comment:

My name is Donna Sneeringer, I am the Public Affairs Manager at Child Action, Inc. in Sacramento County. We are the state funded childcare resource and referral program serving Sacramento.

I'm here today testifying on behalf of the California Childcare Resource and Referral Network. I currently serve as a member of the Public Policy Committee of their board.

The Childcare Resource and Referral Network in coordination with local R & R programs have administered the public's access to Trustline under contract with the State of California since 1992. We have an in-depth understanding of Trustline as well as personal contacts with thousands of parents, childcare providers, and local agencies each year who use the service.

Our comments to the proposed regulations reflect our experience and information we have about the operation of the registry. In California, both the California Department of Social Services and the Department of Education administer childcare subsidy programs. However, the regulations before us today only relate to childcare subsidies under CDSS.

It is important that there is consistency in the regulations that govern childcare subsidy programs administered both by CDSS and CDE so that all families are treated equitably and that local administration of subsidy dollars is done effectively and efficiently.

From the information we have obtained from representatives at CDE, while they intend to mirror the regulations proposed by CDSS, CDE is not allowed to provide retroactive payments of subsidy dollars. This is a serious inconsistency for parents, providers, and the program that administer subsidies.

The proposed regulations assume that the current system works efficiently and that the Trustline applications are processed in a timely manner. We are concerned that the Trustline process may exceed sixty days. There have been times in the last three years

that the California Department of Social Services has taken up to three months to enter the applications, which must be completed prior to a person being registered and being cleared.

It would not be fair to the childcare provider who has nothing disqualifying in their background and in good faith completed the application process as quickly as possible to lose money for services provided because the State of California was delayed in entering applications.

Also, it is unfair to the parent who is trying to comply with welfare-to-work requirements. The parent who is trying to get off welfare and trying to keep a job does not want to be sanctioned, and they may also suffer the consequences of a provider not being cleared for sixty days.

The Trustline Automated Application Process, TAAP, will greatly improve the efficiency of the Trustline process, however, the TAAP process is currently being piloted in Kern County only. There are plans to expand the pilot to San Bernardino County in December, but as of November 7th, they are experiencing computer related and training related challenges in implementing TAAP in Kern County. San Bernardino will be a more complicated county for TAAP implementation. Not only is it bigger geographically, but there are more agencies involved in administering the program.

It is unknown at this time how quickly a successful TAAP would be rolled into 25 counties and able to administer it. When TAAP is fully operational, there will be staffing deficiencies at CDSS. Until that time, CDSS will need to maintain or increase staff appropriately to meet the demands placed upon them with these regulations.

The network recommends a variety of things. First, prior to the implementation of the proposed regulations, assure that CDSS has staffing and resources and the computer capabilities to process all application within fourteen calendar days.

The Department of Social Service and the Department of Education must work together to develop regulations that will apply equally and consistently to all families receiving childcare subsidy vouchers prior to the implementation of new regulations for only segment of its population.

Increased resources to implement the TAAP process and/or provide a phase-in of these regulations by piloting them in counties where TAAP is operational, increase the resources and support in CDSS to expedite the Trustline process, extend the number of days retroactive payment is allowed, and place trigger language in the regulations that allows an extended number of days of retroactive payment to be allowed if and when CDSS has taken 35 days or more to enter the majority of Trustline application forms.

Allow payment programs, flexibility, and extending the sixty day limit on retroactive payment when documented delays are outside of the applicant's control and impact one

or more applicants. That would be if there is limited access to live scan or difficulty in weather conditions, particularly in rural counties.

Additionally, if the goal of these regulations is for the health and safety of all children, then all license exempt providers who receive childcare subsidy must be Trustlined, including grandparents, aunts, and uncles. It should be a universal process.

Thank you for the opportunity to respond to the proposed Trustline regulations. Our written testimony includes additional comments regarding technical recommendations to the proposed recommendations as well.

Response:

In response to public comment, the Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The additional number of retroactive days allowed, will prevent more providers from providing services without receiving a reimbursement.

The regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements.

The intent of these regulations is not to create a bifurcated child care system. Since the intent of the CalWORKs child care system is to be seamless, we would assume that CDE will adopt our regulations.

The following testifiers submitted oral testimony at the public hearing.

- Jennifer Fischer, California Alternative Payment Program Association, Sacramento, CA
- Maria Luz Torres, Parent Voices, San Francisco, CA
- Wendy Wayne, Bakersfield, CA
- Michael Hulsizer, Government Affairs Deputy, Kern County Superintendent of Schools, Sacramento, CA

Jennifer Fischer, California Alternative Payment Program Association, Sacramento, CA submitted the following oral testimony at the public hearing: (Comment 96)

96. Comment:

My name is Jennifer Fisher. I'm with the California Alternative Payment Program Association. First of all, I would like to emphasize that CAPP is very much committed to working to insure that each child is placed in a safe and nurturing environment while their parents are away at work.

CAPP has respectively submitted written comments to the department, but I am here today to talk about one issue that is important to us. Currently alternative payment programs are not set up to administer or track retroactive payments to a provider once a provider has been Trustline.

Current practice is that a family comes to Alternative Payment Program and wants care, they become eligible. They choose a provider, the provider turns in a Trustline application, the Alternative Payment Program immediately starts paying for care until they receive notice from the resource and referral agency that there may be something in that person's background that maybe they shouldn't be watching children, and then they immediately cut off payment. But currently, they do not track that until the parent is no longer eligible or the provider is no longer eligible to care for the child.

We also feel that the language in these regulations is silent on situations where a Trustline processing time line crosses over fiscal years. An example of this would be a provider turning in an application in June of one year, but not getting Trustline clearance until August of the next year and a new contract term. So, we think that needs to be resolved.

In closing, I would like to urge you to take a look at these issues before going forward with any regulations and also remind you that CAPP is not here today to be a roadblock, but rather a partner insuring the safety of children.

Response:

Existing statute requires that license-exempt child care providers who receive compensation for services provided for a California Work Opportunity and Responsibility to Kids (CalWORKs) client must be Trustline registered before payment commences. Therefore, providers that are required to be Trustline registered will not receive payment until they are Trustline registered. They can receive up to 120 days of retroactive payments once they become Trustline registered. The county of contractor will have to track the time period of retroactive payment in order to pay the provider for the child care services provided prior to registration.

The intent of the regulations is to increase the safety of children in subsidized child care. Situations where Trustline processing time crosses over fiscal years is not an issue in Stage One child care.

Maria Luz Torres, Parent Voices, San Francisco, CA submitted the following oral testimony at the public hearing: (Comment 97)

97. Comment:

Good morning. My name is Maria Luiz Torres, and I am a parent and the Organized Parent Voices for the San Francisco Chapter. When my daughter was eighteen months, for the six months she was -- that is when I started working. She was taken care of by a licensed exempt provider. I was working only half time at the time, and I was also not ready to part with her and put her in a big group.

I was a young parent and was not educated enough on my childcare choices, but even if I knew then what I know now, I would still have preferred for my baby to be cared for by someone I know and trust.

It is not (indiscernible) to put my daughter in the hands of strangers, but when my daughter was two, we finally -- I was ready to put her in the center. Furthermore, I didn't really have a choice with when I put her in a center because the waiting list for center was long. It just opened at the right time. So, I was fortunate that when I was ready to let my daughter go, I was able to put her in a child care center because a spot was available.

Then when my children were in kindergarten, we went back to licensed exempt because they have to be picked up at 1:30, and my obvious choice was someone can pick them up while I was at work so that I don't have to leave work.

The proposed legislation is communicated clearly, to protect our children. We cannot fault that. What is worrisome is that the unattended consequences to determine whether this regulation is fair and just, we have to look at the effects on the children and the families it purports to protect. It is not enough that the proponents say so, it must be so.

The regulation proposes that we hold payment until provider clears the Trustline process. That sounds reasonable. What is not reasonable is that even after the presumption of guilt is lifted, the regulation limits payments up to sixty days, which is even worse than six months.

Families are asked to bear the brunt of the flaw in the system. I've known cases where the Trustline didn't clear for six months, sometimes even more. The delay is beyond the provider's control, the delay is beyond the parent's control.

To limit reimbursement to sixty days is pushing the presumption of guilt a bit too far. Instead of sending out a message to the parents that we do not trust their choice, we should educate them to make them the best choice for their children. Instead of being punitive, policies should support families in finding the best care for their children.

Granted there are extreme cases. We could prevent this at intake by supporting the agencies working with the families. Provide training to the providers so they could improve their care until the Trustline process is expedited to no more than sixty days you have to pay childcare that has been provided that is just and fair.

You want to protect children, let's do it the right way by not making a bad situation worse. We should inform the parents, and, in fact, the general public, about Trustline. About a few weeks ago or a few days ago, there was an article that maligned Trustline and said it is a \$2 billion dollar industry, which is not true.

When ill-informed news coverage maligns Trustline, it maligns the very system that is assigned to protect children, a system that should have a chilling effect on disqualified individuals if the parents are told that if their provider is disqualified, then they will not be paid.

Parents should be informed what it means. When we malign the entire childcare system, the field of early education -- I mean in the public's eyes, the drama catches on, and public attention is put on this and not the real issue that needs to be solved.

The state and the system that processes Trustline should be accountable and do better by our children. In the guise of protecting our children, we cannot squeeze them out of much needed resources to enable to make a decent living to allow their parents to go to work. So, I think that it is unfair if we only say, oh, we'll only pay sixty days when, in fact, the process takes longer than that. I also identified with the issue that CAPPA brought up that sometimes it may even cross fiscal years.

I will be sending testimony from two parents later today. They called me at 10:00 last night, and they couldn't be here because they have a class and another has an appointment. These parents name is Amy Lee. She has two children and when her baby was younger, the other one was going to preschool, and she had to take away her son from preschool because she couldn't be dropping them off in two places at the same time. Also sometimes she will be called like at the swing shift because she works during those odd hours, and so licensed exempt care is her only choice, and her neighbor provides the care for her. She was telling me that she has to go over it again. She couldn't even afford to pay up front, and so she won't be able to go to work. That is just a big issue for many of these families.

I asked our host agency at the San Francisco Children's Council to find out how many are non-relative providers, and it is about only 20 percent of Trustline families. So, I think in our effort to cut some few bad apples, we shouldn't turn over the whole apple cart and harm any of the children. I think the intent of the proposed regulations is good, but the consequences, we should really look at how it is going to effect families. Thank you.

Response:

In response to public comment, the Department is amending the proposed regulations to allow 120 days of retroactive payment for providers that achieve Trustline registration. The additional number of retroactive days allowed, will prevent more providers from providing services without receiving a reimbursement.

The regulations do not limit a client's parental choice. Clients may still choose from licensed child care providers, Trustline exempt child care providers, or a different Trustline registered child care provider.

Client's that cannot find suitable child care are eligible for good cause and would not be sanctioned as specified in MPP Section 42-713.23.

Wendy Wayne, Bakersfield, CA submitted the following oral testimony at the public hearing: (Comment 98)

98. Comment:

My name is Wendy Wayne, and I have spent twenty years in public health and maternal child health and the last 22 years in the field of early care and education. So, I am very concerned about the welfare of young children in our communities.

The last two years I've spent statewide consulting on early care and education and prior to that, I administered programs including CalWORKs and Alternative Payment and had an opportunity to be up close and personal with Trustline. I have to say that there were many nights that I went to sleep really worried about the safety of children that we were processing in our county, that they would be hurt in some way and that we were paying for childcare for exempt providers who either self-disclosed or who had records that were eventually revealed.

One staff member that I worked with who has been in early childcare for 30 years said to me for the state to put an agency in this position, putting children in dangerous situations, is just wrong. I want to put a face on some of the issues that kept me up at night as I prepared to support the regulations that you have right now.

We had a female who was arrested on three occasions for assault, battery, and assault again within a two year period. She was paid for six months to the tune of over \$7,000 and denied after those six months.

We had a man who was arrested for felony battery, convicted of misdemeanor vandalism who was paid \$2,159.00 for a four month period before he was denied.

We had a female arrested for battery. She was paid as a relative for three years, and then she came in to take care of a non-relative, and we became aware of her criminal

history after she was Trustlined. She was paid over \$5,000 for the eight months before she was denied.

We had a grandmother who had been taking care of her grandchildren, and of course was not Trustlined, she came in to care for a non-relative when we found out that she had felony child endangerment charges. Her six month old grandchild was hospitalized for eating PCP that was left on her floor. She was printed and then denied.

Then we had a man that came in May who had been out of prison only since December. He broke into a house and pointed a gun at a mother and her children who was just trying to steal her car, and he had been living with the mother and there were no problems. Now he is caring for the children, and we are paying for it. That was until he was denied.

I think that most situations where families have a person who is Trustlined, end up being positive experiences, and I don't believe any parent wakes up with the intent of hurting their child. However, poor choices are made, and I don't believe that our state or county or any agency should be put in the position of paying for poor choices that eventually put our children in harm's way.

As an individual who has spent my career in health and in early childhood education, to support the healthy development of young children who are our future, I implore you to support these regulations, that we do not pay for childcare until after prints have been cleared.

Response:

The Department appreciates these comments and thanks you for your support of the proposed regulations.

Michael Hulsizer, Government Affairs Deputy, Kern County Superintendent of Schools, Sacramento, CA submitted the following oral testimony at the public hearing: (Comment 99)

99. Comment:

It is Michael Hulsizer, I am the Deputy for Government Affairs for the Kern County Superintendent of School's Office. I think the case has already been made in a pretty compelling way for the need to protect children and to frankly create a very clear fence around payment to childcare applicants prior to being cleared through a criminal background check.

What I really want to do here in closing is speak to the questions and concerns that have been raised about the ability or even legality of the current system to process retro

active payments and to also clear and to actually implement these regulations in the time frames that have been laid out in the proposed regs.

As to the legality, the question of the Department of Ed. being unable to process checks, first of all, I would note that the Department of Ed. is not here today. These have just been statements made in regards -- supposed statements made by the department, but I do know for a fact that the Department of Ed. already processes over a billion dollars of payments to schools retro actively between fiscal years. This was done four years ago, and the practice continues today that schools are paid retro actively in arrears. This is not a constitutional problem, there's not a legal problem with that. I don't see why that couldn't be done in this program as well.

To the question of whether these regulations can be implemented in the time frames laid out, opponents to the regulations have cited delays in excess of sixty days to processing criminal background checks. Some have cited that the average completion time for applicants to appeal an initial exemption is 67 days.

What I would argue first of all is that there are basic facts from the Department of Social Services that would lead us to believe that the system currently is already very capable of processing criminal background checks in a timely manner. We know for a fact based on the last reported year, over 86 percent of all Trustline applicants who are approved are approved within five days once the application is submitted. Ninety percent are approved within 30 days.

What we know under the current system is that the regulations allow a 28-day gap between the time a provider can be paid before they are cleared, before they even submit an application. We also know that there is no enforcement for applicants who don't even comply with that 28-day. This is one of the reasons why in the total why the statistics for completion of criminal background checks don't look good.

The reality is the current regulations don't have any incentive in place to insure that this process is done in a timely fashion. The new regulations will require applications in seven days, but more importantly, the new regulations provide a great incentive for people that once their criminal background checks have been approved, they will be paid retroactively. We just don't think there is any evidence that the overwhelming majority of people who have no criminal background will not be cleared well within 60 days. The reality is for the people who aren't cleared within 60 days, the evidence is clear that these were people with criminal backgrounds. They shouldn't be cleared, they will never be cleared.

Again, we thank the governor, we thank the Department of Social Services for moving forward with these proposed regs. We think they are long overdue, and we look forward to implementing them.

Response:

The Department appreciates these comments and thanks you for your support of the proposed regulations.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from August 7 through 22, 2007 was received from the following:

- Patty Siegel, Executive Director and Cindy Mall, Senior Program Manager - Trustline, California Child Care Resource & Referral Network, San Francisco, CA
- Jason Holthe, Child Care Coordinator, San Francisco Human Services Agency, San Francisco, CA
- Nancy Diaz, Chief, County of Los Angeles - Department of Public Social Services, Intergovernmental & Interagency Relations Division, City of Industry, CA
- Eve R. Hershkopf, Senior Staff Attorney, Child Care Law Center, San Francisco, CA
- Dora Luna, Attorney at Law and Mike Herald, Legislative Advocate, Western Center on Law and Poverty, Los Angeles, CA
- Frank J. Mecca, Executive Director, County Welfare Directors Association of California, Sacramento, CA
- Adela Arellano, Child Care Alliance of Los Angeles, Los Angeles, CA
- Theresa Corrigan, Director of Client Services, Child Action, Inc., Sacramento, CA
- Denyne M. Kowalewski, Executive Director, California Alternative Payment Program Association (CAPPA), Sacramento, CA

The comments received and the Department's responses to those comments follow.

Patty Siegel, Executive Director and Cindy Mall, Senior Program Manager - Trustline, California Child Care Resource & Referral Network submitted the following comments: (Comments 1 - 6)

1. Comment:

**Inconsistency of Procedures Between CDSS and CDE**

**Challenge – CDSS Allows Retroactive Payment of 120 Days, CDE Does Not Allow Retroactive Payment:** In California, both the California Department of Social Services (CDSS) and the California Department of Education (CDE) administer child care subsidy programs. It is important that there is consistency in the regulations that govern the child care subsidy programs administered by both CDSS and CDE so that all families are treated equally and that the local administration of subsidy dollars is done effectively and efficiently. From the information we have obtained from representatives at CDE, that department is not allowed to provide retroactive payments of subsidy dollars.

**Recommendation:** The Network recommends that both CDSS and CDE work together to develop regulations that will apply equally and consistently to all families receiving subsidy child care vouchers prior to any regulations being implemented for only one segment of this population.

Response:

The Department appreciates your comments. The intent of these regulations is not to create a bifurcated child care system but rather to ensure child care services are available seamlessly to the family transitioning through the stages. CDSS will continue to work closely with CDE to address seam issues.

2. Comment:

**Implementation of Regulations**

**47-620 – Eligible Providers, Section .14:** The Network supports Section 47-620 .14 Paragraph 2 that allows TrustLine applicants who have initiated the TrustLine background check process prior to the implementation of these regulations to continue to receive child care payments.

Response:

Thank you, the Department appreciates your comment and your support.

3. Comment:

**Payment of Providers - Retroactive Payment Changed from 60 to 120 Days**

**47-301 Administration of Child Care Services, Section .22 (b) Informing Notice:** With approximately 77% of applicants being registered (cleared) on TrustLine who have nothing disqualifying in their background, the Network strongly believes that delays caused by the administration of the TrustLine application process should not be balanced on the backs of parents trying to meet their work requirements or on low-income child care providers. Although allowing retroactive payment for up to 120 days is a much more reasonable timeframe than allowing 60 days for retroactive payment, we still believe that parental choice will be limited to those low income parents and providers who are not able to front the money for child care payments if the TrustLine clearance process is delayed for more than 30 days.

**Recommendation:** Minimize Delays at CDSS – Community Care Licensing in the Caregiver Background Check Bureau. To ensure that the TrustLine application process works efficiently and 75-80% of the TrustLine applicants are registered on TrustLine in 30 days the following must occur:

1. The California Department of Social Services, Caregiver Background Check Bureau must have the appropriate resources and be staffed sufficiently to make sure that from the time CDSS receives the TrustLine application form

until it is entered on the Caregiver Background Check (CBC) computer system, no more than 10 business days elapses.

2. The TrustLine program's computer-related automation and programming needs must be met promptly by the California Department of Social Services, Information Services Division (ISD). Either the TrustLine computer programming work must be the top priority within the Department for ISD or there needs to be increased staffing to meet the TrustLine program's computer-related needs. These proposed regulations are built upon the assumption that the TrustLine application process operates efficiently and effectively. To create the most efficient TrustLine system at CDSS, the automation demands of TARP, the computer program improvements needed for CDSS staff using the CBC system, and the ability of CDSS to provide enhanced data to their contractor, the CA Child Care R&R Network, requires dedicated assistance from ISD.
3. Implementation of the TrustLine Automated Application Process (TARP). The TrustLine Automated Application Process will reduce the turn-around time for applicants who are registered on TrustLine. The TARP process has been implemented in Kern, San Bernardino and San Diego counties. There are plans to implement TARP in all of the remaining 22 eligible counties by June 30, 2008. When TARP is fully and successfully implemented, it is anticipated that there will be staffing efficiencies at CDSS. Until that time, however, CDSS will need to maintain or increase staff appropriately to meet the demands placed upon them with these regulations to ensure that application processing at CDSS occurs within 10 business days.

Response:

The Department appreciates your comment but will not be amending the regulations as suggested. The Department monitors its workload and computer capabilities on an ongoing basis. As work volume increases or significant programmatic changes occur affecting the work, appropriate resources will be requested to ensure timely processing within statutory requirements.

4. Comment:

**Submission of TrustLine Package and Health and Safety Certificate – Seven Days or As Soon as Possible**

**47-301 Administration of Child Care Services, Section .22 c and .22 c (1) Informing Notice Content:** The new language in section .22 c (1) states that the TrustLine package and the Health and Safety Certificate should be submitted as soon as possible. The language in .22 c, Section 47.620 .11 and in Section 47-630 .1, states that the TrustLine package and Health and Safety certification information must be submitted in seven calendar days. Which is it – as soon as possible or seven calendar days? Also, what is the consequence if license-exempt child care providers do not submit their paperwork in seven calendar days? If there is no consequence for not

submitting their paperwork in seven calendar days, then why include that information in regulations?

Response:

Thank you for your comment; however the CDSS will not be amending the proposed regulations. The timeframe to return the completed package is intended to encourage providers to begin their Trustline application process as soon as possible in order to facilitate timely clearance and payment. CDSS does not intend to impose any regulations on providers who do not submit their applications in the proposed time frames.

5. Comment:

**R&R's Receipt of Completed Application Package**

**47-620 TrustLine Registry Application Requirements Section .11:** This language directs the provider to submit the completed TrustLine application package to the Child Care Resource and Referral Agency. Technically, there are no child care resource and referral agencies. Child care resource and referral programs are one category of programs that the California Department of Education funds. With our organization's name as California Child Care Resource and Referral Network, by using capital letters to designate the "R&R" program, the Network is concerned that there would be confusion as to where the application should be submitted.

**Recommendation:** Change the language from "...to the California Child Care Resource and Referral Agency (R&R) for processing" to "to the local child care resource and referral program (R&R) for processing."

Response:

The Department appreciates your comment and, for clarity, has amended the regulations as suggested.

6. Comment:

**47-602 Definitions, Section r. (1) Registered TrustLine Child Care Provider:** Although this Section was not revised, it is still incorrect. The way in which the language was excerpted from statute makes it sound as if all applicants who are not denied are registered – which is not accurate. This Section should be revised to match statute 1596.605. (b) (1) of the Health & Safety Code.

Response:

The Department appreciates your comment but will not be amending the regulations as suggested. The definition in Section 47-602(r)(1) was written pursuant to Health and Safety Code 1596.607 and requires more than fingerprinting and a background check.

Jason Holthe, Child Care Coordinator, San Francisco Human Services Agency submitted the following comments: (Comments 7 - 10)

7. Comment:

**Comments Regarding Registration Payment Criteria**

*Section 47-260.1.14 stating, "A license-exempt provider required to be a registered Trustline child care provider shall not receive a subsidized payment unless Trustline registration has occurred"*

*Section 47-301.2.22(a) stating, "Counties or contracted payment agencies shall not be permitted to begin payments until the license-exempt provider is a registered Trustline child care provider"*

*Section 57-620.2 stating, "The County or contracted payment agency shall issue child care payments only after the license-exempt provider has become a registered Trustline child care provider"*

If the aforementioned proposed Trustline regulatory language goes into effect many families seeking license-exempt care will be faced with the prospects of having to cover child care costs out-of-pocket until their provider clears Trustline, which often exceeds three months time. This creates hardship and is an impossibility for families on public assistance and would further impoverish them.

Families on public assistance cannot cover the costs of their child care. These changes to Trustline will force many license-exempt providers to either deny care or work unpaid until a clearance is obtained. Families, unable to pay or find a provider who will forgo payment for months, face dwindling child care options and the possibility of having to choose a program ill-suited for their particular situation. This creates undue hardship for families already struggling to stabilize their situation. Additionally, these regulatory proposals seem to conflict with Federal regulations prohibiting State regulation that would minimize parental access to child care (See ORD #0906-07 Final Statement of Reasons, page 53, (B)).

While we understand the need to protect children from providers who have a criminal history preventing or delaying families from obtaining license-exempt care exacerbates an already precarious situation for families receiving public assistance who are seeking permanent employment and/or housing.

**Recommendation**

If, in fact, these regulations take effect we strongly recommend that CDSS work to mitigate the impact of delaying payment to license-exempt providers by minimizing delays and decreasing the Trustline application processing time. Also, CDSS could allow license-exempt providers to be paid after first receiving clearance through the California Law Enforcement Telecommunication System (CLETS), which takes significantly less time to process than Trustline. Most welfare departments currently use CLETS within their child welfare services. License-exempt providers who pass with no criminal history could be paid for services immediately. Thus parents choosing these providers will not be penalized by the long delay in the State Trustline process. If the provider ultimately did fail their Trustline application payment would discontinue.

Response:

Please see the response for comment number f) 52.

8. Comment:

**Comments Regarding Retroactive Payment**

While placing any limits on retroactive payments seems punitive to license-exempt providers whose Trustline application, through no fault of their own, takes longer than 120 days to process, we support the proposed extension of retro-active payments from 60 to 120 calendar days cited in Sections 47-301.2.22(b), 47-430.2 (b), 47-620.1.111, and 47-620.3.31.

Although, in each of these sections it proposes that the provider “*shall receive retroactive payment for up to the first 120 calendar days from the date child care services were requested and services provided.*” This seems to contradict CDSS regulation 47-301.2.22(d) stating the provider not be paid “*more than 30 calendar days prior to the client’s request for child care.*” It is confusing that these two regulations appear to use the same point (when client requests child care) at which retroactive payment may begin.

**Recommendation**

CDSS should draft clear language stating license-exempt providers can be paid retroactively up to 120 calendar days from the date of Trustline clearance plus an additional 30 calendar days prior to client’s request for child care. This would allow for a maximum of 150 calendar days of retroactive payment.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. New license-exempt providers who are required to be, but not yet, Trustline-registered are eligible for the 120 day retroactive payment rule. The 30 day rule applies to providers who are already eligible to be reimbursed.

9. Comment:

**Comments Regarding Pending Applications**

*Section 47-260.1.14 stating, “A license exempt provider who has a Trustline application pending on the date that these regulations become effective, may continue to receive a subsidized payment for providing child care services until such time as their Trustline application is denied or their Trustline case is file is closed.”*

We support the proposed regulations “grandfathering” in applicants in process with Trustline at the time these new regulations are implemented.

**Response:**

Thank you, the Department appreciates your comment and your support.

10. **Comment:**

**Comments Regarding Exemptions**

*Section 47-260.2.21 stating “The following are exempt from Trustline: Aunts, uncles, grandparents of the child(ren) in care, by blood, marriage or court decree.”*

We do not support the proposed regulations in this section, which eliminate the Trustline exemption for great grandparents, great aunts, and great uncles. The reasons are unclear and appear arbitrary as to why removal of these particular exemptions is necessary.

**Response:**

Current statute does not exempt greats from having to complete Trustline registration. The proposed regulations will allow great-grandparents, great-aunts and great-uncles who are already providing child care to be grandfathered in. This will ensure that current services being provided are not interrupted.

Nancy Diaz, Chief, County of Los Angeles - Department of Public Social Services, Intergovernmental & Interagency Relations Division submitted the following comments: (Comments 11 - 15)

11a. **Comment:**

**GENERAL COMMENTS**

1. The proposed regulations will require license-exempt providers who are not exempt from the Trustline process to be registered Trustline child care providers before receiving subsidized child care payments. Additionally, individuals who were previously exempt from Trustline, i.e., great-grandparents/aunts/uncles would now be required to be Trustline-registered. Since many (about 70%) of Los Angeles County's CalWORKs participants use license-exempt child care

providers of whom many are Trustline-exempt under the current regulations, this new requirement could have the following local and State negative impacts:

- Access to child care may become more limited;
- The client's right to parental choice would be limited;
- Delaying payment until the provider is a registered Trustline child care provider may create barriers to welfare-to-work (WtW) participation due to the lack of availability for immediate, paid child care of choice; and
- Clients may be unable to find suitable child care and be subject to sanctions for failure to participate in mandatory WtW activities, which would also negatively impact work participation rates.

At minimum, we recommend grandfathering-in existing great-grandparents, great-aunts and great-uncles who are providing child care services when the new regulations become effective to minimize the impact the changes will have on current cases.

Response:

The Department appreciates this comment and did amend the proposed regulations as suggested to grandfather greats providing services when the regulations become effective.

11b. Comment:

2. We are opposed to the 120 day retroactive payment rule. We recommend payment of child care back to the date the provider began providing care or the date of the child care request, whichever is later, once a provider who is required to be Trustline-registered is cleared and registered with Trustline.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. CDSS believes that the majority of providers that are required to become Trustline registered will be able to do so in the time frames proposed by the regulations. The process has many important players outside the authority of CDSS that contribute to successful Trustline registration. The 120 days will support our goals of increasing the health and safety of children in subsidized child care and completing the background clearance process as quickly as possible.

Also, all provisions must be met; the child care must have been requested, the provider must be Trustline registered and the services must have been provided. In the event that the dates differ, we agree with you that the commencement date is the latter of the

dates and we would further clarify that the services must have been provided within the 120 day retroactive period.

12a. Comment:

### **RETROACTIVE PAYMENTS**

1. Regulation 47-301.22(b), Informing Notice Content: *"...and is granted Trustline registration shall receive retroactive payment for up to the first 120 calendar days from the date child care services were requested and services were provided;"* **and** Regulation 47-430.2 Retroactive Payments: Throughout the section

- For clarity, we recommend that the phrase "**and is granted** Trustline registration" in the above referenced citation is changed to say "and whose Trustline registration is completed..."
- The use of the word "retroactive" in reference to both the 120 day rule for license-exempt child care providers required to be Trustlined and the 30 day rule for child care providers that provide care prior to the client's request for child care is confusing. We suggest that the word "retroactive" only apply to the 30 day rule that allows payment for child care provided up to 30 days prior to the date of the participant's request for child care.

Since the 120 day rule for license-exempt child care providers required to be Trustlined allows for payment from the date of child care request for up to 120 days, we recommend that the term "delayed payment" or another appropriate term be used and substituted for "retroactive payment" to address this situation.

Response:

Regarding the comment about changing the phrase "and is granted," the Department is not amending the regulations as suggested. The term "and is granted" is a common term used throughout the regulations and it means that a provider becomes Trustline-registered.

In reference to your comment about the term "retroactive," the Department is not amending the regulations as suggested. In the context of the proposed regulations, the term "retroactive" is used to mean that providers, upon Trustline registration, can be paid for services provided from the date their application is received. The term "delayed payment" would indicate that the provider was receiving a late payment.

12b. Comment:

2. Regulation 47-430.21(a), *Licensed, ~~or~~ Trustline-Exempt Providers, or Existing Trustline-Registered Providers*

According to our interpretation of the proposed regulation changes, it appears that new license-exempt providers who are required to be Trustline-registered and who fall under the new 120 day rule, may not be eligible for the 30 day retroactive payment. However, it is unclear if this interpretation is correct. Please clearly address this issue in the regulations by definitively clarifying if newly Trustline-registered providers, such as those who qualify under the 120 day rule, would also be eligible to receive payment for services provided for up to 30 days prior to the date the client requests child care.

Response:

Please refer to the response for comment number eight.

13. Comment:

**CHILD CARE PAYMENTS TO PROVIDER OR CLIENT**

Regulation 47-430.2(b), Retroactive Payment Limit: *"The retroactive payments **may** **shall** be made by the county or the contracted payment agency to **either** the client, as the **provider's** employer, if care is provided in the home of the client, **or** the **provider,...**"* and Regulation 47-620.31, Provider Reimbursement Limit, County Responsibility: *"...Child care payments may be made directly to the client, as the employer, if child care is provided in the home of the client."*

These regulations appear to be in conflict because Regulation 47-620.31 does not address care provided in the provider's home. Additionally, we recommend that both regulations are changed to require payment directly to the provider on behalf of the client, unless the client has paid the provider directly and can provide supporting documentation as proof.

Response:

The MPP sections referenced in this comment are consistent. If your comment refers to MPP Section 47-430.2(b), counties or contracted agencies shall pay either the provider or the client. If the payment goes to the client it is because the client is the provider's employer and the provider is providing child care services within the home of the client. Again, in MPP Section 47-620.31 the counties or the contracted agencies shall pay the provider and it further states that they may pay the client if the client is the provider's employer and the provider is providing child care services within the home of the client. There is still a choice that the counties may make as to whom they pay.

14. Comment:

**TRUSTLINE REGISTRY APPLICATION REQUIREMENTS**

Regulation 47-620.11, R&R's Receipt of Completed Application Package: *"The provider ~~has no more than 28 calendar days from the first day that CalWORKs child care services began in which to return the completed application package~~ shall submit a completed Trustline application package within seven calendar days from the date they began to provide child care services to the California Child Care Resource and Referral Agency (R&R) for processing.*

While this regulation shortens the time period from 28 days to seven days, the regulations do not address what happens if the completed Trustline application package is not provided within the specified timeframe. Please clarify.

Response:

Please refer to the response for comment number four.

15. Comment:

**PROCESSING TIME FOR CHILD CARE REQUESTS**

Existing Regulation 47-120.31, Processing Time Frame, provides for denial of child care requests "if the county has not received the required information from the client and/or the child care provider within 30 calendar days..."

It is unclear how this processing time frame will coordinate with the proposed Trustline regulations that seem to indicate the Trustline registration process could take up to or more than 120 calendar days. Will counties be required to hold and track cases indefinitely until the Trustline application results in registration or denial? If so, the "Processing Time Frame" regulation should be revised accordingly to include this possibility. Additionally, if counties must hold child care cases for four or more months before they can take appropriate action to approve/authorize or deny child care, this provision would create a significant administrative burden and likely additional cost to counties.

Response:

The Department appreciates your comments. Yes, counties will have to track payments for the retroactive period and they will have flexibility as to how they would like to set up tracking procedures.

Eve R. Hershcopf, Senior Staff Attorney, Child Care Law Center submitted the following comments: (Comments 16 - 35)

16. Comment:

**A. The proposed regulations fail to consider three viable alternative approaches to Trustline registration and payments to providers.**

In the Statement of Alternatives Considered, CDSS lists three alternatives: 1. maintain the current practice and allow payments for up to 28 days prior to submitting the Trustline application; 2. disallow payment, including retroactive payment, to Trustline providers for any period of care occurring before they become registered; 3. conduct a brief preliminary background check using CLETS or CACI. CDSS rejected these alternatives but proposed to adopt a version of the second alternative which allows for retroactive payments.

CDSS failed to consider three other viable alternatives: 1. maintain the current practice of payment from the date care is first requested and provided, but shorten the time frame for submitting the Trustline application, as in the proposed regulations, and shorten the timeframe for processing the applications; 2. adopt the balanced registration and payment approach incorporated in AB 1601 (passed by the legislature in 2006) which authorized payment from the date care was first requested and provided, but then suspended payment until the Trustline registration process was completed if there was an indication the provider had a criminal conviction; 3. take action (as detailed in the Child Care Resource & Referral Network's comments) to invest significant resources in the Caregiver Background Check Bureau so that delays can be minimized across the board; ensure that the Trustline registration process is completed for every eligible provider within 30 days or less. Any of these three alternatives, or a combination of them, would be far preferable to the proposed regulations. These alternatives approaches are permissible under the Health and Safety Code, and would result in safe child care settings for children, genuine parental choice, and a greater likelihood that CDSS will be able to meet the new federal Work Participation Rate.

Response:

Please refer to the response for comment number f) 23.

17. Comment:

**B. The proposed regulations undermine families' ability to maintain their children in safe care arrangements.**

CCLC and many other advocates expressed concern about the impact of the proposed regulation changes on CalWORKs families. In response, CDSS stated that "the priority of these regulation changes is to increase the safety of children in subsidized

care.” CDSS’s position rests on faulty assumptions, and will result in a decrease in safety for children of CalWORKs clients.

CDSS has both the authority and the ability to ensure that every CalWORKs family has appropriate, safe child care in place before the parent(s) are required to engage in even the initial steps of Orientation, Assessment and Appraisal, much less Welfare to Work (WtW) activities and employment. CDSS can dictate that no CalWORKs parent may engage in an activity until they have demonstrated that their children are in a “safe” child care setting. But CDSS has not taken this position; rather, it is making every effort to engage CalWORKs parents in WtW activities as quickly as possible in order to meet the increased federal Work Participation Rate. CDSS is not placing a priority on the safety of children. Because of concern about payments to a few providers who are ultimately determined to be ineligible, CDSS is placing a priority on withholding public funds, at least initially, from every provider who must be registered with Trustline, the providers CalWORKs parents are most likely to choose.

The decision by CDSS to prohibit payment to license-exempt providers until Trustline registration is completed is a de facto determination that non-Trustlined care is not an appropriate form of care. CDSS and the County Welfare Departments (CWDs) cannot require parents to engage in work and work activities unless they ensure that every family has been able to exercise parental choice and has appropriate, safe child care in place for each child. Otherwise, CDSS must instruct the CWDs to provide parents with good cause exemptions due to lack of appropriate child care. CDSS should also revise the regulations to stop the running of the parents’ 60 month time limit on assistance until the family has been successful in locating appropriate care.

As noted in our original comments, the initial withholding of payment until the provider is Trustline registered will not increase children’s safety because these changes will undermine the efforts of many CalWORKs families to find and maintain appropriate care arrangements for their children. This is particularly true because CalWORKs parents often work non-traditional hours and rotating shifts, and must deal with geographic isolation, transportation limitations, language barriers, and the special needs of their children with disabilities and medical problems.

CDSS incorrectly assumes that the withholding of funds from license-exempt child care providers will lead CalWORKs parents to instead select “licensed child care providers, Trustline-exempt child care providers, or a Trustline registered child care provider.” That is unlikely in the vast majority of cases. Most CalWORKs parents, under enormous pressure from CDSS and CWDs to quickly engage in WtW activities, will necessarily continue to select license-exempt providers who have not already undergone Trustline registration for reasons discussed more fully in section C, below. Otherwise, these parents will be forced to rely on far less safe alternatives – leaving children home alone or with a slightly older sibling in charge, or taking children to their work sites and leaving them sleeping in the car. Some CalWORKs clients will simply give up on trying to transition from welfare to work and their families will slip deeper and deeper into poverty which indisputably increases threats to the health and safety of their children.

Response:

Please refer to the response for comment number f) 51.

18. Comment:

**C. The proposed changes to the Trustline regulations impose significant impermissible limitations on parental choice; appropriate alternatives to license-exempt care unavailable for many CalWORKs families.**

Without reiterating our original comments (which we incorporate by reference), we note that CDSS's response does not rebut the argument that the proposed regulations restrict parental choice so significantly that they may be impermissible under the federal Child Care and Development Fund regulations, as well as State law. While it is true that CCDF regulations provide states with flexibility in designing their child care programs and policies, this flexibility must be exercised within the parameters set forth in the federal regulations. Section 98.30(f) of the CCDF regulations is clear that, "CCDF funds will not be available to a [state] if State or local rules, procedures or other requirements ... significantly restrict parental choice by:

- (1) Expressly or effectively excluding:
  - (i) Any category of care or type of provider, as defined in Sec. 98.2; or
  - (ii) Any type of provider within a category of care; or
- (2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in Sec. 98.2; or
- (3) Excluding a significant number of providers in any category of care or of any type as defined in Sec. 98.2."

CDSS's response states that "the regulations do not limit a client's parental choice" yet by restricting payments to license-exempt providers the regulations will, in fact, have "the effect of limiting parental access to or choice from among" the most common type of provider, license-exempt providers required to undergo Trustline registration.

The CDSS response asserts that parents "may have to make other choices in selecting providers." CDSS notes that parents still have a "choice" among licensed child care providers, Trustline-exempt providers, or a license-exempt provider who has already completed Trustline registration. First, it should be noted that a licensed provider, and a Trustline-exempt provider are different categories or types of providers than a provider who is required to undergo Trustline registration. While CalWORKs parents may choose these other types of providers, the CCDF regulations provide protections for parents to choose from among all different categories of care and types of providers. There are compelling practical reasons why many CalWORKs clients will be unable to select other types of providers, and why these parents must have the

option of selecting a license-exempt provider who is paid while undergoing Trustline registration.

CalWORKs parents, by definition, have extremely limited resources and face a difficult balancing act between CalWORKs requirements and their child care needs. CalWORKs clients have four major child care needs: 1. they must find care quickly so they can begin to engage in approved activities; 2. the child care must be extraordinarily flexible to accommodate the frequent changes in their schedules; 3. the child care must be geographically accessible, due to their significant transportation limitations, and 4. the parent must trust the child care provider in order to be comfortable placing the child in care; often this means both language and cultural compatibility. These factors necessarily lead many CalWORKs parents to select family, friend and neighbor care.

Licensed providers are rarely able to offer the enormous flexibility essential for parents as they navigate CalWORKs requirements. Also, there are generally far fewer licensed providers in the low income urban and rural communities in which most CalWORKs parents reside and work; thus, licensed providers are often not geographically accessible for CalWORKs families and are effectively “unavailable.”

With the proposed changes to the regulations, only grandparents, aunts and uncles will qualify as Trustline-exempt providers. If a CalWORKs parent does not have one of these very close relatives available to provide care, then a Trustline-exempt provider is simply not an option. A great-grandparent, cousin, niece, older sibling, godparent, friend, or a neighbor – none of these familiar people qualify as Trustline-exempt. For a significant proportion of CalWORKs families, the Trustline-exempt provider category is simply unavailable.

The third alternative proposed by CDSS is a provider who has already undergone Trustline registration. Again, this suggestion flies in the face of reality for many CalWORKs families. Most license-exempt providers agree to provide care for a particular CalWORKs family because of their relationship with that family. They are not in the “business” of child care, and have no reason to undergo Trustline registration until asked by a friend, neighbor, or family member to take on the responsibility of providing care for their child. Unlike licensed providers, there are no lists of “already Trustlined” providers. Although the “option” of selecting such a provider sounds good on paper, in reality, most CalWORKs families will not know and will have no easy way to find a provider who has already cleared Trustline. Perhaps more importantly, CDSS suggests this option as if license-exempt providers are completely interchangeable. All a CalWORKs family has to do is find someone, anyone who is already registered with Trustline and, voila, their child care problem is solved. The reality is that parents choose a family member, a friend, or a neighbor not because that person has cleared Trustline but because of their relationship, and their comfort in entrusting their child’s care to someone who is known to them, who speaks their language and shares their cultural background and values.

In response to concerns raised by commentators, CDSS amended the proposed regulations to require counties to pay providers retroactively rather than giving counties discretion. The amendments also expand the amount of time for which providers can be paid retroactively from 60 days to 120 days. The proposed regulations have also been amended to delete any language that would require clients to pay out-of-pocket for child care. We welcome these improvements to the regulations but they are insufficient to address the crux of the problem: that by prohibiting payments to providers who are undergoing the Trustline registration process, CDSS is effectively making this type of care “unavailable” for many CalWORKs clients.

The extension of the period for retroactive payment is of little benefit to most parents and their license-exempt providers. Once CalWORKs families find a familiar person willing to provide child care, most do not have the resources to pay for child care out-of-pocket while their providers undergo Trustline registration. Often, their family members, friends and neighbors cannot afford to wait 60, 90 or 120 days to be paid for their work. It is simply unrealistic and unfair to expect CalWORKs parents to convince a friend or neighbor to provide child care without receiving payment for up to four months. If the delay in Trustline registration takes even longer, the caregiver will be required to completely forego payment for that period with the proposed 120 day limitation in the regulations.

Given these realities and the emphasis on parental choice in the federal regulations, we reiterate our position that the proposed regulations’ denial of payment to license-exempt caregivers until they have completed the Trustline registration process, and who may work additional days for which they will never be paid, has “the effect of limiting parental access to” license-exempt care which is impermissible under the federal CCDF regulations.

CDSS’s Response did not directly address our argument (incorporated by reference) that California law similarly enshrines the importance of “parental choice” in the selection of child care, and prohibits policies that discourage the selection of license-exempt care. There is no question that the effect of the proposed regulations will be to significantly discourage parents’ selection of that form of care. We believe the effect will be so significant as to be impermissible under both state and federal law.

Response:

Please refer to the response for comment number f) 55.

19. Comment:

**D. Current CDSS regulations allowing payments to providers undergoing the Trustline registration process are permitted by the Health & Safety Code.**

In the Initial Statement of Reasons, CDSS stated that “...these sections would be amended to conform policy to statute...” and “Current regulations are inconsistent

with Health and Safety Code Sections 1596.60-1596.68.” Throughout the Response to comments, CDSS insists that the changes to the regulations are being made to align the regulations with the requirements of the Health & Safety Code. We disagree. As discussed below, both the language of Health & Safety section 1596.67 and the legislature’s underlying policy decisions regarding the unique quality and role of license-exempt care permit the interpretation articulated in the current Trustline regulations. These regulations, promulgated by CDSS in 1998, construed the identical sections of the Health & Safety Code and arrived at a legal interpretation which allows for payment during the Trustline registration process.

In response to our comments (incorporated by reference), CDSS stated that the statutory language of Health& Safety Code Section 1596.67 “is clear. It establishes a mandatory eligibility condition before a provider is eligible to receive Stage 1 compensation.” The language of the statute is anything but clear; rather, the language is complex and susceptible to a range of interpretations. It states that child care providers “shall be registered pursuant to Sections 1596.603 and 1506.605 in order to be eligible to receive this compensation.” Rather than addressing the timing of compensation for child care services, this language requires license-exempt providers paid by the subsidy system to become registered and to accomplish that registered status by going through the steps detailed in sections 1596.603 and 1596.605. The statute does not specify the point in the registration process at which payment can begin. If it were necessary to have completed the Trustline registration process prior to receiving compensation, section 1596.67 would state that each child care provider who receives compensation must be a “registered Trustline child care provider” as defined in 1596.605(b). But section 1596.67 does not include or specifically reference the term “registered Trustline child care provider.”

Contrast section 1596.67 with section 1596.653 which regulates individuals who accompany minors to out-of-state residential facilities. Subsection 1596.653(f) states,

(f) A transport escort service shall not accompany or transport a minor to any residential facility or institution located outside the state, unless the person or persons transporting or accompanying the minor are trustline registered child care providers.

Subsection (h) of 1596.653 sets forth consequences for violation of this policy, including prosecution as a misdemeanor punishable by a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000), or imprisonment in a county jail for not more than six months. Obviously, when the legislature is intent on prohibiting conduct or payment unless a person is a registered Trustline child care provider, it is very capable of making such a policy crystal clear.

The CDSS Response also states that, “In this regard, these Trustline providers are similar to other child care providers who must meet the regular and more rigorous licensing requirements.” But that is an erroneous analogy as license-exempt providers differ from licensed providers in significant ways. One of the most important is the fact that licensed providers not only cannot receive a subsidy prior to completing licensure, they are prohibited from providing care for children prior to licensure.

The law treats license-exempt providers differently. As noted above, CDSS is not proposing to revise its regulations to prohibit license-exempt providers from caring for a child prior to completing the Trustline registration process. In fact, the proposed regulations anticipate that a license-exempt provider may care for a child for 120 days or longer before completing the Trustline registration process. Once the registration process has been completed, the provider would be paid for the care provided during the period the provider was undergoing the Trustline registration process.

The regulatory structure is very different for a provider who is going through the licensing process. A provider will face serious administrative action if s/he holds herself out as licensed and cares for children prior to completing licensure. This distinction between licensed and license-exempt providers is appropriate, given their differing relationship to the children for whom they provide care. The licensed provider is authorized to provide care for children of several families, many or all of whom are initially unknown to the provider before the families contract for the provider's services. A license-exempt provider is caring for relatives or for the children of one other friend or neighbor, and has been selected by the parent precisely because s/he is known to the family.

Contrary to CDSS's assertion in the Responses, we do not take issue with the statutory policy in the Health & Safety Code, which is flexible and open to varying interpretations. Nor do we take issue with CDSS's original interpretation embodied in the current Trustline regulations which has been in place for more than eight years. We take issue with CDSS's recent policy decision to alter its interpretation of the statute while cloaking its decision as merely amending the regulations "to conform policy to statute."

Response:

This comment is speaking to a particular response and not to the proposed regulations; therefore, it is beyond the scope of the proposed regulation package.

20. Comment:

**E. The proposed regulations undermine the "seamless" child care subsidy delivery system envisioned by the Legislature and the current unified approach to Trustline registration taken by CDSS and CDE; advance agreement by both agencies on an equitable approach is essential.**

CalWORKs child care is a program for low income families who are current or former recipients of CalWORKs cash assistance. When CalWORKs families participate in welfare-to-work activities or are employed, they are eligible for child care subsidies as supportive services. CalWORKs child care is divided into three stages that are intended to support families' transition from reliance on cash assistance to self-sufficiency, with CDSS administering the first stage of CalWORKs child care, and CDE administering Stages 2 and 3. In establishing the CalWORKs child care program

and placing administration in two separate state agencies, the legislature made a particular point of affirming the importance of having the three stages operate as a “seamless” child care subsidy delivery system. The legislature explicitly stated in Education Code section 8350(b) that “it is the intent of the Legislature that families experience no break in their child care services due to a transition between the three stages of CalWORKs child care.”

Although the Health & Safety Code requires CalWORKs families to be transitioned from Stage 1 to Stage 2 once they achieve “stability,” there are differing interpretations as to what constitutes “stability.” While some counties transition families to Stage 2 at the point they leave cash assistance, many other counties transition families much sooner when there is still a great deal of volatility in their WtW activities, and their child care arrangements are similarly precarious. For these families in particular it is essential that CDSS and CDE share a common approach to the delivery of child care services. Since the creation of the Trustline regulations in 1998, CDSS and CDE have had a unified interpretation of Trustline policy and have paid providers while they were undergoing the Trustline registration process. CDSS now proposes to undermine that unified approach, seemingly without making any effort to ensure consistency and equal treatment across the administration of CalWORKs child care.

The California Welfare Directors Association raised this concern regarding the impact of the proposed regulations on the “seamless” operation of the child care subsidy system in their original comments, and noted that the regulations would “exacerbate the bifurcation between CDSS and CDE-funded child care programs” and are “contrary to the Legislature’s desire for equal treatment of families across child care programs.” In its Response, CDSS acknowledged that “the intent of the CalWORKs child care system is to be seamless.” CDSS offered a “solution” to address the increased bifurcation and the inherent unfairness of having two different sets of rules for CalWORKs clients’ license-exempt providers. CDSS stated, “we would assume that CDE will adopt our regulations.”

The likely impact of the policy change in these regulations on CalWORKs families and on the state’s ability to achieve the federal Work Participation Rate is far too significant to simply “assume” that CDE will adopt CDSS’s regulations. This laissez-faire approach is particularly troubling when CDE representatives have publicly stated that, if their agency were to adopt similar regulations, they would not have authority to provide retroactive payments to providers. That factor alone may be sufficient to prevent CDE from “adopting” the CDSS approach to Trustline registration.

With these proposed regulations, CDSS is betting that the certainty of reimbursement upon completion of Trustline registration will make it possible for most CalWORKs Stage 1 parents to convince their family members, friends and neighbors to provide unpaid child care for up to four months. If CDE adopts CDSS’s approach to Trustline registration but without retroactive payments to providers, it will further bifurcate the CalWORKs child care system. CDE will impose great hardships on CalWORKs parents by undermining their efforts at stability and making it necessary for many of them to return to cash assistance. CDE would also risk having to defend its inequitable

treatment of those CalWORKs Stage 2 and 3 families and their license-exempt providers. Given all of these potentially negative outcomes, advance agreement by both agencies on a unified, equitable approach is essential. We believe the current, unified policy of both agencies to issue payment to providers undergoing Trustline registration is the correct approach. Before any changes to Trustline registration and payment policies are implemented, it is imperative that CDSS and CDE jointly analyze the Trustline registration issue and arrive at a fair and consistent solution for CalWORKs families in every stage of CalWORKs child care – a solution that supports the goals of the CalWORKs program to facilitate families’ efforts to achieve self-sufficiency, and enables the state to engage sufficient numbers of clients to meet the Work Participation Rate.

Response:

Please refer to the response for comment number one.

21. Comment:

**Recommendations:**

1. **Maintain the current payment system to providers as they undergo the Trustline registration process while shortening the time for submitting a Trustline application and the time for processing the application.**
2. **In the alternative, move to the balanced registration and payment approach set forth in AB 1601.**
3. **If the proposed regulations are adopted, mandate counties/contractors to make full retroactive payments to Trustline registered providers and full reimbursement to clients for payments made while the provider’s registration was pending without any time limit on such payments or reimbursements.**

Response:

Please refer to the response for comment number f) 57.

22. Comment:

**Specific Comments:**

1. **Subsection 47-110(e)(2):** In addition to referencing Title 22 Sections 101158 and 102358, this section should reference Health & Safety Code Section 1596.792 which contains the original detailed list of facilities that are exempt from licensure and provides the authority for both referenced sections of Title 22.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. These regulations only pertain to child care and Health and Safety Code Section 1596.792 extends beyond child care facilities.

23. Comment:

2. **Subsection 47-260.14:** The amendment to this section allowing a license-exempt provider with a pending Trustline application when the regulations become effective to continue receiving payment until a decision is made will be beneficial to CalWORKs families and to the State in its efforts to meet the new Work Participation Rate.

Response:

Thank you, the Department appreciates your comment and your support.

24. Comment:

3. **Subsection §47-260.2:** In response to our original comment regarding the removal of great grandparents, great aunts and great uncles from those exempt from Trustline registration, CDSS flatly states that “the statute [Health & Safety Code Section 1596.67] does not extend Trustline registration exemption to ‘great’ relatives.” The Department’s interpretation of the statute at the time these regulations were originally promulgated was appropriately expansive and recognized that the statutory terms “grandparents, aunts and uncles” could legally and correctly be interpreted to be inclusive of “great” relatives. Although the statute has not been amended, CDSS is now changing its interpretation of the statute. Our comment was not “aimed at taking issue with the underlying statutory policy” but rather with CDSS’s unwarranted alteration of its prior interpretation of the statute. The decision by CDSS to narrow its original interpretation of the statute is a public policy decision; the change is not compelled by the language of the statute. It is the Department’s policy decision with which we disagree, for the reasons stated in our original comments.

If CDSS decides to remove great-grandparents, great aunts and great uncles from those who are Trustline-exempt, the regulations should also allow current providers who are “great” relatives to continue to receive subsidy payments without having to undergo Trustline registration.

Response:

Current statute does not exempt greats from having to complete Trustline registration. The proposed regulations will allow great-grandparents, great-aunts and great-uncles who are already providing child care to be grandfathered in. This will ensure that current services being provided are not interrupted.

25. Comment:

4. **Subsection §47-301.1:** We disagree with CDSS's Response that the issue of ensuring CalWORKs clients actually have subsidized care when needed as a result of employment or other county-approved activities is beyond the scope of the Department's CalWORKs regulations. The proposed changes to the Trustline regulations will have a significant impact which CDSS should directly address with concomitant changes to other relevant sections of the CalWORKs regulations.

The Response fails to address our comment regarding the importance of adding two crucial elements to the section of the regulations that sets forth the responsibilities of County Welfare Departments. The regulations should explicitly articulate the responsibility of the CWDs and their contractors to pay registered Trustline child care providers, and to pay those providers retroactively for services provided while their applications were pending. As we stated in our original comments, merely including these requirements in the regulations that address the contents of the Informing Notice is insufficient; these are responsibilities the counties/contractors must be clearly mandated to perform.

Response:

Please refer to the response for comment number f) 60.

26a. Comment:

5. **Subsection 47-301.22(b):** In response to comments regarding retroactive payments, CDSS now proposes to change from the permissive "may" to the mandatory "shall" in amendments throughout the regulations, including an amendment to the Informing Notice Requirement. If these proposed regulations are adopted, we recommend a slight rewording of this subsection for greater clarity: "A statement that a client who selects a license-exempt provider who is required to be registered and becomes a registered Trustline child care provider as defined in 47-602(r)(1) ~~and is granted Trustline registration~~ shall receive retroactive payment..."

Response:

Please refer to the response for comment number 12a.

26b. Comment:

This subsection of the Informing Notice requires additional clarification to confirm to the CalWORKs client that the registered Trustline provider shall receive retroactive payment “paid by the County or contracted payment agency.” Without this clarification, the subsection is susceptible to misinterpretation about whether the CalWORKs client could be or would be required to make this retroactive payment to the provider. The likelihood of misinterpretation is increased by the fact that the Informing Notice includes other responsibilities placed on the CalWORKs client, such as the requirement in subsection 301.22(c).

We recommend that former proposed subsection 47-301.22(b), which has been deleted in the current version of the amendments to the regulations, be reinstated in a somewhat altered form. CDSS’s rationale for deleting this subsection states, “The proposed regulations have been amended to delete any language that would require clients to pay an out-of-pocket expense for child care.” But former subsection 47-301.22(b) did not require out-of-pocket payment by the client; rather, it recognized that a client might choose to pay their child care provider for some or all of the costs of care while the provider’s Trustline registration is pending.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. The regulations were amended to require Trustline registration before any payments can be made therefore; if clients make out-of-pocket payments to a provider they do so at their own risk. Please refer to MPP Sections 47-301.22(a) and 47-430.2, which states that license-exempt providers will be paid once Trustline-registered.

26c. Comment:

Subsection 47-430.1 states that, “It is the intent of the Legislature that all CalWORKs clients be aware of their potential liability for child care payment.” In order to meet this requirement, it is essential that the Informing Notice include clear language regarding a CalWORKs client’s potential liability. We suggest former subsection 47-301.22(b) be revised to read, “A statement that, pursuant to subsection 47-620.32, the client is responsible for any child care costs incurred while the provider is undergoing Trustline registration. If a client chooses to pay for child care services and the provider does not become Trustline registered, the county or contracted payment agency is prohibited from reimbursing the client for those payments to the provider. Once the provider becomes Trustline registered, the county or contracted payment agency shall reimburse the client for payments made to the provider.” Given the importance of the client’s potential liability for this child care payment, it is essential that the Informing Notice include this information.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. Please refer to MPP Sections 47-301.22(a) and 47-430.2, which states that license-exempt providers will be paid once Trustline-registered.

26d. Comment:

It is not clear why, in current subsection 47.301.22(b), CDSS deleted notice of the option allowing retroactive payments to be made directly to the child care provider. The Statement of Reasons does not address this proposed change. The deletion of this option in the Informing Notice contradicts subsection 47-430.2(a) and (b), Retroactive Payment Limit, as well as subsection 47-620.111, Trustline Application Requirements, all of which provide for payment directly to the provider. In cases where a client paid some or all of the cost of care while the provider's Trustline application was pending, the client should be directly reimbursed by the county/contractor for those out-of-pocket costs, and the provider should receive any remaining amount of the retroactive payments.

Response:

Please refer to the response for comment number 13.

26e. Comment:

**Subsection 47-301.22(c):** As noted in comments submitted by the Child Care Resource & Referral Network, there should be consistency between sections 47-301.22(c) and Handbook section (c)(1) about the timeframe for the provider submitting a completed TL application package. We recommend the regulations require the provider to submit the Trustline package and the Health & Safety Certificate "as soon as possible."

The expansion of the time period for which retroactive payments shall be made from 60 days to 120 days (included in subsections 47-301.22(c), 47-430(b), 47-620.1 and 47-620.3) is likely to be sufficient for most Trustline registration situations. Nevertheless, it is our firm position that a provider who submits a completed Trustline application, provides care while registration is pending, and subsequently becomes registered should be paid from the date child care services began, no matter whether the processing time of the Trustline application exceeded 120 days. Such a provider should not be penalized for delays in the administrative process. Counties/contractors should be required to fully reimburse providers (or the clients who paid them in the interim) for all care provided while the provider's Trustline registration was pending.

Response:

Please refer to the responses for comments numbered 4 and 11b.

27. Comment:

6. Subsection 47-301.22(d): For purposes of clarity, we suggest substituting “a child care provider who is a registered Trustline provider at the time services are requested” for “a child care provider that is an existing registered Trustline provider.” The term “existing registered Trustline provider” is problematic because it is undefined in the regulations and open to a variety of interpretations.

The county/contractor should be held responsible for providing information regarding Trustline registration to the client’s selected provider as soon as the client has identified the provider to the county/contractor.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. The term "existing" is a common term used throughout the regulations and it means that providers must be Trustlined registered by the time child care services begin.

28. Comment:

7. Subsection §47-301.22(i): Our original comments noted that this subsection requires a client to inform the county “each time they change child care providers” but does not set forth what information must be provided nor designate a timeframe within which this information must be given to the county. The Response was unresponsive to the concerns posed in this comment. The Response stated, “The issues regulating the frequency at which counties are required to inform clients is beyond the scope of the CalWORKs Trustline proposed regulation package.” We recommend the regulations be amended to identify the information the client must provide to the county/contractor and the timeframe within which it must be provided when the client changes child care providers.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. The comments associated with the renote must pertain to regulation changes after the public hearing. None of the provider transfer processes were changed. This comment is beyond the scope of this proposed regulation package.

29. Comment:

9. **Subsection §47-301.22(k):** Our original comments noted that this subsection should include information notifying the client of the various types of licensed child care, of Trustline requirements and the registration process for license-exempt providers who are subject to Trustline; and retroactive and other payment issues. We urged inclusion of information on the Trustline exemption for relatives, and of the good cause exemption available for clients who are unable to locate appropriate child care. The Response stated, “The issues regarding the informing notice ...are beyond the scope of this CalWORKs Trustline regulations package.”

Since the Informing Notice Content is one of the major components of these Trustline regulations amendments, recommendations for important additions, particularly those related to Trustline requirements and exemptions, the Trustline registration process, and payment would seem to be well within the scope of this regulations package. Given the likely impact of prohibiting payment for child care while a provider is undergoing the Trustline registration process, it is crucially important to inform clients of the availability of the good cause exemption for those who are unable to locate appropriate child care.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. The comments associated with the renote must pertain to regulation changes after the public hearing. Good cause processes were not changed. Also, this comment is speaking to a particular response and not to the proposed regulations; therefore, it is beyond the scope of the proposed regulation package.

30. Comment:

9. **Subsection 47-430.2:** Subsections 47-430.21 and 21(a), Payment Limit Application, should be revised to require the county or the contractor to provide the client with an informing notice each time the client changes providers. The importance of receiving this notice is significantly increased by the proposed prohibition on payment to providers who are not Trustline registered at the time they begin to provide child care services, and the potential liability of clients for payments to providers who do not successfully complete Trustline registration. If the client initially selects a Trustline-exempt or Trustline registered provider, the contents of the Informing Notice are of far less concern than if the client subsequently selects a provider who is required to undergo Trustline registration. The client should be given the Informing Notice each time there is a change in provider so the client is actually notified of the prohibitions on payment at the time those restrictions are relevant.

Also, in subsection 47-430.21(a), we suggest substituting “Registered Trustline Providers at the Time Services are Requested” for “Existing Trustline-Registered

Providers.” As in subsection 47-301.22(d), the term “existing registered Trustline provider” is problematic because it is undefined in the regulations and open to a variety of interpretations.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. The conditions for providing the client with an informing notice were not changed therefore this comment is beyond the scope of the proposed regulation package.

In reference to changing the language, please refer to the response for comment number 27.

31. Comment:

10. **Subsections 47-430.2(b) and (c):** We incorporate by reference here our comments to subsection 47-301.22(b) on the expansion of the time period for retroactive payments from 60 days to 120 days.

Response:

Please refer to the response for comment number f) 67.

32. Comment:

11. **Subsection §47-602(r)(1):** Although this definition of Registered Trustline Child Care Provider may be “pursuant to statute,” as noted in the Response, CDSS has the authority and the responsibility to promulgate regulations which provide necessary interpretation of statutory language. The regulations must be clear regarding the point in the registration process that a Trustline applicant becomes a registered provider since payment cannot commence until registration occurs. Again, we suggest using the earlier version of the definition on this important point: “a registered Trustline child care provider is one for whom the background check process has been completed and approved.”

Response:

Please refer to the response for comment number f) 68.

33. Comment:

12. **Subsection 47-620.11:** We incorporate by reference here our comments to subsection 47-301.22(b) on the expansion of the time period for retroactive payments from 60 to 120 days, as well as payment directly to the child care provider.

Response:

Please refer to the response for comment number f) 67.

In reference to the payment being made directly to the child care provider, MPP Section 47-430.2(b) and MPP Section 47-620.31 are consistent.

34. Comment:

13. **Subsection §47-620.3:** We incorporate by reference here our comments to subsection 47-301.22(b) on the expansion of the time period for retroactive payments from 60 days to 120 days.

In order to be consistent with subsection 47-430.2(b), subsection 47-620.31 should be modified to read, “as the provider’s employer.”

Response:

The Department appreciates this comment and, for clarity, has amended the regulations.

35. Comment:

14. **Subsection 47-620.5:** The clarity of this subsection would be enhanced by substituting “registered Trustline provider” for “provider.”

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. The comments associated with the renote must pertain to regulation changes made after the public hearing. No renote changes were made on this issue.

Dora Luna, Attorney at Law and Mike Herald, Legislative Advocate, Western Center on Law and Poverty submitted the following comments: (Comments 36 - 38)

36a. Comment:

The Western Center on Law and Poverty (WCLP) hereby submits comments to the proposed changes to Trustline regulations, ORD #0906-07. WCLP advances and enforces the rights of low-income Californians, including recipients of CalWORKs child care affected by changes to Trustline rules, the subject of the proposed regulation changes. In addition, WCLP supports the comments submitted by the Child Care Law Center.

We appreciate your amendment to the proposed regulation to allow 120 days of retroactive payments for providers that achieve Trustline registration. However, given

the delays in the processing on Trustline applications, the 120 day retroactive limit is still inadequate. As we previously noted, a Senate Human Services Committee analysis of AB 1601 provides that some Trustline applications can take from one month to a year or longer to process depending on the ability of local agencies to provide the missing information. Hence, CalWORKs recipients and child care providers are inconvenienced because of the inadequacies in the Trustline application processing system. The result is that child care providers will not care for children if providers believe that they may have to wait 120 days or longer to get paid. Without child care services CalWORKs recipients will not be able to participate in welfare-to-work activities. And this lack of participation makes it more difficult for California to meet its new work participation rates.

Response:

Please refer to the response for comment number f) 74.

36b. Comment:

In your response to WCLP's comments you indicate that "[t]he vast majority of providers that are required to become Trustline Registered will be able to do so in the time frames proposed by the regulations", but you do not define "vast". Does vast mean that 75% of providers will be able to become Trustline registered within 120 days? In light of the work participation rate issue, it is imperative that all CalWORKs participants receive a timely child care subsidy. It is important that the lack of child care not be an impediment to work participation by CalWORKs participants because California needs to have more, not less, CalWORKs recipients meeting the work participation requirements.

Response:

Please refer to the response for comment number f) 74.

37a. Comment:

The Proposed Regulations Interfere with Participation in Welfare-to-Work Activities

For new CalWORKs applicants, delays in the processing of Trustline applications may violate Welfare and Institutions Code ("WIC") § 11325.21(a), which requires counties to proceed with universal engagement within 90 days of a recipient's eligibility for aid. Without child care services, a recipient may not be able to attend appraisal, assessment, or any of the other activities required to be completed during these initial 90 days. A county's failure to engage recipients timely violates WIC § 11325.21(a).

In addition, the lack of child care services makes it almost impossible for CalWORKs recipients to participate in welfare-to-work activities generally. While the law provides certain safeguards such as good cause for not participating in welfare-to-work activities when child care is not available (WIC § 11320.3(f)(3)), these safeguards are

insufficient. You respond to WCLP's comments with "[c]lient's that cannot find suitable child care are eligible for good cause and would not be sanctioned..." We understand that CalWORKs recipients would not be financially sanctioned under these circumstances. However, those individuals who claim good cause for non-participation in welfare-to-work activities because they cannot find suitable child care cannot be counted in the work participation rate. Again, it is to California's advantage to have more people engaged in work activities, and not claiming good cause.

Response:

Please refer to the response for comment number f) 75.

37b. Comment:

You also respond to WCLP's comments with "[t]he regulations do not create barriers to welfare-to-work participation because clients continue to have parental choice in choosing child care. Clients may have to make other choices in selecting a child care provider so that they do not choose a provider that will not meet the Trustline requirements." These statements erroneously assume one of two things: 1) there are enough licensed child care slots to meet the child care demands; and 2) license exempt providers are plentiful and fungible.

Response:

This comment is speaking to a particular response and not to the proposed regulations; therefore, it is beyond the scope of the proposed regulation package.

37c. Comment:

According to the California Child Care Resource & Referral Network 2005 California Child Care Portfolio, however, the supply of licensed care does not meet the estimated demands in most counties. In Sacramento County, for example, there are an estimated 154,296 children ages 0-13 with parents in the labor force and 54,761 licensed child care slots. In Sacramento, licensed child care is available for only 35% of children with parents in the labor force.<sup>1</sup> Parents may have all the parental choice in the world, but if the slots are not available, child care will not be provided.

In addition, licensed exempt providers are not plentiful or necessarily fungible. According to the Child Care Law Center, parents who chose licensed exempt providers base their choice on 3 basic criteria. They chose a licensed exempt provider who: 1) the parent knows and trusts; and 2) is geographically desirable; and 3) has a common language and cultural background. The idea that a parent can chose any person who lives on the same block to serve as a licensed exempt provider is disingenuous. To make an exception to one of these criteria means that the parent would have to chose a provider whom the parent does not know or trust, or a provider who is located at a great geographic distance, or a provider with whom the parent cannot communicate

because the provider does not speak the parent's language. Surely this is not what is meant by parental choice.

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<sup>1</sup> See the California Child Care Resource & Referral Network 2005 California Child Care Portfolio, at p. 5.

Response:

The priority of these regulations is to increase the safety of children in subsidized child care. The Department believes that the regulations do not limit a client's parental choice. Clients may still choose from licensed child care providers, Trustline-exempt child care providers, or an existing Trustline registered child care provider.

38. Comment:

The Proposed Regulations Increase the Likelihood of Federal Penalties

Further, recent changes to the federal regulations in the Temporary Assistance for Needy Families (TANF) program require that states meet increased work participation rates or face fiscal sanctions. For example, individuals who do not meet the required hours of participation and individuals with good cause for non-participation are not counted towards the federal work participation rate.

Under TANF a state may have its federal block grant amount reduced by an amount of up to 5 percent if the state fails to meet federal work participation requirements. If a state is penalized it is required to make up the difference in order to draw down the remaining portion of the federal block grant. For California this would mean a penalty of \$149 million, money that California cannot afford to lose.

WIC § 10544(a) (AB 1808) provides that

If the state does not achieve the outcomes required by federal law, and as a result, is subject to a fiscal penalty, the penalty shall be shared equally by the state and the counties after exhaustion of all reasonable and available federal administrative remedies. If a county's single allocation pursuant to Section 15204.2 is reduced by the state to offset the county's share of any federal penalty imposed pursuant to this section, the county shall be required to utilize county general funds to replace the offset amount, so the total funding remains equal to the county's single allocation.

New changes to the TANF statute eliminate most of the caseload reduction credit previously available to states and greatly enhance the likelihood of a federal penalty for FY07. Actions taken by the state that erect new barriers to meeting work participation requirements as these regulations would do, increase even further the possibility of federal penalties. These penalties have been the subject of legislation and administrative action throughout 2006 and 2007 and thus the likelihood of penalties is well known among all stakeholders, including the California Department of Social Services.

Response:

Please refer to the response for comment number f) 76.

Frank J. Mecca, Executive Director, County Welfare Directors Association of California submitted the following comments: (Comments 39 - 45)

39a. Comment:

The County Welfare Directors Association of California (CWDA) has reviewed the revisions to the proposed Trustline regulations as contained in the 15-Day Public Notice. Our association continues to object to the changes proposed and believes that even with the most recent modifications, the proposed regulations will not enhance child safety and will hinder families served by county welfare departments from meeting work participation requirements. The result will create hardship for low-income families in the CalWORKs program and potentially expose California to millions of dollars in federal fiscal sanctions.

Child safety is always counties' highest priority. However, we believe that the proposed regulation will not enhance child safety, but will negatively affect the well-being of children by inhibiting the movement of families from welfare to work.

1. Regulations do not address child safety and potentially will place more children at risk by limiting parental choice.

The proposed regulations would provide payment, retroactive up to 120 days, for child care services rendered while a provider undergoes and clears the Trustline process. While this is an improvement over the 60 days of retroactive pay proposed in the prior regulation package, CWDA believes that the proposed regulations do not guarantee a child's safety while in the care of a provider who is undergoing the Trustline process. Rather, these regulations limit the State's liability for making payments to potentially ineligible providers and will create hardship for families in need of child care.

The California Department of Social Services (CDSS, the Department) asserts, "*The vast majority of providers that are required to become Trustline Registered will be able to do so in the time frames proposed by the regulations.*" [Final Statement of Reasons, page 29]. We note the time it takes to process providers can vary, from within three days for those without criminal records, to 180 days or longer in some instances where a provider has an exemptible record. Our concern with the proposed 120 days of retroactive payment is that otherwise eligible providers who are eventually cleared outside of the 120 day timeframe could not receive compensation for services provided beyond the 120 days, despite the fact that providers have little or no control over the time it takes to become cleared.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. CDSS believes that the vast majority of providers that are required to become Trustline registered will be able to do so in the time frames proposed by the regulations.

39b. Comment:

As one alternative, CWDA recommends allowing retroactive payment beyond the 120 days for Trustline applicants who are eventually cleared. This would be consistent with the Department's stated intention to reimburse child care expenses retroactively for eligible providers, and would give fair treatment of Trustline applicants who are eventually cleared, regardless of the time it takes the Department to process these applications.

Response:

Please see the response for comment number 11b.

39c. Comment:

The CDSS maintains that "*the regulations do not limit a client's parental choice. Clients may still choose from licensed child care providers, Trustline-exempt child care providers, or a different Trustline registered child care provider.*" [page 74]. To the contrary, we believe the regulations will have the ultimate effect of limiting parental choice because the providers of first choice—friends, neighbors, relatives and other trusted individuals known to the family—will be unwilling and/or unable to provide care without guarantee of compensation. CalWORKs clients are low income and have few assets; thus, these families typically do not have the financial means to pay out of their own pockets for child care expenses. Without any guarantee of payment, the result will be to discourage potential license-exempt caregivers from providing child care.

Response:

This comment is speaking to a particular response and not to the proposed regulations; therefore, it is beyond the scope of the proposed regulation package.

39d. Comment:

The impact of these proposed regulations is significant—state data indicates that as many as 60 percent of CalWORKs clients utilize license-exempt care, and Los Angeles County reports up to 70 percent of their clients utilize license-exempt care. License-exempt care is vital for these families to enable them to participate in welfare-to-work activities when licensed care is not available. Counties report that families often are unable to utilize licensed care options for a variety of reasons, for example: families need for flexible arrangements and licensed care options may be unavailable at the

days and times needed, may not be accessible near the clients place of employment or home, or may not be able to accommodate multiple children or provide care to meet the child's special needs.

We question the Department's assertion that providers who are already Trustline-registered are a viable alternative without any data or research to support this assertion. It is our belief that providers who are already Trustline-registered do not constitute a reliable "choice" for CalWORKs clients for several reasons. For one, these providers are likely to be providing care for another family and would be required to meet licensing standards in order to care for the children of more than one other family member (reference Health and Safety Code 1596.792). Further, the Trustline-registered provider would not be known to the family, may no longer be available or interested in providing care to another unknown family, and may not meet the needs of CalWORKs client (due to location, hours of availability, etc.).

The only other option is to utilize a Trustline-exempt provider, but these regulations place additional limitations on this option by removing the exemption for great grandparents, great aunts, and great uncles, thus requiring these individuals to also undergo the Trustline process. The only remaining option is for the CalWORKs client to have an immediate family member (grandparent, aunt or uncle) who is willing and available to provide child care, and we believe this option will not be widely available for families.

Given these issues, CWDA is concerned that families participating in welfare-to-work activities may feel compelled to choose far less-desirable options that put their children at greater risk, including leaving children at home alone.

Response:

The Department appreciates this comment, however, will not be changing the proposed regulations. The priority of these regulation changes is to increase the safety of children in subsidized child care. CDSS believes these regulations do not limit a client's parental choice. Clients may still choose from licensed child care providers, Trustline-exempt child care providers, or an existing Trustline registered child care provider.

40a. Comment:

2. Contrary to legislative intent for a “seamless” child care delivery system.

CDSS has not adequately addressed the discrepancy that will result from the proposed regulations between the CDSS Stage 1 program and the CDE-administered Stage 2 and Stage 3 programs. The Department notes, “*we would assume that CDE will adopt our regulations*” [page 24]. To date, CDE has not proposed regulations, nor does CDSS (or the Administration) have the authority to assure that CDE will adopt a consistent approach to its own regulations.

Should CDE adopt regulations as the CDSS surmises, CDE officials have indicated verbally that both their contracting process and federal regulations are barriers to retroactive payment of license-exempt providers. CDSS officials are aware of these issues but have failed to provide any resolution. If the CDE regulations are adopted without a retroactive payment provision, it would create considerable hardship for transitioning CalWORKs families. It is not realistic to presume that families will never change child care providers. If a family in a Stage 2 or Stage 3 program finds they must change providers, and if their provider of first choice is a license-exempt provider and required to be Trustline registered, that family could potentially experience a break in services that could threaten their path toward self-sufficiency. It could also force families back into the Stage 1 program, where there is an option for retroactive payment. Such impacts are undesired and contrary to the intended “seamless” design of the CalWORKs child care program.

Response:

The Department appreciates your comment. The intent of these regulations is to strengthen child safety in subsidized child care. CDSS will continue to work closely with CDE to address seam issues.

40b. Comment:

Thus, whether or not CDE adopts regulations, it is clear that there will be differences in the way families are treated between Stage 1 and Stages 2 and 3 and other subsidized child care programs. However, CDSS has not adequately addressed how these differences will be addressed in the regulations and how it will comply with existing statutes that articulate the expectation that CalWORKs clients receive their child care in the same manner as those transitioning from aid:

*In order to move welfare recipients and former recipients from their relationship with county welfare departments to relationships with institutions providing services to working families, it is the intent of the Legislature that families that are former recipients of aid, or are transitioning off aid, receive their child care assistance in the same fashion as other low-income working families. [Education Code 8354(b)]*

Absent statutory change, which CDSS is not proposing, the regulations will exacerbate the bifurcation between CDSS and CDE-funded child care programs and create confusion for families as they move from one stage of child care to the next. CWDA continues to believe that the proposed regulations are unnecessary and contrary to the Legislature's desire for equal treatment of families across child care programs. At minimum, the regulations should be delayed until CDSS and CDE can arrive at a joint solution to ensure seamless delivery of services for families utilizing license-exempt care.

Response:

The Department appreciates this comment; however, will not be changing the regulations. The CDE has indicated they will be drafting regulations to require registration before payment so many families transitioning between stages will be familiar with the process. About the implementation of the regulations, the Department appreciates this concern and has extended the implementation date to fall on the first of the month following the 60<sup>th</sup> day after approval and filing of the regulations with the Secretary of State by the Office of Administrative Law (OAL). CDSS will continue to work with CDE to address seam issues.

41a. Comment:

3. Contrary to state law that promotes welfare-to-work activities.

CWDA continues to be concerned that these regulations will hinder families from participating in welfare-to-work activities and ultimately serve as a barrier to self-sufficiency. State law requires county agencies to engage families in welfare-to-work activities within 90 days of a parent being found eligible for CalWORKs (WIC 11325.21). During this 90 day period, CalWORKs clients participate in numerous activities including appraisal, assessment, case plan development, etc. Child care services are essential to enabling clients to participate in their case planning activities, and license-exempt child care providers are often better able to accommodate the flexible schedules and frequent changes experience by our CalWORKs Stage 1 families. These families are just beginning their welfare-to-work activities and may be participating in a number of activities to help them find and retain gainful employment, such as training, volunteer work, job club/job search, and participation in mental health or alcohol and drug treatment programs.

CalWORKs clients who cannot access child care within these 90 days will be eligible for a "good cause" exemption from participation in welfare-to-work requirements. However, the 60-month time limit clock does not stop, and families with potentially significant barriers to self-sufficiency will have less time engaging in supportive services that can enable them to transition off the CalWORKs program. Additionally, CalWORKs clients who receive a "good cause" exemption are still counted in federal work participation requirements.

Response:

This comment is speaking to a particular response and not to the proposed regulations; therefore, it is beyond the scope of the proposed regulation package.

41b. Comment:

The Department notes in its response to testimony: *“The Department believes that these changes may effect only a small number of clients as the time it takes to become Trustline registered is short enough to not effect a client’s long term needs. The Department must balance the needs of the client against the health and safety of children.”* [page 28] We disagree. Many clients have significant barriers to self sufficiency that require multiple services and supports, and any delay in services will impact the client’s ability to move from welfare-to-work within the 60 month time limit. Failure by California to meet the work participation requirements by even a small margin will trigger federal penalties. Importantly, this policy change will hinder children and their families who are struggling to rise out of poverty.

Failure to meet work participation requirements will result in up to \$180 million in federal penalties to California, and under federal law the State would be required to make up this difference in order to draw down remaining TANF funds. However, it is likely the State will attempt to pass on these federal penalties onto counties per the provisions of WIC 10544(a), which requires counties to use county general funds to offset the loss in any loss of single allocation funds. This would result in the diversion of scarce county resources from other local needs, such as public child welfare, public health, and services to senior and dependent adults. We also believe this proposed regulation is contrary to the most recent efforts by the Legislature to increase work participation. Proposed Trailer Bill Language (SB 84) would require CDSS to report to the Legislature and Administration on options to increase the state’s CalWORKs welfare-to-work participation, in order to “maximize full-time work and promote family stability.” The proposed Trustline regulations would serve as a barrier to these stated goals.

Response:

This comment is speaking to a particular response and not to the proposed regulations; therefore, it is beyond the scope of the proposed regulation package.

42. Comment:

4. Delays in processing of Trustline applications will impact CalWORKs clients.

CDSS has given no assurance that applications can be processed within a 120 day timeframe, and CWDA is concerned that families rather than the State will bear the burden of any delays in the Trustline process. Very few (if any) CalWORKs clients have enough cash reserves to pay their provider of choice for up to 120 days, and counties report delays exceeding 120 days. We believe the responsibility should be placed with the Department to ensure that all applications can be processed in 120 days

or less and within 30 days for applications with no criminal history. An important tool to facilitate timely processing is the implementation of the Trustline Automated Application Process, or TARP. Currently TARP has been implemented in only three counties (Kern, San Bernardino and San Diego) with the remaining 19 TARP-eligible counties expected to implement by June 30, 2008. We believe TARP should be fully operational in all eligible counties prior to the implementation of these regulations to improve processing time.

Response:

The Department appreciates this comment. Please refer to the response for comment number 40b.

43a. Comment:

**RECOMMENDATIONS SPECIFIC TO THE PROPOSED REGULATIONS:**

***47-430.2 Informing Notices***

***47-430.2 Retroactive Payment Limit***

***47-620.3 Provider Reimbursement Limit***

There are a number of alternatives that should be considered that will more effectively ensure child safety and promote welfare-to-work activities. One alternative we recommend is to delete the 120 day limit for retroactive payment to permit payment of child care services per current regulations while the individual undergoes the Trustline process, and to discontinue payment upon identification of a criminal conviction, as contained in prior legislation (AB 1601, Laird, 2005-06 session). This would ensure that families can immediately begin with their welfare-to-work activities with the assurance that paid child care will be available to enable them to complete these activities. Another alternative recommended by the CA Child Care Resource and Referral Network and which we feel should be considered is to infuse additional resources in the Trustline process to significantly improve processing time.

Response:

Thank you for your comments. With respect to amending the retroactive time period beyond the 120 days, the Department will not be changing the regulations as suggested. CDSS is required to implement the regulations to increase the safety of the children in subsidized care and to make regulations consistent with Health and Safety Code Sections 1596.60-1596.68. Existing statute requires that license-exempt child care providers who receive compensation for services provided for a California Work Opportunity and Responsibility to Kids (CalWORKs) client must be Trustline registered before payment commences.

With respect to additional resources dedicated to the Trustline administrative process, please refer to the response for comment number f) 81c.

43b. Comment:

As a third alternative, we recommend deleting the 120 day limit and allowing reimbursement of child care expenses retroactively to the date child care services were rendered or the date of the child care request, whichever is later. Thus, only eligible providers who are cleared would receive payment for services. We also recommend amending a mechanism for county agencies to pay for child care services prior to Trustline clearance for clients who cannot access other paid child care options (i.e. licensed care) and are likely to need a “good cause” exemption.

Response:

Thank you for your comments. The Department will not be changing the regulations as suggested. Please refer to the response for comment number 11b.

With respect to creating a mechanism for counties or contracted agencies to pay for child care services prior to Trustline clearance, counties who pay child care services before the provider is Trustline registered do so at their own risk.

43c. Comment:

However if the state still intends to implement a retroactive payment limit of up to 120 days, we believe this section needs to be consistent with section 47-301.2.22(d) which allows for child care payments for up to 30 calendar days prior to the client’s request for child care. We recommend that payment is allowed for 120 days from the date child care services were requested and received, and up to an additional 30 calendar days prior to the client’s request for child care if determined eligible by the county welfare department. Thus, a client may receive reimbursement for up to a total of 150 days of child care services provided.

Response:

Please refer to the response for comment number eight.

43d. Comment:

CWDA also recommends delaying the implementation of the proposed regulations until the following conditions are met: (1) all 22 eligible counties have TARP fully implemented and functioning and (2) CDSS and CDE have developed a joint solution to ensure consistency in policies regarding Trustline registration and retroactive payment policies and (3) no earlier than July 1, 2008 to coincide with the next fiscal year for budgeting purposes.

Response:

The Department appreciates this comment. Please refer to the response for comment number 40b.

44. Comment:

**47-260.1.14 Trustline Requirement**  
**47-301.2.22(a) Informing Notice Content**

While we appreciate exempting license-exempt providers with application's pending, it appears the regulations are silent with regard to exempting great aunts, great uncles and great grandparents who are currently providing care from the Trustline process, and thus could be interpreted to require these providers to undergo the Trustline process. We do not believe that is the Department's intent and recommend that this be stated clearly in the regulations.

Response:

The proposed regulations will allow great-grandparents, great-aunts and great-uncles who are already providing child care to be grandfathered in; see MPP Section 47-301.22(a). After the regulations are adopted, greats that provide services must be Trustline registered before payment is approved.

45. Comment:

**47-620.11 R&R's Receipt of Completed Application Package**

The proposed regulations require providers to submit a completed Trustline application within seven calendar days from the date they begin to provide child care services. While we appreciate this expedited timeline, we question the need for this new requirement. Providers will have an incentive to submit applications in order to receive reimbursement for the services they are providing, as the retroactive payment policy provides a new motivating factor. Also, counties will not have any ability to enforce the seven day requirement, and we do not feel it appropriate to penalize providers nor CalWORKs clients if the seven day requirement is not met. Therefore, we recommend amending the language to direct counties to encourage providers to submit their applications within seven calendar days, and notifying providers that failure to submit applications timely may delay their Trustline approval and result in delayed payment, or no payment for any services rendered beyond 120 days should that provision remain in the regulations.

CWDA encourages the Department to consider alternative strategies that will more effectively ensure that children are safe while maintaining our commitment to the principles of the CalWORKs program in supporting welfare-to-work activities and lifting families out of poverty. We welcome the opportunity to work with your Department and other stakeholders to achieve these objectives.

Response:

Please refer to the response for comment number four.

Adela Arellano, Child Care Alliance of Los Angeles submitted the following comments:  
(Comments 46 - 55)

46. Comment:

**General:**

1. The use of the word “payment” throughout the regulations is unclear – Is the intention that a case be approved but the payments be withheld or does it mean no child care shall be **approved** with a provider unless they have been cleared by Trustline or are otherwise exempt? This term should be defined somewhere in the regulations.

Response:

Please refer to the response for comment number f) 1.

47. Comment:

2. Throughout the regulations you specify that retroactive payments can be approved for “120 days from the date child care services was requested and services were provided”. This language is a bit unclear. It should specify if it is 120 days **before** or **after** the child care request date. Also, if the intention is that it is 120 days after the request date, can we still approve a client’s request for child care as far back as 30 days prior to the date they requested child care?

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. Both provisions must be met; the child care must have been requested and the services must have been provided. In the event that the dates differ, the commencement date is the latter of the two dates.

48. Comment:

There should be reasonable time allowed to implement changes in the regulations to allow for proper notification to clients and providers and proper staff training.

Response:

The Department appreciates this comment. Please refer to the response for comment number 40b.

49. Comment:

**Page 2. Section 47-260.2 Trustline Exempt Child Care Providers**

4. The changes in regulations remove the Trustline exemption for great aunts/uncles/grandparents. The regulations should specify what will happen to

these old cases. Will these providers be grandfathered in or will they have to be Trustlined?

Response:

The proposed regulations will allow great-grandparents, great-aunts and great-uncles who are already providing child care to be grandfathered in. Please refer to MPP Section 47-301.22(a).

50. Comment:

**Page 9, Section 47-430.2 Retroactive Payment Limit**

5. The regulations should specify what counties/agencies should do if Trustline does not make a decision on a provider within 120 days.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. If the Trustline process extends beyond the 120 days, the provider would not be reimbursed for those days that extend beyond the timeframe.

51. Comment:

6. For providers who are denied by Trustline, will they receive payment for the services they provided during the application process? This is implied but not clearly stated in the regulations.

Response:

The Department appreciates this comment. If a provider is denied by Trustline, he/she does not receive retroactive payments. Please refer to MPP section 47-260.14.

52. Comment:

**Page 10, Section .21 Payment Limit Application**

7. The regulations address limitations on retroactive payment when changing providers, however, they do not address how to handle the limitations when a case has been denied for non-compliance and then re-opened because a client files another child care request. After a case has been closed can we assume that the 120 day timeframe will be applied to the client's new request for child care services instead of their original request?

Response:

Yes, the 120 day retroactive time frame can be applied to a client's new request for child care services.

53. Comment:

**Page 15. Section 47-620.1.11**

8. The regulations require that a provider submit their Trustline application within seven (7) days from the date they started providing care. In our County we often get child care requests for child care that started more than seven (7) days before the date child care is requested, which would already put a provider out of compliance.

Response:

Please refer to the response for comment number four.

54. Comment:

9. Also, the 7 days is unreasonable in our County because with our current process we have four (4) days to send the required child care forms including the Trustline application to the client. This would only give providers a possible three (3) days to comply with all the Trustline documents, which is too short of a timeframe.

Response:

Please refer to the response for comment number four.

55. Comment:

10. The regulations should specify what counties/agencies should do if the client's selected provider does not submit the Trustline application within 7 days. Should clients be asked to choose a different provider or should the case be denied until the client selects a new provider?

Response:

Please refer to the response for comment number four.

Theresa Corrigan, Director of Client Services, Child Action, Inc. submitted the following comments: (Comments 56 - 62)

56. Comment:

§47-260.212

*Counties shall obtain a self-certification declaration that substantiates the relationship of the exempt provider to the child(ren).*

Does the requirement of a self-certification declaration preclude requiring additional documentation if the contractor has reason to suspect that the declared relationship is non-existent?

Response:

Thank you for your comment, it is beyond the scope of the 15-day renounce.

57. Comment:

§47-301.22(b)

*A statement that a client who selects a license-exempt provider who is required to be registered and is granted Trustline registration shall receive retroactive payment for up to the first 120 calendar days from the date child care services were requested and services were provided.*

This statement implies that both the services and the request for services dictate the date of the 120-day timeline. It is clear that if the request predates the delivery of services, the contractor would only pay for days of services so the 120-day allowance for retroactive payment would begin when the services began. However, if the services predate the request, can the contractor pay for care prior to the request date not to exceed 120 days total? For example, the client requests child care on Sept. 1 but has been using the care since May 1. If the provider clears Trustline on Oct. 1, could the agency make a retroactive payment only back to Sept. 1 or could we pay for the 120 days preceding Oct. 1?

Response:

Both provisions must be met, for Trustline purposes the child care must have been requested and the services must have been provided. In the event that the dates differ, the commencement date is the latter of the two dates within the 120 day retroactive period.

In the example you provided, child care requested on September 1 but care provided since May 1, the retroactive period would be limited to the 30 days from the point where services were both requested and received, which would be September 1<sup>st</sup>, through the point where the provider cleared Trustline, October 1<sup>st</sup>.

58. Comment:

§47-430.2(b)

*The retroactive payments shall be made by the county or the contracted payment agency to either the client, as the provider's employer, if care is provided in the home of the client, or the provider.*

This section states that the retroactive payments **shall** be made to the client if the care is in-home, but Section 47-620.31 states that, *Child care payments may be made directly to the client, as the employer, if child care is provided in the home of the client.* The question is whether payment to the client in the case of in-home care is mandatory.

Response:

Please refer to the response for comment number 13.

59. Comment:

§47-430.2(b)

(second part)

*The retroactive payment shall be made for up to the first 120 calendar days from the date child care services were requested and services were provided.*

This is the same issue raised earlier.

Response:

Please refer to the response for comment number 13.

60. Comment:

§47-620.5

*Upon notification that a provider has subsequently been convicted of a crime as specified in subdivision (f)(1) of §1596.871 of the Health and Safety Code, the county or contractor shall, within two business days, discontinue payment.*

Current regulations allow a 10-day period before discontinuance of payment. Would these proposed regulations require discontinuance of payment only in the case of Trustline denial or would it apply to Trustline closure as well? We find that in the case of closures, the issue is usually not criminal in nature and can be resolved within the 10-day period. We would suggest that this distinction be made in the regulatory changes proposed.

Response:

This comment is beyond the scope of the 15-day renote because this section was not changed for the renote.

61. Comment:

§47-620.6

*Upon receipt that the Trustline Registry application has been denied, the case file closed, registration is revoked, or registration is approved, the county or contractor shall immediately notify the client.*

Is it necessary to notify the client if Trustline has been approved? Wouldn't release of payment signify approval of Trustline? While it is imperative that the client know immediately if payment cannot be made because of denied Trustline, It would save time if the contractor did not have to notify clients when Trustline is approved; release of payment could accomplish the same thing.

Response:

Thank you for your comment. The comment is beyond the scope of the 15-day renote because notices regarding Trustline status were not changed in the renote.

62. Comment:

§47-630

*To be eligible for CalWORKS child care, all license-exempt child care providers in a private residence shall complete a Health and Safety Self-Certification with the parent of the child(ren) to be placed in care. This document shall be returned to the county within seven calendar days from the first day that CalWORKS child care services began.*

What if this requirement is not possible? If the parent begins using care before notifying the county or the contractor, the required seven-day period may have passed before the county or contractor even knows care is occurring.

Response:

Thank you for your comment. The comment is beyond the scope of the 15-day renote because the health and safety requirements were not changed in the renote.

Denyne M. Kowalewski, Executive Director, California Alternative Payment Program Association (CAPP) submitted the following comments: (Comments 63 - 69)

63. Comment:

**47-260 Eligible Providers (Page 2)**

.14 Trustline Requirement

A license-exempt child care provider shall Apply for or be a registered for Trustline child care provider as defined in Health and Safety Code Section 1596.605(b)(1) or be exempt from Trustline Registry, as specified in Chapter Section 47-600260.2. A license-exempt provider required to be a registered Trustline child care provider shall not receive a subsidized payment unless until Trustline registration has occurred.

A license-exempt provider, who has a Trustline application pending on the date that these regulations become effective, may continue to receive a subsidized payment for providing child care services until such time as their Trustline application is denied or their Trustline case file is closed.

**CAPP Comments:** While CAPP appreciates the concept of having exempt providers cleared before payment, Alternative Payment Program (APP) agencies are not set up to administer retroactive payments to a provider once cleared via the Trustline process.

Even if APP agencies had the capability to do retroactive payments CAPP has strong concerns about the workload for the APPs when a family transfers from Stage 1 to Stage 2 before a provider clears trustline. Stage 2 contractors with limited amounts of staff may not be able to keep up with the tracking of Trustline registrations, clearance or denials in order to ensure payment or non-payment. In addition we are concerned about how that would work. What kind of documentation would counties have to give agencies before handing off the family? We fear that the only choice Stage 2 agencies will have is to deny transfers between Stage 1 and Stage 2 if the provider is not cleared. This scenario will create a seam which would not be advantageous to the client, the county, or the Stage 2 agency.

Lastly, we have concerns about the potential situation where a parent may choose a licensed-exempt provider and then change providers to another licensed-exempt provider before the first provider is cleared.

Response:

In reference to agencies having to track payments, please refer to the response for comment number 15.

In reference to creating seams between stages, please refer to the response for comment number one.

In the current regulations there is nothing stopping parents from choosing a different provider while the first provider is in the Trustline registration process. Therefore, counties should practice the same procedures they currently follow when a parent switches providers.

64. Comment:

**47-301 Administration of Child Care Services (Page 5)**

.22

(e b)

A statement that a client who selects a license-exempt provider who is required to be registered ~~with and is granted~~ Trustline registration ~~may~~ shall receive retroactive payment for up to ~~the first 60~~ 120 calendar days from the date child care services were requested and services were provided, ~~if the provider becomes registered with Trustline. The client's retroactive payments may be made directly to the child care provider.~~

**CAPPA Comments:** CAPPA has strong concerns about this section and respectfully requests that the department consider re-working this section. This section raises strong concerns for CAPPA membership for a variety of reasons.

[Clarity] Can a family be transferred from Stage 1 to Stage 2 if their provider hasn't cleared? If so how would a Stage 2 agency go about tracking the attendance if the client transferred before their provider was cleared. What attendance records would they base it on? Many Stage 2 agencies have concerns that this may open agencies up to potential fraud.

[Clarity] CAPPA has concerns that the word "requested" in the above cited section is unclear and could be interpreted in many different ways. Does the term requested mean from the time the client was approved for child care services or when they requested child care?

[Clarity] What would an agency do if the retro-active payment crossed fiscal years? This has the potential to be a nightmare for agencies trying to close out their fiscal year. It could also put agencies into a position of financial liability if there are no state funds at the end of the year to cover retroactive payments.

Response:

The Department appreciates this comment but will not be amending the regulations. Yes a family can be transferred between stages if Trustline is still in process. Please refer to the response for comment number 63.

The term "requested" means from the time services are requested. Please refer to the response for comment number 47.

The Department's expectations are that the provider will be paid regardless whether the Trustline registration process crosses fiscal years or not. This may mean that multiple billings may be required.

65. Comment:

**47-301 Administration of Child Care Services (Page 5)**

(e c)

A statement that the client is required, no later than the first day child care services began, to instruct the license-exempt provider of choice to submit a completed Trustline application, including fingerprints, and a Health and Safety certification within seven calendar days;

**CAPPA Comments:** CAPPA has concerns that the proposed language significantly reduces the amount of time that the provider has to submit a Trustline application from 28 days to 7 days and will have an impact on Stage 1 processes.

Response:

Please refer to the response for comment number four.

66. Comment:

**47-430 Retroactive Payments (Page 9)**

.1 Intent

It is the intent of the Legislature that all CalWORKs ~~applicants and recipients~~ clients be aware of their potential liability for child care payment, and that child care providers be promptly paid for their services to eligible families.

**CAPPA Comments:** CAPPA has strong concerns that retro-active payments set parents and providers up for a very negative experience. There is the possibility that providers will do the care and then be denied Trustline. Providers in this situation are still going to want to be paid and the parents, who have very limited resources, are

going to be stuck reimbursing the provider because Stage 1 won't be able to pay for the care.

Response:

The Department appreciates this comment but will not be amending the regulations. The priority of these regulations is to increase the safety of children in subsidized child care. Please refer to the response for comment number 26b.

67. Comment:

**47-431 Retroactive Payments (Page 9)**

.2 Retroactive Payment Limit

(~~b~~ a) License-exempt child care providers who are required to be Trustline registered. After (~~future date~~), clients ~~may~~ **shall** be entitled to receive retroactive payment for up to ~~60~~ **120** calendar days from the date child care services were requested and services were provided if the provider subsequently becomes Trustline registered. The county may issue retroactive child care payments on behalf of the client directly to the provider.

(~~e~~ b) The retroactive payments ~~may~~ **shall** be made by the county or the contracted payment agency to ~~either~~ the client, as the ~~provider's~~ employer, if care is provided in the home of the client, ~~or the provider.~~ **The retroactive payment shall be made for up to the first 60 120** calendar days from the date child care services were requested and services were provided, ~~if the provider becomes subsequently Trustline registered.~~

CAPPA Comments: CAPPA has strong concerns regarding the retroactive payment of 120 days. Not only will this new timeline be difficult to manage at year end but it will be difficult for counties to quickly transfer families which may create a backlog in Stage 1.

[Clarity]CAPPA has strong concerns that there will be significant confusion in the field between the 120 calendar day retroactive payment limitation going back to the request for and provision of services (47-430.2(b) and the 30-calendar day retroactive payment limit for child care services used by a client before the official request for child care was made (47-430.21(a)).

[Clarity] CAPPA would encourage the Department to consider changing “home of the client” to “the home where the child in care resides.” This change in wording would help avoid the confusion about whether the word “home” simply means where one lives or if ownership is an aspect of a location being the person’s home.

Example: The client and her child who moves into the home owned and occupied by the client's mother, and then this grandmother provides the child care in that location for the client's child.

Response:

The Department appreciates this comment but will not be amending the regulations as suggested. The criterion is that clients will be transferred once they are stable, therefore this should not create a backlog in Stage 1 child care.

Please refer to the response for comment number eight.

Changing "home of the client" was not in the proposed regulation packet making this comment beyond the scope of the proposed regulations.

68. Comment:

**47-620 Trustline Registry Application Requirements (Page 17)**

- .4 6 Immediate Notification to the ~~Recipient~~ Client Upon receipt that the Trustline Registry application has been denied, the case file closed, ~~or registration is revoked, or registration is approved,~~ the county or contractor shall immediately notify the ~~recipient~~ client.

CAPPA Comments: CAPPA has concerns that this section will significantly increase agency workload due to the requirement that the agency notify the parent if a Trustline Registry application has been approved.

Response:

The Department appreciates the comment but will not be amending the regulations. The only change made to MPP Section 47-620.6 was to change "Recipient" to "Client" for clarity and consistency, therefore this comment is beyond the scope of the renote.

69. Comment:

**47-630 Health and safety requirements for license-exempt child care providers (Page 19)**

- .11 Exemptions Aunts, uncles, and grandparents, ~~great grandparents, great aunts, and great uncles~~ of the child(ren) in care, by blood, marriage or court decree. (Continued)

CAPPA Comments: CAPPA appreciates the departments move to align Stage 1 with CDE-funded program by requiring greats to be trustlined.

Response:

Thank you, the Department appreciates your comment.

## ADDENDUM TO FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are NecessarySections 47-301.22(c), 47-620.11, and 47-630.1

These sections have been amended for clarity by adding the phrase "or as soon as possible" after "seven calendar days." Additionally, Section 47-620.11, second paragraph has been deleted because the affected public has as much time as it wants to submit the application, regardless of Live Scan accessibility. The sooner the client submits the application/trustline package, the sooner they will be processed and certified. Any delay in submitting the application/trustline package is self-imposed and affects the timing and possibility of reimbursement. These changes are not substantive since both were included in the version on which the public had opportunity to comment.

d) Statement of Alternatives Considered

The following are the alternatives considered to this proposal:

1. To continue current practices and allow payments for up to 28 days prior to submitting the Trustline application. This alternative was rejected due to the fact that it did not meet the Department's goal of increasing protections to children receiving care from license exempt providers.
2. The second option was to disallow payment of Trustline providers for any period of care occurring before they become registered. This alternative was rejected because it is unlikely that providers would be willing to provide care without the possibility of eventual payment. This could result in parents being unable to participate in their welfare to work activities.
3. Another alternative was to conduct a brief preliminary background check using CLETS or CACI. However, only entities with peace officer designations have access to those systems and only for situations specifically identified as "urgent".

CDSS has determined that no reasonable alternative considered 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.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined 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.

f) Testimony and Response

In regards to Section 47-301.22(i), the issue raised by the commenter for comments numbered f) 64 and g) 28 are beyond the scope of this Trustline proposed regulation package.