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Children's Regulatory Law Reporter, Vol. 2, No. 1 (1999)

Children's Advocacy Institute, University of San Diego School of Law

Children's Regulatory Law Reporter

Children's Advocacy Institute ◆ Vol. 2, No. 1 (1999)

Highlights:

KEY

This issue of the *Children's Regulatory Law Reporter* covers new regulatory packages published or filed from July 1, 1998 through April 30, 1999; actions on those packages through June 15, 1999; and updates through June 15, 1999, on regulatory packages from previous issues.

Prior issues of the *Children's Regulatory Law Reporter* may contain extensive background information on topics discussed in this issue.

The following abbreviations are used in this publication to indicate the following California agencies:

BOC: Board of Control
CCR: California Code of Regulations
CDE: California Department of Education
DDS: Department of Developmental Services
DHS: Department of Health Services
DMH: Department of Mental Health
DSS: Department of Social Services
DYA: Department of Youth Authority
MPP: Manual of Policies and Procedures, Department of Social Services
MRMIB: Managed Risk Medical Insurance Board
OAL: Office of Administrative Law
Parole Board: Youth Offender Parole Board
Board of Education: State Board of Education

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Editor's Comments . . .

As we begin the second year of the *Children's Regulatory Law Reporter (Children's Reporter),* we have a new look for the publication. The revamped design reflects the fact that the *Children's Reporter* has tripled in size from the first issue. We hope this design will enable readers to quickly find areas of interest within what has become a much more comprehensive publication.

This issue covers new regulatory packages – close to thirty of them – that were published or filed from July 1, 1998 through April 30, 1999. Additionally, this issue updates over thirty proposals that had not completed the regulatory process in the time period of the previous two issues.

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. The text of this issue is available on our Web site at <www.acusd.edu/childrensissues>. We are pleased to receive comments electronically or by telephone.

Some major regulatory activity affecting children deserves the highest attention. First, California is still without minimum safety standards for public playgrounds. A 1990 law (SB 2733, Chapter 1163, Statutes of 1990) required the state's Department of Health Services (DHS) to adopt such standards by 1992. DHS failed to meet that deadline, as well as others mandated by subsequent court orders. Recently, the Office of Administrative Law disapproved DHS' long-awaited proposed regulations. For a detailed explanation of the problem, see the Health section, Playground Safety.

Another key area of regulatory activity affecting children is the Healthy Families program – California's answer to uninsured children. Although the Managed Risk Medical Insurance Board (MRMIB) deserves the gold star among state agencies for its approach to the regulatory aspects of this program – including extensive public input and an expedited process – the program is off to an incredibly slow start. Of highest concern is the likelihood that California's children will lose billions of dollars in federal monies if the flaws in this program aren't quickly cured. For an extensive background on this program, as well as changes currently proposed by MRMIB, see the Health section, Healthy Families.

In the Child Protection area, major policy changes are reflected in regulatory activity, especially in the areas of adoption reform and foster care reform. These two areas go hand in hand, and have historically been neglected by policymakers. The regulations follow much-needed legislative action caused, in part, by media attention focusing on recurring problems in both areas. Also of note are the new regulations protecting children in out-of-state group homes; these respond to the death of a California child in such a placement.

These are just a few of the regulatory packages discussed inside. Many state agencies – from the largest and most visible to the smallest and relatively unknown – affect children's lives every day with the regulations they propose. The goal of the *Children's Regulatory Law Reporter* is to monitor these actions, and inform Californians of their impact.

Margaret A. Dalton, Editor

The Children's Advocacy Institute is part of the Center for Public Interest Law at the University of San Diego School of Law. The Information Clearinghouse on Children (ICC) is a project of the Children's Advocacy Institute. The ICC is funded in part by The California Wellness Foundation and by The Maximilian E. & Marion O. Hoffman Foundation, Inc.

CHILD POVERTY

AFDC-FG/U Linkage Determination

In *Capitola Land et al. v. Anderson*, 55 Cal. App. 4th 69 (1997) (*Land*), the court ordered DSS to comply with new federal law under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA) and amend its regulations to retroactively cover a group of children under the previous Aid to Families with Dependent Children-Family Group/Unemployed Parent program (AFDC-FG/U).

On October 2, 1998, DSS amended section 45-202 of the MPP, on an emergency basis, to comply with parts of the court order. Prior to the amendment, DSS required that a child must have lived with the parent or relative during the removal month or within any of the six preceding months to be eligible for AFDC-FG/U payments. The emergency amendment allows indigent children who did not reside with their parent(s) or other legal guardian for more than six months prior to the date they were removed from their parents' custody to establish the linkage needed to qualify for federal foster care payments.

On October 16, 1998, DSS published notice of its intent to permanently adopt the amendment. Because of exemptions allowed under the PRA, the APA procedure for public comment does not apply to these regulations. However, DSS held a public hearing in Sacramento on December 2, 1998, to allow for comment from interested parties. At the hearing, Stephen Goldberg, Northern California Lawyers for Civil Justice, testified about problems with the proposed regulatory changes. Among other comments, Goldberg testified that the regulations do not retroactively extend eligibility to certain groups of children, as required under the *Land* decision, and that DSS regulations indicate that the expansion of eligibility under *Land* will not be implemented without other statutory changes and that this is not acceptable.

In its Certificate of Compliance, dated March 19, 1999, DSS argued that a later case, *Anderson v. Superior Court,* 68 Cal. App. 4th 1240 (1998), allows DSS to limit the eligibility, and only requires it to expand eligibility "until and unless federal financial participation" is authorized.

DSS adopted the regulatory changes as originally noticed and submitted them to OAL, which approved them on March 16, 1999. They became effective on the same date.

Impact on Children: This is an example of California's lead welfare reform agency, DSS, using the legal system to avoid expanding welfare eligibility to needy children. The *Land* decision extended eligibility to children who did not reside with their parent(s) or other legal guardian for more than six months prior to statutory removal; this includes children who had been abandoned by biological parents to the care of relatives more than six months prior to the date. While the regulations also implement some provisions of federal welfare reform under the PRA, they effectively "exempt" the state from what child advocates and the *Land* court believe is California's responsibility to better provide for these foster children who fall just outside the safety net.

CalWORKs Drug and Fleeing Felon Provisions

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on April 7, 1999; they became effective on May 1, 1999.

CalWORKs Voucher and Rent/Utility Payments

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on February 9, 1999; they became effective on the same date.

CalWORKs Child Immunization and School Attendance Requirements

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on February 10, 1999; they became effective on the same date.

CalWORKs Restricted Accounts

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on January 15, 1999; they became effective on the same date.

CalWORKs Cal-Learn for 19-Year-Olds

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on January 25, 1999; they became effective on the same date.

CalWORKs Elimination of Late Monthly Reporting Penalties

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on February 3, 1999; they became effective on the same date.

CalWORKs Deprivation and Diversion Assistance

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on December 23, 1998; they became effective on December 28, 1998.

CalWORKs Time Limit Requirements

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on December 21, 1998; they became effective on the same date.

CalWORKs Grant Structure and Aid Payments

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on December 23, 1998; they became effective on December 28, 1998.

CalWORKs Overpayment Recoupment

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on February 2, 1999; they became effective on the same date.

CalWORKs Child Care

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: On December 28, 1998, DSS readopted the regulations on an emergency basis. DSS accepted public comment until April 14, 1999, and held public hearings on April 13 and 14, 1999. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

CalWORKs Trustline Registry

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on February 8, 1999; they became effective on the same date.

CalWORKs Child Support

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: On December 22, 1998, DSS readopted the regulations on an emergency basis; they became effective on December 28, 1998. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

CalWORKs Property Limits

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: On December 22, 1998, DSS readopted the regulations on an emergency basis; they became effective on December 28, 1998. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

CalWORKs Fraud Penalties

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: OAL approved the regulations on February 10, 1999; they became effective on the same date.

CalWORKs Welfare-to-Work Provisions

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, Insert. *Update*: On December 23, 1998, DSS readopted the regulations on an emergency basis; they became effective on December 28, 1998. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

Child Support Collections

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 4. *Update*: DSS submitted most of the proposed regulatory changes to OAL, which approved them on January 29, 1999. Those became effective on the same date. DSS withdrew the remaining regulations; these included new sections 12-401, 12-405, 12-410, 12-415, 12-420, 12-425, 12-430, 12-435, and amended sections 12-101, 12-108, 12-711, 43-203, 43-205, 82-506, 82-508, 82-518, and 82-520 of the MPP. On January 29, 1999, DSS re-adopted these sections on an emergency basis. At this writing, DSS has not submitted the regulatory changes to OAL.

Domestic Abuse Procedures

One of the provisions of the CalWORKs program is a family violence provision, which was adopted to ensure that applicants and recipients who are past or present victims of abuse are not placed at further risk or unfairly penalized by CalWORKs requirements and procedures. AB 1542 (Chapter 270, Statutes of 1997) requires DSS to convene a Domestic Violence Task Force. In consultation with the Task Force, DSS developed protocols to identify and assist CalWORKs applicants and recipients who, because of past or present domestic abuse, might need additional help to obtain employment and become self-sufficient.

On December 4, 1998, DSS published notice of its intent to permanently adopt section 42-715, and amend sections 19-004, 40-107, 40-115, 40-131, 40-181, 42-302, 42-701, 42-710, 42-713, and 82-512 of the MPP, to clarify CalWORKs procedures as they differ for qualifying victims of domestic abuse. On December 22, 1998, DSS adopted the regulatory changes on an emergency basis; they became effective on January 1, 1999.

The proposed regulations define domestic abuse; establish individual case assessment procedures, confidentiality procedures, notice requirements, and requirements for referrals for counseling and other service referral strategies; identify good cause criteria for waiving program requirements for identified victims of domestic violence; and address training standards for staff serving CalWORKs recipients.

DSS accepted public comment on the proposed regulations until January 20, 1999, and held a public hearing in Sacramento on the same date. At this writing, DSS has not submitted the regulatory changes to OAL.

Impact on Children: The proposed regulations benefit children whose parents (usually mothers) are victims of domestic abuse. By waiving program requirements and developing appropriate service strategies, these regulations assist victim families so they do not lose their CalWORKs eligibility for failure to meet requirements that might impact on their personal safety.

Food Assistance Program

AB 2779 (Aroner) (Chapter 329, Statutes of 1998) eliminates the age restriction for the California Food Assistance Program (CFAP) (food stamps benefits) for legal residents who were in the United States prior to August 22, 1996. On January 27, 1999, DSS adopted sections 63-031 and 63-411, and amended sections 63-102, 63-403, and 63-405 of the MPP, on an emergency basis, to comply with AB 2779. The changes were effective on February 1, 1999.

These proposed regulatory changes revise the definition of those legal residents eligible for CFAP, remove the age restrictions of CFAP, and repeal obsolete provisions. Specifically, the regulations reflect the reinstatement of federal food stamps benefits to children under 18 years old if they were in this country on August 22, 1996; to adults who were 65 years or older on August 22, 1996; and to blind and disabled persons residing in the U.S. as of August 22, 1996. These are persons who *had* been covered by California's CFAP for the past two years. With federal coverage expanding to include this "bookend" coverage of children and the elderly, AB 2779 allows (but does not require) the state's CFAP to shift to parents, providing full food stamp safety net coverage of pre-1996 legal immigrant families.

Consistent with the statute, the amended regulations eliminate the age restriction for the state-only program, and provide that a legal resident present in the U.S. before August 22, 1996, regardless of age, will be eligible for CFAP if certain eligibility criteria are met. For example, an immigrant who meets most of the eligibility criteria of the federal program in effect on August 21, 1996, but is not eligible for federal benefits solely due to immigration status, will be provided food stamps benefits under CFAP.

On February 12, 1999, DSS published notice of its intent to permanently adopt the emergency regulations. DSS accepted public comment until March 17, 1999, and held a public hearing in Sacramento on the same date. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

Impact on Children: The proposed regulations benefit children by reinstating food stamps benefits to parents of children who became ineligible for needed assistance under the provisions of the federal law. These regulations reflect the fact that California has chosen to cover immigrant parents not included in the federal expansion. There is some concern among child advocates that the Davis administration may not support CFAP expansion for food stamp coverage of parents (those from 18 to 65) among legal immigrants who otherwise qualify. Such inclusion is important, since the $70 to $80 per month per person in food purchasing power foreclosed from parents necessarily impacts the nutritional intake of children. When two parents and a child are allowed $75 per month in food benefits, rather than $220, the fictional posture of "preserving child benefits" is manifested in nutritional shortfall. Also note that AB 2779 and the proposed regulations continue to exclude *all legal* immigrants arriving after August 22, 1996. California is the major destination of such immigrants (receiving over 40% of those entering the United States). These persons, adults and children, are categorically barred from TANF, SSI, and food stamps. Except for emergency and prenatal Medi-Cal, they lack any safety net protection. For a discussion of the growing numbers of affected children, see the *California Children's Budget 1999-2000*, Chapter 2; for recent survey evidence of growing hunger among immigrant families and children, see *Id.*, Chapter 3. Both may be viewed online at <acusd.edu/childrensissues>.

CHILD HEALTH

Childhood Lead Poisoning Prevention

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 5. *Update*: DHS submitted the proposed regulatory changes to OAL, which approved them on January 8, 1999. They became effective on the same date.

Dental Sealants

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 7. *Update*: DHS submitted the proposed regulatory changes to OAL, which approved them on September 4, 1998. They became effective on the same date.

Derivative Victims of Crime

Pursuant to Government Code section 13959 *et seq.*, the BOC administers the Victims of Crime (VOC) assistance program, which reimburses eligible victims and derivative victims for certain specified medical, mental health, or funeral/burial expenses, or income or support losses as directly resulting from the commission of a crime. The VOC program compensates direct victims (persons who sustain an injury or die 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 the period within which a person qualifying under the VOC program must file an application to receive financial assistance. It requires that an application be filed within one year after the date of the crime, or one year after a victim or derivative victim reaches the age of 18, whichever occurs later.

On November 2, 1998, the BOC added section 649.1.1, and amended sections 649(e) and 649.1, Title 2 of the CCR, on an emergency basis. New section 649.1.1 provides that the period of limitations for filing an application is tolled when a derivative victim is listed on an application timely filed by, or on behalf of, a victim of the same crime. It requires that in order to toll the period of limitations, the victim's application must include specific information about the derivative victim. It also provides that the BOC is not required to act upon an application from a derivative victim whose period of limitation was tolled under the regulation, until a request for monetary assistance is submitted for the derivative victim.

The proposed change to section 649(e) amends the definition of "zero award" to state that it is a determination of eligibility for program assistance that does not involve a determination concerning monetary assistance for any pecuniary loss. The proposed amendment to section 649.1 makes minor changes to improve clarity.

On November 6, 1998, the BOC published notice of its intent to permanently adopt and amend the proposed regulations. The BOC accepted public comment until January 4, 1999, and held a public hearing in Sacramento on the same date. The BOC adopted the regulations and submitted them to OAL, which approved them on April 2, 1999. They became effective on the same date.

Impact on Children: Without the proposed change, a derivative victim, unlike a direct victim of crime, would not have an additional three years to apply for program funds after he or she reaches majority. The new section 649.1.1 will toll the statute of limitations for the derivative victim if he or she is listed on the direct victim's application. This will benefit a child who suffered from a crime but did not file for assistance during minority.

EPSDT Lead Contamination Detection

The authority to adopt regulations governing the evaluation and abatement of lead hazards resides in DHS, as does the responsibility to provide Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services for children in the Medi-Cal program. The federal Department of Health and Human Services has determined that locating the source of lead contamination may be considered an integral part of the management and treatment of a Medicaid (Medi-Cal in California) eligible child diagnosed with an elevated blood lead level (Memorandum #FME-42, January 21, 1993). DHS believes it is essential to identify the sources of lead contamination.

On April 13, 1999, DHS adopted section 51532.2, and amended sections 51242, 51340, and 51340.1, Title 22 of the CCR, on an emergency basis, to provide payment for onsite inspections for Medi-Cal eligible children diagnosed with lead poisoning. Section 51532.2 states the rules for submitting bills to Medi-Cal, and the rate for onsite investigation. Section 51242(j) allows local health departments and comprehensive environmental agencies to provide onsite investigations to detect the source of lead contamination in the homes or primary residences of Medi-Cal eligible children. When a child is found to have an elevated blood lead level that meets the requirements of section 51340.1, DHS must provide appropriate case management. Section 51340.1(d) deals with technical requirements for identifying specified blood levels as well as a notice requirement regarding coverage of this supplemental service.

On April 30, 1999, DHS published notice of its intent to permanently adopt the sections. DHS accepted public comment until June 14, 1999; no public hearing was scheduled. At this writing, DHS has not submitted the proposed regulatory changes to OAL.

Impact on Children: This regulation goes hand-in-hand with other regulatory activity in this important health area (see *supra*, Childhood Lead Poisoning Prevention). In particular, it assures that children covered or eligible for Medi-Cal receive these services. This new Medi-Cal service parallels current services provided by the Childhood Lead Poisoning Prevention Program, which provides onsite investigations to detect the source of lead contamination in the homes of children who are *not* eligible for Medi-Cal. Lead poisoning has devastating effects, and is preventable. This program will enhance the prevention efforts for poor children, who often are at greater risk for lead poisoning. However, child advocates contend that this rule change stands in marked contrast to the empirical record of DHS in carrying out lead prevention. See the recent DHS survey of drinking water in elementary schools, indicating lead levels substantially above federal maximums, and the tepid response of DHS in terms of comprehensive surveying and mitigation warranted by these findings. For a discussion of this problem see the *California Children's Budget 1999-2000*, Chapter 4 (online at www.acusd.edu/childrensissues).

Firearms Safety

California law provides that no handgun shall be delivered in California unless the purchaser, transferee, or person being loaned the firearm presents to the firearms dealer a Basic Firearms Safety Certificate (BFSC) (California Penal Code sections 12071,12072). DOJ develops, implements and administers the BFSC Program. On October 9, 1998, DOJ published notice of its intent to adopt sections 967 through 967.85, Title 11 of the CCR. In the proposed regulations, DOJ sets standards for issuing BFSCs to individuals, and guidelines for DOJ Certified Instructors and DOJ Course Providers.

Individuals may obtain BFSCs by three separate methods: 1) completing the DOJ Video Course, 2) successfully passing a DOJ Objective Test, or 3) enrolling in and successfully passing a DOJ Certified Course. A BFSC applicant must be at least 21 years old; a firearm dealer must verify the identity and age of the applicant. To become a DOJ Certified Instructor, a person must be certified by a nationally recognized organization or entity that fosters safety in firearms. To become a DOJ Course Provider, a licensed firearms dealer must submit to DOJ the dealer and/or dealership name; the physical address and mailing address, if different; telephone numbers; and the Centralized List firearms dealer number.

DOJ accepted public comment until November 25, 1998, and held a public hearing in Sacramento on the same date. DOJ adopted the regulations and submitted them to OAL, which approved them on March 30, 1999. They became effective on April 29, 1999.

Impact on Children: The objective of the BFSC program is to increase protections and foster safer use of firearms. It attempts to educate purchasers and force a measure of responsibility on firearms dealers. The current short and simple "objective test" taken for the BFSC certificate is the most common means of acquisition. That test does not include examination on major points relevant to child safety, including recent statutory changes sponsored by the Children's Advocacy Institute to make adults criminally liable for gross negligence in allowing children access to firearms when injury results. Nor does it include the range of civil liability exposure for child access to firearms, nor recent data on the ability of children to find guns and ammunition, notwithstanding adult belief that the location is unknown and the status secure.

Healthy Families

As part of the Balanced Budget Act of 1997, the federal government established the Children's Health Insurance Plan (CHIP), the most significant funding increase for children's health coverage since the enactment of Medicaid in 1965 (42 U.S.C. § 1396 *et seq.*). CHIP provides $48 billion over ten years for states to cover uninsured children and for certain specified expansions of the Medicaid program. The monies are intended to cover uninsured children with family incomes too high for Medicaid but too low to afford private family coverage. Money will flow to the states through block grants, on a 65% federal - 35% state matching basis. California is entitled to one of the largest shares – $859 million in the first year alone, due to the state's large number of uninsured children and high poverty rates. In developing individual state plans, each state had the option of further expanding Medicaid (Medi-Cal in California), creating a new and separate state program, or a combination of the two.

During the last three weeks of the 1997 California legislative session, state lawmakers and then-Governor Pete Wilson chose to create a new and separate program, Healthy Families (AB 1126, Villaraigosa, Chapter 623, Statutes of 1997), to finance health insurance for up to 580,000 of California's 1.6 million uninsured children. The Legislature also passed, and Wilson signed, a federally-mandated expansion of Medi-Cal to teenagers between the ages of 14 and 19 whose family income is up to the federal poverty level (SB 903, Lee, Chapter 624, Statutes of 1997). (Regulations relating to the expansion of Medi-Cal are the responsibility of DHS and are covered in the Child Health section of this *Children's Reporter*.)

As required by CHIP, California submitted its Healthy Families plan to the federal Health Care Financing Administration (HCFA). On March 24, 1998, HCFA approved both the mandated plan for expansion of Medi-Cal and the Healthy Families plan, designed to expand coverage to children through age 18 whose family income is up to 200% of the federal poverty level. (But note the federal statute's allowance for coverage up to 250% to 300% of the poverty line for some of California's children; see also later discussion of Wilson's retraction of coverage for many children living below 200% of the poverty line through a revised definition of income.)

Healthy Families provides subsidized health *insurance* coverage (not health *services*, per se) for children in families with incomes between 100% and 200% of the federal poverty level (between $13,650 and $27,300 per year for a family of three). Parents have a choice of plans, including coverage for dental, vision and mental health in addition to physical health services. Monthly premiums range from $4-7 per child (up to $14 per family for families between 100% and 150% of the federal poverty line) to $6-9 per child (up to $27 per family for families between 150% and 200% of the federal poverty line). In addition, co-payments are set at $5 per visit and per prescription; no co-payments may be charged for designated preventive services.

In California, the Managed Risk Medical Insurance Board (MRMIB) is the state agency responsible for drafting regulations for the implementation of Healthy Families. On February 20, 1998, MRMIB published notice of its intent to adopt sections 2699.6500 through 2699.6813, Title 10 of the CCR, on an emergency basis, to

implement the Healthy Families program. The regulations became effective on the same date. On March 13, 1998, MRMIB published notice of its intent to permanently adopt the regulations. MRMIB accepted public comment on the proposal until April 29, 1998, and held a series of eight public hearings throughout the state. MRMIB revised the proposed regulations and submitted them to OAL on June 5, 1998. OAL approved them on July 15, 1998, and they became effective on the same date (15 days after Healthy Families became operational).

On December 25, 1998, MRMIB amended sections 2699.6500, 2699.6600, 2699.6607, 2699.6629, 2699.6805, and 2699.6809, Title 10 of the CCR, on an emergency basis, to implement changes in the Healthy Families program. On January 1, 1999, MRMIB published notice of its intent to permanently adopt the emergency regulations. MRMIB accepted public comment until February 17, 1999, and held a public hearing in Sacramento on the same date. On May 24, 1999, MRMIB again adopted the sections on an emergency basis. At this writing, MRMIB has not submitted the regulatory changes to OAL for permanent adoption.

The Healthy Families regulations are divided into four articles; Article 1, Definitions; Article 2, Eligibility, Application, and Enrollment; Article 3, Health, Dental and Vision Benefits; and Article 4, Risk Categories and Family Contributions. For the purpose of easy reference, each Article is considered in order below.

Article 1, Definitions, includes one of the most controversial portions of the regulations, "Income deduction" allowances (§ 2699.6500(k)(1)). As originally proposed, families qualified for certain income deductions in determining the gross family income for eligibility purposes. These deductions included work expenses of up to $90 per month for each working family member; child care expenses (up to $200 for each child under age two and up to $175 per month for each child over age two and for any disabled dependents); the amount paid by a family member per month for any court-ordered alimony or child support; child support payments received up to $50 for each applicable family member; and alimony payments received up to $50 for each applicable family member. HCFA had approved these income deductions as part of the federal government's approval of the Healthy Families plan. However, in early April 1998, Wilson proposed eliminating the income deductions from the regulations and requested HCFA to approve a corresponding amendment to the state's plan – a plan submitted by the administration's DHS. At its April 20 meeting and at Wilson's request, MRMIB approved the regulatory change (on a 3-2 vote) and removed the income deductions. The elimination of the deductions – vigorously opposed by child and health advocates – raises the total family income for consideration of eligibility, and thus denies health insurance coverage to thousands of previously-qualifying children. It also complicates the ability of families to shift from Medi-Cal to Healthy Families as family income rises, because the new Healthy Families rules no longer are consistent with Medi-Cal rules, which allow the deductions in computing family income. Advocates argue that failing to disregard such expenses discriminates against children in many families with the same disposable income but who must pay for child care or other expenses. Finally, critics of Wilson's plan pointed out that more than enough federal funds have been provided to cover all of the children excluded after this change – and many more – and that exclusion would lead to a California give-back of substantial federal funds for distribution to other states. Nevertheless, HCFA subsequently approved the State Plan Amendment, eliminating the use of income disregards for eligibility determination and temporarily ending the discussion.

The recent emergency regulations, while still restricting the use of income deduction allowances in determining income for eligibility purposes, allow the use of such deductions in determining the income levels that drive the amount of the family contribution (§2699.6500).

Article 1 includes an expanded definition of the "Family Value Package" (§ 2699.6500 (i)) – one of two options families may choose (the other is the Community Provider Plan, see Article 4 discussion below). The Family Value Package is the combination of participating health, dental, and vision plans available to participating subscribers in each county, offering the lowest price or meeting other qualifying criteria. The rules prescribe a formula to determine network capacity; this is important because only those plans meeting stated price thresholds qualify.

The recent emergency regulations further define Family Value Package to include the standard that a plan must cover 85% of a county's population through its provider network to qualify; slightly adjust the dollar difference for a designated Community Provider plan; make technical changes in the designation of Community Provider Plan; and add requirements to a "participating health plan" to assure that there is an outside, independent review authority for all types of Healthy Families plans (§§ 2699.6500, 2699.6805, 2699.6809).

Article 2, Eligibility, Application, and Enrollment, constitutes most of the rules relating to a family's use of the Healthy Families program. The Determination of Eligibility (§2699.6607(a)) sets forth the rules for the administrative completion of the application review process, requiring an eligibility determination within ten calendar days of receipt of the complete application unless documentation is not complete. Originally, if the program was unable to verify citizenship or qualifying immigration

status within the ten-day period, the applicant was deemed to meet the criteria until such status was verified. The recent emergency regulations change that because the federal immigration status verification system is not yet available. Thus, immigrants now are required to document the lawful status of their children as part of the application process (§2699.6607(a)). The requirement to document status, already an issue with child and health advocates, will become more problematic. An initially low number of enrollees in San Diego and Kern Counties – both of which have high numbers of foreign-born parents with citizen children – comes as no surprise. The rules also contain a procedure for extending the ten-day determination period when the application is incomplete. If telephone notification is unsuccessful, the application will be returned with a notice that the applicant must submit clarifying information or documentation.

The complicated application process was another bar to participation in the program. Sections 2699.6600-6605 contain over fifty rules applying to families attempting to qualify for Healthy Families coverage. The original application required a painstaking determination – using a three-step, four-page form – of which family members qualify for Medi-Cal, Healthy Families, or neither; a five page Healthy Families application form including ten declarations which must be individually initialed (and copies made if applying for more than three children); proof of each child applicant's alien or citizenship status; proof of current income; and an initial family contribution payment of at least one month. Applicants who pay in advance the amount of three months of family contributions would receive the fourth consecutive month of coverage with no family contribution required (§ 2699.6809(b)).

In the initial regulations, the rules allowed for payment only by cashiers check or money order. This barrier to participation was adjusted in the permanent rules, which allow applicants – after payment of the first premium – to submit the family contribution payment by personal check, cashiers check, money order, credit card, or electronic fund transfer.

The recent emergency regulations propose a number of changes to simplify the application. For example, families may now use federal income tax returns from the previous calendar year to document income. To further ease the application process, the recent regulations also allow for the first premium payment to be made by personal check or money order.

In an attempt to encourage enrollment, the state has offered training for individuals who work with community-based organizations to participate and assist families in the application process. A person who receives training is certified, and the organization receives an Application Assistance Payment for each successfully completed application when pregnant women or children are enrolled in the program (§ 2699.6629). The recent emergency regulations revise the procedures to determine if the fee should be paid, and raise the fee from the original $25 to $50 per successful application (§ 2699.6629).

Enrollment includes an annual requalification requirement for subscribers (§ 2699.6625), which compels applicants to requalify on an annual basis by providing to the program all information required to initially enroll. Other related sections cover disenrollment criteria, open enrollment (for changing from one health plan to another), and additional or transfer enrollments.

Article 3, Health, Dental and Vision, covers the scope of health benefits, including excluded benefits, and share of cost rules (§§ 2699.6700-6721). Share of cost under Healthy Families includes a $5 copayment requirement for any of these services: outpatient professional (medical) and mental health, home health care, outpatient alcohol and drug services, and rehabilitative therapy. There is also a similar copayment for most prescription drugs. Preventive services as defined do not require a copayment. The share of cost requirement for outpatient services has a $250 ceiling in a benefit year. Child and health advocates have expressed serious concern with this high copayment cap, since otherwise qualifying families – some of whom may be just over the poverty line – may pay up to $250 per year to access medical care for illness or injury, in addition to the price of premiums. This barrier to treatment, particularly for families whose incomes are already at the lowest levels, is one which advocates believe will make the program most prohibitive for many of the very families it was theoretically designed to help.

Article 4, Risk Categories and Family Contributions, covers rate restrictions for participating health plans as well as premium costs for families. Allowable rates are based on the geographic regions of the subscriber's residence, similar to other private health insurance coverage. Section 2699.6805 gives MRMIB the authority to designate a Community Provider Plan in each county, with some exceptions. The Families choosing the Community Provider Plan over the Family Value Package (see Article 1 discussion of the Family Value Package above) pay $3 less for each premium, per month, per subscriber. Community Provider Plans primarily consist of traditional safety net providers such as community clinics; in many cases the current provider of care for those families previously receiving any health care services.

The Healthy Families program became operational on July 1, 1998. As of May 8, 1999, the number of enrollees stands at 107, 398. This is a huge increase over the earliest figures, and likely reflects the recent changes to the application process and other adjustments. However,

California is still far short of its long-term goal of 580,000. Outreach and education alone will not solve these issues. Further refinements of the program, especially a reconsideration and lowering of the family contribution for premiums and copayments, are needed to cure Healthy Families.

In a related action on August 28, 1998, MRMIB adopted sections 2699.6900, 2699.6903, and 2699.6905, Title 10 of the CCR, on an emergency basis. These proposed regulatory changes arrange for payments for providers in the state's Child Health and Disability Prevention (CHDP) program, for children who receive such services 30 days prior to enrollment as members of Healthy Families. Section 2699.6905 requires DHS to use the same rates for Healthy Families reimbursements that it uses in the Medi-Cal program. On October 2, 1998, MRMIB published notice of its intent to permanently adopt the emergency regulations. MRMIB accepted public comment until November 16, 1998, and held a public hearing on the same date. MRMIB adopted the regulations and submitted them to OAL, which approved them on February 2, 1999. They became effective the same date.

Impact on Children: Uninsured children are less likely to have regular health examinations, resulting in little early detection of problems. They lack a regular medical professional to monitor their development, and are three times more likely than an insured child to lack a regular source of care. Fewer immunizations, well baby checks, and genetic/chronic disease screening are related consequences. Most uninsured children come from families where one or more parents work. These are families who are "playing by the rules," but often cannot afford basic health care services even when children are ill. The Healthy Families program does not provide those services; rather it offers "working poor" families an opportunity to purchase health insurance. The emergency regulations, adopted in December 1998, speak to many of the concerns child advocates have had with the implementation of Healthy Families. However, the changes do not speak to one important element – the lowering or elimination of premiums and copayments. Without reasonable adjustments to this part of the program, Healthy Families will have even more difficulty reaching its potential. There is no reason for any child in a state as wealthy as California to lack needed health care services.

Immunizations

Health and Safety Code sections 120325 through 120475 require children 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 February 19, 1999, DHS amended sections 6020, 6035, and 6075, Title 17 of the CCR, on an emergency basis, to conform with statutory requirements and to bring California in line with current national recommendations.

The emergency amendments added a series of three hepatitis B immunizations and a second dose of measles-containing vaccine to the immunization requirements for children entering or advancing to the seventh grade on or after July 1, 1999. The amendments also added an annual reporting requirement on the immunization status of seventh graders for these vaccines.

In addition, current regulations require that children receive their final, or booster, dose of both polio and diphtheria-tetanus-pertussis (DTP) vaccines on or after the age of two years. The proposed regulatory changes will raise the age from two years to four years. Accordingly, some children will need an additional DTP shot or polio dose.

On March 12, 1999, DHS published notice of its intent to permanently adopt the emergency regulations. DHS accepted written comments until April 26, 1999, but did not hold a public hearing. At this writing, DHS has not submitted the proposed regulatory changes to OAL.

Impact on Children: These changes further ensure that children in California are properly vaccinated, updating the immunization schedule with recent public health recommendations of the Centers for Disease Control and Prevention.

Infant Botulism Treatment and Prevention

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 5. *Update*: DHS submitted the proposed regulatory changes to OAL, which approved them on November 4, 1998. They became effective on the same date.

Medi-Cal Children's Programs
(formerly Expansion of Medi-Cal Children's Programs)

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 8. *Update*: DHS submitted the proposed regulatory changes to OAL, which approved them on November 18, 1998. They became effective on the same date.

Medi-Cal Rate Increase

AB 1656 (Ducheny) (Chapter 324, Statutes of 1998) authorizes additional Medi-Cal funding to increase reimbursement rates for providers. On March 12, 1999, DHS amended sections 51503, 51505.1, 51509, 51509.1, and 51527, Title 22 of the CCR, on an emergency basis, to comply with the legislation.

The proposed regulatory changes establish the Medi-Cal reimbursement rates for physician, hospital outpatient department, and ambulance transportation services. Prior to the amendments, Medi-Cal reimbursement for children was less than that for adults, because rates were based on twenty-year-old Relative Value Studies (RVS). The amended sections will provide funding to increase children's rates for a specific set of physician office visit procedures to at least equal the rates paid for adults. The Legislature appropriated funding for a rate increase of 10% for adults and 20% for children under 18 years of age, for selected primary care and preventive medicine procedures. As a result of these rate increases, reimbursement for most primary care and preventive medical services will now be greater for children than for adults.

These regulatory changes also increase the reimbursement rates paid to hospital outpatient departments by 15.3%. Additionally, the rate for emergency responses-to-call would increase by 47.8%, and the rate for non-emergency responses-to-call would increase by 55.5%.

On March 19, 1999, DHS published notice of its intent to permanently amend the sections. DHS accepted written public comment until May 3, 1999. There was no public hearing scheduled. At this writing, DHS has not submitted the proposed regulatory changes to OAL.

Impact on Children: The overall objective is to motivate providers of these medical services to treat more Medi-Cal patients. The Legislature authorized rate increases for services to ensure continuing access to care for Medi-Cal beneficiaries. In an era of reduced medical reimbursement, this increase to providers treating children is important. Note that such reimbursement rates do not keep pace with medical inflation rates from historical RVS levels. Reimbursement is allowed to fall behind rates of inflation by denying cost-of-living or other inflation adjustment application. Note also that these rate increases will not assist children in managed care settings, when services are paid by Medi-Cal on a capitated (per child covered) basis. The goal for such managed care coverage of the Medi-Cal population is 50% by the end of 1999. Children are particularly attractive enrollees for managed care plans because they cost approximately one-fifth the amount of adults. For discussion of the limited applicability of these long overdue rate changes, see the *California Children's Budget 1999-2000*, Chapter 4 (online at www.acusd.edu/childrensissues).

Medi-Cal Specialty Mental Health Services

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 6. *Update*: On November 6, 1998, DMH published notice of its intent to adopt the revised regulations. DMH accepted public comment until December 21, 1998; no hearing was scheduled. At this writing, DMH has not submitted the proposed regulations to OAL for approval.

Orthodontic Services

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 8. *Update*: DHS submitted the proposed regulatory changes to OAL, which approved them on October 27, 1998. They became effective on the same date.

Playground Safety

SB 2733 (Rosenthal) (Chapter 1163, Statutes of 1990) requires the adoption of minimum safety standards for all public playgrounds in California. Among other factors, SB 2733 specifies that the regulations must be at least as protective as the public playground safety guidelines published by the U.S. Consumer Product Safety Commission (CPSC), a recognized authority in the field of playground safety. SB 2733, which has been codified in Health and Safety Code sections 115735 *et seq.* (formerly sections 24450 *et seq.*), specifically requires DHS to consult with specified agencies and private entities, and to adopt playground safety regulations by January 1, 1992.

DHS failed to promptly initiate the regulatory process; in fact, two years after the deadline, DHS still had not complied with its mandated duty. Therefore, in 1994, the Children's Advocacy Institute (CAI), on behalf of petitioners Maia Barrow, her guardian ad litem Steve Barrow, and the California Public Interest Research Group (Cal-PIRG), petitioned for a writ of mandate in Sacramento County Superior Court (Case No. 379538). The writ sought a ruling forcing DHS to adopt playground safety regulations as required by SB 2733.

On March 7, 1995, Judge Tom Cecil issued a peremptory writ of mandate ordering DHS to "immediately on receipt of this writ to comply with your duty under Health and Safety Code sections 24450 *et seq.* to adopt playground safety regulations. You are expected to proceed in good faith to adopt regulations in a timely manner." In the summer and fall of 1995, DHS convened a "SB 2733 Playground Regulations Advisory Work Group." On October 13, 1995, DHS notified the court that it would draft and submit the required public playground safety regulations to DHS' Internal Office of Regulations by January 31, 1996, and would thereafter submit an emergency regulations package to OAL by March 31, 1996. DHS failed to meet either deadline.

Almost three years later and six years after the statutory deadline for rule adoption – with no real action on the regulations by DHS – CAI filed a motion to enforce the judgment, threatening possible contempt of court proceedings against DHS officials. In June 1998, the court ordered DHS to adopt the regulations on or before March 1, 1999.

On September 18, 1998, DHS finally published notice of its intent to permanently adopt sections 65700 through

65755 (inclusive), Title 22 of the CCR. DHS accepted public comment on the proposal until November 4, 1998, and held a public hearing in Sacramento on the same date. CAI submitted written and oral comments at the hearing. In particular, CAI objected to DHS's failure to include provisions needed to meet the statute's minimum standards. (The law requires California's standards to be at least as strict as those adopted by the CPSC. The proposed rules failed to match the standards in important respects.)

Consequently, DHS revised the proposed regulations, and held a second public comment period, which ended on March 12, 1999. Once again, CAI presented comments on the proposed regulations, noting DHS's failure to include critical sections on protective surfacing requirements, and objecting to other deficiencies. DHS made further revisions, adopted the regulations, and submitted the proposed regulatory changes to OAL on April 14, 1999. OAL disapproved the regulations on May 24, 1999, on the grounds that DHS failed to meet the authority and clarity standards of the APA. In its Notice and Decision to DHS, OAL summarizes six areas of concern. The most significant issue is the exemption established in proposed section 65755 for certain operators of playgrounds. OAL found that DHS exceeded its statutory authority by creating an expansive exemption, not authorized by the statute. Other issues center on language and the requirement that DHS incorporate the CPSC Handbook in the rules.

The proposed regulations will have to be amended and renoticed because of the substantive nature of OAL's required changes. Hence, additional comments relevant to altered provisions will be particularly appropriate. The substantive rules as renoticed will include the basic provisions as initially submitted to OAL. These are divided into four articles: Article 1, Definitions; Article 2, General Standards; Article 3, Certified Playground Safety Inspector Requirements; and Article 4, Provisions for Child Care Facilities and Facilities Operated for the Developmentally Disabled. Each article is discussed in order below, in some detail because of the importance of these rules as a precedent; they represent the first state regulatory attempt to set up a detailed set of minimum standards for playground safety, and they include enforcement implementation mechanisms.

Article 1, Definitions, provides terms used in the regulations. Under the regulations, a "playground" is an improved outdoor area that is designed, equipped and set aside for children's play. A playground includes all equipment, fencing, surfacing, signs, pathways, structures, vegetation and land forms (section 65700.6). The regulations define "playground equipment" as a fabricated structure used for children's play, which includes at least one surface that is anchored or built into the ground and not intended to be moved (section 65700.8).

Additionally, Article 1 defines those who use, operate, and maintain public playgrounds. Under the regulations, children are defined as individuals between 2 and 12 years of age (section 65700.2). A playground "operator" is any entity that operates a playground that is open to the public (section 65700.4). This includes public playgrounds operated by churches, subdivisions, hotels and motels, resorts, camps, offices, hospitals, shopping centers, child care settings, restaurants, state and public agencies, cities and counties, and school districts. The playground operator must hire or appoint a "supervisor" to look after the playground on a regular basis (section 65700.10). A supervisor is trained to oversee playground use, administer first aid if needed, and report hazards or injuries. A "certified playground safety inspector" is one who possesses a current Certified Playground Safety Inspector certificate issued by the National Playground Safety Institute (sections 65700, 65750).

Article 2, General Standards, covers the scope of requirements for ensuring that all public playgrounds within California comply with minimum safety guidelines. Significantly, it requires all entities that operate public playgrounds to abide by the safety standards set forth by the CPSC in its Handbook for Public Playground Safety (CPSC Handbook), and the guidelines in the Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, developed by the American Society for Testing and Materials (ASTM Standard) (section 65710). Article 2 also sets forth the time frame in which operators of public playgrounds must begin to comply with safety standards. A certified playground safety inspector must conduct an initial inspection of public playgrounds by October 1, 1999 (section 65715). After the initial inspection, playground operators will be required to make any needed changes in the design, installation, inspection, maintenance, and supervision of their playground facilities to conform to the regulation's safety guidelines.

Additionally, Article 2 specifies design requirements (section 65720). It provides that playground operators shall design, redesign, locate or relocate playground equipment to comply with the guidelines of the CPSC Handbook. In particular, playgrounds must meet "critical height" standards (section 5720(a)). The term critical height is useful in describing the performance of shock absorbing surface material under and around a piece of playground equipment. Protective-surfacing materials absorb shock more readily than hard surfaces like concrete, thus preventing potentially serious injuries from falls. The critical height is the maximum height expected to prevent against a life-threatening head injury in case of falls. Under this formulation, surfacing material used under and around playground equipment should have a "critical height

value" of at least the height of the highest play surface on the equipment. Additionally, playgrounds must conform to recommended fall heights for equipment (section 65720(b)). For example, from a horizontal ladder or climber, the fall height equals the maximum height of the equipment. For slides and elevated platforms, the fall height is the height of the platform. On a merry-go-round, the fall height is the height at which any child on the equipment may sit or stand.

The regulations also specify certain playground areas where protective surfacing is not required (section 65720(c)). With some types of playground activities, children are sitting or standing at ground level during play. Because the risk of a fall from a height is absent in these areas, protective surfacing is not considered necessary. Such equipment includes sand boxes, activity walls, play houses, and any other equipment that does not contain an elevated playing surface.

In written comments to DHS, CAI objected to the omission of several sections of the CPSC Handbook addressing protective surfacing. The adopted regulations excluded Sections 4.5 and 4.6 of the handbook, covering the acceptability of various surfacing materials and describing selection of suitable surfacing materials, which include rubber mats or a combination of rubber-like materials that are held in place by a binding material, or loose-fill materials at sufficient depth. Suitable loose-fill includes sand, gravel, shredded wood products, and shredded tires. Section 4.5 also includes a table of critical heights of various surfacing materials. Because the statute requires that the regulations be at least as protective as the CPSC Handbook, by excluding Section 4.5 of the handbook, the regulations failed to meet this statutory mandate.

In addition to Section 4.5, CAI also objected to the exclusion of Section 4.6 of the CPSC Handbook, covering additional characteristics of surfacing materials. Section 4.6 provided advantages and disadvantages of different types of materials, based on environmental conditions and location. CAI argued that this section should be included because the selection of adequate surfacing is crucial to obtaining optimal playground safety. Further, providing guidelines on appropriate surfacing materials could result in significant savings in maintenance and replacement costs for operators and California taxpayers.

Playground operators must also meet the requirements for stairways, ladders, and handrails, set forth in Section 10 of the CPSC Handbook, excluding Section 10.2 (section 65720(e)). The dimension of rungs and other hand-gripping components of equipment is important to prevent children from losing their grip while playing. Thus, the regulations require that rungs and hand-gripping components have specific diameters or cross sectional dimensions. The regulations specify that continuous handrails should extend the entire length of access on stairways and stepladders and be provided on both sides of the equipment.

Article 2 also covers safety features for platforms, guardrails, and protective barriers, included in Section 11 of the CPSC Handbook (section 65750(f)). One risk of elevated platforms is inadvertent falls. To minimize the risk of falls, the regulations require protective barriers designed to prevent children from climbing over or through the barrier. For instance, openings between the platform and the barrier should not be wide enough so children may climb through the barrier. The regulations further specify that openings in the barrier should be sufficiently narrow to prevent the passage of a small torso. Additionally, a protective barrier should meet minimum height requirements, to prevent children from inadvertently falling over the equipment's barrier.

Specifications for major types of playground equipment are incorporated into Article 2 of the regulations through Section 12 of the CPSC Handbook (section 5720(g)). For example, the Handbook uses the term "climbers" to describe various playground equipment such as sliding poles, chain or net climbers, upper body equipment (overhead horizontal ladders, overhead rings), dome climbers, parallel bars, balance beams, cable walks, suspension bridges, and linked platforms. In terms of design, climbers should not contain structural components in the interior of the equipment upon which a child may fall from a height of more than 18 inches. Additionally, climbers should offer an easy way for children to climb up or get out of a structure. Another type of playground equipment addressed within Section 12 of the CPSC handbook is the seesaw, or teeter totter. If a child climbs off the seesaw with another child still on the equipment, there is a risk of injury. For this reason, seesaws are not suggested for preschool-age children unless they contain a spring centering device to prevent a child's seesaw seat from suddenly hitting the ground. To prevent injury from sudden impact with the ground, partial car tires or other shock-absorbing material should be located in the ground under the seats of seesaws. The regulations also address slides. Slide designs must reflect the fact that children descend slides in many different positions, from head first to facing backward. The design portion of Article 2 provides design requirements for various types of swings, balance beams, sliding poles and merry-go-rounds.

Article 2 also requires that California public playgrounds meet the accessibility guidelines set forth in Section 10 of the ASTM Standard (section 65720(h)). This section provides that if the use area of a playground does not contain surfacing material throughout the playground, a minimum of one accessibility route shall be

provided from the perimeter to all play structures or equipment within the playground. The width of the accessibility route must conform with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities. Included within this section are requirements for ramps for wheelchair use, and specifications for ramp landings, adequate barriers, and handrails.

Article 3, Qualified Playground Inspector Requirements, establishes requirements for inspector-training in specific areas of competence. This section requires the basic training program to be consistent with that of the National Playground Safety Institute.

Article 4, Provisions for Daycare Facilities and Facilities Operated for the Developmentally Disabled, establishes special provisions applicable to child daycare facilities and facilities operated for children with developmental disabilities. Licensed family daycare home providers are exempt from the regulations as originally proposed, although changes pursuant to the OAL disapproval could change this.

Impact on Children: The beneficial impact that these regulations will have on children's safety is dwarfed by the detrimental impact on children while DHS ignored its legislative mandate and allowed these regulations to languish in the department for ten years. With OAL's recent disapproval of the regulations, as long as four months may pass before final adoption and actual implementation. Further, given the now seven and one-half years of delay beyond the legislative deadline, CAI is seeking a court date in July or August to assure judicial review of DHS's movement to comply with other recommendations and the underlying statutory mandate. Although the regulations seem detailed, they are based on years of experience in ascertaining the contributing causes to playground injury – a major source of childhood accidents. Most of the requirements follow common sense or well-recognized design practices for child safety.

Prenatal Care for Immigrants and Unqualified Aliens

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 8. *Update*: At this time, DHS is awaiting the results of a court hearing scheduled for July 1999.

CHILD CARE

Infant Care Centers

AB 243 (Alpert) (Chapter 246, Statutes of 1994) and AB 1858 (Speier) (Chapter 336, Statutes of 1993) emphasize preventive health practices training and prohibit baby walkers on infant care premises. On August 23, 1996, DSS published notice of its intent to amend sections 101351 through 101439.1 (non-inclusive), and to repeal section 101352, Title 22 of the CCR. These sections update the educational requirements for infant care teachers, define the criteria for the supervision of sleeping infants, replace confusing language, and align the regulations to reflect the prohibition against "baby walkers" in infant care centers.

California's current law requires infant care teachers to complete 15 hours of health and safety training, if the teacher is on or off site with children when no other director or teacher who has completed the training is present. Section 101416.1 deleted the previous one-year exception to this rule extended to infant care teachers who were employed prior to the effective date of these regulations. Section 101416.5(d)(1) establishes criteria under which an infant care aide may supervise sleeping infants without being under the direct supervision of a teacher. This regulation seeks a balance between staff flexibility and child health and safety. An aide may supervise 12 sleeping infants when a teacher is immediately available at the center. However, the aide must be 18 years or older and have obtained a fingerprint and child abuse/criminal record index clearance.

Another amendment changed the term "parent" to "the child's authorized representative" (sections 101416.8(c)(1) and 101417(a)(3)). Now, the regulations include any person or entity authorized by law to act on behalf of any child. This includes a parent, legal guardian, conservator, or a public placement agency. Sections 101439(d) and 101439(d)(2) reflect the current prohibition of "baby walkers" in infant care centers. These amendments delete the terms and current regulations of "walkers" and "walking harnesses," and implement Health and Safety Code section 1596.856(b) and (c), which prohibit such equipment from being kept or used on the premises of infant care centers.

DSS accepted public comment on its proposed regulations until November 30, 1996, and held public hearings on October 8, 10, 15, and 17, 1996. DSS adopted these regulations and submitted them to OAL, which disapproved them on October 7, 1997, for failure to comply with the clarity standard of the APA. After incorporating modifications, DSS re-opened public comment until June 5, 1998. DSS adopted the regulations on September 14, 1998, and resubmitted them to OAL, which approved the revised package; they became effective on November 1, 1998.

Impact on Children: This is another troubling example of simple regulations that took a state agency two years to complete. The use of emergency regulations in lieu of a more expedited process defeats the meaning and intent of emergency regulations. By clarifying the educational requirements of infant care teachers, specifying the criteria for infant supervision, and reconciling these regulations with current safety concerns about the use of baby walkers, these simplified amendments allow for practitioners' compliance. However, the ratio of aides to infants – regardless of the amount of training – permits an aide to be responsible for far too many infants at one time; that is a continuing cause for concern.

School Age Child Care Centers

SB 1678 (Hart) (Chapter 848, Statutes of 1994) provides alternatives to the existing regulatory requirements for school-age child care centers. More specifically, it establishes alternative requirements concerning the education and experience of site directors and teachers. DSS has the responsibility to propose regulations to implement, clarify, and make specific SB 1678. Further, on September 20, 1995, then-Governor Pete Wilson issued an Executive Order requiring state agencies to simplify regulations. DSS' attempt to do so, in this case, took almost three years.

Many of the amendments and additions were minor editorial changes for clarity and consistency. The substantive changes and adoptions set the educational requirements for the director of a combination program that includes a school-age child care component; establish alternative educational requirements for the director of a school-age child care center that is not a part of a combination program; establish qualifications for directors; require teachers who use alternative education to meet certain requirements; and establish alternative approved sources of education for a school-age child care center teacher.

On August 23, 1996, DSS published notice of its intent to permanently adopt sections 101471, 101472, amend sections 101451, 101471, 101482, 101515, 101516.2, 101516.5, 101520, 101520.1, 101521, 101526.1, 101527, 101529.1, 101538, 101538.3, 101539, and repeal section 101452, Title 22 of the CCR, to comply with SB 1678 and the Executive Order. DSS accepted public comment until October 17, 1996, and held eight public hearings across the state from October 8 through October 17, 1996.

On August 22, 1997, DSS submitted the proposed regulatory changes to OAL, which disapproved them on October 6, 1997, for failure to meet the clarity standard. DSS made adjustments and resubmitted the revisions to OAL on July 31, 1998. OAL approved them on September 14, 1998, and they became effective on November 1, 1998.

Impact on Children: A number of YMCAs from around the state made general comments in support of these regulatory changes. YMCA School-Age Child Care Program representatives believe the added flexibility will enhance their ability to attract additional qualified staff to their program. Based on these comments, it appears that the amended regulations should benefit children in school-age day care programs.

Training Standards for Child Day Care Providers

SB 1524 (Alpert) (Chapter 666, Statutes of 1998) amends section 1797.191 of the Health and Safety Code, requiring the Emergency Medical Services Authority (EMS) to establish standards for the preventive health portion of child care training that is currently mandated for state licensed child care providers. Section 1797.191, as amended, establishes EMS as the sole agency responsible for the approval of the preventive health portion of mandated child care provider training.

On April 19, 1999, EMS published notice of its intent to amend sections 100000.1 through 100000.28, Title 22 of the CCR, to clarify and make specific the EMS monitoring role. Relating to its monitoring function, EMS increased the number of review days from ten to twenty, finding that the current requirement is insufficient for careful review. Further, the proposed specifications set minimum instruction times (no less than seven hours) in child preventive health and safety, and establish requirements for instructor training, along with required course content. Each approved program shall submit class rosters to EMS for each of its training sessions within 14 days of course completion. The EMS-approved programs in pediatric first aid, CPR, and preventive health practices training must provide course completion cards.

EMS accepted written comments on the proposed regulations until June 7,1999. A public hearing was held on the same date. At this writing, EMS has not submitted the proposed regulations to OAL.

Impact on Children: The intent of these regulations is to improve training programs that teach pediatric first aid, CPR, and preventive health to child care providers. The amended and new guidelines establish stricter requirements to be followed by such programs. As part of its monitoring function, EMS seeks to provide greater assurances that child care providers possess the necessary skills for potential emergencies in the day care setting.

SPECIAL NEEDS

Personnel Standards for Nonpublic Schools and Agencies

SB 989 (Polanco) (Chapter 944, Statutes of 1996) directs the Board of Education (Board) to adopt regulations setting personnel standards for individuals employed by nonpublic schools and agencies. On July 18, 1997, the Board 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 the standards for specialized instruction, and the other setting the 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 is required to employ personnel authorized by the Commission on Teacher Credentialing or the Business and Professions Code, or meet other personnel standards established by CDE, to comply with federal and state law on the provision of services to individuals with exceptional needs.

On November 14, 1997, the Board readopted these sections on an emergency basis, to review the regulations along with others relating to special education and public schools. On April 16, 1998, August 19, 1998, and December 21, 1998, the Board again readopted the regulations on emergency basis.

On January 19, 1999, the Board published its intent to permanently adopt the regulations. The proposed permanent regulations, although similar in scope to the emergency provisions, significantly reduce the means for approval of related services personnel, in many cases failing to distinguish between qualifications required for assessment, planning, and supervision of related services from those required for staff who only implement those services. For example, emergency sections 3061(h) and (i), respectively, distinguish between "adapted vision services" (which could be provided by any staff member recognized by the Commission on Teacher Credentialing) and "consultative vision services" (which could only be performed by an optometrist, ophthalmologist, or physician). In contrast, proposed permanent section 3065(x) specifies only that "vision services" must be performed by an optometrist, ophthalmologist, or physician. Similarly, emergency section 3061(n) describes conditions for certified or credentialed personnel to supervise implementation of behavior intervention services.

The proposed permanent regulations also eliminate the requirements for provision of supervised services, detailing only the qualifications necessary for designing and planning behavior intervention plans (section 3065(e)). For services not specifically enumerated, the proposed amendments only permit individuals licensed by the Department of Consumer Affairs (DCA) to provide services (section 3065(y)), although the emergency rules also recognize credentials issued by the Commission on Teacher Credentialing as well as other state and national organizations (section 3061).

On March 11, 1999, the Board held a public hearing to consider the proposed regulatory changes. Several hundred individuals, parents as well as providers, attended the hearing to provide public comment. The Board attempted to severely limit the number of persons allowed to provide testimony at the hearing. Following a public outcry, however, the Board allowed groups of individuals to select a representative to provide testimony.

CAI submitted written testimony in opposition to portions of the proposed regulations. In particular, CAI expressed concern that the addition of proposed section 3065, establishing staff qualifications for Designated Instruction and Services in nonpublic schools and agencies, is inconsistent with state and federal law by effectively requiring a higher level of qualifications for educating students in nonpublic schools than in public schools. Due to the magnitude of the comments expressed at the public hearing, the Board withdrew the permanent regulations for reconsideration.

The Board further modified the proposed regulations, and readopted them on March 25, 1999, on an emergency basis. Only behavior intervention service provisions changed; emergency section 3065(f) now permits delivery of behavior intervention services by staff members under the supervision of licensed or credentialed personnel. On March 30, 1999, the Board announced another public comment period until April 16, 1999, to consider the revised regulations. In response to public comment, the Board again modified the regulations. On May 21, 1999, the Board announced another public comment period until June 8, 1999. At this writing, the Board has not submitted permanent changes to OAL.

Impact on Children: These regulations attempt to ensure that children with special needs attending nonpublic schools will receive services from state-certified or licensed instructors. While certification is important, some parent and child advocates believe that the regulations do not provide sufficient flexibility for utilizing highly-trained instructors who may not be state-certified or licensed. Because the regulations, in many cases, specify higher standards for personnel qualifications in nonpublic schools and agencies than in public schools, parents and child advocates are also concerned that they may reduce the availability of both public and nonpublic educational placements by unnecessarily draining limited pools of highly qualified personnel, reducing the number of nonpublic schools that are approved to provide special education, and/or lead to exorbitant costs to the state for nonpublic placements.

Some child advocates have suggested that these regulations are an attempt to eliminate nonpublic schools and agencies by imposing requirements for state certification that are impossible to meet. In such cases, however, the State of California may be required by the United States Supreme Court decision in *Florence County School District v. Carter*, 510 U.S. 7 (1993), to place children in private schools that have not been accredited by the state. In *Carter*, the Supreme Court held that, when the state public school system fails to meet the child's needs, it would be inconsistent with federal law to prohibit appropriate educational placements in private schools simply because the private school lacks the state's stamp of approval. Thus, without further modifications, these regulations may have a negative impact on the education of children with special needs, and only serve to increase litigation by parents wishing to secure nonpublic school placements in schools that fail to meet the new criteria.

Resource Specialist Caseload Waivers

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 13. *Update*: The Board of Education submitted the proposed regulatory changes to OAL, which approved them on March 2, 1999. They became effective on April 1, 1999.

Special Education Pupils Program

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 11. *Update*: DSS submitted the proposed regulatory changes to OAL, which approved them on February 25, 1999. They became effective on February 26, 1999.

EDUCATION

Charter School Certification

AB 544 (Lempert) and 2417 (Mazzoni) (Chapters 34 and 673, respectively, Statutes of 1998) amend state law on charter schools by providing that no charter shall be granted to any private school attempting to convert to a charter school, by denying public funds for charter school pupils who also attend private school, and by requiring the Board of Education to adopt appellate procedures for charter school applications that have been denied.

On February 8, 1999, the Board of Education adopted sections 11965 through 11968 (inclusive), Title 5 of CCR, on an emergency basis, to provide guidelines for charter school certification and authorization. Specifically, the proposed regulations provide a definition of "private school," clarify the charter school certification requirement, and clarify the procedures to be used for appealing denials.

Importantly, proposed section 11965 defines "private school" as a school that meets the requirements set forth in Education Code sections 48222 and 48223. Specifically, such schools are private, full-time day schools taught in English by persons capable of teaching. In addition, the Education Code states that these schools shall offer instruction in several branches of study required in public schools, and that attendance be kept in a register.

Section 11966 requires that an official of the charter school shall specifically certify that all reported attendance is for pupils whose attendance is eligible for public funding. State funds shall not be apportioned to any charter school that fails to make such certification. Section 11967 details the appellate procedure for potential charter schools whose petition has been denied. In order to be acted upon, a petition for establishment must be received by the appropriate board (either the county board of education or the Board of Education) no later than 180 days after the denial. Upon filing, petitioner(s) shall include a complete copy of the charter petition, an explanation of why the charter petition was denied, and a signed certification of compliance with applicable law. Section 11967 further requires the denying board to make written factual findings, specific to the particular petition, which support one or more grounds for denial. The county board of education and/or the Board of Education shall grant or deny the petition within 60 days of receiving the complete petition package.

Section 11968 provides for a maximum number of charters. If a charter school voluntarily ceases to operate, its charter school number will lapse and will not be reassigned. Every July 1, the statutory limit increases the total number of allowable charter petitions by 100. Whenever the statutory limit on petitions is reached, requests for new numbers will be placed on a waiting list in the order received.

On February 19, 1999, the Board of Education published notice of its intent to permanently adopt the regulations. The Board accepted public comment until April 8, 1999, and held a public hearing in Sacramento on the same date. At this writing, the Board has not submitted the proposed regulatory changes to OAL.

Impact on Children: The proposed regulations support the state's goal of adding charter schools as one method for improving public school performance in California. In particular, the regulations attempt to ensure that new charter schools are, in fact, *new*, and not merely private schools wishing to re-characterize themselves in order to receive public funding. The regulations reflect the Board of Education's desire to limit charter schools to those which truly provide new educational alternatives and opportunities.

Class Size Reduction in Grade 9

SB 12 (O'Connell) (Chapter 334, Statutes of 1998) created the Program to Reduce Class Size in Two Courses

Instructional Materials

AB 2519 (Poochigian) (Statutes of 1998) adds Section 60200.1 to the Education Code, requiring the Board of Education to adopt a policy allowing additional submissions and adoptions of instructional materials in language arts, reading (including spelling), and mathematics.

On November 20, 1998, the Board published notice of its intent to adopt sections 9540 through 9550, Title 5 of the CCR, to comply with the requirements of AB 2519. The proposed regulations set the Board's policy for additions to approved instructional materials in reading/language arts and mathematics, and clarify the terms used and the procedures to be followed in the review of such instructional materials. The regulations specify the required subject matter to be covered in the submissions and adoptions of instructional materials and the extent to which the submissions and adoptions are to be based on other respective standards. The regulations also provide the procedures to be used for developing the criteria for evaluating the instructional materials; the conditions to be met before the Board may add a submission to the adopted instructional materials; the length of time of the adoption; and the procedures to be used for reviewing and evaluating submissions.

The Board accepted written comments until January 7, 1999, and held a public hearing in Sacramento on the same date. The Board adopted the regulations and submitted them to OAL; they were approved and became effective on April 13, 1999.

Impact on Children: The proposed regulations set the guidelines for adding the appropriate instructional materials for public school children in grades K-12. The Board of Education proposes these criteria to establish the substantive quality of materials chosen for classroom instruction, and to provide a uniform process for adoption.

Instructional Time and Staff Development Reform

SB 1193 (Peace) (Chapter 313, Statutes of 1998) created the Instructional Time and Staff Development Reform Program to increase the number of school days in a school year by providing funds for school districts, charter schools, or county offices of education to hold staff development programs on days that are not instructional days. Education Code sections 44579 through 44579.4 provide that school districts, charter schools, or county offices of education applying for a grant that meets the requirements of the Instructional Time and Staff Development Reform Program will receive $270 per day for up to three days for each certificated classroom teacher, and $140 per day for up to one day for each classified classroom instructional aide and certificated classroom assistant.

On October 23, 1998, the Board of Education adopted sections 6000 through 6002 (inclusive), Title 5 of the CCR, on an emergency basis, to provide guidance for the Instructional Time and Staff Development Reform Program. Generally, the new sections will facilitate the participation of school districts, charter schools, and county offices of education in the Instructional Time and Staff Development Reform Program. They also require those entities to maintain attendance records for each staff development day, and prescribe the method of application.

For example, section 6000(a) through (e) defines a certificated classroom teacher, a certificated teaching assistant, a classified classroom instructional aide, and various related positions for the purposes of this funding. Section 6000(f) defines core curriculum areas, which include English, mathematics, social sciences, science, visual and performing arts, health, and physical education for grades 1-6, inclusive, and English, social science, foreign language or languages, physical education, science, mathematics, visual and performing arts, applied arts, vocational-technical education, and automobile driver education for grades 7-12. Section 6000(g) defines the number of teacher-days attendance as the sum of the full staff development days of attendance of the qualified classroom teachers, instructional aides and teaching assistants. Every school district, charter school, and county office of education participating in the Instructional Time and Staff Development Reform Program must maintain a certification of the contemporaneous record of attendance of participants who attended each full staff development day for which funding is requested.

On October 23, 1998, the Board of Education published notice of its intent to permanently adopt the emergency regulations. The Board accepted public comment on the proposed action until December 10, 1998, and held a public hearing in Sacramento on the same date. The Board adopted the regulations and submitted them to OAL, which approved them on March 25, 1999. They became effective the same date.

Impact on Children: These regulations support the legislative goal of increasing instructional time while providing funding for additional staff days for educational development programs. Quality of instruction remains a concern of educators, as California currently has a record 10% of its teachers lacking certification and working on an emergency approval basis.

Standardized Testing and Reporting Program

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 16. *Update*: The Board of Education submitted the proposed regulatory changes to OAL, which approved them on April 6, 1999. They became effective on April 6, 1999.

Substitute Teaching Authorization

Education Code section 44225(e) requires the Commission on Teacher Credentialing (Credentialing Commission) to determine the scope and authorization of credentials, ensure competence in teaching and other educational services, and to establish sanctions for the misuse of credentials and the mis-assignment of credential holders. On January 8, 1999, the Credentialing Commission published notice of its intent to adopt sections 80025.3, 80025.4, and 80069.1, and amend sections 80067, 80068, and 80069, Title 5 of the CCR, to clarify issues in substitute teaching.

As a result of an increased need for substitute teachers in recent years, employers have asked for clarification of which documents authorize day-to-day substitute service. More specifically, questions arose regarding the use of Multiple and Single Subject Teaching Permits for substitute service after an individual has completed a long-term assignment. Also, the Credentialing Commission has recognized the Department of Education's regulations which limit substitute teaching in special education classes to twenty days; the regulations have not reflected this limitation.

In March 1997, the Credentialing Commission adopted a policy that states that any credential for which the requirements are higher than those for the Emergency 30-Day Substitute Teaching permit authorizes the holder to substitute teach. This allows employers to assign individuals holding valid documents requiring more than 30-Day Substitute Permits to substitute without requiring the individual to apply for the permit. The Credentialing Commission now proposes to amend the regulations to reflect that policy, based upon the fact that individuals employed to substitute teach under these provisions already hold documents which have requirements beyond that of a 30-Day Substitute Teaching permit.

The Credentialing Commission accepted public comment until March 3, 1999, and held a public hearing in Sacramento on March 4, 1999. At this writing, the Credentialing Commission has not submitted the proposed regulatory changes to OAL.

Impact on Children: The proposed regulatory changes likely will increase the number of available day-to-day substitutes to meet increasingly high demand. They also clarify the credential requirements to better substantiate that substitute teachers for children in grades K-12 meet certain statutory minimums.

Teaching Credential Requirements

Education Code section 44225(e) provides that the Credentialing Commission may grant an added authorization to a credential holder who has met certain minimum requirements.

On December 18, 1998, the Credentialing Commission published notice of its intent to amend section 80499, Title 5 of the CCR, to add additional required training to obtain an authorization at a new level. The proposed regulations require the holder of the Multiple Subject Credential, who wishes to obtain a Single Subject Credential, to complete a departmentalized methodology course in addition to the specialty area subject matter competency. It also requires holders of the Single Subject Credential, who seek a Multiple Subject Credential, to complete the liberal studies subject matter competency, a course in "self-contained" methodology, and either take a course in English language skills for the beginning learner or pass the Reading Instruction Competence Assessment (RICA) examination at the level required for the Multiple Subject Credential.

The Credentialing Commission accepted public comment on the proposed amendments until February 3, 1999, and held a public hearing in Sacramento on February 4, 1999. At this writing, the Credentialing Commission has not submitted the regulatory changes to OAL.

Impact on Children: The proposed amendments will require teachers at all grade levels, who seek to add a Multiple or Single Subject Credential, to complete additional training before being authorized for an additional credential. This regulation recognizes the importance of a teacher's ability to translate knowledge of a subject into content that is understandable and developmentally appropriate at all grade levels. Currently, section 80499 does not require any additional pedagogical training when obtaining an authorization at a new level, such as the holder of a Single Subject Credential obtaining the Multiple Subject Credential. However, research shows that different skills and strategies are needed for those who teach reading in early grades than for those who teach reading in the middle and secondary levels, and vice versa. These additional requirements add specific skills to the instructional preparation.

Education Technology Staff Development Program

AB 1339 (Knox) (Chapter 844, Statutes of 1998) establishes the Education Technology Staff Development Program to provide funds for in-service training of teachers, administrators, and instructional staff to incorporate educational technology in daily instruction. To qualify for funds of up to twenty dollars per pupil in grades four to eight, school districts must certify that they have sufficient computer equipment and Internet access in each classroom for instructional purposes, among other requirements.

On March 23, 1999, the Board of Education adopted section 11970, Title 5 of the CCR, on an emergency basis, to clarify the requirements that school districts must meet

in order to receive educational technology staff development funding. AB 1339 specifies that each fourth through eighth grade classroom must have a sufficient number of up-to-date computers that provide access to the Internet for instructional use. The proposed regulations define classroom as a room in which students receive core curriculum instruction, and specify that one computer must be provided for every ten students in the classroom.

Up-to-date computers are defined as multimedia computers with access to a CD-ROM drive. Each computer must be capable of accessing the Internet through a networked connection or at least one classroom computer must be connected to a device, such as a television or an LCD panel, that can be viewed by the entire class. Finally, proposed section 11970 specifies that each school or school district must provide a written action plan for incorporating education technology into existing staff development programs.

On March 26, 1999, the Board of Education published notice of its intent to permanently adopt the emergency regulation. The Board accepted public comment until May 13, 1999, and held a public hearing in Sacramento on the same date. At this writing, the Board has not submitted the proposed regulatory change to OAL.

Impact on Children: The proposed regulation appears to ensure that school districts provide sufficient technological resources for staff to utilize training provided under AB 1339. However, schools that are in the process of acquiring computers, but have not yet fully equipped all classrooms, may be denied the training vital for effective use of their limited resources.

CHILD PROTECTION

Adoption Reform

AB 1544 (Committee on Human Services) (Chapter 793, Statutes of 1997) expedites legal adoption procedures for juvenile court dependents who cannot return to their birth parents. On July 23, 1998, DSS adopted sections 35065.1 through 35213 (non-inclusive), amended sections 35000 through 35385 (non-inclusive), and repealed sections 35005 through 35323 (non-inclusive), Title 22 of the CCR, and amended sections 31-002 through 45-101 (non-inclusive) of the MPP, to comply with AB 1544.

Specifically, these regulations mandate case planning for every child who is a juvenile court dependent; require an inquiry into adoptive children's paternity; provide for easier relative foster care and adoption procedures; attempt to keep siblings and half-siblings together; and create alternative relative adoption agreements and voluntary relinquishment procedures.

For example, section 35000(c)(7), the Concurrent Services Planning provision, mandates a case planning methodology requiring that child welfare services develop a case plan for every child who is a juvenile court dependent. It also provides for services to reunify the family as well as those services necessary to achieve legal permanence should reunification fail.

The paternity regulations require the juvenile court to make formal inquiries into the identity and address of all possible fathers of the child, both presumed and alleged. The primary thrust of sections 35108 and 35128 is to locate all potential fathers of a child being freed for adoption, and either obtain voluntary relinquishment of parental rights or seek termination of those rights. This requires the adoptive agencies to ask the birth mother to identify any possible fathers of the child and to provide any information regarding their whereabouts. If this information is unavailable or the presumed father does not sign an adoption placement agreement or consent form, the agencies are instructed to begin termination of the father's parental rights. These sections also contain the procedures for determining the presumed and/or alleged status of a child's father. Additionally, these newly-filed sections permit a child to be freed for adoption, under certain circumstances, even when an alleged father's rights have not been terminated by relinquishment or court action.

The regulations also revise the definition of "relatives" and require the court to order the parent to disclose the identification of all available maternal and paternal relatives. General minimum standards are also established for the emergency assessment of suitable relatives prior to the placement of the child. For example, section 35183 allows for abbreviated assessment procedures for the adoptive applicants who are the existing relative caregivers of the child upon proof of an appropriate assessment.

Newly-amended section 35203 permits an adoption agency to shorten the six-month supervision of an adoptive home and the four-interview minimum of adoptive parents, when the adoption is by a relative of the child or the child's half sibling (if the relative already provided supervised foster care for the child to be adopted).

The new regulations also provide for optional adoption procedures when a child is being adopted by a relative which includes a voluntary but legally enforceable kinship adoption agreement regarding post-adoption contact. For instance, section 35209.1 ensures that birth parents are aware of the existence of kinship adoption agreements and requirements, and that prospective adoptive parents are informed of these agreements as well as any other options available to the child's relatives to establish a legally permanent relationship with that child.

Other changes permit a foster family home to provide care for up to eight foster children for the purpose of maintaining siblings and half-siblings together, and allows for relatives of the child's half sibling to be exempt from licensing for the purpose of facilitating the placement of a sibling group. As defined in section 35000(f)(9), "foster family homes" may care for more than the standard six children if the purpose is to keep siblings together, provided that Health and Safety Code conditions are met.

Section 35129 includes provisions for advising parents about participating in adoption planning and the option of voluntarily signing a relinquishment agreement. This section conditions the acceptance of a relinquishment of a child for adoption by his or her birth parent(s) upon certain services provided by an adoption agency to ensure that the relinquishment is truly voluntary and freely given. These services include counseling to assist the parent(s) in understanding the consequences of the decision and alternative options available such as the kinship adoption agreements; assistance in providing medical and social background information; authorization for the release; and verification of any information necessary to identify the child's mother, the child's presumed father(s), and/or the child's alleged natural father(s).

On August 14, 1998, DSS published notice of its intent to permanently adopt the regulations. On November 24, 1998, DSS filed the amendments on an emergency basis. DSS accepted public comment on the proposed changes until September 30, 1998, and held public hearings on September 28, 29, and 30, 1998. DSS submitted the regulatory changes to OAL, which approved them on May 3, 1999. They became effective the same date.

Impact on Children: These regulations aim at expediting the adoption process for those children trapped in the foster care system. By eliminating several of the barriers faced by relatives of children eligible for adoption, the regulations encourage adoptions which keep relatives and siblings together. These amendments similarly support the voluntary relinquishment of parental rights, which more efficiently clears the path for adoption. The new laws also strive to identify the fathers of these children so that paternity issues preventing adoption can be resolved quickly.

Foster Care Reform

SB 933 (Thompson) (Chapter 311, Statutes 1998) requires DSS to make several changes to the Foster Care Program. On December 22, 1998, DSS adopted section 11-505, and amended sections 11-400, 11-401, 11-402, 11-403, 11-410, 11-415, 11-420 and 11-430 of the MPP, on an emergency basis, to implement the provisions of SB 933. The emergency regulations became effective on January 1, 1999.

These regulations are intended to improve the provision of services to foster care children in group homes through the creation of a new system of provisional rates for group home providers. The regulations include several new restrictions on the placement of children in out-of-state group homes and provide DSS with increased monitoring authority. Section 11-400 includes the creation of two basic payment rates, one for foster family homes and one for certified homes of foster family agencies. Section 11-400 also establishes meanings for certain terms used in the regulations. Some highlights include subsection (d), which defines the meaning of the term "date of issuance" as the date of mailing, for consistency with existing regulations; and subsection (f), which defines the meaning of the term "family home" as the family residence of a licensee in which 24-hour care and supervision are provided for children, or a family residence which is approved and which provides care and supervision.

Section 11-402 establishes a provisional rate under the existing group home rate setting system whereby all providers will receive provisional rates for up to thirteen months, until DSS can perform a program audit to ensure providers are operating at the projected levels. The regulation requires that DSS terminate the provisional rate of a provider when the provider is found to be providing services at a level significantly below that which it projected.

Section 11-403 specifies that foster family agency rates will be based on the new foster family agency basis rate rather than that for foster family homes. Section 11-415 specifies that an additional uniform amount shall be paid to cover the cost of care and supervision of an infant living with a minor parent in a group home or other eligible facility. Section 11-420 establishes the allowance for funeral payments. When a foster parent desires a funeral for the foster child, other than as provided by the county, the county shall reimburse the foster parent(s) for the cost of funeral expenses up to $5,000 for a child receiving foster care at the time of his or her death.

On January 1, 1999, DSS published notice of its intent to permanently adopt the sections. DSS accepted public comment until February 18, 1999, and held public hearings on February 16 in Sacramento and February 18 in Santa Ana. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

In a related action on January 29, 1999, DSS published notice of its intent to further amend sections 11-400 and 11-402, and announced a public hearing for comment on March 17. This regulatory change relates to the computation of allowable shelter costs, to enable DSS to receive federal reimbursement for such costs. On March 1,

1999, DSS adopted the changes on an emergency basis, allowing it to receive the reimbursement immediately. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

Impact on Children: These regulatory changes reflect new legislation designed to increase foster care supply. They are one response to extensive media and public criticism of the state's system, which currently has over 100,000 children in various types of foster care placements. However, they do not address the crux of the problem: the undersupply of *family* foster care homes (where compensation remains well below out-of-pocket cost), adoption assistance rates, juvenile court confidentiality, the classification of large numbers of children as "unadoptable," the refusal to allow Caucasian parents to adopt children of color, and numerous other serious problems. For a detailed discussion, see the *California Children's Budget 1999-2000*, Chapter 8 (online at www.acusd.edu/childrensissues).

Group Homes that Accept Children under Six Years of Age

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 17. *Update*: DSS submitted the proposed regulatory changes to OAL, which approved them on September 24, 1998. They became effective on the same date.

Use of Manual Restraints in Group Homes

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 17. *Update*: DSS submitted the proposed regulatory changes to OAL, which approved them on October 13, 1998. They became effective on November 12, 1998.

Out-of-State Group Home Requirements

SB 933 (Thompson) (Chapter 311, Statutes of 1998) requires out-of-state group homes that accept placements of California children to comply with the same reporting requirements applicable to in-state group homes. They must be certified by DSS, indicating compliance with the same standards as facilities operating within California, and provide the same personal rights and safeguards afforded to children placed in California group homes.

On December 30, 1998, DSS adopted section 31-066, and amended sections 31-001, 31-002, 31-206.31, 31-230.11, 31-320, 31-435.2, 31-510, 45-101, 45-201.4, 45-202.51, 45-203.41, and 45-302.2 of the MPP, on an emergency basis, to implement and comply with SB 933. These emergency regulations, which were effective on January 1, 1999, enable children in out-of-county or out-of-state placements to receive services aimed at preventing further abuse and neglect, while ensuring that the child's placement is in his or her best interest.

As amended, section 31-001 includes county probation departments among the county child welfare departments that are mandated to follow specific requirements when placing children in out-of-home care. Section 31-001.35 requires written agreements between probation and county welfare departments in order to claim federal and/or state funds for the cost of care for foster children supervised by a probation department.

Section 31-002 defines terms used in the Interstate Compact on the Placement of Children (ICPC). Subsection (s)(9) defines "substantial distance" to mean an out-of-home placement that is farther than an adjacent county, whose borders touch on one side, from the residence of the parents or guardian. Hence, the regulations partially include in-state placements in other counties than the one in which the child resides. (In California, some counties regulate licensure locally by delegation from the state, raising issues of inter-county coordination as well.)

For children already placed in out-of-state group homes prior to March 1, 1999, section 31-066 requires the county social service agency or probation department to obtain an assessment and placement recommendation within six months from the date of placement. For those children placed in an out-of-state group home after March 1, 1999, the agency must obtain an assessment and placement recommendation prior to placement.

Sections 31-066.4 through 31-066.43 mandate the factors that the multidisciplinary team must consider, at a minimum, when assessing a child's need for an out-of-state placement. These factors include a review of: (1) the current circumstances precipitating the request for an out-of-state placement, such as the reasonable efforts/services provided prior to the placement of the child in foster care or to make it possible for the child to return home; (2) the services provided to prevent an out-of-home placement; (3) the current location of the child and length of time there; (4) the situation and location of parents/siblings; (5) descriptions of out-of-state placement resource(s) or type of resource(s) being sought; (6) the child's/parents' attitudes towards placement; (7) an assessment of the individual child, including a physical description; an evaluation of behavioral, emotional, social skills, and relationships/interactions with parents, care givers, and peers, overall health, educational status, placement history (including the reason in-state services or facilities were not adequate), and special needs, if any; (8) family history, including current and anticipated involvement with the child; and (9) a permanent plan for the child, including documentation of other options and the anticipated duration of the proposed placement.

Sections 31-066.5 through 31-066.6 clarify and emphasize the multidisciplinary team's obligation to rule out in-state placement options prior to recommending an out-of-state placement. The team has the option of determining whether a delay in placement to accommodate

an in-state program is feasible. All activities undertaken by the multidisciplinary team to determine whether in-state programs offer services necessary to meet the child's needs must be documented and submitted to the court along with the documentation used to make the out-of-state placement recommendation.

Section 31-206 details the requirements for case plan documentation. The case plan must include the reasons for a child's placement in an out-of-state group home, the assessment and recommendations by the multidisciplinary team (discussed above), and documentation as to why in-state facilities were not and will not be successful for the child. Because the case plan is the foundation and central unifying tool in child welfare services, it must document the current or potential inability of in-state services/facilities to meet the child's needs, the particular benefits of the out-of-state group home facility for the child, and the reasons any placement a substantial distance from the parents' home is considered to be in the child's best interest. The case plan must also list the schedule of monthly visits for children placed in out-of-state and in-state group homes.

Section 31-230 clarifies the requirements for court-ordered placements. Prior to placing a child in an out-of-state group home, the court must find that the out-of-state placement is and "continues to be the most appropriate placement selection and in the best interest of the child," and that the facility is certified by DSS and licensed in the state it is located. These conditions must be met at the initial placement hearing, review hearings every six months, and the permanency hearing; otherwise, the county will not be entitled to receive or expend any public funds for the placement of a child in an out-of-state group home.

Section 31-320 requires the social worker/probation officer to visit the children in group homes, whether in-state or out-of-state, at least monthly *with no exceptions*. These visits must be documented in the child's case plan. Section 31-320.54 allows the county placing a child into an out-of-state relative, guardian, or foster family home to enter into an agreement with the receiving state that such state will provide the needed services, including the required visitation. However, the receiving state must provide reports to the California sending agency, which must document them in the child's case plan.

Finally, section 45-305 essentially summarizes the amended and adopted regulations, discussed above, by listing the conditions that must be met before any public funds will be expended on behalf of a child placed in an out-of-state group home. These conditions are as follows: (1) there has been a finding by the court that the group home is licensed or certified for the placement of minors by an agency in the state in which the minor will be placed; (2) the court reviews the out-of-state group home placement every six months; (3) the court reviews the out-of-state group home placement at each periodic review and permanent placement hearing to ensure that the placement continues to be the most appropriate and in the best interests of the child; (4) the assessment and placement recommendations have been met; (5) the monthly visit requirements have been met; (6) the child is placed in a facility eligible for funding; and (7) there had been an additional finding by the court that in-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the child or children whose placement and care is vested with the county probation department.

On January 1, 1999, DSS published notice of its intent to permanently adopt the emergency regulations. DSS accepted public comment until February 18, 1999, and held public hearings on February 16 and 18, 1999. At this writing, DSS has not submitted the proposed regulatory changes to OAL.

Impact on Children: SB 933, which mandates many of these regulations, is a response to the plight of children placed in out-of-state group homes, particularly in states with little or no oversight authority. These regulations set procedures for agencies and multidisciplinary teams making out-of-home placement decisions, both out-of-county as well as out-of-state. Without these sensible requirements, there is no uniformity or any level of quality assurance in such decisions because each county could conduct assessments based on different standards. Arriving at informed and thoroughly researched decisions prior to placing children out-of-state is particularly important, because after a child leaves the state, monitoring progress and program quality is much more difficult.

Further, to ensure children placed in out-of state group homes receive the services they need, it is vital that case workers have current and accurate information. This is achieved both by the reporting requirements in these regulations, as well as the monthly visit requirement. Monthly visits to out-of-state group homes provide a safeguard for children in facilities not easily monitored by out-of-state case workers. In essence, it is the only way to assure appropriate program compliance. Reporting requirements for group home providers also enable all participants on the case to stay relatively current on the status of the child. Further, documenting the process utilized in reaching the child's assessment in the case plan will facilitate better communication among all those involved with the child, as well as avoid wasting time researching information or options already reviewed by others. Although this process is time consuming, it has the potential to protect children and enhance their success in a particular placement. Neither the statute nor these rules address underlying concerns over group home placements, including expense, instability from frequent movement

between placements, intermixing of child abuse victims with delinquents, failure to monitor drug administration, educational deficiencies and failure to mainstream children, failure to achieve permanent adoption, and failure to effectively assist children who emancipate out of juvenile court jurisdiction at age 18 (into work and adult life transitions). In particular, group homes cost from three to five times the per child monthly rate of family foster care, a cost disparity exacerbated when placement is out-of-state and new requirements, such as the regulatory costs of these rules, are added. SB 949 (Speier), now pending in the legislature, addresses the salient factors: increasing family foster care supply (80% of adoptions come from family foster care placements) and stimulating adoptions. Its enactment and prospective rules implementing it will warrant close monitoring.

JUVENILE JUSTICE

Disciplinary Decision Making System

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 18. *Update*: DYA submitted the proposed regulatory changes to OAL, which approved them on December 2, 1998. They became effective on January 1, 1999.

Juvenile Facilities

The Board of Corrections sets minimum standards for the operation and maintenance of juvenile halls for the confinement of minors (Welf. and Inst. Code sections 207.1(h) and 210). On October 2, 1998, the Board published notice of its intent to amend sections 1302 through 1561 (inclusive), Title 15 of the CCR. There are a number of significant changes in these regulations. For example, section 1321 changes the staffing requirements for correctional camps from a minimum of 1.6 positions for each 10 minors in residence to a ratio of 1:15 during waking hours and 1:30 during sleeping hours. (This change means that instead of 16 staff members being provided for 100 minors, there will be 17 for every 100.) This regulation also clarifies that camps must have a sufficient number of food service personnel relative to the number and security level of living units.

Section 1322 makes changes in requirements for staff training. Prior regulation mandated eight hours of training before assuming responsibility for supervision of minors, with an additional 32 hours prior to assuming sole responsibility. The proposed rule requires 40 hours of training prior to assuming responsibility for supervision of minors. There is no standard training that is to occur during the first eight hours. Both training sessions are now folded into a 40-hour block of training. Additionally, the changes clarify that training must include a specific orientation to child supervision duties.

Section 1327 deals with emergency procedures. This is a new regulation that replaces the more general language for emergency procedures that was deleted from section 1324. Section 1328 now requires halls and camps to implement procedures for documented 15-minute safety checks of minors when they are asleep or in their rooms or dorms. Section 1356 modifies and strengthens the current requirement that minors must receive counseling services. This service now must be provided for related personal problems, such as substance abuse, family crisis, and mental health issues.

Section 1357 clarifies that only the amount of force necessary to ensure the safety of the minor and others in the facility may be used; force is never to be used as a method of punishment or discipline. Section 1358 adds a requirement that policies and procedures include identifying known medical conditions that would contraindicate certain restraint devices or techniques. The rules specify that a four-hour placement in restraints (e.g., a disabling jacket, table restraints, or limb manacles) is excessive when dealing with a minor whose behavior warrants restraint. If continued restraint is required after two hours, the rules countenance underlying medical conditions that must be checked as a possible cause. The rules change the time frame for continued restraint from six to three hours. Required mental consultation must occur within four hours, rather than the current eight. This change requires more timely evaluation of medical conditions for those children and minors under extreme physical confinement.

Section 1361 adds language for grievance procedures, assuring minors free access to grievance forms; they do not have to ask staff for them. New policies and procedures are also required to address and document concerns raised by parents, guardians, staff, and other parties who may have an interest in the minor's welfare.

Section 1370, formerly "School Programs," is now titled "Education Program." It adds a new requirement that the facility administrator annually request the superintendent of schools to certify that the facility school programs comply with applicable rules. Also, individual education assessment plans must be requested from the minor's prior school to facilitate often absent linkage between the correctional facility's education efforts and the minor's prior schooling.

Section 1371 adds a requirement that equivalent recreational programming be provided for both male and female minors. Section 1390 provides that educational programs cannot be withheld as a disciplinary sanction. Changes to section 1402 clarify that health care services must address acute symptoms in addition to known conditions. This is intended to assure that symptoms are addressed even if not a clearly identified and associated "condition."

Section 1431 deals with intoxicated and substance abusing minors. The regulation now requires a medical clearance for a minor who displays outward signs of intoxication, or is known or suspected to have ingested any substance that could result in a medical emergency. Section 1437 adds language to require timely referrals to a treatment facility and requires procedures to provide transportation.

Section 1438 adds a requirement that an annual pharmacist's report on the status of pharmacy services must be provided to the health authority and facility administrator to assure that proper pharmacy law is being followed, a particular concern given the sedative or other involuntary drug administration policies of facilities.

Section 1450 assures the involvement of the mental health director when developing suicide prevention plans and procedures. Changes to section 1462 clarify that facilities are required to provide therapeutic diets and maintain a therapeutic diet manual. Amended section 1488 requires that hair care equipment be cleaned and disinfected after each haircut or procedure. Currently, the hair cutting equipment may be used to cut the hair of many minors after the initial cleaning. This can lead to the spread of infections and lice – a common problem among incarcerated youth. Section 1510 has been amended to clarify that equipment maintenance, physical plant maintenance, and inspections must be done in a timely manner. This change is intended to assure that the facility is clean, safe, and in good repair.

Current section 1526 allows facility watch commanders to approve special visits for adults or juveniles under extenuating circumstances; this section is recommended for deletion. Section 1550 adds a requirement that entry and release time for minors in non-secure detention must be documented and available for review.

The Board accepted written comments until November 16, 1998, and held a public hearing in Sacramento on December 3, 1998. At this writing, the Board has not submitted the proposed regulatory changes to OAL.

Impact on Children: Many of these regulatory changes are made to provide cleaner, safer, and more secure conditions for juveniles housed in detention facilities. They clarify juvenile rights and the state's responsibilities. Taken as a whole, they make a marginal improvement by providing some additional checks on practices historically involving institutional abuse of incarcerated youth.

Youthful Offender Parole Board Review

For a discussion of this regulatory package, see *Children's Regulatory Law Reporter*, Vol. 1, No. 2, at 18. *Update*: DYA submitted the proposed regulatory changes to OAL, which approved them on October 15, 1998. They became effective on November 14, 1998.

AGENCY DESCRIPTIONS

Following are general descriptions of the major 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.

Department of Developmental Services

The Department of Developmental Services (DDS) has jurisdiction over laws relating to the care, custody, and treatment of developmentally disabled persons. DDS is responsible for ensuring that persons with developmetnal disabilities receive the services and support they need to lead more independent, productive and normal lives, and to make choices and decisions about their own lives. DDS executes its responsibilities through 21 community-based, nonprofit corporations known as regional centers, and through five state-operated developmetnal centers. DDS' enabling act is found at section 4400 *et seq.* of the Welfare and Institutions Code; DDS regulations appear in Title 17 of the CCR.

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 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.

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.

Department of Mental Health

The Department of Mental Health (DMH) has jurisdiction over the laws relating to the care, custody, and treatment of mentally disordered persons. DMH may disseminate education information relating to the prevention, diagnosis and treatment of mental disorder; conduct educational and related work to encourage the development of proper mental health facilities throughout the state; coordinate state activities involving other departments and outside agencies and organizations whose actions affect mentally ill persons. DMH provides services in the following four broad areas: system leadership for state and local county mental health departments; system oversight, evaluation and monitoring; administration of federal funds; operation of four state hospitals (Atascadero, Metropolitan, Napa and Patton) and an Acute Psychiatric Program at the California Medical Facility and Vacaville. DMH's enabling act is found at section 4000 *et seq.* of the Welfare and Institutions Code; DMH regulations appear in Title 9 of the CCR.

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.

Department of the Youth Authority

State law mandates the California Department of the Youth Authority (DYA) 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. DYA's offender population 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 DYA's program strategy. DYA's enabling act is found at section 1710 *et seq.* of the Welfare and Institutions Code; DYA regulations appear in Title 15 of the CCR.

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 1999-2000* can be accessed via the Web at <www.acusd.edu/childrensissues/ report>.

Information on new federal regulations for the Individuals with Disabilities Education Act, IDEA, can be found at <www.ed.gov/offices/OSERS/IDEA>.

Information on the federal Children's Health Insurance Plan (CHIP) can be found at <www.hcfa.gov/init/children.htm>.

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 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 publication 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 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).