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CHILDREN'S REGULATORY LAW REPORTER

Children's Advocacy Institute Vol. 1, No. 1 (Winter 1998)

Comments from the Editor

This is the charter issue of the *Children's Regulatory Law Reporter* (*Children's Reporter*), a new biannual publication of the Information Clearinghouse on Children (ICC), Children's Advocacy Institute. The *Children's Reporter* focuses on an often-ignored but very critical area of law -- regulations adopted by governmental agencies. Our objective is to report on the California regulatory process as it affects children. Although we approach the regulatory process from a legal perspective, we have attempted to present material that will be useful to policymakers, child advocates, community organizations and other interested parties as well.

To prepare for this first issue -- Volume 1, Number 1, the *Children's Reporter* staff reviewed the regulatory actions of five California agencies whose decisions have par-

ticular impact on the lives of children. They are the Department of Health Services, the Department of Social Services, the Department of Education, the California Youth Authority and the Board of Control's Victim Restitution Fund. Beginning with the next issue, the *Children's Reporter* will also cover the regulatory actions of the Managed Risk Medical Insurance Board, the state agency now responsible for drafting the regulations for Healthy Families (California's new health insurance program for uninsured children), and the Department of Mental Health.

This issue covers California regulatory actions affecting children, which were published, adopted, and/or became effective between January 1 to December 31, 1997. We provide a description and chronological tracking of each agency rulemaking proceeding, and include an "Impact on Children" statement to summarize the probable importance of the action.

For easy access to areas of interest, the *Children's Reporter* divides regulations into seven categories: Child Poverty, Child Health, Child Care, Special Needs, Education, Child Protection, and Juvenile Justice. We provide a "Key" for acronyms used; it is listed on the last page.

The text of this document is available on ICC's Website: Go to <www.acusd.edu/childrensissues> and click on the "Regulations" link. We are pleased to receive comments electronically from the Website, or by e-mail, telephone or fax.

Margaret A. Dalton, Editor

The California Regulatory Process

The Administrative Procedure Act (APA), Government Code section 11340 *et seq.*, prescribes the process that most state agencies must undertake in order to adopt regulations (also called "rules") which are binding and have the force of law. This process is commonly called "rulemaking," and the APA guarantees an opportunity for public knowledge of and input in an agency's rulemaking decisions.

For purposes of the APA, the term "regulation" is broadly defined as "every rule, regulation, order or standard of general application . . . adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure . . ." Government Code section 11342(g). Agency policies relating strictly to internal management are exempt from the APA rulemaking process.

The APA requires the rulemaking agency to publish a notice of its proposed regulatory change in the *California Regulatory Notice Register*, a weekly statewide publication, at least 45 days prior to the agency's hearing or decision to adopt the change (which may be the adoption of a new regulation or an amendment or repeal of an existing regulation). The notice must include a reference to the agency's legal authority for adopting the regulatory change, an "informative digest" containing a concise and clear summary of what the regulatory change would do, the deadline for submission of

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written comments on the agency's proposal, and the name and telephone number of an agency contact person who will provide the agency's initial statement of reasons for proposing the change, the exact text of the proposed change, and further information about the proposal and the procedures for its adoption. The notice may also include the date, time, and place of a public hearing to be held by the agency for receipt of oral testimony on the proposed regulatory change. Public hearings are generally optional; however, an interested member of the public can compel an agency to hold a public hearing on proposed regulatory changes by requesting a hearing in writing no later than 15 days prior to the close of the written comment period. Government Code section 11346.8(a).

Following the close of the written comment period, the agency must formally adopt the proposed regulatory changes and prepare the final "rulemaking file." Among other things, the rulemaking file -- which is a public document -- must contain a final statement of reasons, a summary of each comment made on the proposed regulatory changes, and a response to each comment.

The rulemaking file is submitted to the Office of Administrative Law (OAL), an independent state agency authorized to review agency regulations for compliance with the procedural requirements of the APA and for six specified criteria -- authority, clarity, necessity, consistency, reference, and nonduplication. OAL must approve or disapprove the proposed regulatory changes within thirty working days of submission of the rulemaking file. If OAL approves the regulatory changes, it forwards them to the Secretary of State for filing and pub-

lication in the California Code of Regulations, the official state compilation of agency regulations. If OAL disapproves the regulatory changes, it returns them to the agency with a statement of reasons; the agency has 120 days within which to correct the deficiencies cited by OAL and resubmit the rulemaking file to OAL.

An agency may temporarily avoid the APA rulemaking process by adopting regulations on an emergency basis, but only if the agency makes a finding that the regulatory changes are "necessary for the immediate preservation of the public peace, health and safety or general welfare" Government Code section 11346.1(b). OAL must review the emergency regulations -- both for an appropriate "emergency" justification and for compliance with the six criteria -- within ten days of their submission to the office. Government Code section 11349.6(b). Emergency regulations are effective for only 120 days.

Interested persons may petition the agency to conduct rulemaking. Under Government Code section 11340.6 *et seq.*, any person may file a written petition requesting the adoption, amendment, or repeal of a regulation. Within 30 days, the agency must notify the petitioner in writing indicating whether (and why) it has denied the petition, or granting the petition and scheduling a public hearing on the matter.

References: Government Code section 11340 *et seq.*; Robert Fellmeth and Ralph Folsom, *California Administrative and Antitrust Law: Regulation of Business, Trades and Professions* (Butterworth Legal Publishers, 1991); Robert Fellmeth and Thomas Papageorge, *California White Collar Crime* (Butterworth Legal Publishers, 1995).

Agency Descriptions

Following are general descriptions of the California agencies whose regulatory decisions affecting children are discussed in this issue:

Board of Control Victims of Crime Program

The California Board of Control's (BOC) activities are largely devoted to the Victims of Crime (VOC) program (95.2% of the BOC's total budget and staff activities). The VOC program was the first victims' compensation program established in the United States. It reimburses eligible victims for certain expenses incurred as a direct result of a crime for which no other source of reimbursement is available. The VOC program compensates direct victims (persons who sustain an injury as a direct result of a crime) and derivative victims (persons who are injured on the basis of their relationship with the direct victim at the time of the crime, as defined in Government Code section 13960(2)). Crime victims who are children have particular need for medical care and psychological counseling for their injuries. Like other victims, these youngest victims may qualify for reimbursement of some costs. The BOC's enabling act is found at section 13900 *et seq.* of the Government Code; BOC regulations appear in Title 2 of the CCR. *For more information on VOC program regulations in this issue, contact Judith Kopec, BOC Senior Staff Counsel, 916-327-4016.*

State Board of Education and Department of Education

The California State Board of Education (State Board) adopts regulations for the government of the day and evening elementary schools,

the day and evening secondary schools, and the technical and vocational schools of the state. The State Board is the governing and policy body of the California Department of Education (CDE). CDE assists educators and parents to develop children's potential in a learning environment. The goals of CDE are to set high content and performance standards for all students; build partnerships with parents, communities, service agencies and businesses; move critical decisions to the school and district level; and create a department that supports student success. CDE regulations cover public schools, some state-sponsored preschool programs, and some aspects of programs in private schools. The CDE's enabling act is found at section 33300 *et seq.* of the Education Code; CDE regulations appear in Title 5 of the CCR. *For more information on CDE regulations in this issue, contact Peggy Peters, CDE Audit Response Coordinator, 916-657-4440.*

Department of Health Services

The California Department of Health Services (DHS) is one of thirteen departments that constitute the state's Health and Welfare Agency. DHS is a statewide agency designed to protect and improve the health of all Californians; its responsibilities include public health, and the licensing and certification of health facilities (except community care facility licensing). DHS' mission is to reduce the occurrence of preventable disease, disability, and premature death among Californians; close the gaps in health status and access to care among the state's diverse population subgroups; and improve the quality and cultural competence of its operations, services, and programs. Because health

conditions and habits often begin in childhood, this agency's decisions can impact children far beyond their early years. DHS' enabling act is found at section 100100 *et seq.* of the Health and Safety Code; DHS' regulations appear in Titles 17 and 22 of the CCR. *For more information on DHS regulations in this issue, contact Allison Branscombe, Chief, DHS Office of Regulations, 916-654-0381.*

Department of Social Services

The California Department of Social Services (DSS) is one of thirteen departments that constitute the state's Health and Welfare Agency. DSS administers four major program areas: welfare, social services, community care licensing, and disability evaluation. DSS' goal is to strengthen and encourage individual responsibility and independence for families. Virtually every action taken by DSS has a consequence impacting California's children. DSS' enabling act is found at section 10550 *et seq.* of the Welfare and Institutions Code; DSS' regulations appear in Title 22 of the CCR. *For more information on DSS regulations in this issue, contact Frank R. Vitulli, Chief, DSS Office of Regulations Development, 916-657-1937.*

Department of the Youth Authority

State law mandates the California Department of the Youth Authority (Youth Authority) to provide a range of training and treatment services for youthful offenders committed by the courts; help local justice system agencies in their efforts to combat crime and delinquency; and encourage the development of state and local crime and delinquency prevention programs. The Youth Authority's offender popula-

tion is housed in eleven institutions, four rural youth conservation camps, and two institution-based camps; its facilities provide academic education and treatment for drug and alcohol abuse. Personal responsibility and public service are major components of the Youth Authority's program strategy. The Youth Authority's enabling act is found at section 1710 *et seq.* of the Welfare and Institutions Code; Youth Authority regulations appear in Title 15 of the CCR. *For more information on Youth Authority regulations in this issue, contact Reeshemah Davis, Youth Authority Regulations Coordinator, 916-262-1437.*

Child Poverty

Child Support Enforcement

In 1996, the federal government abolished Aid to Families with Dependent Children (AFDC) and replaced it with Temporary Assistance to Needy Families (TANF), a federal block grant program created under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA), 8 U.S.C. § 1601 *et seq.* TANF requires applicants for welfare assistance to cooperate in identifying all third parties (such as non-custodial parents) who may be financially liable for medical services for any member of the family receiving aid. On April 5, 1996, DSS published notice of its intent to adopt sections 40-024, 82-502, 82-504, 82-506, 82-508, 82-510, 82-512, 82-514, 82-516, 82-518, 82-520; amend sections 40-105, 40-131, 40-173, 40-181, 43-107, 43-203, 43-205, 44-111, 44-113, 80-310; and repeal sections 43-106, 43-200, 43-301 of the MPP, to implement required changes (see below). DSS accepted public comment on the

proposal until May 23, 1996, and held public hearings on the proposed regulations on May 21, 22, and 23, 1996. Following the public comment period, DSS adopted the proposed regulations, which were approved by OAL on May 16, 1997 and became effective on July 1, 1997.

The PRA imposes a general requirement on the caretaker parent to "cooperate in identifying" the non-custodial biological parent (usually the absent father) to facilitate child support collection. This requirement is partly intended to compel repayment of public funds for grants to involved needy children under the TANF program (formerly AFDC). The new implementing rules require assistance in obtaining child support from absent parents -- not only where TANF aid is provided, but where public medical assistance (e.g., Medi-Cal) aid is provided as well.

Prior to welfare reform, families eligible for TANF were also eligible for Medi-Cal coverage for their children. Medi-Cal also has covered some children living above the federal poverty line, and above TANF eligibility. Two changes will add substantially to the number of children who receive Medi-Cal aid but not TANF welfare. First, federal "Healthy Families" money available in 1998 from tobacco tax increases will cover children in families with incomes up to 200% of the poverty line (or higher in some cases), increasing the number of children receiving Medi-Cal who do not receive TANF. Second, some former AFDC recipients now are suffering TANF denial although family income qualifies (chiefly legal immigrants arriving after August 1996). Further, large numbers of current recipients unable to find work face cut-off over the next five years. At present, most

of those cut off from TANF retain Medi-Cal coverage for involved children. See Children's Advocacy Institute, *California Children's Budget 1997-98* (1997) at 2-23 to 2-34.

In sum, many families not receiving TANF will be receiving public medical assistance. Accordingly, inclusion of this "medical aid only" population in the PRA's "cooperate in identifying the noncustodial biological parent" requirement expands its reach substantially. However, the available remedy of TANF cut-down of the "parent's portion" of the TANF grant would not apply to Medi-Cal-only recipients, and the sanction for failure to cooperate for this population is unclear.

The new rules limit the previous and general "good cause for not cooperating" exception to the specific exemptions listed in the 1996 federal PRA. They extend cooperation in identifying absent fathers and in proving paternity to "establishment" of the child support order itself. This latter requirement depends upon action by the family support divisions of local offices of district attorneys who commonly obtain such support orders.

The rules define "cooperation" as including, but not limited to: (a) providing any information about relevant whereabouts of each absent parent; (b) completing applicable forms; (c) appearance at the District Attorney's (DA) office; (d) submission to court-ordered genetic testing to establish paternity; (e) serving as a witness in proceedings relevant to child support enforcement; (f) forwarding support payments received to the DA; and (g) providing verbal, written or documentary information to the DA relating to paternity and child support. The new rules also require cooperation with the DA in identifying potential sources of med-

ical coverage (other than Medi-Cal), including the provision of information about coverage through an absent biological parent, private health insurance, pending judgments, tort settlements, etc. New forms pertaining to possible medical coverage through absent parents must be completed.

Unlike earlier DSS proposals, the final rules do not allow cut-off or cut-down of TANF assistance categorically until a child support order is in place -- a result not within the sole power of a custodial parent. Rather, they require specific cooperation. One remaining concern of child advocates is whether rules requiring that forms be filled out include information which a custodial parent may not be able to answer, but where failure to answer may be considered "non-cooperation" resulting in TANF cuts. A related concern is whether changes in the forms, which are essentially written into the rules by reference, will be made without notice and hearing. Since accurate completion of the forms is required, will questions which the applicant is incapable of answering lead to cut-offs of groups of recipients? Will changes in the forms which might not be answerable by large numbers of applicants occur with opportunity for notice and public comment under the California Administrative Procedure Act?

The rules also establish exemptions from the "cooperation" requirement, including where: (a) cooperation will result in serious physical or emotional harm to the child or applicant; (b) the child was conceived as a result of incest or rape; (c) adoption proceedings are pending; and (d) a public or private agency is counseling the applicant regarding keeping the child or relinquishing the child for adoption. The

"serious harm" exemption applies only where an impairment that "substantially affects an individual's functioning" is demonstrated. An applicant may obtain court documents, official records, or declarations under penalty of perjury from third parties relevant to prospective harm.

The procedural provisions of the new rules governing exemption are significant. They obligate the applicant to produce evidence of an applicable exemption. The applicant has twenty days after claiming exemption to provide evidence; the county may request additional evidence, and shall make a determination within 25 days of final evidence submission. If the county department of social services does not agree that the claimed exemption applies, it promptly reports this decision to the DA, who then suspends immediately "all activities to secure child support until notified of a final determination by the county" (Section 82-508.35 of the MPP). The county also discontinues "aid to the parent/caretaker" while continuing to make payments for the children. For families receiving both TANF and Medi-Cal, enforcement of this sanction reduces TANF payments by from 1/4 to 1/2 previous levels -- already reduced about 40% in spending power from 1989. See *California Children's Budget 1997-98* at 2-67.

The unilateral decision of a county agency to determine exempt status, as provided under these new rules, does not meet procedural due process constitutional standards which apply where a "taking" of a vested right has occurred. See *Goldberg v. Kelly*, 397 U.S. 254 (1970). It is not clear whether a substantial reduction in non-entitlement TANF grants based on individual failure to cooperate triggers those

due process rights to fair notice and hearing. The population affected includes many who have been receiving assistance, where cuts will result in homelessness and undernutrition, of both parent recipients and third party children. The procedures governing a decision that a family's parent has failed to cooperate and will suffer such a result may be a primary area of litigation challenge to the new rules.

Impact on Children: The adopted regulations require applicants for, and recipients of, family welfare assistance to cooperate in identifying third parties (such as non-custodial parents) who may be liable for medical care and services for the child(ren). This creates a barrier that may prevent a family from receiving needed assistance, if the parent does not, or cannot, cooperate.

Maximum Family Grants

AB 473 (Brulte) (Chapter 196, Statutes of 1994) provides that, with certain exceptions, the maximum aid payment in the AFDC (welfare) program shall not increase when a child is born into a family that has received aid for ten months immediately before the birth of the child. On November 29, 1996, DSS published notice of its intent to adopt new section 44-314 and amend section 43-201.3 of the MPP to implement AB 473 (see description below).

DSS accepted public comment on the proposal until January 16, 1997, and held a public hearing on the proposed regulations on January 15, 1997. Following the comment period and hearing, DSS adopted the proposed regulations, which were approved by OAL on June 10, 1997 and were to become effective on August 1, 1997. On July

30, 1997, DSS filed an emergency regulatory action to delay by one month (from August 1, 1997 to September 1, 1997) the effective date of the regulatory changes. This emergency action became effective on August 1, 1997. The regulations became effective on September 1, 1997.

As noted above, AB 473 denies an increased TANF grant to women to assist additional children conceived while a parent was receiving TANF assistance. This so-called "family grant" cap is intended to discourage the conception of additional children by welfare recipients unable to provide for them without public assistance. Child advocates contend that the evidence from New Jersey's experience with a similar family cap indicates virtually no affect on pregnancy rates of recipients. Advocates also contend that the longstanding AFDC grant for additional children of \$80 to \$110 per month does not meet their direct expenses; and that a denial of any increase for additional children does not affect the number born, but jeopardizes the health and adequate nutrition for the developing brains of children who are born. Single-parent AFDC recipients average 1.9 children per family. The total savings from implementation of AB 473 is projected at \$14.1 million per year. See discussion in *California Children's Budget 1997-98*, at 2-33, and note 128.

The new rules implementing this statute provide that any child born to a family (termed an "assistance unit" or "AU") within ten months of receiving any TANF aid shall not enjoy an increase in the maximum available payment. Recipients must receive notice of such a prospective cap before the ten month period begins to run. Because notice

will be a routine part of TANF paperwork, the effect of this provision is to assure prospective application; those children conceived before notice of the cap is given will receive aid.

The rules define "aid" as cash aid (thus excluding Medi-Cal and food stamps) to the parent or on behalf of the children. They include families where only the child receives aid, so-called "child only" recipients (e.g., where the parent is personally ineligible). The rules also apply the cap to minors who have received aid as a child and then become a minor parent within the ten-month time span.

The rules allow some latitude where assistance is episodic. Hence, the cap does not apply where there has been a break in aid of at least two consecutive months during the ten-month (pre-birth) period. However, if the cap does apply because of aid received during nine of those ten months, it is in force permanently. Its bar is broken only by 24 consecutive months or more in which no TANF assistance ("cash aid") is received by the family. Hence, a parent may receive assistance for only nine months, and conceive a child, knowing that a job and income sufficient to avoid welfare will be available to support the child when born. If that parent then suffers a lay-off, illness, or other calamity after one year or one and one-half years of steady work, and requires assistance, the cap will apply to the family and no grant will be provided for that child.

The statute and rules set forth five major exceptions to the cap: rape, incest, contraceptive failure, conception while either parent was the caretaker and did not receive aid, and situations in which the child is not living with either parent (as in

foster care). As the adopted rules read, rape must occur under the definitions of Penal Code sections 261 and 262, and must have been reported (before the child is three months old) to law enforcement, a mental health professional, or an organization which counsels rape victims; the burden is on the recipient to provide written verification that a qualifying report was made. The incest exception requires verification of a similar report on a similar timeline, with incest defined under the definition of Penal Code section 285.

The most commonly applicable exception is for contraceptive failure. The statute does not preclude assistance for an additional child who was not intended and where contraception was being used. However, the new rules cover only three types of contraception: an intrauterine device, Norplant, or sterilization of either parent. Failure of more commonly used birth control -- pills, condoms, or diaphragms -- is not included. The three birth control methods which are allowed are more ascertainable. Even here, recipients must "medically verify" that an IUD, Norplant implant, or sterilization was in effect, and that it failed.

The statute and implementing rules allow any child support received for an additional child subject to the cap to be retained entirely by the family.

Retention of child support payments from absent parents by public agencies is justified by the public monies they expend for the children involved. If no additional aid is provided for an added child from public sources, it follows that private child support received for that child goes to the family involved.

Impact on Children: The intent of AB 473 and consistent changes in the federal PRA is to discourage pregnancies by those receiving TANF assistance. Research indicates little correlation between benefit levels and pregnancy incidence among welfare recipients. Previous AFDC grants increased by \$80 to \$110 for additional children, substantially below the cost of a new child. This disallowance is cumulative to other substantial reductions from 1989, and will exacerbate hunger and health shortfalls, particularly among vulnerable infants. The implementing rules add to the population in jeopardy by limiting allowable exceptions and by imposing barriers to their qualification.

Teen Pregnancy Disincentives and Minor Parent Services

AB 908 (Brulte) (Chapter 307, Statutes of 1995) creates an additional condition of eligibility for the welfare assistance program for certain minors under the age of 18. The statute implements the requirements of the new federal law creating TANF. TANF seeks to discourage teen pregnancies by requiring a minor who is a parent or is pregnant to live with a parent (or legal guardian, adult relative, or in an adult-supervised arrangement) in order to receive TANF assistance.

On April 30, 1997, DSS adopted new sections 89-200 - 89-201.64 (non-inclusive) and amended sections 40-181.241(i), 44-133.7, 44-305.11, 44-315.37, and 82-820.33 of the MPP on an emergency basis to implement AB 908. On the same date, DSS published notice of its intent to permanently adopt these regulatory changes. DSS accepted public comment on the proposal until May 28, 1997, and held a pub-

lic hearing on the same date. The emergency regulations expired on August 11, 1997 and were repealed by operation of law. DSS submitted the proposed regulations to OAL on August 20, 1997. OAL approved them on October 1, 1997, and they became effective on the same date.

AB 908, which added Welfare and Institutions Code section 11254 and amended sections 16504 and 16506, requires unmarried minors who are pregnant or have children to reside at the home of a parent or adult guardian or relative, or in another adult-supervised living arrangement in order to receive TANF assistance. The purpose of the "stay-at-home" requirement is to remove the alleged incentive of TANF family assistance to leave home and avoid adult supervision through unmarried pregnancy.

The enactment of AB 908 in 1994 then required a federal waiver given conflicts with federal DHHS rules, but the PRA of 1996 (cited above) itself instructs that minor parents remain in the home of a parent or relative in order to receive TANF assistance.

The 1994 state law, consistent with later federal exceptions, allows minor parents to receive TANF although living independently (on their own) when: (1) the minor has no parent or guardian who is alive or whose whereabouts are known; (2) no parent or legal guardian will allow the minor to remain in his or her home; (3) the minor lived apart from parents and guardians for at least one year prior to the birth of the child or the minor's application for TANF; (4) the minor is legally emancipated by a court; or (5) county child protective services determines that the health or safety of the minor or her child would be jeopardized if living in the same resi-

dence with the minor's own parent or guardian.

DSS' new rule changes focus on the final exception described above. The state statute requires county welfare workers to respond "in person" whenever a minor parent applies for TANF assistance and asserts an "abuse" allegation to justify living apart. The law and new rules require an in-home visit by a child protective services social worker within 20 days of referral from the TANF caseworker. The rules authorize the social worker to investigate and "determine" whether or not the referral is unfounded, documenting the observed relevant factors. Child advocates are concerned that the lack of standards in the statute and in these rules, coupled with broad discretion to "determine" abusive conditions by a social worker without formal review or check, may lead to erroneous and inconsistent judgments.

When local social workers decide that an exemption does not apply and the minor remains out-of-home, all TANF funding is cut off, and child welfare services is so notified. Presumably, that notice enables visits to the minor's residence to protect the health and safety of an affected infant, including theoretical removal. However, the removal of children based on the poverty of parents -- even when malnutrition is likely -- is rare and legally problematical.

Minors who live in a licensed group or maternity home qualify as living at home. TANF payments go to the "senior parent" (parent or adult guardian of the minor) or the administrator of the licensed facility. Payments may go to the minor if the "senior parent" refuses to accept them.

Importantly, the new rules allow for a possible determination -- with county documentation -- that the funds go to the minor parent where "in the best interest of the minor or her children."

The new rules also specify how TANF income eligibility works when a senior parent, minor parent, and child live in the same household. Briefly, the rules allow the minor parent and child to be considered an assistance unit and to qualify without "deeming" the income of the senior parent. The senior parent's income is used to determine whether the minor parent is eligible for assistance as a child of the senior parent, but not for the eligibility of the minor's child. In effect, the rules allow a minimum grant to the stay-at-home minor parent equivalent to the maximum assistance payment applicable to the minor's child or children.

Consistent with the treatment of the minor parent and her child as a quasi-separate assistance unit, the grant may be reduced by sanctions imposed under the Cal-Learn program for failure to attend school or achieve minimum grades. The rules are ambiguous as to the status of a Cal-Learn reward payment (for good grades).

In a related action, DSS adopted regulatory changes to further implement AB 908. On May 1, 1997, DSS adopted section 31-530 *et seq.* and amended sections 31-0-02(m), 31-002(s), and 31-101.1 of the MPP, on an emergency basis, to establish definitions and procedures for certain services to minor parents (see description below). On May 2, 1997, DSS published notice of its intent to permanently adopt these regulatory changes. DSS accepted public comment until June 19, 1997, and held public hearings on June 16, 17, 18, and 19, 1997. DSS submitted

the proposed regulatory changes to OAL on August 20, 1997. OAL approved the regulations on October 1, 1997; they became effective on the same date.

These new rules add some important available services for those minors who are parents and are permitted to live on their own. These regulations implement Welfare and Institutions Code section 16506(c), new statutory authority under AB 908 which allows services to minor parents living independently from their parents or other adult caregivers without allegations of abuse or neglect. Although abuse or neglect is normally required to warrant child welfare services, this population is deemed sufficiently at-risk to warrant some preventive services, similar to those provided in the in-home family preservation programs of most counties.

Accordingly, the new rules create a "Minor Parent Services" term of art, defined as home-based services provided to minor parents and children living independently and including education about infant health and development, nutrition, parenting skills, and life skills. Services include in-home visits and referrals to community services. The new rules also define a new term, "safety plan," to promote the health and safety of children in such a family, and which will specify the number and frequency of in-home visits.

Impact on Children. The sponsors of AB 908 contend that teen pregnancies are stimulated by TANF financing of separate residences for young girls. It is unclear whether a "stay-at-home" requirement will lower pregnancy rates, and little reliable research has occurred or is planned to gauge its impact. Child impact concerns include the possible failure to apply the four

exceptions properly (leading to infant jeopardy where the minor's parents are abusive) and the possible diversion of funds intended for infant support by the "senior parent," or other responsible adult.

Child Health

Prenatal Care for Immigrants and Unqualified Aliens

The federal PRA prohibits states from providing state and local public benefits, including non-emergency pregnancy-related services, to persons who are non-qualified aliens and certain other aliens.

Prior to the enactment of the PRA, federal law required states to provide services for the treatment of emergency medical conditions, including emergency labor and delivery services, to any alien otherwise eligible for Medi-Cal regardless of whether that person could document his or her immigration status. And since 1988, California has used state-only Medi-Cal funds to provide non-emergency pregnancy-related services to women without satisfactory immigration status as described in federal law. 42 U.S.C. § 1396b(v). With the enactment of the PRA, federal law now prohibits states from providing certain public benefits, including non-emergency pregnancy-related services, to ineligible persons as described above, unless the state enacts a law after the PRA enactment date that affirmatively provides for such eligibility.

On November 5, 1996, DHS added section 50302.1 to Title 22 of the CCR, on an emergency basis, to specify who is eligible to receive non-emergency pregnancy-related services; amend the *Manual of Criteria for Medi-Cal Authorization*, effective July 1997; and incorporate by

reference section 51003, Title 22 of the CCR. These regulatory changes are intended to implement the requirements of the PRA; services will not be provided to persons who are ineligible under federal law. They also define the term "non-immigrant" in the same manner as does federal immigration law.

On November 13, 1996, the Western Center on Law and Poverty and others filed a lawsuit challenging the validity of the regulations, contending that the use of the emergency rulemaking process by DHS -- under which regulations may be adopted without notice or comment -- violates the Administrative Procedure Act (APA). In *Doe, et al. v. Wilson, et al.*, Nos. 982521 and 982522 (San Francisco Superior Court) (November 26, 1996), the trial court held that the state's required compliance with the new federal law did not justify the issuance of emergency regulations; the court issued a preliminary injunction barring DHS from enforcing the emergency regulations. As a result, DHS dropped the emergency rules and commenced the ordinary rulemaking process as required by the APA for non-emergency (permanent) regulations.

However, on August 25, 1997, the First District Court of Appeal vacated the order granting the preliminary injunction and remanded the matter to the trial court with instructions to deny the request for the preliminary injunction. *Doe, et al. v. Wilson, et al.*, 57 Cal. App. 4th 296 (1997). The appellate court found that DHS did not abuse its discretion in finding that an emergency existed in light of the passage by Congress and the signing by the President of the PRA. *Id.* at 306. Although DHS prevailed, it did not readopt the changes as emergency

regulations because conclusion of the non-emergency regulatory process was near.

On December 20, 1996, DHS published notice of its intent to adopt new section 50302.1, Title 22 of the CCR. DHS accepted public comment on the proposal until February 19, 1997 and held public hearings on the proposed regulation on February 5, 1997 in Los Angeles and February 19, 1997 in Sacramento. DHS made post-hearing changes in the proposed regulation, and reopened the public comment period between July 15 and July 31, 1997. Following the comment period, DHS deleted some language and again reopened the public comment period between August 30, 1997 and September 16, 1997. DHS made some additional changes and again reopened the public comment period between October 15 and October 29, 1997. DHS re-submitted the regulatory changes to OAL on November 13, 1997; OAL approved them on December 1, 1997. The effective date of the new regulation is January 1, 1998 for new applicants and February 1, 1998 for the existing caseload.

The new rule implements the PRA's ban on non-emergency prenatal care assistance for non-qualified, non-immigrant aliens. Those barred from medical service assistance include all immigrants who are not lawfully admitted as a permanent resident, granted asylum or refugee status, paroled into the United States for more than one year, granted conditional entry, or whose deportation is being withheld. A final category of exemption primarily addresses children who have been subject to serious abuse. However, the rule narrows this exemption to those who have been battered or subject to extreme cruelty by family members,

the benefits to be provided have a "substantial connection" to that abuse, and the alien has a petition pending for (or has been granted) status as a spouse or child of a United States citizen. Services may be granted only where the recipient does not live with the abuser.

The "substantial connection" required above is defined narrowly to include situations where medical coverage is lost because of the removal of the abused victim from the abuser, or for medical care, mental health counseling or disability needs from the battery or cruelty, or to provide care for an unwanted pregnancy and child from the abuser's sexual assault or abuse of relationship (incest, statutory rape, molestation).

The rule specifies some of the procedural measures to assure prenatal care cut-offs as intended. "State only funded nonemergency, pregnancy related services" for any alien may be provided only upon declaration that she is a qualified alien as defined above, using the "Supplemental Alienage and Immigration Status Declaration" form of INS. Further, the alien must present documentation "issued by or acceptable to" INS as evidence of that declared status, and which must be submitted to INS for verification through that agency's Systematic Alien Verification of Entitlements program (a computer record index). The verification then may require a "secondary verification" where there is an instruction from the INS index to do so, where the documents presented do not include an alien registration or admission number, or where that numbered document does not match other documents, the number has not yet been issued, the document is a fee receipt for replacement of a lost document, or the doc-

ument is "suspected of being counterfeit or to have been altered." In addition, a series of enumerated documents are excluded from verification status.

The rule provides that eligibility for state-funded prenatal care must await receipt of verification of an alien's declared status from the INS. Consistent with the statute, the rule excepts immunizations and communicable disease treatment.

The rule provides procedural due process in the form of a hearing pursuant to Welfare and Institutions Code section 10950 for those receiving prenatal care during the month in which the rule became effective and who are denied care as a result of the rules. That due process consists of a hearing on the narrow issue of whether the alien is a qualified alien eligible for services as described above. The rule enigmatically provides that "subject to Welfare and Institutions Code section 10950 . . . any alien [denied Medi-Cal benefits] . . . is entitled to a hearing." No details are provided.

Impact on Children. The elimination of non-emergency prenatal health care to "nonqualified aliens" (most but not all of whom are illegally in the United States) will result in increased complications during pregnancy which otherwise could have been detected during routine prenatal care visits. Some of these complications involve fatal consequences (such as HIV transmission at birth, possibly preventable if HIV status is known). Other complications result in life-long disabilities preventable through routine screening. Because children born in the United States are citizens at birth, failure to provide prenatal care will impose substantial medical, disability, education, and lost productivity costs many times the pre-

natal care expenses involved, according to the American Academy of Pediatrics and others. There is no evidence that the denial of prenatal care has a significant impact on illegal immigration incidence, or on pregnancy incidence among those in the United States. See *California Children's Budget 1997-98* at 4-12 to 4-14. Beyond these statutory consequences, the new rule narrowly defines exemptions, and imposes onerous proof requirements on lawful immigrants, discouraging prenatal care by those not intended to be barred and adding gratuitously to infant death and disability consequences.

Expansion of Alpha-Fetoprotein Testing to Detect Birth Defects

The Hereditary Disorder Act (Health and Safety Code sections 124975 *et seq.*) provides for a statewide prenatal screening program to detect birth defects. California's existing regulations implementing the Act are embodied in sections 6521-6532, Title 17 of the CCR. They require that physicians offer pregnant women seen before the 20th week of gestation an opportunity to participate in a DHS-administered statewide Alpha-Fetoprotein (AFP) screening program to detect neural tube defects. Advances in genetic screening technology now permit an expanded AFP screening which includes analyses of additional blood components and detects a high proportion of fetuses affected with chromosomal syndromes, mainly Down's syndrome.

On March 14, 1997, DHS amended sections 6521, 6523, 6525 and 6527, Title 17 of the CCR, on an emergency basis. The amendments make the definitions more specific, include the additional birth defects to be detected, and rename the program

as "The Expanded AFP Prenatal Birth Defects Screening Program"; specify that offering or providing laboratory and follow-up services is limited to approved providers in California and specify the conditions for approval; update a document titled *Prenatal Diagnosis Center Standards and Definitions*, which is incorporated by reference, from the 1995 version to the 1997 version; and make other non-substantive changes.

In an April 11 notice, DHS announced a public comment period ending on May 28, 1997, and a public hearing on May 28, 1997. Pursuant to Health and Safety Code section 125070, DHS is not required to follow the usual APA rulemaking process in order to adopt this regulation; it remains in effect until revised or repealed by DHS.

Impact on Children: The broader capability of the expanded AFP program offers screens for additional birth defects that otherwise could not be detected.

Pediatric Subacute Care Standards and Payment

Section 14132.25 of the Welfare and Institutions Code requires DHS to develop regulations and a reimbursement system for services to children under 21 years of age who are in a pediatric subacute care program. Children in such a program are dependent on medical technology to sustain vital bodily functions.

On June 30, 1997, DHS amended sections 51215.8, 51335.6, and 51511.6, and adopted sections 51215.9, 51215.10, and 51215.11, Title 22 of the CCR, on an emergency basis. The amended sections adjust the payment schedule for the pediatric subacute level of care based on financial data on pediatric

subacute care services; clarify the role of the respiratory care practitioner and attending physician; revise the qualifications of the medical director for the pediatric subacute care unit; and revise the requirements for the provision of developmental services. The regulatory changes also define the role of Service Coordinator, and add criteria for payments for supportive or maintenance therapy services, supplemental rehabilitation therapy services and ventilator weaning services.

On July 18, 1997, DHS published notice of its intent to permanently adopt these regulatory changes. DHS accepted public comment until September 2, 1997; no hearing was scheduled. DHS submitted the proposed regulatory changes to OAL on October 22, 1997. OAL approved the changes and they became effective on November 26, 1997.

Impact on Children: The pediatric subacute care program is relatively new, having been established in 1994. These regulations affect the quality of care for children who need pediatric subacute care services by setting standards for pediatric care in a subacute facility, establishing the role of the Service Coordinator, and by delineating the rate structure for provider payment. Additionally, the revisions in the qualifications of practitioners and physicians in these units clarify their standard of practice and set forth criteria for services provided in the subacute setting.

Measles and Hepatitis B Immunization Requirements for Children

Under existing law (Health and Safety Code sections 120325-120475) and regulations (sections 6000-6075, Title 17 of the CCR),

children are required to receive certain immunizations in order to attend public and private elementary and secondary schools, child care centers, family day care homes, nursery schools, day nurseries and development centers.

On May 22, 1997, DHS amended sections 6020, 6025, 6035, 6075, Title 17 of the CCR, on an emergency basis. The amendments brought DHS' regulations into compliance with SB 1497 (Committee on Health and Human Services) (Chapter 1023, Statutes of 1996). The amendments add hepatitis B immunization as a requirement for children entering the above-named institutions at kindergarten level or below on or after August 1, 1997; require a second dose of measles-containing vaccine for children entering public and private schools at kindergarten level on or after August 1, 1997; permit DTaP vaccine as an alternative to DTP vaccine; and eliminate obsolete language concerning polio immunization.

On June 13, 1997, DHS published notice of its intent to permanently adopt these regulatory changes. DHS accepted public comment on the proposal until July 28, 1997; no hearing was held. OAL approved the changes and they became effective on September 26, 1997.

Impact on Children: Implementation of these changes will mean that California children have important new protections. The additional dose of measles vaccine is expected to ultimately prevent 30-40% of measles cases occurring in persons age five years and older who are vaccine failures, and to indirectly protect unimmunized persons as their risk for exposure to measles would decrease. Measles immunization is virtually always given in the form of combined measles-mumps-

rubella (MMR) vaccine; thus, a second dose of MMR also improves protection against mumps and rubella in those children whose first vaccine failed to "take." Further, the addition of the hepatitis B vaccine requirement is considered critical by many physicians. Since 1992, both the U.S. Public Health Service Advisory Committee on Immunization Practices and the American Academy of Pediatrics have recommended that all children be immunized against hepatitis B.

Stop Tobacco Access to Kids Enforcement Program (STAKE)

In 1994, the legislature enacted SB 1927 (Hayden) (Chapter 1009, Statutes of 1994), the Stop Tobacco Access to Kids Enforcement (STAKE) Act, which added sections 22950-22959 to the Business and Professions Code and amended section 216 of the Health and Safety Code. The bill requires California to comply with section 1926 of the federal Public Health Services Act of 1992. This federal law, known as the Synar Amendment, makes the effective enforcement of state law prohibiting the sale of tobacco products to persons under 18 years of age a condition for any state to receive the full amount of its federal Substance Abuse Prevention and Treatment Block Grant.

The STAKE Act requires DHS to develop an enforcement program to reduce and eventually eliminate illegal tobacco sales to minors. The Act authorizes an administrative penalty system to penalize retailers who sell tobacco products to persons under 18 years of age. Specifically, the enabling legislation mandates DHS to develop sign requirements to warn consumers and tobacco retailers that selling tobacco to minors is illegal, and adopt and

publish guidelines regulating the participation of minor "decoys" in its enforcement activities. The legislation further requires cigarette or tobacco products distributors, wholesalers and cigarette vending machine operators to submit to DHS a list of the names and addresses of all tobacco retailers they supply.

To implement the STAKE Act, DHS adopted sections 6901-6905, Title 17 of the CCR, on an emergency basis on December 22, 1995. On January 19, 1996, DHS published notice of its intent to permanently adopt the sections. DHS accepted public comment until March 6, 1996, and held a public hearing on the same date. DHS repeatedly re-adopted these regulations on an emergency basis, and finally submitted the proposed regulations to OAL on January 8, 1997. OAL approved them on February 3, 1997, and they became effective on the same date.

Impact on Children: These regulations make it more difficult for children to gain access to tobacco products, and facilitate enforcement of retail sales prohibitions.

Detection of Fluoride in Public Water

On March 28, 1997, in compliance with U.S. Environmental Protection Agency regulations under the Safe Drinking Water Act (42 U.S.C. § 300(f) *et seq.*), as well as Health and Safety Code sections 4026.7 and 4026.8, DHS published notice of its intent to adopt new sections 64400.47 and 64433-64434 and amend sections 64431 and 64432, Title 22 of the CCR. In these proposed changes, DHS seeks to provide a definition for the term "fluoridation" and establish a detection limit for fluoride, a naturally occurring chemical.

Specifically, these regulatory changes would define the term "fluoridation"; add fluoride to the maximum contaminant level list to address the natural occurrence of fluoride in sources of drinking water; add fluoride to the list of inorganic chemicals monitored to set a detection limit for purposes of reporting fluoride; specify exemptions and determine which systems are covered by the mandate to fluoridate when funds are made available; and establish optimal fluoride levels for fluoridation systems; develop monitoring and compliance requirements associated with fluoridation; introduce the basic criteria for a fluoridation system; institute recordkeeping, reporting, and notification requirements related to fluoridation treatment; determine the fluoridation system operations contingency plan; and establish the water system priority funding schedule.

DHS accepted public comment until May 12, 1997; no hearing was scheduled. At this writing, DHS has not submitted the proposed regulatory changes to OAL.

Impact on Children: Maintaining appropriate amounts of fluoride in public water sources will improve the oral health of children.

Surface Water Quality Criteria

In June 1989, the U.S. Environmental Protection Agency adopted regulations under the Safe Water Drinking Act (42 U.S.C. § 300(f) *et seq.*), intended to improve the microbiological quality of surface waters and groundwaters influenced by surface water. DHS adopted similar regulations at that time.

On May 23, 1997, DHS published notice of its intent to amend sections 64426.5, 64650, 64651.91, 64652, 64652.5, 64653, 65654,

64655, 64656, 64660, 64661, 64663 and 64666, Title 22 of the CCR. These changes would incorporate the federal provisions that allow water systems using surface water or groundwater under the direct influence of surface water to avoid the requirement for filtration under certain circumstances. In addition, DHS has incorporated a provision for taking an unfiltered surface water source out of service immediately if certain water quality criteria are not met.

DHS accepted public comment on the proposal until July 7, 1997; no hearing was scheduled. DHS submitted the proposed regulations to OAL, which disapproved them on January 12, 1998, because they did not comply with the "clarity," "necessity," and "consistency" standards of the APA.

Impact on Children: The regulations include a public notification requirement whenever water quality criteria are exceeded. Such consumer notification could be especially beneficial for children, whose immune systems often are weaker than those of adults.

Child Care

Transitional Child Care

SB 1780 (Committee on Budget and Fiscal Review) (Chapter 206, Statutes of 1996) mandates an extension of the eligibility period for the Transitional Child Care (TCC) program from 12 to 24 months for former welfare recipients who lose eligibility due to increased hours of, or earnings from, employment. SB 1780 did not extend the TCC program eligibility period for former welfare recipients who lose eligibility due to excess assets or income as a result of marriage or the reuniting

of separated spouses; the eligibility period for these recipients remains 12 months.

On February 21, 1997, DSS published notice of its intent to amend sections 22-072, 42-750, and 47-101, 102, 105, 110, 125, 130, and 155 of the MPP to implement the provisions of SB 1780. In its February 21 notice, DSS scheduled a public hearing on the proposed amendments for April 10, 1997, and also announced that it would adopt the amendments on an emergency basis pending conclusion of the rulemaking proceeding. DSS thereafter adopted the emergency amendments on February 28; they became effective on March 1, 1997. DSS accepted public comment until April 10, 1997 and held a public hearing on the same date. Following the public comment period and hearing, DSS modified the proposed regulations and re-opened a comment period from June 14 to June 30, 1997. On July 7, 1997, DSS readopted the amendments on an emergency basis. On August 20, 1997, DSS submitted permanent amendments to OAL, which approved them on September 30, 1997. They became effective on the same date.

Impact on Children: These regulations provide a transitional period of subsidized child care for families who are moving from welfare to work. The extension will give some additional time to participants who are transitioning back into the workforce, often at wages which cannot cover child care costs.

Children With Special Needs

Children with Special Health Care Needs

On April 5, 1996, DSS published notice of its intent to amend sections 80001-88070.1 (non-inclusive), Title 22 of the CCR, to expand services to children with special health care needs. The amendments provide the in-home care option, currently available to medically fragile court dependents, to developmentally disabled minors who are not court dependents but who have special health care needs, some of which can be provided through family health care. The amendments define children with special health care needs; establish capacity limits; prohibit dual licensure; introduce personnel and training requirements; mandate documentation; and place upon the licensee the responsibility for specialized in-home health care.

DSS accepted public comment on the proposal until May 23, 1996, and held public hearings on May 21, 22, and 23, 1996. Following the comment period and hearings, DSS adopted the proposed regulations, which were approved by OAL on May 14, 1997 and became effective on June 13, 1997.

Impact on Children: If this service is reasonably accessible, it will provide much-needed help to children from low-income families who are not court dependents.

Due Process Hearing Procedures For Students With Educational Disabilities

SB 523 (Kopp) (Chapter 938, Statutes of 1995), the "New Administrative Procedure Act (APA)," requires the California State

Board of Education (State Board) to either adopt the administrative hearing procedures set forth in sections 11400-11530 of the Government Code or promulgate its own procedural regulations consistent with current federal and state due process hearing requirements.

On June 23, 1997, the State Board adopted sections 3083-3089, Title 5 of the CCR, and amended section 3082, Title 5 of the CCR, on an emergency basis. The new regulations provide due process hearing procedures for school districts and families of children with educational disabilities. Specifically, the regulations describe the requirements for service, notice, *ex parte* communications, precedent decisions, mediation, decision by settlement and sanctions.

On July 25, 1997, the State Board published notice of its intent to permanently adopt these regulatory changes. The State Board accepted public comment on the proposed action until September 11, 1997, and held a public hearing on the same date. On September 15, 1997, the State Board published notice of changes in the proposed regulations, and re-opened the comment period until October 3, 1997. The State Board submitted the regulatory changes to OAL on October 28; OAL approved the changes and they became effective on December 4, 1997.

Impact on Children: These regulations set forth hearing procedures and guidelines that children with disabilities and their families must follow to resolve problems or disputes they may have with their school districts regarding services. They are intended to improve due process by assuring a more neutral third party to conduct the administrative hearing.

Alternative Community Treatment Facilities for Children

The intent of SB 282 (Morgan) (Chapter 1245, Statutes of 1993) is to establish a new community care licensing category in California ("Community Treatment Facility"), as an alternative to out-of-state or acute care placement and state hospitalization for seriously emotionally disturbed children and adolescents needing a greater level of care than can be provided in a group home, but in a less restrictive environment than a state or acute care institution. This bill requires DSS to adopt licensing regulations and DMH to adopt program standards to govern community treatment facilities.

On January 10, 1997, DSS published notice of its intent to amend sections 80001-84188 (non-inclusive), Title 22 of the CCR. The proposed regulations assign criteria and responsibilities for the licensure and operation of a community treatment facility, and establish standards for the new category. The standards address administrative proceedings, treatment tools, treatment staffing, and the use of psychotropic medication, discipline, and restraint in community treatment facilities. Those facilities are limited to serving only seriously emotionally disturbed children with a documented history of less restrictive mental health interventions and who may require periods of containment to participate in and benefit from mental health treatment.

DSS accepted public comment on the proposed regulations until February 27, 1997, and held public hearings on February 25 in Santa Ana, February 26 in Sacramento, and February 27 in San Jose. DSS submitted the regulatory changes to OAL on January 8, 1998.

Impact on Children: These regulations expand the alternatives for California's seriously emotionally disturbed children needing a greater level of care. The policies and procedures clarify when additional services should be considered for community treatment facility residents. Expanding placement options allows decisionmakers to consider variables including location, the best type of environment for the child, security and other important criteria.

Use of Manual Restraints in Group Homes

On August 29, 1997, DSS published notice of its intent to adopt sections 84001, 84022, 84061, and 84800-84808 (non-inclusive), Title 22 of the CCR. These regulations formalize the existing DSS Community Care Licensing Division policy regarding the use of manual restraints in group homes when an assaultive child is threatening to endanger or injure himself, herself or others, and in "runaway" situations. The proposed regulations use the term "emergency intervention" to include the use of non-physical interventions as well as the use of manual restraints. The least restrictive form of intervention must be used first; more restrictive interventions are to be used only after the less restrictive methods have proven ineffective. For purposes of these regulations, the use of a protective separation room is considered a form of manual restraint.

DSS accepted public comment on the proposal until October 16, 1997, and held public hearings on October 14, 15, and 16, 1997. At this writing, the proposed regulations have not yet been submitted to OAL.

Impact on Children: At this time, neither general licensing re-

quirements nor specific regulations for group homes address the use of behavior management techniques in such homes. The adoption of specific regulations that address the use of manual restraints should enable DSS to set parameters for group home staff in restraining these children, and enable it to sanction a facility which inappropriately restrains a child.

Education

Alternate Instructional Materials

Section 9528, Title 5 of the CCR, specifies the requirements for alternate formats of adopted instructional materials by school districts. On November 22, 1996, CDE published notice of its intent to amend section 9528 to clarify the requirements for including free instructional materials in the alternate format package. The amendments ensure that school districts not use funds from the State Instructional Materials Fund to purchase non-adopted and non-approved instructional materials. The amendments also define alternate formats; require such alternate formats to be submitted to CDE (including samples of proposed alternate format material); and state the conditions under which the package may include free, non-adopted instructional materials.

CDE accepted public comment on the proposed amendments until January 9, 1997, and held a public hearing on the same date. CDE adopted the amendments, which were approved by OAL on February 27, 1997, and became effective on March 29, 1997.

Impact on Children: The requirement that alternate formats be identical in content or equivalent to adopted instructional materials and

be submitted to CDE for approval is intended to further consistency in instructional materials. This procedure controls the use of non-adopted and/or non-approved curriculum materials, while allowing some flexibility for alternate formats with approval.

Requirements for Independent Study

On August 1, 1997, CDE published notice of its intent to adopt new section 11701.5 and amend sections 11700-11703, Title 5 of the CCR. The regulatory changes would clarify independent study requirements for local educational agencies and ensure that independent study is uniformly implemented throughout the state. Specifically, the regulations will ensure that independent study assignments are made, evaluated, and documented by a certificated teacher; that the curriculum and methods of independent study are consistent with school district policies; and that school resources and services are equitably provided.

CDE accepted public comment until September 18, 1997, and held a public hearing on the same date. CDE submitted the regulatory changes to OAL on October 28, 1997; OAL approved them on December 12, 1997. They were effective on January 11, 1998.

Impact on Children: These regulations are intended to give children learning through independent study the same required curriculum as other children in the state.

Elementary Instructional Materials

AB 3482 (Davis) (Chapter 196, Statutes of 1996) establishes provisions for Core Reading Program Instructional Materials and appropriates funds to furnish each

pupil in kindergarten and grades 1 to 3 with a complete set of core reading instructional materials. The legislation places certain restrictions on the expenditure of the funds, including a restriction that the funds be used exclusively for the purchase of instructional materials adopted by the State Board. However, the legislation also provides that if the governing board of a local educational agency (LEA) can establish "to the satisfaction of the state board, that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning," the LEA governing board may request authorization from the State Board to use Core Reading Program Instructional Materials funds to purchase non-adopted instructional materials.

On January 30, 1997, the State Board amended section 9535, Title 5 of the CCR, on an emergency basis. The amendment specifies how an LEA may purchase non-adopted instructional materials with Core Reading Program Instructional Materials funds. It is patterned after existing policy, modified to reflect the specific requirements for purchasing core reading program instructional materials.

On March 21, 1997, the State Board published notice of its intent to permanently adopt the amendment. The State Board accepted public comment on the proposal until May 8, 1997, and held a public hearing on the same date. On May 12, 1997, the State Board published notice of its intent to amend the proposed regulations, and reopened the comment period from May 14 to May 30, 1997. The State Board submitted the permanent amendment to OAL for review on June 19, 1997. OAL approved the amendment, which became effective on July 31, 1997.

Impact on Children: This regulation may help ensure that requests to purchase non-adopted materials are consistently evaluated and acted upon by the State Board. Students may also benefit from this action if the proposed standards and procedures allow for the purchase of non-adopted materials in appropriate cases.

Personnel Standards for Nonpublic Schools and Agencies

SB 989 (Polanco) (Chapter 944, Statutes of 1996) directs the State Board to adopt regulations setting personnel standards for individuals employed by nonpublic schools and agencies. On July 18, 1997, CDE adopted sections 3060-3064, and amended sections 3001 and 3051, Title 5 of the CCR, on an emergency basis. These emergency regulations specify the personnel standards for individuals employed by nonpublic, nonsectarian schools and agencies for each type of service that local educational agencies are required by federal and state law to provide to pupils with disabilities. The regulations are divided into two principal sections -- one setting standards for specialized instruction, and the other setting standards for related services.

The personnel standards, when applicable, are based on state-issued credentials and licenses, certificates of registration issued by professional, nongovernmental organizations, and degrees issued by accredited postsecondary educational institutions. To be eligible for certification, a nonpublic school or agency must employ personnel who are authorized by the Commission on Teacher Credentialing or the Business and Professions Code to provide the service rendered, or meet other personnel standards established by

CDE to comply with federal and state law regarding the provision of services to individuals with exceptional needs.

On November 14, 1997, CDE readopted these sections on an emergency basis. CDE is currently reviewing these regulations along with others relating to special education and nonpublic schools.

Impact on Children: These regulations will help ensure that children with disabilities attending nonpublic schools will receive adequate instruction and services by state-certified instructors.

Assessment of Academic Achievement

Through AB 265 (Alpert) (Chapter 975, Statutes of 1995), the California Assessment Academic Achievement Act, the legislature declared its intention to improve pupil achievement through a state-wide pupil assessment program. The pupil assessment program is based on two elements: a system of assessments of applied academic skills administered to pupils in grades 4, 5, 8, and 10; and a voluntary pupil testing incentive program for grades 2 through 10 in basic academic skills.

On October 29, 1996, CDE published notice of its intent to adopt sections 800-802, Title 5 of the CCR. The regulations clarify the general Pupil Testing Incentive Program (PTIP) testing provisions, including a requirement that all pupils be tested and the procedures for reporting test results. The regulations also specify circumstances under which the State Board is willing to grant waivers of one or more "required" elements of the PTIP in order to encourage wide participation by school districts.

The PTIP is designed to stimulate, through incentive funding, expanded efforts to test all pupils in grades 2 through 10 in basic academic skills. A school district's eligibility for participation in the PTIP depends upon its compliance with three statutory requirements: (1) all pupils in grades 2 through 10 must be tested; (2) a State Board-approved test must be used; and (3) the tests must be administered within a designated period of time.

The agency accepted public comment until December 12, 1996, and held a public hearing on the same date. CDE submitted the proposed regulations to OAL, which disapproved them on March 7, 1997, because they did not comply with the "authority" and "clarity" standards and the procedural requirements of the Administrative Procedure Act. CDE revised the proposed regulations and resubmitted them to OAL on May 2, 1997. OAL approved the regulations and they became effective on June 11, 1997.

Impact on Children: The reported test results could lead to increased accountability for pupil performance among California school districts. The results also may assist teachers in identifying individual academic strengths and weaknesses in order to improve teaching and learning.

Requirements for Class Size Reduction Program

SB 1777 (O'Connell) (Chapter 163, Statutes of 1996), the Class Size Reduction Program Act, authorizes funding to school districts that reduce class sizes in kindergarten and grades 1 to 3, inclusive, to no more than 20 pupils per certificated teacher. The program's requirements are specified in Education Code sections 52120-52128.

School districts participating in the program must certify compliance with the requirements, including implementation of a staff development program to maximize the educational advantages of class size reduction and establish their class size reduction first in grade 1 classes, second in grade 2 classes, and third in kindergarten and/or grade 3 classes. School districts participating in the program are eligible to receive \$650 per pupil enrolled in classes and \$325 per pupil enrolled in classes participating in the program for at least half of the instructional minutes offered per day.

On August 29, 1996, CDE adopted sections 15130, 15131, 15132, and 15133, Title 5 of the CCR, on an emergency basis, to clarify the requirements for school districts participating in the Class Size Reduction Program. On November 22, 1996, CDE published notice of its intent to permanently adopt the sections. CDE accepted public comment on the proposal until January 9, 1997; and held a public hearing on the same date. Following the comment period and hearing, CDE adopted the proposed regulations, which were approved by OAL on March 6, 1997 and became effective the same date.

Impact on Children: Class size reduction allows teachers to provide additional individualized and collective attention to their students; the program also increases funding per classes in the participating districts. Those classes which do not meet the requirements of class size reduction may be affected if their schools are not able to receive those funds.

Child Protection

Group Homes that Accept Children under Six Years of Age

AB 1197 (Bates) (Chapter 1088, Statutes of 1993) requires DSS to assess the needs of children under six years of age in group homes, and develop standards to be incorporated into the group home program statement. On May 9, 1997, DSS published notice of its intent to amend sections 84000-84088 (non-inclusive), repeal sections 84009, 84044, 84076, and 84080, Title 22 of the CCR, and amend sections 31-002 to 31-420 (non-inclusive) and 11-400, 402 of the MPP. These regulations are intended to implement AB 1197 by setting standards for the care of children under six years of age in group homes, establishing payment rates and qualifications of group home personnel, and setting forth services which should be provided to young children in group homes.

DSS' current regulations do not provide standards specific to the care of children under six years of age in group homes. The proposed regulations will establish standards to ensure that very young children are appropriately cared for in group home facilities. These regulations establish specific education and experience standards for facility personnel, additional health and safety requirements, and additional physical environment standards. In addition, because group homes for very young children are a component of the group home regulatory category, the regulations that apply to group homes for older children will also apply to group homes that care for very young children, unless specified otherwise. The proposed regulations set rates of payment for caregivers, clarify the personnel requirements

and duties of caregiving staff, and address the services required to meet the specific needs of children under six years of age in group homes.

DSS accepted public comment on its proposed regulations until June 26, 1997, and held public hearings on June 23, 24, 25, and 26, 1997. DSS then re-opened the comment period from September 3 to October 15, 1997. DSS then submitted the regulatory changes to OAL, which disapproved them on October 17, 1997, because they did not comply with the "clarity" standard of the Administrative Procedure Act. DSS then revised the Statement of Reasons and the proposed regulatory language; in a December 10, 1997, notice, DSS re-opened the comment period from December 11 to December 26, 1997.

Impact on Children: Safeguards, guidelines, and specifications are important to ensure quality care for children of any age placed in group homes, but particularly so for these youngest children.

Time Limit For Victims of Crime Assistance Program

Pursuant to Government Code section 13959 *et seq.*, the Board of Control administers the Victims of Crime (VOC) assistance program, which reimburses eligible victims for expenses incurred as a direct result of a crime for which no other source of reimbursement is available. The VOC program compensates direct victims (persons who sustain an injury as a direct result of a crime) and derivative victims (persons who are injured on the basis of their relationship with the direct victim at the time of the crime, as defined in Government Code section 13960(2)).

Section 13961(c) of the Government Code sets forth the period

within which a person qualifying under the Victims of Crime Act must file an application to receive financial reimbursement. The period for the filing of an application for assistance is one year after the date of the crime or one year after the victim attains the age of 18 years, whichever is later; the BOC may for good cause grant an extension of the time period not to exceed three years after the date of the crime or three years after the victim attains the age of 18 years. There has been some uncertainty as to whether subdivision (c) allows consideration of a claim filed by a *derivative* victim within three years of the date the derivative victim attains the age of 18 years, but more than three years after the date of the crime.

On December 10, 1996, BOC amended section 649.1, Title 2 of the CCR, on an emergency basis. This action implements section 13961(c) to clarify that a derivative victim must file his or her claim within three years of the date of the crime or within three years of the date the *direct* victim attains the age of 18 years, whichever is later. The period within which a claim must be filed will not be extended due to the minority of a derivative victim. For example, a minor whose supporting parent dies as a direct result of a crime must file within three years of the crime. If three years have passed, BOC will not consider the minor's claim even though the minor has applied prior to the expiration of three years from the date the minor attains the age of 18 years.

On January 10, 1997, BOC published notice of its intent to permanently adopt the amendment. BOC accepted public comment on the proposal until February 27, 1997, and held a public hearing on the proposed amendment on the same

date. Following the public comment period, BOC adopted the amendment, which was approved by OAL on May 14, 1997 and became effective the same date.

Impact on Children: Under this amendment, derivative victims who were minors at the time of the crime must apply for assistance within three years of the crime or of the direct victim's majority, whichever comes later. Unlike a direct victim of a crime, derivative victims will not have three additional years to apply after they become 18. This may be a great disadvantage for a child who suffered from a crime but was not able to apply for assistance within the statute of limitations as defined in this regulation.

Foster Care Placement with Former Relatives

On April 11, 1997, DSS published notice of its intent to amend section 87001, Title 22 of the CCR, and sections 45-100, 101, 200-203, 300-302, and 80-300, and 310 of the MPP, in order to clarify existing program requirements and establish a new eligible facility in the foster care program which allows placement with former relatives who are exempt from licensure as foster parents.

DSS accepted public comment until May 28, 1997, and held a public hearing in Sacramento on the same date. Following the comment period and hearing, DSS adopted the proposed regulations, which were approved by OAL on October 27, 1997 and became effective on November 26, 1997.

Impact on Children: These regulatory changes create an alternate placement for children by removing barriers that could impede former relatives from caring for them. Children tend to be familiar

with their former relatives and may already have bonded with them; such placement could establish a more satisfactory and loving environment than placement with strangers.

Juvenile Justice

Discretion to Reject State Prison Commitments

Section 1700 of the Welfare and Institutions Code mandates the Youth Authority to provide a range of training and treatment services for youthful offenders committed either by the juvenile or criminal courts. AB 3369 (Bordonaro) (Chapter 195, Statutes of 1996) requires the Youth Authority to adopt regulations that modify its discretion to accept or reject state prison commitments, pursuant to Welfare and Institutions Code section 1731.5(c).

Formerly, the Youth Authority could reject a young person for housing in Youth Authority facilities if the sentence imposed would result in an earliest possible release date that exceeds the person's 25th birthday. The option did not apply to persons who were less than 18 years of age at the time of sentencing.

On March 7, 1997, the Youth Authority published notice of its intent to amend section 4197.2(a), Title 15 of the CCR. The amended regulation modifies rejection criteria to permit the Youth Authority to reject a young person for housing in Youth Authority facilities if the sentence imposed would result in an earliest possible release date that exceeds the person's 21st birthday. The option to reject would include persons who are 17 years and 6 months or older at the time of referral to the Youth Authority.

The Youth Authority accepted public comment on the pro-

posal until April 23, 1997, and held a public hearing on April 24, 1997. Following the comment period and hearing, the Youth Authority adopted the amendments, which were approved by OAL on June 27, 1997, and became effective on July 27, 1997.

Impact on Children: Essentially, the amendments will increase the number of young offenders who may be denied housing within Youth Authority facilities. This, in effect, means that more adolescents will be sent to adult correction facilities. These adult prisons may not provide many of the rehabilitation programs offered to young offenders at juvenile detention facilities, further impeding the likelihood of rehabilitation.

Limitation on Parole Services for Aliens

Section 411 of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to adopt regulations governing the denial of public benefits to parolees identified as illegal aliens.

On June 27, 1997, the Youth Authority published notice of its intent to adopt new section 4830.1, Title 15 of the CCR. This regulation identifies those benefits which may not be afforded to parolees identified as illegal aliens and ensures that the Youth Authority works with the Immigration and Naturalization Service to determine verification of individuals who are not in this country legally.

The proposed regulation requires the Youth Authority to deny parole service to ineligible aliens unless they are, as defined by federal law, "qualified aliens," "non-immigrant aliens," or "aliens paroled into the United States for less than one

year." These parole services include bus passes, mental health treatment and services, parenting education, job placement, cash assistance, and clothing assistance.

The Youth Authority accepted public comment on the proposal until August 29, 1997, and held a public hearing on the proposed regulation on September 3, 1997. At this writing, the proposed regulation has not yet been submitted to OAL.

Impact on Children: This regulation could have a serious effect on youth who need public assistance during rehabilitation. This denial of services is maximized if the youth's immigrant family also is ineligible for public assistance.

Regulatory Key

BOC: Board of Control

CCR: California Code of Regulations

CDE: California Department of Education

DHS: Department of Health Services

DMH: Department of Mental Health

DSS: Department of Social Services

MPP: Manual of Policies and Procedures (DSS)

OAL: Office of Administrative Law

State Board: State Board of Education

Youth Authority: Department of Youth Authority

Other Information Sources

The *California Children's Budget*, published annually by the Children's Advocacy Institute and cited herein, is another source of information on the status of children in California. It analyzes the California state budget in eight areas relevant to children's needs: child poverty, nutrition, health, special needs, child care, education, abuse and neglect, and delinquency. The *California Children's Budget 1997-98* can be accessed via the Web at <www.acusd.edu/childreissues/report>.

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