

FINAL STATEMENT OF REASONS

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

Section 31-002(c)(5)

Specific Purpose:

This section is amended to clarify the definition of a case record, which is in accordance with existing regulations. A dependent child or child receiving some form of child welfare services will have both electronic and hard file documents within their case record. This includes additional court documents as defined in the California Rules of Court, Rule 5.552, that are maintained by the child welfare services agency, in the child's case file record.

Factual Basis:

This amendment is necessary, as it provides the source where specific information is kept, which must be released per the conditions of Senate Bill (SB) 39. The chaptered legislation provides very specific and sensitive information that must be released upon request when a child suffers abuse and/or neglect that results in a fatality.

Section 31-002(g)(3)

Specific Purpose/Factual Basis:

This section is amended to repeal the cross reference of Welfare and Institutions Code Section 366.25, as it no longer exists. It is amended for clarification.

Section 31-002(r)(7)

Specific Purpose/Factual Basis:

This section is being adopted to provide a definition of risk assessment information that is already being captured by the counties for which there is no existing regulatory definition. This section is necessary to provide guidance to counties to clarify the pertinent documented information that shall be released upon request pursuant to SB 39 and Welfare and Institutions Code Section 10850.4 when a child fatality occurs as a result of abuse and/or neglect.

Sections 31-002(s)(1)

Specific Purpose/Factual Basis:

This section is being adopted to provide a definition of safety assessment information that is already being captured by the counties for which there is no existing regulatory definition. This section is necessary to provide guidance to counties to clarify the pertinent documented information that shall be released upon request pursuant to SB 39 and Welfare and Institutions Code Section 10850.4 when a child fatality occurs as a result of abuse and/or neglect.

Sections 31-002(s)(2) through (s)(10)

Specific Purpose/Factual Basis:

These sections are being renumbered accordingly to allow for the adoption of Section 31-002(s)(1).

Section 31-003

Specific Purpose/Factual Basis:

This section is being adopted to provide a definition section for the form that is referred to in Division 31, for clarity and ease of use.

Sections 31-003(a) through (r)

Specific Purpose/Factual Basis:

These sections are being adopted to reserve a space for forms that are referenced in Division 31, to support county child welfare service agencies. They are put into alphabetical order for ease of use.

Section 31-003(s)(1)

Specific Purpose:

This section is adopted to provide guidance to the counties when reporting information to the Department related to child fatalities and near fatalities that resulted from abuse and/or neglect.

Factual Basis:

This section is necessary to provide the updated SOC 826 form created by CDSS to support the counties with fulfilling both SB 39 requirements and Child Abuse Prevention and Treatment Act reporting requirements.

Final Modification

A technical correction was made to Section 31-003(s)(1) to reflect the newest revision date of the SOC 826 form. This form was revised to capture information required by the Child Abuse Prevention and Treatment Plan (CAPTA).

Sections 31-003(t) through (z)

Specific Purpose/Factual Basis:

These sections are being adopted to reserve a space for forms that are referenced in Division 31 to support county child welfare service agencies. They are put into alphabetical order for ease of use.

Sections 31-502.1 and .11

Specific Purpose:

These sections are being adopted to provide guidance to the county child welfare agencies regarding how to report, using the SOC 826 form, each child fatality that occurs when there is a reasonable suspicion that the fatality was a result of abuse and/or neglect.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007 created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will notify CDSS when they have learned of a child fatality and they have applied the standard of reasonable suspicion of abuse or neglect as defined in Penal Code Section 11166(a)(1). These sections are necessary to comply with this statute.

Final Modification

The information in Section 31-502.1 was deleted and Sections 31-502.11, .112, and .112(a) were combined to make a revised Section 31-502.1. This clarifies for the counties that the "reasonable suspicion" that a death was the result of abuse or neglect would trigger a referral and not a report to the CDSS at this stage. The words "caused by" were changed to "a result of" in the renumbered Section 31-502.1 in response to public comment in order to maintain consistency in the language used throughout this section of the regulations.

Sections 31-502.111 and .111(a) (Handbook)

Specific Purpose:

These sections are being adopted to provide examples of sources from which a county child welfare agency may learn of a child fatality. Section 31-502.111(a) Handbook provides the legal definition of "reasonable suspicion" as defined in Penal Code Section 11166(a)(1), that must be applied once the county has learned of a child fatality.

Factual Basis:

These sections are necessary because counties are responsible for complying with this statute for any deaths that occur on or after January 1, 2008 where there is reasonable suspicion of child abuse and/or neglect that occurs on or after January 1, 2008. It is also necessary to make clear to counties that reasonable suspicion is required to be applied to any information that is received regarding a child fatality.

Sections 31-502.112 and .112(a)

Specific Purpose:

Section 31-502.112 is being adopted to make clear to the counties, that once they learn of a child fatality, and have applied the reasonable suspicion standard, a referral must be generated and documented within the child's case record. Further, Section 31-502.112(a) describes how counties are to proceed in order to comply with reporting requirements in the same manner as any abuse or neglect referral pursuant to Manual of Policies and Procedures (MPP) Division 31, Section 31-501.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will notify CDSS when they have learned of a child fatality and they have applied the standard of reasonable suspicion as defined in Penal Code Section 11166(a)(1). Counties are responsible for complying with this statute for any deaths that occur on or after January 1, 2008, where there is reasonable suspicion of child abuse and/or neglect. Further, Penal Code Sections 11166 and 11169 specify additional reporting requirements for child welfare agencies, when child abuse and/or neglect allegations have been substantiated or found to be inconclusive.

Final Modification:

Section 31-502.112 was deleted because counties are not required to submit a SOC 826 form for suspected fatalities. Section 31-502.112(a) was renumbered for clarity and ease of use.

Sections 31-502.113 and .113(a) through (d)

Specific Purpose:

These sections are adopted to specify information relating to a child who has died where there is reasonable suspicion of child abuse and/or neglect, that is to be reported on the SOC 826 and submitted to CDSS by the county child welfare agency.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will notify CDSS when they have learned of a child fatality and they have applied the standard of reasonable suspicion as defined in Penal Code Section 11166(a)(1). Counties are responsible for complying with this statute for any deaths that occur on or after January 1, 2008, where there is reasonable suspicion of child abuse and neglect.

Final Modification:

These sections were renumbered to Sections 31-502.2 through .24 for clarity.

Sections 31-502.2 and .21

Specific Purpose:

These sections are being adopted to specify additional information that shall be reported to CDSS by the county child welfare agency when a determination has been made that a child did or did not die as a result of abuse and/or neglect.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will notify CDSS when they have learned of a child fatality and a determination has been made by an agency as specified in statute. Counties are responsible for complying with this statute for any deaths that occur on or after January 1, 2008, where there is reasonable suspicion of child abuse and neglect.

Final Modification:

The list of information reported to CDSS when a fatality has occurred was moved due to changes in previous sections. This information, previously found in Section 31-502.113 was renumbered to Sections 31-502.21 through .24.

Sections 31-502.22 through .223

Specific Purpose:

These sections are being adopted to specify the agencies that are identified by statute to make such a determination. These sections further clarify how a determination of abuse and/or neglect is made by these identified agencies.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will notify CDSS when they have learned of a child fatality and a determination has been made by an agency as specified

in statute. Counties are responsible for complying with this statute for any deaths that occur on or after January 1, 2008, where there is reasonable suspicion of child abuse and neglect.

Final Modification:

Sections 31-502.22 through .223 were renumbered to Sections 31-502.25 through .253. These sections were subsequently amended. The word "direct" was removed as the term was too restrictive given the wide array of circumstances in child fatality cases. In addition, the words "as the direct cause" were changed to "which resulted in" in Section 31-502.251 in response to public comment in order to maintain consistency in the language used throughout this section of the regulations.

Section 31-502.224 (Handbook)

Specific Purpose:

This handbook section is added to provide the counties with a reference to Penal Code Section 11165.12(b) which defines a "substantiated" report as used by county child welfare agencies. This further clarifies how the county child welfare agencies determine whether or not child abuse or neglect occurred.

Factual Basis:

The counties are responsible for complying with this statute for any child abuse and/or neglect case that results in a fatality that occurs on or after January 1, 2008.

Final Modification:

Section 31-502.224 was renumbered to Section 31-502.254 as a result of modifications to Section 31-502.2.

Section 31-502.23

Specific Purpose/Factual Basis:

This section is being adopted to clarify the necessary information that shall be reported to CDSS by the county child welfare agency when it is substantiated that a child fatality was the result of abuse and/or neglect. This information is necessary to remain in compliance with federal laws (The Child Abuse Prevention and Treatment Act [CAPTA]). The findings and information of abuse and neglect cases that result in fatalities shall be disclosed upon public request. This information shall be documented by the county child welfare agencies on the SOC 826 form.

Final Modification:

This section is being deleted because the reporting requirements are combined in Sections 31-502.2 through .254 and because the counties only report upon determination that the death was the result of abuse or neglect, therefore, there is no subsequent report.

Final Modification:

Sections 31-502.231 and .232

Specific Purpose:

Due to renumbering in prior sections, Sections 31-502.231 and .232 are adopted to replace Sections 31-502.113(c)(1), (c)(2) and .113(d). These sections provide the counties with instruction regarding information to be included on the SOC 826.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will notify CDSS when they have learned of a child fatality and they have applied the standard of reasonable suspicion as defined in Penal Code Section 11166(a)(1). Counties are responsible for complying with this statute for any deaths that occur on or after January 1, 2008, where there is reasonable suspicion of child abuse and neglect.

Final Modification:

Sections 31-502.24 through .253

Specific Purpose/Factual Basis:

Due to renumbering in prior sections, these sections are being adopted to clarify the necessary information that shall be reported to CDSS by the county child welfare agency when it is substantiated that a child fatality was the result of abuse and/or neglect. This information is necessary to remain in compliance with federal laws (The Child Abuse Prevention and Treatment Act [CAPTA]). The findings and information of abuse and neglect cases that result in fatalities shall be disclosed upon public request. This information shall be documented by the county child welfare agencies on the SOC 826 form.

Final Modification:

Section 31-502.254 (Handbook)

Specific Purpose:

Due to renumbering in prior sections, Section 31-502.254 is adopted to replace Section 31-502.224. This handbook section is added to provide the counties with a reference to Penal Code Section 11165.12(b) which defines a "substantiated" report as used by county child welfare agencies. This further clarifies how the county child welfare agencies determine whether or not child abuse or neglect occurred.

Factual Basis:

The counties are responsible for complying with this statute for any child abuse and/or neglect case that results in a fatality that occurs on or after January 1, 2008.

Sections 31-502.3 through .32

Specific Purpose:

These sections are adopted to clarify how the county shall respond to public requests for information related to a child fatality that is suspected or has been determined to be a result of abuse and/or neglect. These sections specify the timeframes for when the information shall be provided, and describe those individuals who must be notified of such a request when there is an objection to the release of such information regarding a child who is related directly or indirectly related to the to the deceased child's case record.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008.

Final Modification

The cross reference included in this section was changed to the corresponding renumbered sections. The cross reference cited in Section 31-502.31 was changed to Section 31-502.2.

Sections 31-502.33 through .331(g)

Specific Purpose:

These sections are adopted to specify case record information that shall be released by the counties upon public request. These sections identify specific documents within a child's

case record that are to be released when a determination has been made that the child died as a result of abuse and/or neglect. These sections specify timeframes to which counties must adhere when responding to requests for information as mandated by statute. A cross reference to Section 31-502.4 is also included to make clear to counties that specific confidential information shall be redacted prior to public disclosure.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008.

Final Modification:

The cross references in Sections 31-502.33 and 31-502.331(a) were renumbered to reflect changes made in previous sections. The word "caused" was changed to "resulted in" in Section 31-502.331(b) in response to public comment, in order to maintain consistency in the language used throughout this section of the regulations.

Sections 31-502.34 through .35

Specific Purpose:

These sections are being adopted to specify case record information that is to be released by the counties upon public request for children who have died as a result of abuse and/or neglect inflicted by the foster parent. These sections identify specific documents within a child's case record that are to be released when a determination has been made that the child died as a result of abuse and/or neglect, including specific licensing information, if in the case record. Additional instruction is also provided for instances where a child fatality may have occurred within a non-residential licensed child care center, which falls under the jurisdiction of an agency other than the county child welfare agency, to the extent the information is available in the case record. These sections further specify timeframes to which counties must adhere when responding to requests for information as mandated by statute.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008.

Final Modification

The cross references in Sections 31-502.34 and 31-502.431(a) were renumbered to reflect changes made in previous sections. A technical correction was made to the punctuation in Section 31-502.34 for clarity. Also, the word "caused" was changed to "resulted in" in Section 31-502.341(b) in response to public comment in order to maintain consistency in the language used throughout this section of the regulations. In addition, in Section 31-502.341(e), "person" was changed to "person(s)" for clarity.

Sections 31-502.4 through .437

Specific Purpose:

These sections are adopted to provide instructions to the counties for redacting confidential and sensitive information that is not releasable from the child's case record regardless if the child fatality was caused by abuse and/or neglect. The counties shall also consult with the local law enforcement agency and/or the District Attorney to identify if whether any information that is to be released would jeopardize a criminal investigation. This information is necessary in order for counties to remain in compliance with CAPTA requirements.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008. Further, Welfare and Institutions Code Section 10850.4 mandates that CDSS will develop regulations specifying confidentiality laws and information that shall be redacted from case record documents prior to release. CAPTA excludes the disclosure of information that may jeopardize a criminal investigation or proceeding.

Final Modification

Handbook Section 31-502.41 was added to provide clarification regarding entities under independent state law that are entitled to unredacted records. This section does not apply to those entitled to unredacted records. For example, "pursuant to Welfare and Institutions Code Section 4903, counties are required in some circumstances, to release information without redactions to the protection and advocacy agency in California." (See Welfare and Institutions Code Section 4900 et seq.). Because of the inclusion of Handbook Section 31-502.41, previously numbered Sections 31-502.41 through .437 have been renumbered to Sections 31-502.42 through .447, respectively. Section 31-502.43 was amended to clarify that the section provides instruction related specifically to the disclosure of information that may be detrimental to children directly or indirectly related to the deceased child. The word "that" was added to Sections 31-502.441, .442 and .443 in response to public comment, for clarity.

Section 31-502.44

Specific Purpose:

This section is adopted to provide counties with instruction related to confidentiality laws, which must be adhered to for redacting confidential and sensitive information that is not releasable from the child's case record.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008. Further, Welfare and Institutions Code Section 10850.4 mandates that CDSS will develop regulations specifying confidentiality laws and information that shall be redacted from case record documents prior to release.

Final Modification:

This section was renumbered to Section 31-502.45 due to the inclusion of Handbook Section 31-502.41.

Sections 31-502.441 through .441(j)

Specific Purpose:

These sections are being adopted to provide guidance to the counties regarding their responsibility of maintaining confidentiality when disclosing documents from a child's case record when the child has died as a result of abuse and/or neglect. These sections specify state laws and rules governing confidentiality and the release of sensitive personal information, which are not subject to SB 39 or Welfare and Institutions Code Section 10850.4.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case record information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008. Further, Welfare and Institutions Code Section 10850.4 clearly states that the CDSS shall provide the county child welfare agencies, with a list of state laws limiting the scope of disclosing case record documents.

Final Modification

Section 31-502.441 has been renumbered to Section 31-502.451 due to the inclusion of Handbook Section 31-502.41. Section 31-502.451 is being amended in response to public comment. The confidentiality laws originally listed in this section were over inclusive. Sections 31-502.451(a) through (d) now includes handbook examples of applicable laws related to confidentiality, as well as a brief description of each law for clarification purposes.

Sections 31-502.442 through .442(g)

Specific Purpose:

These sections are being adopted to provide guidance to the counties regarding their responsibilities of maintaining confidentiality when disclosing documents from a child's case record when the child has died as a result of abuse and/or neglect. These sections specify federal laws and rules governing confidentiality and the release of sensitive personal information, which is not subject to SB 39 or Welfare and Institutions Code Section 10850.4.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse or neglect case that resulted in a fatality that occurs on or after January 1, 2008. Further, Welfare and Institutions Code Section 10850.4 clearly states that the CDSS shall provide the county child welfare agencies, with a list of state and federal laws limiting the scope of disclosing case record documents.

Final Modification:

Section 31-502.442 was removed due to public comment, because it was overly inclusive and misleading. All relevant confidentiality laws are now included in Section 31-502.451.

Final Modification:

Sections 31-502.44 through .447

Specific Purpose:

Due to renumbering in prior sections, Sections 31-502.44 through .447 are adopted to replace Sections 31-502.43 through .437. These sections are adopted to provide instructions to the counties regarding the specific confidential and sensitive information that shall be redacted from the deceased child's case record prior to release. This information is necessary in order for counties to remain in compliance with CAPTA requirements.

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008. CAPTA excludes the disclosure of information that may jeopardize a criminal investigation or proceeding.

Sections 31-502.45 through .47

Specific Purpose:

These sections are adopted to provide guidance to the counties for their responsibilities with reporting and releasing documents from a child's case record when the child has died as a result of abuse and/or neglect. Further, these sections provide counties with directions as to the limits of their responsibilities for disclosure of information that is not within the child's case record as defined in MPP Division 31, Section 31-002(c)(5).

Factual Basis:

SB 39, Chapter 468, Statutes of 2007, created Welfare and Institutions Code Section 10850.4 and amended Section 827 to mandate that counties will provide specific case file information to public and private entities upon request for any child fatality that was a result of abuse and/or neglect and was known to the county agency. Counties are responsible for complying with this statute for any child abuse and/or neglect case that resulted in a fatality that occurs on or after January 1, 2008.

Final Modification:

These sections were renumbered to Sections 31-502.46 through .48 due to the inclusion of Handbook Section 31-502.41.

b) Identification of Documents Upon Which Department Is Relying

- Senate Bill 39, Chapter 468, Statutes of 2007
- Penal Code Sections 11165.12, 11166, and 11169
- 42 USC 5106
- 45 CFR 1340.15(b)

c) Local Mandate Statement

Although these regulations do impose a mandate on local county child welfare agencies to respond to public requests for information, this will not create any additional costs for the local county child welfare agencies.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made a determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on March 18, 2009 in Sacramento, California. Oral testimony was given by National Center for Youth Law. Written testimony was received from the following during the 45-day comment period from January 30, 2009 through March 18, 2009:

National Center for Youth Law (NCYL)
Disability Rights California (DRC)

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

General Comment:

1. Comment:

"The National Center for Youth Law, the Children's Advocacy Institute, and the California Newspaper Publishers Association, welcome this opportunity to comment on the California Department of Social Services (CDESS) January 2009 draft regulations, "SB 39, Child Fatality Reporting and Disclosure Requirements" (ORD No. 1008-07).

"We propose a number of modifications, the most important of which revise sections 31-502.441 and .442. As currently drafted, those sections would be inconsistent with the underlying statute and therefore prohibited by the Administrative Procedures Act. (Govt. Code section 11349.1(a)(4).)" (NCYL)

Response:

Thank you for your comment. We agree, in part, with the suggested modifications to Sections 31-502.441 and .442.

Section 31-502

2. Comment:

"Proposed section 31-502 includes potentially troublesome variations of terminology concerning causation:

""the direct cause" (proposed regulation .221)

""a direct cause" (proposed regulation .222)

""a direct result" (proposed regulation .223)

""a result of: (proposed regulation .23)

"The last of these, "a result of," or "a cause of," is preferable, as it avoids perennial problems in defining causation. If A is "*the* direct cause" of X, can B also be *a* cause of X? If A is *a direct* cause of X, can B also be a *direct* cause of X? The CDSS can avoid seeming to enter into such debates by consistent use of the most straightforward term: "a result of" or "a cause of." This unembellished approach is also required for consistency with the legislature's choice of terms in SB 39: "the fatality was caused by abuse or neglect," "abuse or neglect leads to a child's death," and "child fatality...that was the result of child abuse or neglect." (Welfare & Institutions Code subdivisions 10850.4(a), 10850.4(b), 10850.4(j).)" (NCYL)

Response:

Thank you for your comment. We agree and will change the wording to "a result of" to maintain consistency throughout the section.

Section 31-502.341(e)

3. Comment:

"Section .341(e) (p. 8) should read "person(s)" rather than "person.""(NCYL)

Response:

Thank you for your comment. We agree and will make the suggested change to this section.

Sections 31-502.431 , .432, and .433

4. Comment:

"At section .431 (p. 9) and sections .432 and .433 (p. 10) the word "that" should be inserted after "except" for clarity." (NCYL)

Response:

Thank you for your comment. We agree and will add the word "that" in the sections noted.

Sections 31-502.441 and .442

5. Comment:

"These subsections require substantial revision because, as currently worded, they fail to provide the guidance required by the statute and they include unnecessary and inappropriate citations to external laws and regulations. Unfortunately, both of these subsections were omitted from the version circulated to interested parties for comment in 2008, so it has not been possible to address their problems until now.

"In cases of child abuse or neglect leading to a child's death, SB 39 requires the release of 12 types of documents and/or information maintained by the local child protective services agency. The records and information to be released are specified in the law. The 12 items are:

- "Age of child
- "Gender of child
- "Whether the child was residing with parent(s)/guardian or in foster care
- "Whether an investigation is being conducted or has been conducted by law enforcement, child welfare agency, both or neither
- "Previous referrals while living with parent(s)/guardian, if any
- "Emergency response referral information form
- "Emergency response notice of referral disposition form
- "Cross reports from child welfare agency to law enforcement
- "Risk and safety assessments by child welfare agency
- "Health care records, excluding mental health records, if reflective of a pattern of abuse/neglect
- "Police reports concerning the perpetrator of abuse/neglect
- "If death occurred in foster care, initial and renewal licensing records for the foster parents at the time of the child's death, reports of licensing violations, notices of action concerning licensing violations, and records of the foster parents' training.

"For details, see Welfare & Institutions Code, sec. 10850.4(a)-(c).

"Prior to release of the records, however, the statute requires the redaction of personally identifying information: "names, addresses, telephone numbers, ethnicity, religion, or any other identifying information of any person or institution, other than the county or the State Department of Social Services...." (Section 10850.4(e)(1)(A).) In addition, requests by the district attorney to redact information because its release would jeopardize a criminal investigation or proceeding are to be honored (section 10850.4(e)(1)(B)). Finally, SB 39

also requires redaction of "[a]ny information that is privileged, confidential, or not subject to disclosure pursuant to any other state or federal law" (section 10850.4(e)(1)(C)).

"Recognizing that the above items of information might include information protected by other federal or state statutes, the legislature directed CDSS to promulgate regulations listing such external laws and regulations as are relevant and setting standards governing any further redactions.¹

"The legislature's intent in requiring the CDSS regulations to list external statutes and regulations designating information that is "privileged, confidential, or not subject to disclosure pursuant to any other state or federal law" is, of course, to help county administrators/custodians of records to ensure that within the 12 items or documents to be released there is no information subject to redaction because it is protected by other statutes not overridden by SB 39. Administrators/custodians of records will cross-check the 12 items or documents against the restrictions in the listed external statutes to facilitate appropriate redactions, if any, beyond the scope of the redactions specifically prescribed in SB 39, i.e., information other than "the names addresses, telephone numbers, ethnicity, religion, or any other identifying information of any person or institution...."(Welf. & Inst. Code, Sec. 10850.4(e)(1)(A).)

"The list of laws and regulations in the draft of subsections .411 & .442 is overly inclusive and misleading. The mere mention of privacy, confidentiality or privilege in a statute or regulation does not make it relevant to the redaction of the records called for by SB 39. As they stand now, the draft regulations take a scattergun approach that conflicts with both the text and the intent of the statute. For example, Revenue and taxation Code section 19542, cited at .441(h), refers to the disclosure of information from state tax filings. Such state tax filing information is not part of the records to be released under SB 39. Indeed, they are unlikely to be found in any child welfare records. The list of statutes in the regulations should be much more precise. In Attachment A to this letter we propose an alternative, pared down list of the statutes that may need to be considered. Attachment A also includes language to provide the guidance to county administrators that SB 39 requires.

"Listing statutes that do not require redaction of any information would be contrary to SB 39's text and destructive of its intent. To list statutes that would require redaction of the same information that is explicitly required to be redacted by SB 39 also would be contrary to the legislative intent: it would send county administrators on time-wasting, budget-consuming, wild goose chases, wading through irrelevant statutory materials to find only that the same names, addresses, etc., that the administrators have already redacted pursuant to Section 10850.4(e)(1)(A) also would be appropriate for redaction by application of other laws. The time-wasting and budget-depleting consequences of listing laws that should not

¹ "Prior to releasing any document pursuant to subdivision (c), the custodian of records shall redact the following information:...

(e)(1)(C). Any information that is privileged, confidential, or not subject to disclosure pursuant to any other state or federal law.

(e)(2)(A) The State Department of Social Services shall promulgate a regulation *listing* the laws described in subparagraph (C) [reproduced immediately above] of paragraph [10850.4(e)](1) and *setting forth standards* governing redaction." (Welfare & Institutions Code Sec. 10850.4(emphasis supplied).)

be listed are particularly troublesome when they occur in the absence of the guidance that SB 39 requires.

"The revised list in Attachment A is shorter than the list in the CDSS draft because we have deleted citations to statutes and regulations that meet one or more of the following criteria:

- "a. The statute or regulation deals with judicial (i.e., court) records or proceedings, not the administrative records that are found in child welfare agency files. For example, Penal Code section 1054.2, cited at proposed regulation .441(g), deals with disclosures by attorneys in criminal trials. It is irrelevant to SB 39.
- "b. The statute or regulation requires redaction of the same information – names, addresses and/or other personally identifying information – that will be redacted pursuant to Welfare & Institutions Code subdivision 10850.4(e)(1)(A), i.e., "...names, addresses, telephone numbers, ethnicity, religion, or any other identifying information...." For example, Penal Code section 293.4, cited at proposed regulation .441(g), allows a sexual crime victim to request deletion of her or his name from trial records. Names must be deleted from responses to SB 39 requests, so a citation to Penal Code section 293.4 would be redundant.
- "c. The statute or regulation does not exist. For example, we have been unable to find a section 255.7 in the California health & Safety Code, so it should not be cited at proposed regulation .441(f).
- "d. The statute or regulation does not prohibit county officials from releasing information. For example, Evidence Code section 1560, cited at proposed regulation .441(c), defines the term "business" and specifies procedures related to subpoenas duces tecum; it has nothing to do with redactions or the limits on disclosure of information. As another example, Family Code section 17505 mandates limits on acquisition of criminal information coming *into* the California Child Support Automation System, but it does not regulate dissemination of information *from* that system, nor does Family Code section 17505 have any relationship to the files of county agencies.
- "e. The statute or regulation deals with documents or types of information that are not among the documents or types of information that SB 39 specifies as subject to release. The documents and types of information that are subject to release are only those listed earlier in this letter. (See Welfare & Institutions Code sec. 10850.4(a)-(c).) For example, income tax data is not among the types of information that SB 39 permits to be released, so the citation to the federal Internal Revenue Code, 26 USC, at proposed regulation .442(d), is unnecessary.

"SB 39 also requires CDSS to develop standards for application of the state and federal statutes that may apply to the records whose release it requires. The legislature's intent is that CDSS not only provide a list of statutes, but also guidance, i.e., standards, for application of external statutes. The proposed regulations provide no guidance or standards for dealing with the numerous statutes and regulations listed in proposed sections .441(a)-(j) and .442(a)-(g). For that reason, the current draft would produce just the opposite of the

statute's mandate. Without the guidance that SB 39 mandates, county administrators would have to do their own parsing of numerous statutes and regulations, leading to precisely the lack of uniformity in disclosure that the legislature, in SB 39, has determined to remedy. The absence of the legislatively mandated standards, along with the excessive and unwarranted number of citations to irrelevant statutes, would impose an unnecessary burden and cost on administrators charged with the release of records.

"It is important to provide the sort of guidance that we propose in Attachment A. The legislature has been explicit concerning the need to provide guidance. It explained the problem in the text of the statute:

"The current procedures for accessing information about a child's death from abuse or neglect are costly, at times resulting in lengthy delays in the release of that information, fail to provide adequate guidance for what information should and should not be disclosed, and permit significant variation from one jurisdiction to another in the nature and extent of the information released." (SB 39 (2007), Sec. 1(d) (emphasis supplied).) (NYCL)

Response:

Thank you for your comment. CDSS agrees that the list of confidentiality laws is over inclusive, and agree to use the edits, in part, suggested by NYCL. However, we have added other references that we feel are pertinent to this section (listed in Comment #7).

6. Comment:

"Attachment A to letter to CDSS Office of Regulations Development

"Proposed revision of SB 39 regulations, sections .441-.442, with guidance [*sic*]

"The following listing of laws and regulations and the guidance concerning them applies only to request pursuant to Welfare & Institutions Code section 10850.4.

".441

"(d)¹² Family Code sections 3041.5, 3111, and 7643

"Family Code section 3041.5 provides for alcohol and drug testing in judicial proceedings concerning custody, visitation, and guardianship. The results of such tests are confidential and should be redacted.

"Family Code section 3111 provides for confidential child custody evaluation reports in cases of contested child custody and contested visitation rights. For example, one family member may object to visits from another family member. Documents from

¹² For convenience in cross-referencing these recommended revisions to CDSS's proposed regulations, we have retained CDSS's numbering system, e.g., .441(a), .441(b), etc. In the final regulations, the sections should be renumbered.

such cases are in the files of the Superior Court, or the Juvenile Court. If such evaluation reports are found in the county's files, they should be redacted.

"Family Code section 7643 provides for confidentiality of court proceedings to establish the identify [*sic*] of a child's father. Records of such proceedings, including paternity test results, should be redacted.

"(g) Penal Code section 13300

"Penal Code section 13300 allows several government agencies, including child welfare agencies, to obtain "local summary criminal history information," more commonly known as "rap sheets." Rap sheet information concerning the perpetrator(s) of neglect or abuse that has come from a local criminal justice agency should be redacted. Rap sheet information concerning the criminal history of persons other than the perpetrator(s) of neglect or abuse should be redacted. Information about the criminal history of the perpetrator(s) of neglect or abuse that has come from sources other than a "rap sheet," such as police reports, the individual concerned, family members, child welfare department personnel, etc., should not be redacted.

"(i) Welfare & Institutions Code section 11478.1

"Welfare & Institutions Code section 11478.1 requires public agencies to maintain the confidentiality of information gathered for purposes of child and spousal support enforcement. (See 42 U.S.C., ch. 7, Part D, section 651.) Documents generated or acquired for purposes of child or spousal support enforcement, as well as information derived from such documents, should be redacted. Information that could have been acquired for purposes of child or spousal support enforcement, but which actually was acquired through other channels (for example: mother tells Child Protective Services caseworker how much father earns) should not be redacted." (NCYL)

Response:

Thank you for your comment. CDSS agrees, in part, to revise this section using the suggested edits submitted by NYCL. The language in Section 31-502.441 "the following are examples of state laws and rules and are not intended to be an exhaustive list of such laws and rules" will remain unchanged; the NCYL's suggested language "the following listing of laws and regulations and the guidance concerning them applies only to request pursuant to Welfare and Institutions Code Section 10850.4" will not be used. In addition, CDSS is adding the following language:

Section 31-503.441(d)(1) (Handbook):

"Health and Safety Code section 1255.7 provides for "safe-surrender site" and for the confidentiality of any identifying information that pertains to a parent or individual who surrenders a child pursuant to this section. Any identifying information that pertains to a parent or an individual who surrenders a baby under this section is exempt from disclosure and therefore, if this information is I n the juvenile case file this information must be redacted."

Section 31-503.441(e)(1) (Handbook):

"Penal Code section 851.8 provides for the sealing and destruction of arrest records if a determination of factual innocence was made by the court. If the Child Welfare Agency still maintains such records in the juvenile case file those records should be destroyed."

Section 31-503.441(f)(1) (Handbook):

"Penal Code section 11081 provides the general rule that there is no access to any criminal offender record information obtained from the Department of Justice unless otherwise authorized by law. This information should be redacted if it is part of the social worker emergency response information, referral disposition or safety and risk assessments."

Section 31-503.441(g)(1) (Handbook):

"Penal Code section 11105 provides that Child Welfare Agency may obtain summary criminal history information from the Department of Justice. This information must be redacted if it is part of the social worker emergency response information, referral disposition or safety and risk assessments."

Section 31-503.441(h)(1) (Handbook):

"Penal Code section 11167.5 provides that all reports of child abuse or neglect by mandated reporters shall be confidential and may be disclosed only to authorized persons or agencies. Reports of suspected child abuse or neglect may only be disclosed to authorized persons therefore, these reports written pursuant to 11166, 11166.2, or authorized by 11166.05 may not be disclosed. Any information that may identify a mandated reporter that is maintained in the juvenile case file must be redacted."

Section 31-502.5

7. Comment:

"Add new MMP [sic] Section 31-502.5

"To comply with Welfare and Institutions Code § 4900 et seq., 42 U.S.C. § 15001 et seq., 42 U.S.C. § 10801 et seq., and 29 U.S.C. § 794e et seq., the county shall within 24 hours of receiving the request grant the protection and advocacy agency for the State of California access to the information and documents listed in Section 31-502.3 without subject to the redactions listed in Section 31-502.4.

"Under the proposed DSS regulations, the extent of the redaction is inconsistent with DRC's statutory authority to obtain complete records and information without redaction in abuse and neglect investigations.

"In the case of a death, DRC is allowed access to confidential information and records without redaction within 24 hours of receipt of a written request, without consent of another party. Welf. & Inst. Code § 4903(e)(2). Such access is necessary for DRC to fulfill DRC's statutory mandate to investigate the abuse and neglect of children with disabilities. Under our statutory authority, confidential information obtained by DRC must remain confidential and, with limited exceptions, is not subject to disclosure.¹ Welf. & Inst. Code § 4903(f).

"DRC frequently investigates abuse and neglect cases involving the death of a child with a disability. Our investigations include whether oversight agencies such as law enforcement, criminal justice, licensing agencies, regional centers, and protective services agencies have adequately responded to incidence of reported abuse and neglect in these settings." (DRC)

Response:

Thank you for your comment. CDSS agrees to add a reference to this statute, but rephrased as follows:

".5 Pursuant to Welfare and Institutions Code Section 4903, counties are required, in some circumstances, to release information without redactions to the protection and advocacy agency in California." (See Welfare and Institutions Code Section 4900 et seq.)

Transcription of Public Hearing Comments

MS. ORTEGA: Let's get started. This public hearing is being held by the Department of Social Services in accordance with the provisions of Government Code Sections 11346.5 and .8.

We gave notice that this hearing would be held on this date, March 18th, 2009, at 10:00 a.m. in the CDSS Office Building No. 8, 744 P Street, Room 105, Sacramento, California.

My name is Sandra Ortega, Manager, Office of Regulations Development, and I will be conducting this hearing.

The purpose of this hearing is to receive testimony concerning the items on the agenda. We will not be responding directly to any questions or comments at today's hearing. However, all testimony received at today's hearing and testimony received through the

¹ DRC may (1) share information with the individual client who is the subject of the record or report, or with his or her legally authorized representative, subject to limitations on disclosure to recipients of mental health services, as provided in 42 U.S.C. § 10806(b); (2) issue a public report of the result of an investigation that maintains the confidentiality of individual clients; (3) report the results of an investigation to responsible investigative, enforcement, and licensing agencies if an investigation reveals information concerning a facility, its staff, or employees warranting possible sanctions or correction action; (4) pursue alternative remedies, including the initiation of legal actions; and (5) report suspected elder or dependent adult abuse pursuant to the Elder Abuse and Dependent Adult Civil Protection Act.

mail, via fax, and from e-mail will be fully considered by the Department. Copies of the proposed regulations are available here. Anyone wishing to testify is asked to complete an interest card indicating he or she wishes to offer testimony. We may impose reasonable limitations on oral presentations.

The Department may modify the regulations after public hearing. If changes are made, the text of the regulations, as modified, will be mailed at least 15 days prior to adoption by the Department to all persons who have testified, all who have submitted written comments during the public comment period, including today, and those who have requested notification.

If you are not presenting oral testimony but would like to be notified if the regulations are modified, please fill out an interest card at the registration table.

The following items are on today's public hearing agenda: Item number 1, ORD number 1008-07, SB 39, Child Fatality Reporting and Disclosure Requirements.

Item number 2, ORD number 0608-05, Asset Exclusion Changes and Earned Income Tax Credit, Outreach in CalWORKS Program.

The items on today's agenda have been processed by the Director on an emergency basis. Regulations adopted on an emergency basis must meet the test imposed by Section 11346.5 of the Government Code.

Most often, the emergency adoption procedure must be utilized to change regulations in response to a court decision, meet an imposed deadline, or for similar pressing reasons. We are then required to bring such emergency regulations to public hearing within 180 days of the date they are effective and certify to the Secretary of State that the hearing has been held.

With respect to the regulation changes I have just mentioned, we are taking testimony to determine what revisions, if any, should be made to these emergency regulations which have been filed.

As indicated in the notice of hearing, written versions of your oral testimony are not required, but are helpful to us in considering your exact testimony.

Now, as your name is called, please state your name for the taped record and speak directly to the issue you are concerned with. If you agree with an earlier testimony, simply state that fact and add any new information you feel is pertinent to the issue.

So, Mr. Opton, I will turn it over to you.

MR. OPTON: I'm Edward Opton, National Center for Youth Law. Next to me is Bill Grimm, also from the National Center for Youth Law.

Most of what we have to say we had said in our letter of March 13th, which we sent also on behalf of Ed Howard, who's senior counsel for Children's Advocacy Institute, and Jim Hayward, who's legal counsel for the California Newspaper Publishers Association.

So I will enlarge on this letter just -- just a bit. We believe that the draft regulations need to be slimmed down considerably in one respect and expanded considerably in another respect in order to become consonant with the intent of the legislature in passing SB 39, and to be consonant with the California Administrative Procedures Act, which requires that regulations not be, you know, redundant and excessive, and also requires that -- that they support rather than take away from the legislature's intent and words in enacting the statute they enlarge upon.

The sections that we particularly want to talk about are Sections .441 and .442, which list all the external laws -- that is, the laws other than SB 39 -- which county administrators need to take into account when they are deciding which documents to turn over to people who have requested documents concerning children who have died as the result of neglect or abuse.

The regulations are too much in that they list numerous, numerous statutes and regulations in one section of the California Constitution which are not relevant, which -- which don't belong in that list. The effect of having too many statutes and regulations and constitutional provisions listed is going to be one or both of two very bad consequences.

One is that SB 39 won't be effective because people will not be able to get the documents that the statute intends them to be able to get because the county administrators will be so tied up with working through this enormous list of laws, regulations and constitutional provisions that they will never get around to figuring out what needs to be redacted. Or it will take them so long to do it that the production of the documents will be delayed, which was certainly not the legislature's intent, nor the intent of the Administrative Procedures Act.

So in that respect, the -- the excessive number of statutes listed is in violation of the California Procedures Act, and would, if not corrected, frustrate the intent of -- of the law.

The other possible bad outcome of having an excessive and improper number of statutes listed is that the county administrators will throw up their hands in despair and not check the documents against the statutes, and thus, potentially produce information without redaction that they shouldn't be producing because they'll ignore the regulations-mandated procedures that are just impossible for them to comply with.

So both of those would be undesirable. It shouldn't be done and, therefore, the list should be cut down in the way that we propose in Attachment A to our letter.

In Attachment A, we list, one, two, three, four, five -- five statutes that should be left in that section because the law requires that the regulations list the external statutes that administrators need to attend to.

Now, the way that Sections .441 and .442 need to be expanded is that they need to give guidance. The SB 39 statute requires guidance. It's in the statute. And the proposed regulations provide no guidance whatsoever. That would be a very bad thing because county administrators would be set forth into the wilderness of California's statute books without any guidance. That's why the legislature is said: You must provide guidance.

CDSS is the agency that has the expertise to provide that guidance as to how the administrators, you know, should deal with these external statutes, what they should look for, what they should leave in, and what they should leave out.

Propose -- proposed guidance is what we have provided in Attachment A. We propose that CDSS adopt the guidance just as we have proposed it. We think that will -- will do a good job.

Now, as CDSS is reviewing the comments that it's received in writing and -- and these comments, the agency may wonder why do the California Newspaper Publishers Association, the Child Advocacy Institute, and the National Center for Youth Law propose to take out each of these statutes, regulations and constitutional provisions that we do propose for deletion from the list, and the answer to that question is at pages 3 and 4 of our March 13 letter. There are five with reasons which we've numbered -- or lettered A through E. I think we made ourselves clear there as to the reasons, so I -- I won't take up your time by repeating them.

Though I might add an F that we don't have in our letter, and that is that the particular statute or regulation listed in the draft regulations which we believe should be deleted is superseded by SB 39. There are some of those, which I'm sure you'll pick up on as you rework this.

And finally, I'd say that Mr. Grimm and I are available for consultation with your experts on this. If you'd like to talk with us during the revision process, we are available by phone, e-mail and letter, and we'll be glad to discuss it with CDSS.

MS. ORTEGA: Thank you, Mr. Opton. Is that all your comments?

MR. OPTON: Yes.

MS. ORTEGA: Okay. Then, Mr. Grimm, would you like to add anything?

MR. GRIMM: I'll -- I'll just add a couple of things which we have not discussed at great length in the -- in the letter, but which I've looked at with some of our people who deal a lot with the issue, particularly around health care records; some which are to be disclosed under SB 39. Although, a careful reading of the statute indicates that it's not all health care records for the child who suffered fatality; it's, in fact, only those medical records that appeared in the case record maintained by the child welfare agency. So there's no obligation in SB 39 for the agency to go outside of what it has already collected as part of its Child Protective Services investigations of the fatalities and earlier investigations.

It is -- HIPAA, actually, is the only statute mentioned at any point in the Federal Child Welfare Policy Manual on this issue of public disclosure. Unfortunately, all the policy manual says on this issue is consult other parts of the Department of Health and Human Services for guidance about this. So, in fact, The Children's Bureau, I think, has really fallen short on this opportunity, if not obligation, to advise state child welfare, and state and county child welfare agencies about what implications, if any, HIPAA has in this situation.

And so, I would just suggest that after having looked at HIPAA, rather than, what often happens in this discussion about HIPAA is that, well, we have to think about HIPAA, and that HIPAA, in fact, might restrict what can be disclosed, with most of the people suggesting that not ever citing any aspect of the statute, or more particularly, the regulations.

Though what I would suggest to you is, in fact, the case, when one looks at the privacy rules within, for example, 45 CFR 164.512, and also at the regulation dealing with covered entities, 45 CFR 160.103, is that HIPAA in no way impacts the limited obligation here on the part of the agency to disclose medical records in a case of child fatality as set forth by SB 39 for two reasons: One, and the primary reason being, that the child welfare agency, the county department of social services, does not fit -- absolutely does not fit within the definition of a covered entity. And so, that's the first hurdle that one has to get over to over -- in order to apply the privacy rules of HIPAA. The covered entity includes things such as health care providers, insurers, health care clearinghouses. I mean, there's no way in which you can fashion the definition of covered entity to really encompass a child welfare agency that's the subject of SB 39. Even if through some tortured application of the definition of covered entity -- and there are some other resources we can give you to look at in terms of why we believe that covered entity -- that child welfare agency does not fall within the definition of a covered entity. Even if that's true, there is an explicit exception in the regulations under the privacy rule that says when a state, through some other law, requires the disclosure of the medical or protected health care information, then that controls.

And in fact, SB 39 is a very specific targeted and a law that requires the disclosure of medical records, and it's, in fact, I think, precisely the kind of statute that HIPAA -- HIPAA regulations considered when saying it has to be sort of a targeted piece of legislation. It has to be a restricted piece of legislation. SB 39 does not say all medical records of the child from whenever the child was born are subject to disclosure; it's a very narrowly drawn exception to the medical records privacy.

And then one last thing I'll say about that as well, some -- someone might also say, well, in fact, medical records are protected by HIPAA, but then California, we have to look to California laws because that's the direction of what the legislature said in SB 39; federal or state laws or regulations. Well, in fact, California's Confidentiality of Medical Information Act, which is, I think, Civil Code 5605, and the sections after that, also does not foreclose the disclosure of this specific limited medical record information, and in fact, there is within that code a provision that says if it's specifically required by another law, this does not control, that law does.

And so, SB 39, by requiring the disclosure of medical records in a situation where there has been a child fatality creates precisely the kind of exception in law that the civil code envisions.

So, I mean, those -- those are the specific additional comments that I would add that get to, really, again, the only federal or state statute that usually pops up in this situation, again, without the sort of general comments to the protections of HIPAA without ever anybody having done the -- the analysis that's needed to determine whether there is some applicability of HIPAA that would impact the information to be disclosed under SB 39.

And I think it is -- I'll just reiterate what -- what Ned has said. Since we spent a considerable amount of time looking at these statutes and looking at HIPAA, and looking at the regulations, obviously, we believe that there needs to be a substantial revision of those lists in .441 and .442, and we certainly would be willing to work with the agency to come up with what is, as Ned has said, a necessary and pared down version of the statutes which should be cited in the regulations and the guidance that should be provided to the child welfare agencies.

MS. ORTEGA: Thank you, Mr. Grimm. Unless there's anyone in the audience that would like to present testimony, we will close the hearing. However, having said that, I'm going to -- we're going to stay here until 11:00 in case members of the public do come.

But, yeah, that should take care of it and we've got your --

MR. OPTON: Thank you.

MS. ORTEGA: -- comments on record now. Thank you.

MR. OPTON: Okay.

MS. ORTEGA: Thank you.

Response:

See response to Comment #5. We have incorporated the suggested changes into the 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. No written testimony on the modifications renoticed for public comment from August 29 to September 13, 2009 was received.

AMENDED FINAL STATEMENT OF REASONS

Subsequent to the closure of the 15-day re-notice period for the Regulations for the Reporting and Disclosure Requirements of Child Abuse and/or Neglect Fatalities, some language has been amended for clarity and consistency, as follows:

- In Handbook Section 31-502.451(a) through (d)(1), the words “should” and “must” were changed to the word “shall” in order to provide consistency throughout the document and clarify information that, upon public request, shall be redacted upon the release of information. The confidentiality laws listed in this section prohibit the release of certain information; as a result, this clarification was necessary to comply with the requirements of the listed statutes.
- In the amended regulations released for the 15-day re-notice period, Handbook Sections 31-502(b)(1)(2) and (c)(2)(3) narrowly defined the documents that required redaction of certain information. The final regulations clarify that the information to be redacted applies to the entire case record, not only the social worker emergency response information, referral disposition or safety and risk assessments, as formerly listed in these sections.