

University of San Diego

Digital USD

Children's Regulatory Law Reporter

Children's Advocacy Institute

1-1-2002

Children's Regulatory Law Reporter, Vol. 3, No. 2 (2002)

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

Follow this and additional works at: https://digital.sandiego.edu/law_cai_chrlr

Digital USD Citation

Children's Advocacy Institute, University of San Diego School of Law, "Children's Regulatory Law Reporter, Vol. 3, No. 2 (2002)" (2002). *Children's Regulatory Law Reporter*. 7.

https://digital.sandiego.edu/law_cai_chrlr/7

This Book is brought to you for free and open access by the Children's Advocacy Institute at Digital USD. It has been accepted for inclusion in Children's Regulatory Law Reporter by an authorized administrator of Digital USD. For more information, please contact digital@sandiego.edu.



Children's Regulatory Law Reporter

Children's Advocacy Institute — Vol. 3, No. 2 (2002)

Highlights

Department of Social Services' Foster Care Financial Audit Requirements Violate Federal Law; All Federal Foster Care Program Funding Received by California Group Homes and Foster Family Agencies At Serious Risk
(see page __)

Department of Industrial Relations' New Permanent Amusement Ride Safety Inspection Program Regulations Deemed Inadequate by Child Advocates
(see page __)

California Student Aid Commission Adopts Regulations Implementing New Cal Grant Entitlement Award Program
(see page __)

Department of Health Services Amends Childhood Lead Poisoning Prevention Fee Program Regulations
(see page __)

Key

This issue of the *Children's Regulatory Law Reporter* covers new regulatory packages published or filed from April 1, 2001, through November 15, 2001; actions on those packages through December 31, 2001; and updates on previously-reported regulatory packages through December 31, 2001.

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 the *Children's Regulatory Law Reporter* to indicate the following California agencies or publications:

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

Preface

Each year, the California Legislature enacts important new laws affecting children; those laws have broad mandates, and they often delegate critical details to the rulemaking or administrative process of our state's various agencies. The *Children's Regulatory Law Reporter* focuses on that rulemaking activity—an often ignored but very critical area of law. For each regulatory proposal discussed, the *Children's Reporter* includes both an explanation of the proposed action and an analysis of its impact on children. Any advocate knows that the devil is in the details, and a single phrase in a rule can mean that either ten thousand or a hundred thousand children receive public investment when needed. The *Children's Reporter* is targeted to policymakers, child advocates, community organizations, and others who need to keep informed of the agency actions that directly impact the lives of California's children.

The *Children's Regulatory Law Reporter* is published by the Children's Advocacy Institute (CAI), which is part of the Center for Public Interest Law (CPIL) at the University of San Diego School of Law. Staffed by experienced attorneys and advocates, and assisted by USD law students, CAI works to improve the status and well-being of children in our society by representing their interests and their right to a safe, healthy childhood.

CAI represents children—and only children—in the California Legislature, in the courts, before administrative agencies, and through public education programs. CAI strives to educate policymakers about the needs of children—about their needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury. CAI's mission is to ensure that children's interests are effectively represented whenever and wherever government makes policy and budget decisions that affect them.

Children's Advocacy Institute Staff

Robert C. Fellmeth, J.D., *Executive Director*
Julie D'Angelo Fellmeth, J.D. *CPIL Administrative Director*
Elisa Weichel, J.D., *CAI Administrative Director*
Lupe Alonzo-Diaz, *Senior Policy Advocate*
Stephanie Reighley, *Administrative Assistant*
Louise Jones, *Administrative Assistant*
Cindy Dana, *Administrative Assistant*

Contributing Student Interns

Jennie Morgan
Heather Smith

Children's Regulatory Law Reporter

Children's Advocacy Institute — Vol. 3, No. 2 (2002)

Table of Contents

Preface

Child Poverty

Health / Safety

Child Care / Child Development

Education

Child Protection

Juvenile Justice

Agency Descriptions

For Further Information

CHILD POVERTY

New Rulemaking Packages

Maximum Family Grant Regulations

Settlement orders entered in *Nickols v. Saenz* (San Francisco County Superior Court Case No. SCV-310867) and *Kehrer v. Saenz* (Sacramento County Superior Court Case No. 99CS02320) require the Department of Social Services (DSS) to amend the California Work Opportunity and Responsibility to Kids (CalWORKs) program's Maximum Family Grant (MFG) regulations. The MFG regulations essentially provide that the maximum aid payment for a family receiving CalWORKs will not be increased to include a child born to a family, if any member of the family received CalWORKs for the ten consecutive months preceding the child's birth. This limitation is intended to discourage pregnancies leading to additional children while a family is already receiving aid.

The *Nickols v. Saenz* settlement order requires that the MFG "no additional aid" rule will no longer be applied to any child who was born when a recipient, who was previously aided as a dependent child in a parent's case, establishes his/her own case. Further, for MFG purposes, months in suspense and/or a month where the family ("assistance unit" or AU) is eligible for a zero basic grant will no longer be counted as aid against the 60 month or other maximums.

The *Kehrer v. Saenz* settlement order requires that child support paid by an absent parent directly to the custodial parent of an MFG child shall no longer be considered as income to the family for MFG purposes. Benefits from the Social Security Administration or other government programs that are based on an absent parent's disability or retirement and paid to or on behalf of the MFG child shall be considered child support for MFG purposes and no longer considered as income to the family.

In accordance with these court orders, on June 29, 2001, DSS published notice of its intent to amend sections 44-314.62, 44-314.14, 44-314.321, and 44-314.56, and repeal section 44-314.142 of the MPP to provide:

- that the MFG rule will not be applied to any child who was born when an applicant or recipient, who was previously aided as a dependent child in a parent's case, establishes his/her own case;
- that the MFG rule would also not be applied to any new child born to this applicant or recipient during the first ten months after establishing his/her own case;
- for MFG purposes, months in suspense and/or a month the AU is eligible for a zero basic grant will not be considered as a month in which the family received aid;
- child support paid by an absent parent directly to the custodial parent of an MFG child shall not be considered as income to the family for MFG purposes; and
- benefits from the Social Security Administration or other government programs that are based on an absent parent's disability or retirement and paid to or on behalf of the MFG child shall be considered child support for MFG purposes.

On June 25, 2001, OAL approved the emergency adoption of these changes; on December 11, 2001, OAL approved the permanent adoption of the amendments. [To view these regulations, visit http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm.]

Impact on Children: Maximum monthly grants for Temporary Aid to Needy Families (TANF) normally increase by from \$70 to \$110 per child in a family (termed an “assistance unit” or AU). Although that amount per added child is less than the marginal cost of providing for a new infant, CalWORKs enacted a “maximum cap” provision disallowing any increase for new children where that child is conceived by a family member while the family is receiving aid. The intent is to discourage more children by families already receiving aid.

However, such a purpose does not apply to teen parents who have their first child while they are minors in a family receiving welfare. Further, prior to the *Nickols* order, DSS failed to properly inform teen recipients of the MFG limitation, instead notifying only heads of households. As the plaintiffs illustrated, many teen parents never even heard about the MFG rule until after their babies were born, resulting in severe hardship such as homelessness and dropping out of high school. Among other benefits, the *Nickols* order and the resulting rule changes will result in better disclosure to families regarding the MFG limitation.

Further, many parents are eligible for TANF assistance based on their own economic difficulties. Child support paid to them should not add to their income and disqualify them from aid. Such child support is intended to offset the costs of providing for the child. It is not net income for the new family (note that the average amount received by absent parents in child support is under \$50 per month per child and rarely offsets the full cost of a child to his or her parent). The same is true for derivative benefits from Social Security or other government programs based on an absent parent’s disability or retirement and paid to or on behalf of a child.

Both of these court orders and resulting regulatory revisions modify CalWORKs restrictions which DSS had improperly extended beyond their legislative intent. The adoption of the court order provisions as rules extends the case beyond the parties, and allows administrative and statewide enforcement.

For further discussion of both restrictions, see the Children’s Advocacy Institute’s *California Children’s Budget 2001–02* (San Diego, CA; June 2001) at 2-15 to 16, 2-37, 2-82 to 87, available at www.sandiego.edu/childreissues.

Grant-Based On-the-Job Training

On April 6, 2001, DSS published notice of its intent to amend sections 42-701, 42-716, and 44-111 of the MPP, to implement and make specific AB 1233 (Chapter 933, Statutes of 2000). AB 1233 amended CalWORKs Welfare-to-Work (WTW) Program provisions governing grant-based on-the-job training (OJT), which may include community service assignments. The AB 1233 provisions require that CalWORKs WTW participants be assigned to grant-based OJT only on a voluntary basis; increase the amount of cash aid that can be diverted to an employer as a wage subsidy; strengthen the employer’s retention and training requirements; eliminate the earned income disregard for wages that are subsidized by the recipients aid grant or the grant savings from employment; and revise county plan requirements.

Grant-based OJT is a funding mechanism for subsidized employment, including community service, in which all or part of the recipient’s cash grant, or the grant savings from employment, are diverted to an employer as a wage subsidy. However, DSS’

regulations effectively limited the amount of the grant available for diversion to the grant savings. In addition, participants' grant-based wages are subject to the same earned income disregard that is provided to recipients in unsubsidized jobs or other forms of subsidized employment.

DSS' revisions provide a voluntary alternative to unpaid community service placements after the 18- or 24-month time limit, which many CalWORKs WTW participants are now reaching; ensure that CalWORKs WTW participants are assigned to grant-based OJT only on a voluntary basis; and establish notification requirements, so that CalWORKs WTW participants are advised of the impact grant-based OJT may have on their income, before they volunteer for the assignment.

Among other things, the changes also provide that:

- a participant's diverted cash grant and grant savings shall be used by the employer for the sole purpose of subsidizing the participant's wages;

- after the participant has reached his/her 18- or 24-month limit, as specified, the subsidy provided to the employer shall be limited to the amount of the participant's diverted grant and/or grant savings;

- county welfare departments (CWD) shall administer grant-based OJT funded positions in a manner that minimizes any break in income received by the participant as a grant, or as a wage subsidized by the diverted grant and/or grant savings upon entry into, during, or upon exit from the assignment;

- wages derived from the diverted grant and/or grant savings and paid to a participant shall not be considered as income in any determination of financial eligibility for the CalWORKs program; and

- a CWD shall not place grant-based OJT participants with an employer unless the employer agrees, at a minimum, to use the diverted grant solely for subsidizing the participant's wage and to return to the CWD any of the grant and/or grant savings received that are not paid as wages to the participant; not to displace current employees with grant-based OJT participants; to comply with specified labor union and employee notification requirements; and to comply with all applicable federal and state labor laws and regulations.

OAL approved these changes on an emergency basis on March 29, 2001, and on a permanent basis on August 30, 2001. [To view these regulations, visit http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm.]

Impact on Children: CalWORKs requires almost 80% of all parents receiving aid to seek employment within two years of receiving aid (the remaining 20% may be exempt as unemployable). In all cases, adequate child care is assured by the federal Personal Responsibility and Work Opportunity Reconciliation Act. The spirit behind the federal statute and its state counterpart calls for the government to provide child care, training, and jobs, thus enabling welfare recipients to transition from aid to work. For example, California's CalWORKs statute requires local public agencies to provide public service jobs as a last resort.

Accomplishment of these legislative goals has been greatly assisted by the late 1990s economic boom, which increased employment and reduced welfare rolls markedly. However, approximately 500,000 parents and one million children remained dependent on TANF and food stamps for basic safety net support as of 2001. Moreover, signs in 2002

point to rising unemployment and increased need for safety net protection for more children.

The CalWORKs model theoretically costs substantially more per family than did previous welfare benefits. Among other things, child care must be provided at a cost of \$3,000 to \$7,000 per child per year. Work must be secured. If publicly provided, it may cost at least the amount of previous grants. Until 2001–02, the static block grants from the federal government produced surpluses because caseload was declining while grants remained steady. However, as the economy has turned down, that surplus has now largely disappeared. It is unlikely that money will be available to comply with the literally stated requirement of providing public or public service employment to every TANF parent at the two-year mark. A failure to provide that opportunity will become critical after 2002 when over 500,000 children will reach or approach their parents' sixty-month lifetime limit for federal funding.

In this context, the stimulation of grants for private training and private employment is understandable. It also portends important gains for involved children. Where public employment is provided it is expensive for the affected families as well as the public budget. Public employment may be viewed as "workfare" and recipients may be required to work simply for their welfare grant. This format means income well under even minimum wage, and the likely denial of federal Earned Income Tax Credits (EITC) available to the working poor with children. Those credits are substantial, amounting up to \$3,600 per year. Using year 2001 data, workfare compensation will yield \$645 in average grant income, plus \$251 in food stamps (for the benchmark family of mother and two children) totaling \$896 monthly. Private employment at minimum wage for the same family will yield \$1,356, including the EITC.

The stimulation of private training and employment could benefit both families and public budgets vis-a-vis the alternatives. However, those gains may be short-lived given the failure to fund child care for more than two years after leaving TANF. Wages do not increase at the two-year mark to allow for child care payments, but the cut-off at this point threatens large numbers of parents with welfare reentry, even where privately employed, advancing, and not laid off due to the economic downturn. Such reentry restarts the sixty-month lifetime limit on federal TANF assistance for them and their children. For detailed discussion and citations, see Children's Advocacy Institute, *California Children's Budget 2001–02* (San Diego, CA; June 2001) at Chapter 2, *passim*, available at www.sandiego.edu/childrensissues.

Inclusion of Food Stamp Benefits as Public Service Compensation

The Department of Labor (DOL) has concerns regarding the applicability of the federal Fair Labor Standards Act (FLSA) to unpaid community service and work experience in the CalWORKs program, which is California's implementation of the federal Temporary Assistance for Needy Families (TANF) program (see discussion above). The FLSA requires that individuals be paid minimum wage if they are "employees." According to DOL, TANF recipients would probably be considered employees in many, if not most, TANF work activities, including community service and work experience. Welfare-to-Work (WTW) activities in the CalWORKs program include community service and work experience. However, DSS has advised counties that participants in unpaid community service and

work experience are not employees for purposes of the FLSA. In 1998, DOL informed DSS that it disagrees with DSS' interpretation of the FLSA with regard to these activities, and warned DSS about possible back-wage liability as a result of either private litigation or federal enforcement.

DOL has issued guidance interpreting the FLSA as it applies to TANF work activities, specifically referring to an hourly work participation limitation based on a minimum wage calculation. The guidance also describes when Food Stamp Program benefits may be added to the cash grant to calculate the maximum number of hours that a recipient may be required to participate in community service. The U.S. Department of Agriculture, Food and Nutrition Service (FNS) has provided additional guidance allowing states to use a Simplified Food Stamp Program (SFSP) as the vehicle for combining Food Stamps and TANF grants in the minimum wage calculation.

On March 30, 2001, DSS published notice of its intent to adopt the SFSP program into its regulations, by amending sections 42-710.1, 42-710.2, 42-710.3, 42-711.9, 42-716.11, 63-407.2, and 63-407.5 of the MPP, thus allowing the use of Food Stamp allotment in the minimum wage calculation. According to DSS, if Welfare-to-Work participation hours were restricted based on the cash grant alone, the risk of severe federal financial penalties for failing to meet TANF's hourly participation requirements would increase.

Under the SFSP, hours of participation in unpaid community service and work experience will be limited to the number of hours equal to the amount of the CalWORKs grant plus the Food Stamp allotment, divided by the higher of the state or federal minimum wage. In addition, the proposed changes would allow hours of participation in unpaid community service to be combined with other allowable WTW activities to meet the 32- and 35-hour work requirement.

On March 26, 2001, OAL approved DSS' emergency adoption of these changes. On September 10, 2001, OAL approved DSS' permanent adoption of the revisions. [To view these regulations, visit http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm.]

Impact on Children: As CalWORKs was implemented, California's DSS took the position that local public service employment required only the payment of the TANF grant amount. In other words, the counties were to provide workfare only. The federal Department of Labor required that such public service employment not violate state minimum wage laws. Accordingly, the state adopted rules to consider federal food stamp benefits as "compensation" for public service work performed in order to meet minimum wage levels at the 32 to 35 hours per week necessary to be considered "employed" under federal welfare reform law.

As discussed immediately above, the California approach yields the benchmark family \$896 per month rather than the \$1,356 available at minimum wage with an EITC. The option favored by state officials would pay the benchmark single mother and two children even less — \$645 per month for full-time work. In fact, large numbers of persons leaving welfare rolls have lost both Medi-Cal coverage for themselves and their children, as well as food stamp coverage. The new California rule may lead to some additional food stamp participation for those on such "workfare," since the state needs that allocation (of mostly federal funds) to meet the Department of Labor's minimum wage standard which is approximately \$900 per month. Accordingly, local CalWORKs administrators have an

incentive to assure retention of food stamp allocations for these employees.

But the longer range implications of the work fare/food stamp policy are unfavorable to children, promising what critics decry as likely “make work” for a two-year period, followed by dismissal and reentry onto welfare (the public employment requirement terminates after 24 months). Children suffer particular disadvantage from the current arrangement: They lose an assured safety net, as well as the loss of parental time and attention as they are devolved into commercial child care or deposited with other relatives. Actual living income is likely to be less. Under previous welfare policies, most parents receiving assistance worked part-time, achieving total family income below the poverty line, but somewhat above the maximum grant. The CalWORKs result is little parental time for such part-time remunerative work and less time for parental duties. Current policy may also leave on the table \$324 per month in federal Earned Income Tax Credits — a significant amount for affected families, and the major tax benefit available to impoverished working families.

Then, after the two-year period allocated for public service employment, parents will be dismissed and can be expected to return to welfare dependency in large numbers, only to encounter shortly after 2002 the sixty-month federal assistance cut-off.

Food stamps cover about one-third of the nutritional needs of a child. Where TANF is terminated or cut back (disingenuously termed the removal of “the parent’s share”), children face serious consequences.

CalWORKs Pregnancy Special Needs Allowance

On May 25, 2001, DSS published notice of its intent to amend sections 44-200 and 44-211 of the MPP regarding a pregnancy special needs allowance for eligible CalWORKs recipients. The changes revise the sections to provide that a CalWORKs-eligible pregnant woman is eligible for the pregnancy special needs allowance of \$47 per month not only during the third trimester of her pregnancy, but also at any time during the pregnancy, as long as the pregnancy is verified and the woman is otherwise eligible for CalWORKs. This change brings these provisions into conformance with relevant federal and state law.

On May 31, 2001, OAL approved these changes on an emergency basis. On October 15, 2001, OAL approved DSS’ permanent adoption of these changes. [To view these regulations, visit http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm.]

Impact on Children: The new rules implement an important extension of special assistance to benefit children during early prenatal months. Prenatal care requires adequate nutrition as a fetus develops, an investment of momentous value over the long term. The prior confinement of assistance to the third trimester violated the national priority on fetus and infant health as reflected in the WIC nutritional supplement program. The revised rules are consistent with the broad latitude offered within Medi-Cal for prenatal treatment of women, including undocumented aliens. The policy reflects the reality of both enhanced health needs, and some work or training limitations which may apply to pregnant women.

Noncitizen Eligibility Certification Provisions

On May 24, 2001, DSS amended sections 63-102, 63, 300, 63-301, 63-402, 63-405, 63-501, 63-502, 63-503, 63-504, and 63-507 of the MPP, on an emergency basis, in order to effect several changes which impact the CalWORKs and Food Stamps programs.

Among other things, the modifications include the following:

- Changes to section 63-102 define the term “inaccessible resource,” clarifying that a resource or vehicle is exempt from consideration if its equity value is \$1,500 or less.

- Changes to section 63-102 also define the term “indigent noncitizen” to mean a person who is sponsored but not able to find housing and food. This adds a new category of sponsored noncitizen who may be eligible for benefits. According to DSS, once an eligible sponsored noncitizen is determined to be indigent for a twelve-month period, only the amount of money provided to the noncitizen will be treated as income, and the noncitizen is exempt from income-deeming provisions.

- Changes to section 63-503 provide a new computation to arrive at net self-employment income earned by members of a food stamp household. For example, the section now provides an option for an applicant or recipient to choose either actual costs of producing self-employment income or a standard deduction of 40% of gross earned income.

- Changes to section 63-503 also exempt battered noncitizens from the sponsorship income deeming rules for a twelve-month period. For the battered noncitizen, a substantial connection between the need for benefits and the battery or extreme cruelty must be established. The exception to deeming is not applied during any time in which the battered spouse or child lived with the individual responsible for the battery or extreme cruelty.

On May 25, 2001, DSS published notice of its intent to adopt these changes on a permanent basis. On October 1, 2001, DSS readopted the changes on an emergency basis. At this writing, the permanent changes await review and approval by OAL. [For more information, visit http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm.]

Impact on Children: The rule opens a small door for noncitizens who have fallen on hard times. The door includes only properly admitted aliens seeking lawful status. Those who have been so admitted and have citizen “sponsors” have been limited in seeking safety net support for themselves — or for their children. The law requires the full income of the “sponsor” to be added to their income and no public benefit will be provided unless both added together fall under the poverty line or other eligibility measure. This policy is designed to prevent new immigrants from obtaining sponsored entry only to seek public benefits. However, DSS data indicates that the percentage of TANF recipients who have been in California for less than one year has historically amounted to approximately one percent of recipients. The evidence does not support the thesis that substantial numbers are entering the state from other states, or other nations, in order to abusively apply for public benefits. However, within that one percent are families and children who have fallen upon hard times.

Some sponsors may assist such families, while others may not. No obligation is imposed to provide a private safety net, and involved children can suffer nutritional shortfall without minimum safety net support. Evidence is mounting that not insignificant numbers of the children of such immigrants are subject to such serious shortfalls. See Children’s Advocacy Institute, *California Children’s Budget 2001–02* (San Diego, CA; June 2001) at 2-60 to 69, 3-19 to 21, available at www.sandiego.edu/childreissues.

The rules reflect current state law exempting from such deeming the income of a sponsor who has physically abused an immigrant. Such circumstances sometimes exist where spouses or employees are abused by sponsors who sometimes may believe the

invitees have no redress. The deeming exemption here is broader, and allows the exclusion of the sponsor's income and qualification based on the immigrant's income alone — but understandably only if the immigrant moves out of the residence of the alleged abuser.

The adjustments here made in the statute and rules affect a very small part of a larger population of children who have been cut-off categorically from basic safety net protection, including substantial numbers of children of persons who are here legally and who may fall upon difficulties through no fault of either involved children, or their parents.

CalWORKs Inter-County Transfers

Inter-county transfer (ICT) statutes and regulations were established to ensure continuous services and cash aid to CalWORKs recipients when they move from one county to another. Although current ICT regulations provide guidance relative to the ICT process, they lack specificity in the area of timeframes, eligibility determinations, and client informing. As a result, ICT procedures are inconsistently applied, causing disruptions in aid and services to CalWORKs recipients. Also, some CalWORKs clients might be inappropriately discontinued from aid because their eligibility was redetermined in the new county based on criteria used for new applicants rather than continuing recipients.

On November 30, 2001, DSS published notice of its intent to amend sections 40-101 and 40-187 through 40-197 of the MPP, to revise its ICT regulations. Among other things, the changes would set forth timelines counties must follow to ensure that necessary documentation and the responsibility for the provision of benefits is transferred on a timely basis; specify appropriate eligibility criteria to ensure that continuing CalWORKs recipients are not erroneously discontinued from aid; require the receiving county to initiate contact with the recipient to provide assistance with establishing aid in the new county of residence.

For example, the revised language requires the first county to notify the second county of the initiation of a case transfer in writing using the "Notification of Intercounty Transfer" form or via electronic data transfer; inform the recipient in writing of his/her responsibility to immediately apply for a redetermination of eligibility in the second county to avoid a break in aid; and provide the second county with copies specified documents within seven working days from the date that the first county notifies the second county of a case transfer.

Under the amended regulations, the second county would be required to provide or send an appointment letter to the recipient, if the address is known. The second county must also redetermine the recipient's eligibility and amount of cash aid based on current circumstances; eligibility determination must be completed within thirty calendar days from the date of the request for a redetermination of eligibility. Eligibility and grant amount shall be determined based on continuing recipient criteria. Also, for children who are receiving AFDC-foster care and have a legal guardian, the second county must make an effort to secure the cooperation of that guardian.

DSS is scheduled to hold public hearings on these proposed changes on January 15, 2002, in Culver City, and on January 16, 2002, in Sacramento. [For more information, visit http://www.dss.cahwnet.gov/ord/CDSSPropos_308.htm.]

Impact on Children: CalWORKs intercounty transfers are complicated by the creation of two categories of counties in the state, each with different maximum aid levels.

The new system was designed to reduce assistance where families live in the more rural (and lower rent) locations. These TANF grants have fallen in real spending power by over 30% over the past nine years. Hence, where a parent moves into an urban county with much higher rent costs, a failure to adjust grants upward as appropriate for the new location can create basic subsistence shortfall.

In addition, CalWORKs only allows 24 months in total training and job search time before either commencing public employment, or imposing substantial sanctions (e.g., subtraction of the “parent’s share” of assistance, which can be from 25% to 50% of the already reduced grant level. Where a family moves to a new county, a failure to pick up training and job search may inhibit employment which is the stated purpose of the CalWORKs statute.

The record of the state in tracking inter-county movement in other areas (e.g., child support tracking of parents, foster care child inter-school transfers) has been poor historically. The counties have an incentive not to pick up an incoming CalWORKs family because such new entrants impose additional training and employment obligations without revenue increases from the state.

The rules here proposed are important in setting the timeframe for the pick-up of families who move between counties — movement often due to family, personal, or employment opportunity circumstances. Even more important would be an enforcement mechanism to assure compliance with those limits; such a realistic mechanism is not yet a part of the rules as proposed.

Child Support: Program Administration and Complaint Resolution

On June 26, 2001, DCSS adopted, on an emergency basis, new Division 13, Title 22 of the CCR (commencing with section 110000), regarding the child support program administration and complaint resolution process. Specific details of the new regulations include the following:

- The provisions specify which records are necessary for the administration of the Title IV-D program and must be maintained by local child support agencies; which information used in the administration of the Title IV-D program is considered confidential and must be safeguarded; which information may be disclosed and the entities to whom disclosure may be made; the length of time Title IV-D records must be retained and the exceptions to those retention requirements; and requirements related to the disposal of Title IV-D records.

- The regulations set forth the customer service requirements that each local child support agency must ensure are met. For example, it requires each local child support agency to adopt and maintain an Ombudsperson Program. Among other things, the ombudsperson is required to assist customers on inquiries about the child support program, local complaint resolution, state hearings, and issues regarding actions taken by the local child support agency and/or Franchise Tax Board.

- The regulations specify each local child support agency’s responsibility to implement a complaint resolution process, not discourage a complainant from filing a complaint or requesting a state hearing, or refuse to assist a complainant in requesting a state hearing. They also set forth each local child support agency’s responsibility for complaint investigation, assignment of a complaint investigator, jurisdictional

determination of a complaint, a complaint investigator's responsibility to clarify and attempt to resolve a complaint, and complaint amendment procedures.

On August 10, 2001, DCSS published notice of its intent to adopt these regulations on a permanent basis; the Department has subsequently modified its proposal and released the revised sections for an additional fifteen-day public comment period. On December 18, 2001, OAL approved DCSS' re-adoption of these regulations on an emergency basis. At this writing, DCSS has not yet submitted the permanent regulations to OAL for review and approval. [For more information, visit www.childsup.cahwnet.gov/regulations/rulemaking.htm#emergency.]

Impact on Children: Historically, critics of child support enforcement have faulted the program from two directions. Parents (usually mothers) seeking assistance from absent parents (usually fathers) have often not received monies due them, even where they provide information about the whereabouts or income of the delinquent parent. At the same time, allegedly delinquent parents who have been served or had wages garnisheed complain that mistakes are often made and that they are denied due process. Their complaints range from erroneous identification to paternity attribution, to amount of monies owed.

Over the past three years legislation has been enacted to allow for such complaints to be heard beyond an appeal to the office of District Attorney (until recently the agency charged with collection) or through the statewide Department of Child Support Services (or county agencies) now administering the program. (See recent child support reform legislation: AB 196 (Kuehl) (Chapter 478, Statutes of 1999); SB 542 (Burton) (Chapter 480, Statutes of 1999); and AB 1358 (Shelley) (Chapter 808, Statutes of 2000).) At the same time, the court system is not well equipped to deal with an influx of large numbers of cases requiring adjudication. Since the issues will reoccur, recent amendments have provided for an administrative law judge type of proceeding to hear such problems — to combine an informality short of formal court filings with the essential elements of due process (a chance to be heard by an impartial third party).

The new rules are designed to allow access to this complaint resolution process by prohibiting complained of local practices allegedly discouraging its use. It also requires an ombudsperson program within every county (also enacted statewide) to deal with local agencies on behalf of such complainants.

The proposed system promises substantial benefits for children. Where absent parents become desperate, they may abandon all contact with their child, or hide to avoid all obligations. A chance at redress without private expense, and with assistance from an ombudsperson, may yield more assistance for children in the long run — and stimulate parental contact and investment beyond remuneration. And where complainants are custodial parents, such redress allows pressure to collect. Such pressure historically has been needed where the state is collecting for persons not on welfare. In such cases, the sum recovered goes entirely to the family and not to recompense the state and federal jurisdictions for paid TANF support. That historical bias in favor of enforcement of sums due the public treasury has enjoyed substantial amelioration over the last five years. Increasingly, child support enforcement is including families not on welfare and where all of the sums collected go to involved children. But where the vestiges of agency bias in favor of public treasury recompense remain, the new mechanism provides a check against

its abuse.

For discussion of the legislation referred to above, see child support collection discussion in the Children's Advocacy Institute's *California Children's Budget 2001–02* (San Diego, CA; June 2001) at 2-84 to 87, available at www.sandiego.edu/childreissues.

Child Support: Administrative Reporting, Quality Control, Performance Standards

On September 6, 2001, DCSS adopted sections 111900, 111910, 111920, 121100, 121120, and 121140, Title 22 of the CCR, on an emergency basis, setting forth data submission requirements of local child support agencies in order to evaluate and maintain a suitable level of performance. Specifically, the new provisions define the type of data required to be submitted, articulate the correct process to ensure accuracy, explain the requirements relating to both the federal incentive and state performance measures, denote the consequences of failure to meet due dates, emphasize cooperation of the local child support agency during audits and reviews, and specify the retention requirements for all of the reports submitted to DCSS. DCSS will then analyze the submitted documents to—among other things—determine the local child support agency's efficiency in terms of securing child support, spousal support, medical support, and determinations of paternity and establish baseline performance standards that shall be met by each local child support agency.

Specific details of the new regulations include the following:

- Each local child support agency will be responsible for submitting the necessary data by the specified deadlines. Failure to do so will result in a series of written notifications to a hierarchy of authority figures after each period of fifteen days. If an agency continues to be non-compliant, DCSS shall offset the next child support payment to the county.

- If a local child support agency fails to meet the reporting deadline or fails to provide accurate data, DCSS may use the data reported by that local child support agency from prior reporting periods as applicable, noted as such, in any DCSS reports.

- A local child support agency shall not be eligible to receive state incentive funds, as specified, if the local child support agency fails to comply with the applicable reporting requirements.

- The local child support agency shall, consistent with applicable law, retain copies of all activity and statistical reports for four years and four months, provided there are not any outstanding issues in litigation, claims, financial management, review, or audit; any reports relating to issues in any litigation, claims, financial management, review, or audit are to be retained until the issue is resolved and final action has been completed.

On October 19, 2001, DCSS published notice of its intent to adopt these changes on a permanent basis. The deadline for the submission of public comments was December 3, 2001. At this writing, DCSS has not yet submitted the permanent regulations to OAL for review and approval. [For more information, visit www.childsup.cahwnet.gov/regulations/rulemaking.htm#emergency.]

Impact on Children: As noted immediately above, momentous legislation enacted in 1999 and 2000 removed child support collection jurisdiction from California's district attorneys, and vested it with a Department of Child Support Services at the state level. However, actual enforcement occurs at the county level. Accordingly, most of the actual

persons engaged in collection within or for offices of district attorney essentially move from local governance to state governance. This change was precipitated in part by the failure of local DAs to agree on a statewide computer system mandated by federal law, which caused substantial penalties to be imposed on the state.

With the new structure fully in place by 2001, local offices used to county focus must begin to work as part of a state effort. That in turn means the submission of data to allow statewide administration. Although the federal government requires some data to be submitted in a uniform fashion by county agencies, and this information has been collected statewide, it is not sufficient to allow for statewide administration. The new rules are intended to provide a reporting system which is consistent between counties and will allow for statewide administration.

One important impact of the new system, including these coordinating rules, may be the amelioration of staggering federal penalties. Over the three years of 1997–2000 those penalties amounted to a subtraction of \$104 million in federal funds, which grew to \$114 million for 2000–01 and threatens to be \$163 million in current 2001–02 unless statewide administration (including computer coordination of data) can be achieved. Moreover, the federal schedule of penalties is projected at over \$200 million per year after 2002–03.

Child Support: Location of Persons or Assets

On September 4, 2001, DCSS adopted new sections 110413, 110550, 113100, 113200, and 113300, Title 22 of the CCR, on an emergency basis, concerning the location of persons or assets for purposes of securing the collection of child support obligations. Specifically, the regulations clarify terms related to the location of noncustodial parents, outline the appropriate process whereby local child support agencies can locate noncustodial parents whose physical whereabouts are unknown, denote the requirements of enlisting the assistance of the Federal Parent Locator Service for Non-Title IV-D Locate Only Requests and Non-Title IV-D Parental Kidnapping/Child Custody Locate Only Requests, and explicate the confidentiality expectations related to the information received from locate resources.

For example, section 113100 requires each local child support agency to use all appropriate locating sources when the noncustodial parent's location is unknown – including the California Parent Locator Service; the U.S. Postal Service; the local telephone company; the Federal Parent Locator Service; state agencies maintaining records of public assistance, wages and employment, unemployment insurance, income taxes, driver's licenses and vehicle registration, and criminal records; agencies which administer public assistance, general assistance, medical assistance, and social service programs; financial institutions; current and past employers; unions; fraternal organizations; and police, parole, and probation offices.

Once it is determined that a noncustodial parent needs to be located, the local child support agency has 75 calendar days to access all appropriate locate resources and ensure that the location information received is sufficient to take the next locate, establishment, or enforcement action, or initiate service of process.

The provisions also define the term "quick locate" to mean a request for locate services from one state's parent locator service to another state's parent locator service with

the responding state providing those services without opening a Title IV-D case. The regulations provide that quick locate method is appropriate for use in the following cases (at a minimum): when a local child support agency determines that a noncustodial parent might be in one of several states, or when a local child support agency intends to use this state's long arm jurisdiction to establish paternity or a support order, or to enforce an order and wants to use the quick locate method to confirm the noncustodial parent's location.

On September 21, 2001, DCSS published notice of its intent to adopt these changes on a permanent basis. The deadline for the submission of public comments was November 5, 2001. At this writing, DCSS has not yet submitted the permanent regulations to OAL for review and approval. [For more information, visit www.childsup.cahwnet.gov/regulations/rulemaking.htm#emergency.]

Impact on Children: The new rules reflect two interacting intended improvements in collection (1) interstate collection enhancement pursuant to federal coordination and authority, and (2) consolidation of state collection within the newly created Department of Child Support Services. These proposed locator enhancement rules are the culmination of a long series of measures designed to increase child support collections nationally. In addition to enhanced birth certificate identification of biological fathers, license renewal bars where delinquencies exist, and other measures, federal and state statutory changes help track absent parents across county and state lines. These measures have increased child support collection from \$17 per month per affected child in 1995 to \$42 per month per child in 2001. While momentous, that increase has occurred against a low base. Children cost much more than \$42 per month to their custodial parents. Newer measures are now targeting the movement of absent parents in order to establish paternity, obtain orders, track income, and enforce support obligations. These rules are likely to facilitate some additional collection. However, the scale of that increase is modest in comparison with the needs of affected children. Additional income — even modest in amount — is important to children in families living below the poverty line. However, reliance on collection from absent parents as a panacea to child poverty is misplaced. Collection may be more important in reducing child poverty over the long run to the extent it influences males not to impregnate women they do not marry.

The important missing element to these and other child support enforcement enhancement (see below) is the failure to make clear to sexually active males the changing odds of successful assessment. Enhanced collection may be more important if it influences decisions to biologically father children who are then dependent upon unwed mothers for sustenance. The proposed rules and related rules do not reflect such a priority. Nor has the state grasped the most important education/public relations campaign opportunity likely to address child poverty: The right of children to be intended by two adults committed to the child they have created.

Child Support: Case Intake Process

On September 10, 2001, DCSS adopted new sections 110041, 110098, 110284, 110299, 110428, 110430, 110473, 110539, 112002, 112015, 112025, 112034, 112035, 112100, 112110, 112130, 112140, 112150, 112152, 112154, 112155, 112200, 112210, 112300, 112301, and 112302, and amended sections 110042, 110431, and 110609, Title 22 of the CCR, and repealed sections 12-103.1-.24, 112-110, and 12-220 of the MPP, on

an emergency basis. These sections are designed to establish a standard process for the initiation of child support services cases. Among other things, the provisions define terms and phrases pertaining to the child support program and the case intake process, articulate the application and referral processes, assert the requirements of case opening, enumerate the appropriate procedures for case processing, stipulate the guidelines for cooperation, and set forth the procedure for denoting the existence of family violence in a particular case.

For example, the provisions pertaining to case opening requirements require local child support agencies to:

- open a case by establishing a case record within 20 days of receipt of either (1) a referral of a CalWORKs, foster care, or medically needy only recipient from the county welfare department; or (2) the application for services form, if the minimum data elements necessary to open a case (the names of the custodial party, noncustodial parent and child(ren), and the signature of the applicant on the application) are provided;
- solicit any additional information and initiate verification of information obtained, as necessary, to provide locate, establishment, or enforcement services;
- open one case naming the most likely alleged father when paternity is at issue and if that alleged father is excluded, change the case record to reflect the next most likely alleged father (the local child support agency shall repeat this action for each alleged father until the father has been identified or all alleged fathers have been excluded);
- provide written notification to a CalWORKs and medically needy only recipient of the requirement to cooperate in all required activities necessary to establish paternity and/or establish, modify, or enforce a support order, as specified, as a condition of continued eligibility for CalWORKs or Medi-Cal, unless only the children are receiving CalWORKs or Medi-Cal benefits, or a good cause claim has been approved by the county welfare department, as specified; and
- mail written notification to the noncustodial parent, if his/her address is known, informing the noncustodial parent of the case opening, and including specified information.

The provisions also require the local child support agency to conduct an initial interview with a custodial party or a noncustodial parent within 10 business days of opening a case, except under specified circumstances; determine cooperation from a custodial party who is a CalWORKs or medically needy only recipient throughout case processing, and not require the custodial party to sign a voluntary declaration of paternity as a condition of cooperation; not make a finding of noncooperation for CalWORKs or medically needy only recipients before they are given the opportunity to attest, under penalty of perjury, that they have no further information about the noncustodial parent and the information already provided is complete and accurate; and screen all custodial parties and noncustodial parents for family violence, as specified, and determine whether there is, or has been, family violence based upon the information provided by a custodial party or a noncustodial parent.

On October 19, 2001, DCSS published notice of its intent to adopt these provisions on a permanent basis. The deadline for the submission of public comments was December 3, 2001. At this writing, DCSS has not yet submitted the permanent regulations to OAL for review and approval. [For more information, visit

www.childsup.cahwnet.gov/regulations/rulemaking.htm#emergency.]

Impact on Children: See comments above.

Child Support: Interstate Cases

On September 24, 2001, DCSS adopted new sections 110250, 110374, 117016, 117019, 117021, 117025, 117030, 117036, 117042, 117047, 117049, 117052, 117054, 117064, 117074, 117080, 117083, 117085, 117089, 117091, 117094, 117200, 117300, 117301, 117302, 117303, 117400, 117401, 117402, 117403, 117404, 117405, 117406, 117407, 117500, 117501, 117502, 117503, 117504, and 117600, Title 22 of the CCR and repealed sections 12-104.433 through 12-104.5 and 12-226 of the MPP, on an emergency basis, in order to set forth the requirements imposed on local child support agencies involved in interstate efforts to collect child support. Specifically, these regulations define terms related to the processing of interstate cases, articulate the requirements of California as both the initiating or responding state in regard to the processing of Title IV-D interstate cases, clarify the conditions under which a local child support agency may execute long arm jurisdiction or direct enforcement activities in place of a two-state interstate process, and incorporate in regulation provisions of the Uniform Interstate Family Support Act.

For example, section 117200 lists the general requirements of asserting long arm jurisdiction, which is the legal authority for one state to assert personal jurisdiction over someone who lives or is served with process in another state. If paternity and support have not yet been established, the local child support agency shall obtain the necessary information to determine whether any basis exists upon which California can assert long arm jurisdiction over the alleged father. Factors supporting the exercise of such jurisdiction include the following: the noncustodial parent is personally served with notice within California; the noncustodial parent submits to the jurisdiction of California by consent; the noncustodial parent resided with the child in California; the noncustodial parent formerly resided in California and provided prenatal expenses or support for the child; the child resides in California as a result of the acts or directives of the noncustodial parent; the noncustodial parent engaged in sexual intercourse in California and the child may have been conceived by that act of intercourse; the noncustodial parent has signed a voluntary declaration of paternity in California; or any other basis consistent with the constitutions of California and the United States for the exercise of personal jurisdiction. Examples of the new regulations are set forth below:

- New section 117301 provides that the duration of a support order is determined by the issuing state's law which defines the age of majority; the duration of a support order may be modified only to the degree it could be modified under the law of the issuing state.

- New section 117400 outlines the appropriate procedure of California as an initiating state. Whenever a local child support agency initiates an interstate case, it must refer the case to the responding state's central registry for action within 20 days of determining that an interstate action is necessary; provide any additional information to the responding state, or notify the responding state when the information will be provided, within 30 days of receiving a request for additional information from the responding state; notify the responding state of any new information regarding a case within 10 days of receiving any such information; and provide a payment record showing a month-by-month

breakdown of amounts owed and paid at the time the case is referred. Also, the local child support agency is required to determine the amount of arrears owed under multiple orders, and ask the responding state to enforce valid orders of accrued arrears, even if the family is no longer on public assistance and no ongoing support order is sought.

- New section 117401 provides that when California is the initiating state and paternity must be established, a local child support agency shall pay for the costs of genetic testing in actions to establish paternity; allow a responding state to select the laboratory and schedule the genetic tests and cooperate in obtaining samples from the parent and child; and request that the responding jurisdiction attempt to secure a judgment against the noncustodial parent to recover a local child support agency's cost for the genetic testing.

- New section 117500 addresses California's obligations as a responding state, and—among other things—provides that within 75 days of receipt of an interstate case from the California Central Registry, the local child support agency shall provide locate services, if the request is for location services or the case does not include adequate information to locate the obligor and/or the obligor's assets; request additional or corrected documentation from the initiating state's Title IV-D agency if the local child support agency is unable to proceed with the case because the provided documentation is insufficient; and process the case to the extent possible pending receipt of the necessary documentation from the initiating state, if the documentation initially received by a local child support agency is insufficient and cannot be remedied without the assistance of the initiating state.

- New section 117501 provides that when California is the responding jurisdiction and genetic tests are requested to establish paternity, a local child support agency shall select the laboratory and provide the laboratory with sufficient information to schedule the genetic testing for the mother, child, and alleged father; notify the initiating state of the genetic testing costs and request payment; attempt to secure a judgment against the noncustodial parent to recover the costs of genetic testing; and reimburse the initiating state for costs of genetic testing, if the costs are recovered by a local child support agency. A local child support agency shall give full faith and credit to another state's judgment of parentage and shall not order genetic tests unless the judgment is vacated in the issuing state.

On November 2, 2001, DCSS published notice of its intent to adopt these changes on a permanent basis. The deadline for the submission of public comments was December 17, 2001. At this writing, DCSS has not yet submitted the permanent regulations to OAL for review and approval. [For more information, visit www.childsup.cahwnet.gov/regulations/rulemaking.htm#emergency.]

Impact on Children: See comments above.

[Update on Previous Rulemaking Packages](#)

Charitable Choice Provisions

SB 516 (Haynes) (Chapter 551, Statutes of 1999) added section 10006 to the Unemployment Insurance Code, requiring DSS and the Employment Development Department (EDD) to adopt regulations that interpret the "charitable choice" provisions contained in section 604a of Title 42 of the United States Code, which allows states to provide vouchers for services that are redeemable at religious organizations, and contain

protections from discrimination for both religious groups and CalWORKs recipients.

On June 30, 2000, DSS published notice of its intent to add new sections 42-713.26 and 42-722 to the MPP. Among other things, the changes would have

- specified that an individual who objects to the religious character of any welfare-to-work service provider to which they are assigned has good cause for not participating in the activity that requires that service until the county provides them with an alternate provider;

- clarified how county welfare departments (CWDs) may utilize charitable, religious, or private organizations to provide services to CalWORKs recipients;

- provided that CWDs must not exercise control over the religious beliefs of any religious organization that provides welfare-to-work activities and services to CalWORKs recipients, and must not require a religious organization to alter its form of internal governance, or remove religious art, icons, scripture, or other symbols;

- specified that religious organizations are not allowed to discriminate against an individual in regard to the provision of services under the CalWORKs program on the basis of religion, religious beliefs, or a refusal to participate in a religious practice;

- specified that religious organizations that contract to provide services under the CalWORKs program are subject to the same regulations as other contractors in regard to accounting for the expenditure of federal and state CalWORKs funds, in accordance with generally accepted auditing principles for the use of such funds under such programs;

- provided that if a religious organization places the federal funds it receives under the CalWORKs program into an account separate from its other funds, then only those funds will be subject to audit; and

- stated that no federal funds given directly to religious organizations to provide services or administer programs under the CalWORKs program are allowed to be spent for sectarian worship, instruction, or proselytization. (For background information on this rulemaking package, see *Children's Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 6.)

Update: On June 29, 2001, DSS published notice of its intent not to proceed with this rulemaking proposal. A related rulemaking proposal commenced in November 2000 by EDD is also on hold at this writing while agency staff researches various constitutional issues.

HEALTH / SAFETY

New Rulemaking Packages

Childhood Lead Poisoning Prevention Fees

The Childhood Lead Poisoning Prevention Act of 1991 requires DHS to provide funding for the detection and prevention of childhood lead poisoning in California by assessing fees upon “manufacturers and other persons...that were formerly and/or are presently engaged in the stream of commerce of lead or products containing lead....” The Act directs DHS to adopt regulations establishing the mechanism and formula for collecting annual fees from those industries responsible for environmental lead contamination.

On July 19, 2001, DHS—on an emergency basis—repealed sections 33001 and 33010, adopted new sections 33001, 33002, 33003, 33004, 33005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, 33013, 33015, 33015, and 33025, and amended

sections 33020, 33030, and 33040, Title 17 of the CCR, in order to standardize procedures for applicants seeking exemptions from payment of the fees. The changes also base the fee assessment on historic market share of lead-containing products, rather than current sales of non-lead products. In addition, a list of examples of products encompassed by the definition of “architectural coating” has been augmented by the addition of varnishes, stains, and lacquers.

According to DHS, the effect of the emergency regulations is to ensure that the Department will continue to assess fees upon industries responsible for sources of childhood lead poisoning, in order to provide funding for case management activities; clarify the process and required elements for applicants seeking exemption from the fees; and comply with the legislative mandates specified in the Health and Safety Code Sections 105310 and 124165.

These regulations would not alter the total fee assessment, which is legislatively limited to a maximum of \$16 million. According to DHS, some businesses may experience a slight increase or decrease in their individual fee assessments. However, historical market share has remained relatively constant and any differences in fee assessments resulting from the shift in the assessment basis are estimated to be nominal.

On August 3, 2001, DHS published notice of its intent to permanently adopt these changes; on November 14, 2001, DHS readopted them on an emergency basis. Regulatory changes regarding the lead fee assessment and collection are exempt from OAL review pursuant to Health and Safety Code section 105310(h). [To view these regulations, visit ccr.oal.ca.gov.]

Impact on Children: The fund affected by these rules reached \$14.4 million in 1995–96, and was suspended for two years after litigation from industry temporarily halted collection. The fee was upheld by the California Supreme Court in June 1997 (*Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866). The new rules allow for the equitable adjustment of fees across the industry in relation to prior production of lead based products, approximating the environmental risk properly assignable to payors.

However, the small funding produced by this Fund is inadequate to protect children from the disproportionate risk young children continue to face from lead contamination. Blood level screenings have increased under Medi-Cal over the last decade. In 1998, the Department of Health Services undertook its own survey, concluding that 37% of public elementary schools have deteriorating lead based paint sufficient to constitute a hazard, and more importantly, finding that 18% have lead levels in their drinking water higher than the federal action level of 15 parts per billion.

The money available from the Fund is insufficient for monitoring, mitigation, or treatment. Regrettably, its existence may in some measure impede alternative funding, since it may be relied upon to address a problem far beyond its capability. For a detailed discussion of the problem and the Fund, see the Children’s Advocacy Institute’s *California Children’s Budget 2001–02* (San Diego, CA; June 2001) at 4-54 to 58, available at www.sandiego.edu/childrensissues.

Permanent Amusement Rides — Technical Requirements

On March 30, 2001, the Occupational Safety and Health Standards Board published

notice of its intent to adopt new sections 3195.1–3195.15, Title 8 of the CCR, regarding the safe installation, repair, maintenance, use, operation, and inspection of permanent amusement rides. (See below for an update on a related regulatory package relating to the permanent amusement ride safety inspection program.) Among other things, the proposed regulations would provide the following:

- The owner/operator shall ensure that the design and manufacture of permanent amusement rides placed in service after the effective date of these regulations complies with the American Society for Testing and Materials (ASTM) F 1159-97a “Standard Practice for the Design and Manufacture of Amusement Rides and Devices.”

- Cars or other permanent amusement ride components shall be provided with emergency brakes when collisions are likely to cause injury or damage if normal controls fail. However, ride systems designed for controlled collisions, such as bumper cars, do not require emergency brakes.

- Rides that use inclined tracks shall be provided with automatic anti-rollback devices.

- A permanent amusement ride capable of exceeding its maximum safe operating speed shall be provided with a maximum speed-limiting device.

- Parts of permanent amusement rides with which a passenger may come in contact shall be smooth, free from sharp, rough, or splintered surfaces, edges and corners. Those parts shall also be free of protruding studs, bolts, screws, or other projections. Interior parts that a passenger may be forcibly thrown into by the action of the ride shall be adequately padded to prevent injury to passengers.

- Self-powered rides operated by passengers shall have the driving mechanism guarded to prevent passengers from gaining access to the mechanism. The overhead screen of bumper car type rides shall not have holes.

- A restraining or containing device shall be installed in or on tubs, cars, chairs, seats, gondolas, or other carriers if it is deemed necessary after inspection by DOSH-authorized representative. Passenger restraining or containing devices used in or on tubs, cars, chairs, seats, gondolas, and other carriers shall be designed, constructed, installed, and maintained to retain, restrain or support the passenger safely. The fastenings shall be of a type that cannot be released inadvertently by the passenger or by other accidental means.

- Belts, bars, footrests, and other equipment used to enter, exit, or support passengers shall be provided and maintained in a safe condition. The equipment, anchorage, and fastening shall be of sufficient strength to restrain the passengers.

- Permanent amusement rides shall be operated and controlled only by authorized personnel. Authorized personnel shall be in the immediate vicinity of the operating controls during operation, even if automatic devices are used to control the time cycle of the ride.

- Permanent amusement rides shall have a stopping device within reach of the authorized personnel at all times.

- A permanent amusement ride shall not be used or operated in such a way as to endanger any person.

- Areas in which bystanders may be endangered shall be fenced, barricaded, or otherwise guarded against public intrusion.

- The owner/operator shall maintain for as long as the ride is in operation, and

make available to DOSH for review during the annual records audit and inspection all of the following records including, but not limited to (1) employee training records; (2) maintenance, repair, and inspection records for each permanent amusement ride; (3) records of accidents covered by section 344.15(a), Title 8 of the CCR; (4) records of accidents associated with permanent amusement rides due to failure, malfunction, use, or operation of the ride, resulting in any injury not covered in 3195.14(a)(3); and (5) records of incidents associated with permanent amusement rides due to malfunction, including failure and use of the ride, resulting in no injury.

- The information on accidents and incidents recorded shall include but not be limited to the (1) date the accident/incident occurred and events causing or related to the accident/incident; (2) name, address, age, and telephone number of person(s) involved, including but not limited to person(s) injured, ride operator, and witness(es); (3) name of the ride and manufacturer of the ride where or on which the accident/incident occurred; (4) description of accident/incident; and (5) description of injury and treatment provided.

- Each accident/incident shall be classified according to the following categories based on the reported or observed reliable information: (1) "on ride accident/incident" — accident/incident occurred while patron was riding the amusement ride during the operation of the ride; (2) "loading and unloading accident/incident" — accident/incident occurred while patron was within the area designated for loading and unloading of the amusement ride; (3) "queue line accident/incident" — accident/incident occurred while patron was in line for the amusement ride; (4) "Other" — accident/incident occurred in a location other than described above.

OSB held a public hearing on these proposed regulations on May 17, 2001, in Los Angeles. At this writing, the rulemaking package awaits adoption by OSB and review and approval by OAL. [For more information, visit www.dir.ca.gov/OSHSB/aquaticdevices0.html.]

Impact on Children: Legislation enacted in 2000 subjects amusement parks in California to minimal regulation for the safety of riders, particularly children. As the sponsors of the legislation argued, building permits and prior inspections are required for minor building projects, but machinery which moves children at high speed over concrete lacked inspection or standards. A series of highly publicized accidents stimulated the legislation. It is unclear how many deaths and serious injuries have been caused by park equipment malfunctions or otherwise because of the lack of reporting attributable to amusement park operations. However, the legislation focused some public attention on the issue, resulting in publicity given to a series of accidents and substantial injuries at well known amusement parks in the state.

A related rulemaking package drafted by the Department of Industrial Relations' Division of Occupational Safety and Health is discussed below.

[Update on Previous Rulemaking Packages](#)

Permanent Amusement Rides — Safety Inspection Program

On September 15, 2000, the Department of Industrial Relations' Division of Occupational Safety and Health (DOSH) published notice of its intent to implement the Permanent Amusement Ride Safety Inspection Program (Labor Code § 7920 *et seq.*),

governing the safe installation, repair, maintenance, use, operation, and inspection of permanent amusement rides. Specifically, DOSH proposed to adopt new sections 344.5, 344.6, 344.7, 344.8, 344.9, 344.10, 344.11, 344.12, 344.13, 344.14, 344.15, 344.16, and 344.17, Title 8 of the CCR. The new regulations implement Labor Code section 3924, which requires each owner of a permanent amusement ride to annually submit to DOSH a certificate of compliance. Among other things, the regulations would require owners and operators to include certain identifying information with the certificate, such as a written declaration stating that, within the preceding twelve-month period, the permanent amusement ride was inspected by a qualified safety inspector (QSI), and that the permanent amusement ride is in material conformance with applicable requirements.

The regulations also include the following provisions:

- DOSH must conduct an operational inspection of each new permanent amusement ride. A DOSH QSI must conduct the inspection before the ride is placed in operation and opened to public, and DOSH must conduct an operational inspection after any major modification has been made to a permanent amusement ride.

- A QSI must inspect each permanent amusement ride at least once each year. A permanent amusement ride found to be unsafe as the result of an annual QSI inspection must be closed to the public and not be reopened to the public until all necessary repairs and modifications have been completed and certified as completed by a QSI.

- A DOSH QSI must conduct an annual audit on the records pertaining to each permanent amusement ride, including but not limited to record of accidents, records of employee training, and records of maintenance, repair, and inspection of the ride. A discretionary DOSH QSI inspection of a permanent amusement ride may determine whether operation of the permanent amusement ride is safe. (For background information on this rulemaking package, see *Children's Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 6.)

Update: One of the most important provisions in this rulemaking package is proposed section 344.15, which would require each owner or operator of a permanent amusement ride to report or cause to be reported immediately to DOSH each known accident where maintenance, operation, or use of the permanent amusement ride results in the death of a patron, or results in a patron injury requiring medical service other than ordinary first aid. The original language proposed by DOSH defined the term “medical service other than ordinary first aid” to mean “examination, diagnostic testing, treatment or observation beyond that which occurs at the location of the accident, when provided by or under the supervision of a physician licensed to practice medicine in California or in any other State, in response to a serious medical concern that is related directly to the accident.” However, amusement park operators strenuously objected to the proposed language, and—to the dismay of child advocates and others concerned for the health and safety of children—convinced DOSH to omit this definition entirely from the September 5, 2001, revised version of the proposed regulations. As revised, section 344.15 requires each operator of a permanent amusement ride to immediately report or cause to be reported each known accident where the maintenance, operation, or use of the permanent amusement ride results in a death or serious injury to any person, unless the injury does not require medical service other than ordinary first aid; however, the regulatory provisions fail to define what constitutes “medical service other than ordinary first aid.”

Thus, the rules as adopted by DOSH do not reflect the more expansive threshold definition for reporting favored by child advocates. Correction of this failure will require child advocates to overcome industry lobbying in a new rulemaking proceeding, or legislation commanding a more useful threshold standard on point for child protection.

On October 30, 2001, OAL approved the revised rulemaking package. [For more information, visit <http://ccr.oal.ca.gov>; see above for a related regulatory package relating to permanent amusement ride technical requirements.]

Screening for Childhood Lead Poisoning

On October 10, 2000, DHS adopted—on an emergency basis—Chapter 9, Title 17 of the CCR, commencing at section 37000, to establish a standard of care on screening for childhood lead poisoning with which physicians, nurse practitioners, and physician's assistants providing primary care to children from age 12 months to age 72 months must comply; on February 8, 2001, DHS readopted the regulations on an emergency basis. Among other things, DHS' proposed regulations would require doctors to tell the parents of young children about lead poisoning, and require doctors to either test or evaluate all children for lead poisoning. Doctors would also be required to do the following:

- with the consent of the parent(s), test all children in certain public programs such as Medi-Cal, CHDP, Healthy Families, WIC, and similar programs;
- ask the parents of other children whether the children are around old peeling paint or places being fixed up (if the answer is “yes,” the doctors are to test the children’s blood (with the consent of the parent(s)));
- screen these children when they are one year old and again when they are two years old; and
- screen children whenever they find out a child less than six years old was not screened at the right time. (For background information on this rulemaking package, see *Children’s Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 9.)

Update: On June 4, 2001, DHS readopted the changes on an emergency basis. On November 19, OAL approved DHS' permanent adoption of these provisions. [To view these regulations, visit ccr.oal.ca.gov.]

Healthy Families Program—Application Assistance

On March 2, 2001, MRMIB published notice of its intent to adopt changes to sections 2699.6619 and 2699.6629, Title 10 of the CCR, to—among other things—allow participating Healthy Families Program health plans to provide application assistance; expand the initial health plan transfer period from thirty days to three months; and clarify the plan transfer process at open enrollment to ensure that Healthy Families Program subscribers maintain enrollment in a plan that serves their county of residence. (For background information on this rulemaking package, see *Children’s Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 13.)

Update: These changes were approved by OAL on October 23, 2001. [To view these regulations, visit ccr.oal.ca.gov.]

CHILD CARE / CHILD DEVELOPMENT

New Rulemaking Packages

CalWORKs Stage 2 and Stage 3 Child Care Regulations

On June 28, 2001, the Superintendent of Public Instruction adopted—on an emergency basis—Chapter 19.5 (consisting of sections 18400, 18405, 18406, 18407, 18408, 18409, 18409.5, 18410, 18411, 18412, 18413, 18414, 18415, 18416, 18417, 18418, 18419, 18420, 18421, 18422, 18423, 18424, 18425, 18426, 18427, 18428, 18429, 18430, 18431, 18432, 18433, and 18434), Title 5 of the CCR, to provide guidance to child care contractors on administering the second and third stages of CalWORKs child care services to all eligible families.

Among other things, the proposed regulations clarify the eligibility requirements for recipients of CalWORKs Stage 2 and Stage 3 child care; set forth child care contractor responsibilities for maintaining family eligibility and data file information, the limitations on child care provider payments, and the requirements for parent fees and parent co-payments for Stage 2 and Stage 3; provide guidance for Stage 3 child care contractors on eligibility and prioritization of families when child care funding is insufficient to serve all eligible families and direction on the actions to be taken by child care contractors if subsequent Stage 3 child care funds become unavailable; and specify contractor requirements for data reporting, program quality, and due process for parental appeals and notices of adverse action.

For example, Chapter 19.5 contains the following provisions:

- CalWORKs Stage 2 child care services may begin when child care is available through a local Stage 2 program and one of the following occurs: (1) the county welfare department determines that the adult’s work or work activity is stable; (2) the adult is transitioning off CalWORKs cash aid; or (3) a family applies and is found eligible for CalWORKs Stage 2 services.

- A family is eligible to receive CalWORKs Stage 2 child care services if all of the following conditions are met: (1) the family is and remains income eligible (the family’s adjusted monthly income based upon the family size is at or below 75% of the state median income); (2) the adult or minor teen parent is responsible for the care of the child needing child care; and (3) the adult or minor teen parent is (a) a CalWORKs cash aid recipient, (b) a former CalWORKs cash aid recipient who received such cash aid within the last 24 months; or (c) determined eligible for diversion services by the county welfare department.

- If child care is reimbursed with state funds, the parent(s) and any other adult whose income is counted toward Stage 2 eligibility must each meet one of the following requirements: (1) be employed; (2) be seeking employment, but not to exceed sixty working days in the fiscal year; (3) be participating in a job training and education program leading directly to a recognized trade, paraprofession, or profession; (4) be participating in job retention services as approved by the county welfare department; or (5) be incapacitated.

- If child care is reimbursed with federal funds, the parent must meet one of (1)–(4) set forth directly above, and any other adult whose income is counted toward Stage 2 eligibility must meet one of requirements (1)–(5) set forth directly above.

- If a parent chooses a provider with a usual and customary rate exceeding 1.5

standard deviations above the mean market rate for the type of care provided, the parent may receive services from that provider, in which case the parent is responsible for the difference between the maximum payment rate and the provider's rate.

■ A family is eligible to receive CalWORKs Stage 3 child care services if all of the following conditions are met: (1) the family is and remains income eligible (the family's adjusted monthly income based upon the family size is at or below 75% of the state median income); (2) the adult or minor teen parent is responsible for the care of the child needing child care; and (3) the adult or minor teen parent is (a) a former CalWORKs cash aid recipient and is in his/her 24th month of eligibility for CalWORKs Stage 1 and/or 2 after leaving CalWORKs cash aid, or (b) a diversion services recipient and is in his/her 24th month of eligibility for CalWORKs Stage 1 and/or Stage 2 child care.

On August 17, 2001, the Superintendent published notice of her intent to adopt these regulations on a permanent basis, and on October 1, 2001, held a public hearing on the rulemaking package. On October 26, 2001, the Superintendent re-adopted the package on an emergency basis. At this writing, the permanent regulations have not yet been submitted to OAL for review and approval. [For more information, visit www.cde.ca.gov/regulations/.]

Impact on Children: The rules implementing CalWORKs child care skirt the three most important problems confronting families living below the poverty line: (1) the lack of child care supply in urban centers or otherwise accessible to the CalWORKs population, (2) lack of assured child care quality (a cognitive component, reliable licensing, and standards), (3) the cut-off of child care to CalWORKs families at the two-year mark post-employment.

The qualifications in the proposed rules allow impoverished parents to receive child care as they engage in training and look for work. And the federal applicable statute (the Personal Responsibility and Work Reconciliation Opportunity Act of 1996) requires states to offer "adequate child care" to those who are now required to work. The rules reflect such provision for the two-year period allowed TANF recipients before they must obtain private employment or are employed publicly (CalWORKs requires counties to provide public or public service employment for all non-disabled and qualified CalWORKs participants within two years; see discussion above). However, "stage 3" child care is critical — care available to persons once they have exited the TANF rolls and have achieved employment. Under current budgetary constraints, that care is assured for no more than two years — a period now running out for hundreds of thousands of parents. At that point, child care assistance depends upon the overall supply of subsidy available to "working poor" families who have not been on welfare or are otherwise not subject to CalWORKs.

However, few newly-employed parents achieve a raise sufficient to pay the \$3,000 to \$7,000 per year per child required for child care (depending upon location and age of children). Complicating matters further, where private employment is not obtained and public (or subsidized public service) employment is provided, it need be continued for the same limited two-year period. The two-year mark limitation condemns most of those families leaving TANF rolls back onto those rolls, with costs to children outlined in discussion of proposed CalWORKs rules above.

For a detailed discussion of this and related child care regulatory issues, see the Children's Advocacy Institute's *California Children's Budget 2001-02* (San Diego, CA;

June 2001) at 6-23 to 28, available at www.sandiego.edu/childreissues.

Child Development Contractor's Responsibility

Current regulations set forth due process requirements for recipients of child care and development services. When the Superintendent of Public Instruction decides to make no offer of continued funding to a contractor, families receiving child care services from that contractor have a claim for continuity of service. Section 18302, Title 5 of the CCR, gives the Superintendent authority to access family files when contractors have received a notice of termination in order to ensure that recipients of child care services from the terminated contractor continue to receive child care services from another contractor. However, neither section 18302 nor any other regulation currently authorizes the Superintendent to access family files when she decides not to offer continued child care funding to a contractor. Consequently, in the event that funding is not continued, the Superintendent may not have access to family files in order to transfer the recipients to another child care services contractor, and thereby ensure continued child care services for the family.

On August 17, 2001, the Superintendent of Public Instruction published notice of her intent to amend section 18302, Title 5 of the CCR, to provide guidance on a child care and development contractor's responsibility after notice of termination or notice of decision to make no offer of continued funding. Specifically, the proposed amendment would enable the Superintendent to access family files from all contractors to ensure that families continue to receive child care services.

The Superintendent held a public hearing on the proposed change on October 1, 2001, in Sacramento. On November 6, 2001, the amendment was approved by OAL. [For more information, visit www.cde.ca.gov/regulations.]

Impact on Children: Continuation of child care services permits the continued employment and educational activities of parents in need of subsidized child care services, and the continued participation of families in California's CalWORKs program. Recipients of child care services participating in the CalWORKs program need child care services to ensure participation in their welfare-to-work plan. If CalWORKs families are unable to participate in their welfare-to-work plan, their federal financial participation in California's Temporary Assistance for Needy Families (TANF) program could be jeopardized. It is critical that CalWORKs families continue to receive child care services.

Civil Penalty Clarification

California law provides that prior to an individual's presence or employment in specified facilities, including child care facilities and foster care facilities, the individual must have fingerprints submitted for purposes of a criminal background check; the law provides for the imposition of an immediate civil penalty of \$100 per violation on a licensee who permits a person who violates this requirement to be present in a facility. On March 30, 2001, DSS published notice of its intent to adopt new sections 80055.1, 87054, 85055.1, 87455.1, 87855.1, 88055.1, 101198.1, 102395, and 102402.1, and amend sections 80054, 87454, 87854, 101195, Title 22 of the CCR, to implement these statutory provisions. The changes also clarify other provisions regarding the imposition of civil penalties, such as the circumstances under which DSS will impose progressive civil

penalties on licensees who continue to violate the same requirement. Among other things, the changes provide the following:

- The transfer, surrender, forfeiture, or revocation of a licensee shall not affect the licensee's responsibility for paying any civil penalties accrued while the license was in effect.

- DSS has the authority to deny or revoke any license for failure to pay civil penalty assessments.

- When a child care center or foster care facility is cited for a deficiency and violates the same regulation subsection within a twelve-month period, the facility shall be cited and an immediate penalty assessment of \$150 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.

- For child care centers and foster care facilities, an immediate penalty of \$100 per cited violation shall be assessed for the failure to submit fingerprints on any individual required to be fingerprinted by applicable law. Additionally, child care centers will be assessed an immediate penalty of \$100 per cited violation for failure to provide a copy of the "Addendum to Notification of Parent's Rights Regarding Exclusion" of an individual from the home, to one parent or authorized representative of every child in care; failure to provide a copy of the "Addendum to Notification of Parent's Rights Regarding Reinstatement" permitting an individual to return to the home, to every parent or authorized representative who received a copy of the "Addendum to Notification of Parent's Rights Regarding Exclusion" and whose child is still in care; failure to obtain, and keep in the home, a parent's or authorized representative's signature indicating that he/she has been provided with each Addendum; and failure to provide signed addenda to DSS, when requested.

On July 27, 2001, OAL approved DSS' adoption of these changes. [To view these regulations, visit ccr.oal.ca.gov.]

Impact on Children: Prior to child care regulatory reform legislation in the mid-1990s, DSS had two choices where it inspected a licensed child care facility and discovered violations: issue a sanctionless warning, or suspend/revoke the facility's license. The new legislation gave DSS a middle ground — the imposition of civil penalties sufficient to deter violations but not so harsh as to diminish supply or cause disruption to affected families — particularly given current supply shortages.

The rules spell out penalty amounts for a series of violations related to new requirements imposed on licensees to check those persons interacting with children. A number of children in child care and foster care facilities have been victimized by child molesters and abusers. Some of these persons seek out employment in such facilities due to their predilections. The result has been tragic for many affected children.

EDUCATION

New Rulemaking Packages

Reclassification of English Learners

Current regulations providing guidance on English learners are contained in several locations within Title 5 of the CCR. On November 23, 2001, the Board of Education published notice of its intent to repeal sections 4304, 4306, 4311, and 4312, and renumber other existing provisions, in order to provide one coherent system of regulations on English learners. The revised regulations would include the following provisions:

- Revised section 11303 would require that the procedures used to reclassify a pupil from English learner to proficient in English shall include, but not be limited to, a responsible administrative mechanism for the effective and efficient conduct of the language reclassification process, including specified procedural components.

- Revised section 11304 would require school districts to monitor the progress of reclassified pupils to ensure correct classification and placement.

- Revised section 11305 would require school districts to maintain documentation of multiple criteria information, participants, and reclassification decisions in the pupil's permanent records.

- Revised section 11306 would require school districts reporting the presence of English learners to conduct an annual assessment of the English language development and academic progress of those students.

- Revised section 11307 would require, among other things, that all pupils whose primary language is other than English, and who have not been previously assessed or are new enrollees to the school district, have their English language skills assessed within thirty calendar days from the date of initial enrollment.

- Revised section 11308 would require that advisory committees on programs and services for English learners be established in each school district with more than fifty English learners in attendance, and in each school with more than twenty English learners in attendance. The parents or guardians of English learners shall elect the parent members of the school advisory committee, which have specified responsibilities.

- New section 11309 would specify that Education Code sections 310 and 311 place decisionmaking authority for selecting English learner educational options from those alternatives made available at the school in the parents or guardians of pupils who are English learners. Among other things, section 11309 provides that in order to facilitate parental choice of program, all parents and guardians must be informed of the placement of their children in a structured English immersion program and must be notified of an opportunity to apply for a parental exception waiver; the notice shall also include a description of the locally-adopted procedures for requesting a parental exception waiver, and any locally-adopted guidelines for evaluating a parental waiver request.

- Among other things, new section 11310 requires school district governing boards to submit any guidelines or procedures for parental exemption waivers to the Board of Education for review, upon written request.

- New section 11315 provides that, in distributing funds authorized by Education Code sections 315 and 316, the Superintendent of Public Instruction shall allocate the fund and local educational agencies shall disburse the funds at their discretion consistent with specified factors.

The Board is scheduled to hold a public hearing on these proposed changes on January 10, 2002, in Sacramento. [For more information, visit www.cde.ca.gov/regulations.]

Impact on Children: Currently, 35% of California school children do not speak English as their first language, with the percentage higher in the lower grades. The white population of children in California public school has fallen to 35.9%, with most of the non-white increase Latino or Asian-American. Many of these children (about 25% of the state's public students) are considered to be "Limited English Proficiency" (LEP). The electorate's enactment of Proposition 227 in 1998 requires such students to be placed in one-year sheltered "English immersion" classes and then mainstreamed into regular classrooms. The initiative requires the alteration of the state's previous bilingual programs and the rerouting of funds into immersion classes. For a discussion of the demographics of California's children and the provisions of Proposition 227, see Children's Advocacy Institute's *California Children's Budget 2001-02* (San Diego, CA; June 2001) at 7-3 to 4, and 7-22, available at www.sandiego.edu/childreissues.

These rules implement the new Proposition 227 system. Data supports some of the criticism of the previous bilingual system; for example, its overly gradual exposure of LEP students to English may have delayed language skill development and left too many graduating students without adequate English skills to advance in a society where English remains the primary language. And experience supports the intuitive judgment that children are able to learn a new language more quickly if immersed in it. Nevertheless, the mechanistic approach of the initiative is deeply troubling, because circumstances for optimum learning in English vary widely. For example, younger students may absorb English as a second language somewhat more quickly than will older students where another tongue has become imprinted. Further, some languages are more difficult to bridge into English, particularly Asian languages. To allow no more than one year for the full mainstreaming of a five-year-old Latino child who speaks English at home may work well, but may not fit a twelve-year-old Lao child just starting to learn English. The limitation of one year for the latter child condemns him or her to marginal substantive understanding across many substantive subject areas while being mainstreamed. In contrast, a two- to three-year period of bilingual transition for such students may enable quick English learning without sacrificing as much learning in other substantive courses. Such refinements are not easily amenable to the sloganeering approach of initiative campaigns.

The proposed rules do provide for monitoring of English learning progress. They also allow for parental requests for waiver from English immersion. The bases for granting such waivers is unclear and the rules do not provide definitive guidance. The rules seem to establish a "local control" model which is not entirely consistent with the categorical spirit of the proposition. While such delegation may allow more children to transition more gradually into English-only classes, it implies inconsistency in such decisionmaking across the state. It is unclear why regional or school district or individual school different judgments are germane. Child advocates argue that if there is to be variation, it should be based on the best interests of the child — which will vary more by child than by school locale.

The allowance within the Proposition and these rules for exceptions from quick immersion may be problematical given the underlying problem of financial rerouting away from bilingual education. If bilingual courses are not taught, the granting of an exemption to allow their attendance becomes moot.

California English Language Development Test

Legislation enacted in 1997 required the Superintendent of Public Instruction to select or develop a test that assesses the English language development of pupils whose primary language is a language other than English; 1999 legislation further required school districts to assess the English Language development of all English learners, and 2000 legislation required the Superintendent of Instruction and the Board of Education to establish a period of time for assessment of English language development. On May 25, 2001, the Board published notice of its intent to adopt Subchapter 7.5, consisting of sections 11510, 11511, 11511.5, 11512, 11512.5, 11513, 11513.5, 11514, 11516, 11516.5, and 11517, Title 5 of the CCR, to provide guidance on administration of the California English Language Development Test.

The proposed regulations are intended to clarify what is required of school districts administering the assessment of English language development, as required by Education Code section 313. The assessment is referred to in the proposed regulations as the California English Language Development Test. The proposed regulations define key terms in the legislation and specify requirements for test administration, test security, record keeping, accommodations for students with disabilities, apportionment, and treatment of cheating. To eliminate duplication of effort and paperwork by school districts, the proposed regulations, where feasible, are consistent with the requirements for the other statewide testing programs.

Among other things, the regulations provide the following:

- Any pupil whose native language is other than English, and for whom there is no record of results from an administration of an English language development test, shall be assessed for English language proficiency by using the California English Language Development Test within 30 calendar days of enrollment in the school district. Continuing students will be tested during the annual assessment window at the school sites.
- For each student assessed using the California English Language Development test each school district shall notify parents or guardians of the pupil's results within 30 calendar days following receipt of results of testing from the test publisher.
- Each school district shall report to the CDE the unduplicated count of the number of pupils to whom the California English Language Development Test was administered for annual or initial assessment during the twelve-month period prior to October 31 of each year.

The English language development test will have consequences for individual students, schools, and school districts. For example, a student's identification as an English learner, designation of proficiency level, and redesignation as proficient in English will affect his/her instructional program, while identification of students as English learners will affect school district funding for the English Language Acquisition Program.

The Board held a public hearing on July 12, 2001, in Sacramento, and subsequently adopted the new provisions. On October 4, 2001, OAL approved the regulations. [For more information, visit www.cde.ca.gov/regulations.]

Impact on Children: See discussion above. Note that a school with a large population of LEP students is at a disadvantage in the language related standardized testing now required of students and schools. A proper gauge of comparative progress must take into account the starting point of English proficiency of respective schools. It can affect not

only the cited funding for English development, but the larger incentive (and sanction) systems set up for schools that fail to show improvement. Some of that failure can be the result of an influx of new LEP students. Accordingly, the ranking of schools properly takes into account this important variable. While the factors here cited will be used for English development funding (with concentration on schools with high numbers of students needing help), many education experts advocate the adjustment of overall test scores for generic aid and school ranking.

Criteria for the Review and Approval of Charter School Petitions

AB 544 (Lempert) (Chapter 24, Statutes of 1998) required the Board of Education to consider approval of charter schools that had previously been denied approval by a local education agency. AB 2659 (Lempert) (Chapter 580, Statutes of 2000) required the Board to—on or before June 30, 2001—adopt criteria to be used for the review and approval of charter school petitions. On August 24, 2001, the Board published notice of its intent to adopt section 11967.5, Title 5 of the CCR, to provide the necessary criteria for the Board to evaluate charter school petitions in a consistent and comprehensive manner, and to provide necessary clarity and guidance to charter school petitioners who may be considering appealing a charter denial to the Board.

Among other things, section 11967.5 would provide the following:

- A charter petition shall be consistent with sound educational practice if, in the Board's judgment, it is likely to be of educational benefit to pupils who attend. A charter school need not be designed or intended to meet the educational needs of every student who might possibly seek to enroll in order for the charter to be granted by the Board.

- A charter petition shall be an unsound educational program if it is either (1) a program that involves activities that the Board determines would present the likelihood of physical, educational, or psychological harm to the affected pupils, or (2) a program that the Board determines not to be likely to be of educational benefit to the pupils who attend.

- The Board shall take the following factors into consideration in determining whether charter petitioners are demonstrably unlikely to successfully implement the program: (1) if petitioners have a past history of involvement in a successful charter school operation; (2) if petitioners are unfamiliar, in the Board's judgment, with the content of the petition or the requirements of law that would apply to the proposed charter school; (3) if petitioners presented an unrealistic financial and operational plan for the proposed charter school; and (4) if petitioners personally lack the necessary background in specified areas critical to the charter school's success (such as curriculum, instruction, assessment, finance, business management, organization, governance, and administration), and do not have plans to secure the services of individuals who have the necessary background in those areas.

Additionally, the section sets forth the criteria for the Board to determine whether the charter petitioner provides a reasonably comprehensive description of the following fifteen elements considered to be essential to the successful operation of the school: education program, pupil outcomes, pupil assessment measures, governance and parent participation, staff qualifications, pupil health and safety, racial and ethnic balance, admission requirements, audit process, pupil suspension and expulsion, staff retirement,

attendance alternatives, employee return rights, disputes with chartering entity, and public employer of record.

The Board held a public hearing on proposed section 11967.5 on October 10, 2001, in Sacramento. At this writing, the section awaits review and approval by OAL. [For more information, visit www.cde.ca.gov/regulations.]

Impact on Children: The charter school option was partly a compromise advanced in lieu of a more competitive “voucher” option, which would allow parents to select any school — financed by vouchers approximating public spending per child. California has advanced three types of reforms to provide some choices to parents. First is the provision of school choice within a district. If there is room, a parent may choose to send a child to any public school within a district’s jurisdiction. Second is the package of reforms under the Davis Administration to test students and to provide funds to low performing schools, with the threat of state takeover where improvements are not forthcoming. Third is the option addressed in these rules, the right of persons to petition for the creation of new schools separate and apart from existing institutions. Such an option not only provides a measure of competition for existing schools, but allows for creative experimentation.

The charter school option began in California in 1992, and limited charter schools to no more than 100 statewide. That number was reached in December 1995, and the legislature authorized up to 250 such schools as of 1998–99, with an additional 100 schools authorized each fiscal year thereafter, bringing the total current maximum to 550.

The Little Hoover Commission’s 1996 study of charter schools was generally favorable. Some have invested heavily in electronic teaching, performing arts or vocational training in an area of interest, or have embraced Montessori or Waldorf educational theory. Contrary to the fears of early critics, charter schools thus far generally mirror the demographics of the public school population — they have not markedly “skimmed the cream” of upper middle class students.

A Charter School Revolving Loan fund provides up to \$50,000 in start up costs for such schools, and “opportunity scholarships” for attending students exceed \$50 million annually — funds available to the bottom 5% of performing students in public school to use in the charter school setting. Meanwhile, some philanthropists and foundations are providing \$1,000 per year scholarships to low income families to provide school choice options (including parochial options as well as other public or charter school opportunities).

The entry requirements for a new school in the context of this expansion of the option become important. The new proposed rules are generous and liberal in allowing new charter schools to win their required approval from the school districts within their respective territorial jurisdictions. That expansive spirit for approval is consistent with the low entry barrier spirit of the charter school experiment. However, the rules do not provide for the level of strict accountability commensurate with such initial permissiveness. Where a school is failing, students may be irreparably affected. Each year that passes deepens their disadvantage for optimum employment and higher education. Many of the “off-stream” educational efforts in the state (e.g., many group home “schools” attended by dependent foster children) have a record of poor performance in educating those children within their charge. Although charter schools may be within the generic public school accountability ambit of the new testing system under the Davis Administration, some

education experts contend that they should be on a much shorter leash, and subject to close monitoring and performance standards. Many of the approaches of these schools may be evaluated from their similar analogues among the now numerous charter and other experimental schools extant. Where a methodology is found to be consistently deficient, the burden should shift to its proponents to demonstrate its likely success where failure portends harm to affected students. Such a regime of “I’m from Missouri — show me,” is not provided in the rules in force or as proposed.

For a discussion of the charter school option and other proposed educational reforms over the past decade, see the Children’s Advocacy Institute’s *California Children’s Budget 2001–02* (San Diego, CA; June 2001) at 7-22 to 27, available at www.sandiego.edu/childreissues.

Safe Schools Assessment Program

Penal Code section 628 *et seq.* seeks to ensure that adequate data and information on the type and frequency of school crime occurring on public school campuses are available for the development of effective crime prevention programs and techniques. Annually, all school districts and county offices of education in California are required to submit complete and accurate school crime data to the CDE. By March 1 of each year, CDE is required to submit an annual school crime report to the Legislature, including a summary of the statewide aggregated crime data.

On March 23, 2001, the Board published notice of its intent to amend sections 700, 701, 702, and 704, Title 5 of the CCR, to modify the types of school crime data that public schools must report annually to CDE. Among other things, the Board is revising its California Safe Schools Assessment School Crime Reporting Form to include the reporting of hate crime and hate motivated incidents. As originally defined by the Board, the term hate crime means an act or attempted act against the person or property of another individual or institution which in any way manifests evidence of hostility toward the victim because of his or her actual or perceived race, religion, disability, gender, nationality, or sexual orientation. This includes, but is not limited to, threatening telephone calls, hate mail, physical assault, vandalism, cross burning, destruction of religious symbols, or fire bombings. The term hate motivated incident means an act or attempted act which constitutes an expression of hostility against a person or property or institution because of the victim’s real or perceived race, religion, disability, gender, nationality, or sexual orientation. A hate motivated incident can be using bigoted insults, taunts, or slurs; distributing or posting hate group literature or posters; defacing, removing, or destroying posted materials or announcement; or posting or circulating demeaning jokes or leaflets.

The Board held a public hearing on these proposed changes on May 10, 2001 in Sacramento. Following the end of the public comment period, the Board slightly revised its proposed changes to provide that the term hate crime includes threats or hate mail sent by electronic communication, and the term hate motivated incident includes those expressions of hostility sent by electronic communication. The Board subsequently adopted the amendments, which were approved by OAL on August 1, 2001. [For more information, visit www.cde.ca.gov/regulations.]

Impact on Children: These rules are the culmination of the Columbine and other school shootings, including one in San Diego County. Such events lead to substantial

media coverage due to their drama. That coverage in turn leads to responsive political actions by officials. In fact, juvenile crime is down substantially over the last decade — across virtually all categories. Violent crime is particularly decreasing. For example, juvenile homicide arrest rates have more than halved since 1991.

Where juvenile crimes do occur, they happen disproportionately during the period after school and not on school grounds. Statistically, schools are relatively safe places for California children. Nevertheless, the public and repetitive attention to exceptional events has created heightened fear not only among adults, but among students. While still a small number, an increasing percentage of students feel “unsafe” at school.

The proposed rules provide for more complete and uniform crime related data gathering by schools, and implement “hate crime” legislation enacted over the last several years. The rules could have some beneficial impact on children, but that effect is limited by (1) the lack of real evidence that the problems addressed are endemic or increasing, and (2) their consumption of additional school resources (e.g. to gather and transmit data) for an uncertain purpose.

For discussion of juvenile justice data and school security status, see the Children’s Advocacy Institute’s *California Children’s Budget 2001–02* (San Diego, CA; June 2001) at 9-4 to 7, and 9-12 to 14, available at www.sandiego.edu/childreissues.

California Student Aid Commission

SB 1644 (Ortiz) (Chapter 403, Statutes of 2000) authorized new Cal Grant entitlement award programs for California students in the high school graduating class of 2000–01 pursuing a postsecondary education, and revised and reenacted the previous Cal Grant competitive award programs for these students as well as existing postsecondary students seeking a Cal Grant competitive award. On April 20, 2001, the Student Aid Commission published notice of its intent to adopt sections 30007, 30008, 30009, 30023, 30024, 30025, 30026, and 30027, Title 5 of the CCR, to implement the new Cal Grant provisions.

Among other things, the new regulations provide the following:

- Every high school grade point average reported to the Commission shall include a certification under penalty of perjury from the school official filing the report that the grade point average is accurately reported to the best of his or her knowledge. The certification shall include a statement that it is subject to review by the Commission or its designee. It is the responsibility of the applicant to have his or her high school grade point average reported.

- The Commission may establish minimum standards of academic achievement and potential and may adopt criteria for selecting recipients of grants from among applicants to qualify for a Cal Grant and may require applicants to submit transcripts of high school and college academic records or other evidence of potential.

- A Cal Grant B entitlement award for first year tuition and fees plus the access grant as defined and limited by Education Code section 69435(a)(3) shall be given to applicants based upon consideration of the following factors: applicants with the lowest expected family contribution determined pursuant to Education Code section 69432.7; and applicants with the highest level of academic merit as indicated by their high school grade point average and/or submitted test scores. Additional factors to be considered may include

any of the following: whether the applicant is an orphan or ward of the court or was a ward of the court at the age of eighteen; the level of education attainment of the applicant's parents; the number of family members in the applicant's household in relation to the household income; and whether the applicant comes from a single parent household or is a single parent.

- A Cal Grant A or B competitive award shall give special consideration to applicants who are disadvantaged students taking into consideration those financial, educational, cultural, language, home, community, environmental, and other conditions that hamper access to, and ability to persist in, postsecondary education programs. The extent to which an applicant is considered disadvantaged shall be determined based on the following: whether the applicant is an orphan or ward of the court or was a ward of the court at the age of eighteen; the level of education attainment of the applicant's parents; the number of family members in the applicant's household in relation to the household income; and whether the applicant comes from a single parent household or is a single parent.

- An applicant seeking to establish “occupational talents” pursuant to Education Code section 69439 may do so by submitting any of the following supplemental information: applicant's work history (including unpaid internships) in the field; and/or recommendations from teachers or persons working in the applicant's occupational or technical field.

On August 13, OAL approved the Commission’s permanent adoption of these regulations. [To view these regulations, visit ccr.oal.ca.gov.]

Impact on Children: During 2000–01, the legislatively-approved budget accomplished an important expansion of Cal Grants, which constitute the major state program to make higher education possible for students in need. Total student financial aid grants stood at \$975 million in 2000–02 and are projected to reach \$1.2 billion by 2006, given the expansion approved by the Davis Administration and incorporated into the prospective budget (see SB 1644 (Ortiz) (Chapter 403, Statutes of 2000)). The economic downturn of 2001–02 may threaten these funds given budgetary pressure for 2002–03. Nevertheless, they allow for the possible qualification of additional students for aid in Cal Grant A, B, C, or T categories, ranging from \$9,700 per annum for tuition for students who maintain a 3.0 average and otherwise qualify, to \$1,550 in books and expenses.

More troubling than the prospect of the violation of the SB 1644 promise of additional funding is the state’s failure to implement Cal Grant expansion. Evidence from 2001–02 indicates that rules, paperwork, and other bureaucratic impediments have kept tens of thousands of students from these funds, many of whom may sacrifice the higher education important for their future productive employment. Proving “family contribution” has been a particular problem. The funds are only available where family income is below \$64,000 for a family of four for a Cal Grant A award or \$33,700 for a Cal Grant B award. The proposed expansion could provide assistance to all students who so qualify. But the rules impose a hierarchy of preference assuming full funding will be denied, and then require paperwork and demonstration that one is high on this priority scale (based on family contribution, and other factors, as indicated above). The imposition of these barriers has inhibited actual substantial expansion of the program, contrary to its ostentatious billing by the legislature and the Governor’s office.

In the long run, the Cal Grant expansion will run into another barrier to our children's productive future — the decline in higher education slots per high school graduate. That decline includes community college to university enrollment opportunity and diminishes opportunity at an historical point where the state's economic niche in the international marketplace requires such education for the employment of its youth.

For data and discussion of higher education disinvestment, see the Children's Advocacy Institute's *California Children's Budget 2001–02* (San Diego, CA; June 2001) at 7-11 to 13, and discussion of scholarship and grant funding as 7-51 to 58, available at www.sandiego.edu/childrensissues.

Update on Previous Rulemaking Packages

Standardized Testing and Reporting Program

The Standardized Testing and Reporting (STAR) program currently serves as the backbone for the Public Schools Accountability Act of 1999. Regulations that accurately support current statute are necessary for the uniform administration of STAR under which more than 4.5 million pupils are tested annually. AB 2812 (Chapter 576, Statutes of 2000) made several changes to the Education Code sections that authorize STAR. Specifically, changes were made in the testing "window" — the time at which testing is to occur in school districts, and in the required dates on which the California Department of Education is required to post statewide STAR results on the Internet.

In November 2000, the Board published notice of intent to amend sections 850, 852, 853, 855, 857, 858, 859, 862, 864.5, 866, 867, 867.5, 868, 870, 880, 884, 891, and 894, Title 5 of the CCR, to reflect the recent statutory changes. Under the proposed regulations, school districts would test pupils at approximately the same time in their instructional calendar and school districts would administer the standards-based tests in addition to the designated achievement test. (For background information on this rulemaking package, see *Children's Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 14.)

Update: On May 9, 2001, OAL approved the permanent regulations. [To view these regulations, visit ccr.oal.ca.gov.]

California High School Exit Exam

In November 2000, the State Board of Education proposed to adopt sections, 1200, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1215, 1216, 1217, 1218, 1220, 1225 of Title 5 of the CCR, to clarify what school districts must do to administer the high school exit examination authorized by the Legislature in 1999. (For background information on this rulemaking package, see *Children's Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 15.)

Update: On June 20, 2001, OAL approved the regulations with the exception of Article 3 (sections 1215, 1216, 1217 and 1218); the Board withdrew Article 3, regarding accommodations for students with disabilities or for English Language Learners, to make further changes. CDE received public comments regarding revised Article 3 during the period from October 18, 2001 through November 2, 2001; at this writing, Article 3 awaits review and approval by OAL. [For more information, visit www.cde.ca.gov/regulations.]

Award Programs Linked to API

In November 2000, the Board proposed to amend sections 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, and 1039 of Title 5 of the CCR, to guide the reporting of the Academic Performance Index (API) and implement the Governor's Performance Award Program of the Public Schools Accountability Act of 1999, the Certificated Staff Performance Incentive Act, and the Academic Performance Index Schoolsite Employees Performance Bonus. (For background information on this rulemaking package, see *Children's Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 16.)

Update: On June 11, 2001, OAL approved the permanent adoption of these regulations, except for subsection 1032(i), a post-hearing addition which OAL disapproved for failing to comply with the clarity standard of the APA. The Board amended section 1032(i) and submitted the revised version to OAL, which approved it on November 15, 2001. [For more information, visit www.cde.ca.gov/regulations.]

In related matters, on August 2, 2001, the Board adopted emergency changes to section 1032, Title 5 of the CCR, and on August 24, 2001, the Board published notice of its intent to permanently amend sections 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, and 1039, Title 5 of the CCR, to clarify several provisions in the API regulations prior to the implementation of the 2001 API. Specifically, the proposed revisions provide for the evaluation of the representativeness of a school's tested population in instances when the school's proportion of parental waivers compared to its Standardized Testing and Reporting (STAR) enrollment is greater than 10% but less than 20% prior to invalidation of the school's API; clarifies the condition under which a school's API will be invalid if the proportion of test-takers in any STAR content area is less than 85%; clarifies the definition of a test-taker to include only pupils who attempted to take a STAR content area included in the API; and provides a way that some schools with invalid 2000 APIs could be eligible for API awards in 2001.

Following the 45-day public comment period, the Board modified its proposed amendments and released the revised language on October 16 for an additional fifteen-day public comment period, which expired on November 2, 2001. At this writing, the changes await review and approval by OAL. [For more information, visit www.cde.ca.gov/regulations.]

Nondiscrimination and Educational Equity

In April 2000, the Board published notice of its intent to amend sections 4900, 4902, 4910, 4920, 4921, 4930, 4931, 4940, and 4960, Title 5 of the CCR, to add sexual orientation to the provisions relating to nondiscrimination in elementary and secondary educational programs; in May 2000, the Board of Education published notice of its intent to amend sections 4900–4940, Title 5 of the CCR, regarding educational equity. (For background information on this rulemaking package, see *Children's Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 18.)

Update: On June 13, 2001, OAL approved the Board's adoption of these changes. [For more information, visit www.cde.ca.gov/regulations.]

CHILD PROTECTION

New Rulemaking Packages

Foster Care Financial Audit Requirements

Welfare and Institutions Code section 11466.21 requires all group home and foster family agencies to submit independent financial audits as a condition of receiving an annual rate. Because DSS determined that group home and foster family agency providers were vendors and not subrecipients of federal funds, DSS regulations require that the financial audit be conducted according to the Government Auditing Standards of the Comptroller General of the United States, commonly known as the Yellow Book. This audit standard is less in scope than the audit standard required for subrecipients expending combined federal funds of \$300,000 and greater.

However, in a letter dated April 3, 2001, the Department of Health and Human Services' Administration for Children and Families (ACF) notified DSS that group home and foster family agency providers are subrecipients of federal funds, not vendors. As subrecipients of federal funds, federal regulations require group home and foster family agency providers to comply with the federal OMB Circular A-133 audit requirements. In an April 19, 2001, letter, ACF notified DSS that the type of audit California has required under section 11466.21 does not meet the federal audit standard as required under federal OMB Circular A-133. Accordingly, all federal Foster Care Program funding received by California group homes and foster family agencies is at serious risk. Also, California's current audit and operational costs under section 11466.21 would not be allowable for federal claiming purposes.

On November 30, 2001, DSS published notice of its intent to amend sections 11-400, 11-402, 11-403, and 11-405 of the MPP. Among other things, the proposed changes would require all group home and foster family agency corporations which expend \$300,000 or more in combined federal funding in any year to adhere to the audit standards contained in OMB Circular A-133; require DSS to issue written management decisions regarding the findings in the providers' OMB Circular A-133 audit reports within six months of receipt of the audit reports; establish an appeal process for disputed management decisions concerning disallowed costs; and create a rate reestablishment process for foster family agencies.

DSS is scheduled to hold a public hearing on these proposed changes on January 15, 2002, in Culver City, and on January 16, 2002, in Sacramento. [For more information, visit http://www.dss.cahwnet.gov/ord/CDSSPropos_308.htm.]

Impact on Children: Group homes and family foster care agencies receive five to ten times as much per child as do family foster care homes. These more institutional settings are intended to provide a closely-supervised and structured environment for youth, including both wards of the court subject to delinquency proceedings, and dependents of the court who have been removed from their homes due to abuse or neglect.

On the one hand, the imposition of strict accounting standards may consume more resources that might otherwise be applied to the education and care of children under the charge of these institutions. On the other hand, they function more as businesses than do the family foster care homes, receive substantial compensation, and have a mixed record of efficacy in caring for their charges. Regardless of the advantages of the stricter accounting and paperwork standards insisted upon by the federal Department of Health and Human

Services, a substantial share of the funding for foster care comes from federal sources, and the cut-off of federal funds would impose enormous unanticipated pressure on the state budget, including the funding of foster care overall.

Child Abuse Reports Recordkeeping

On May 11, 2001, the Department of Justice (DOJ) published notice of its intent to amend sections 900, 901, 902, 903, 904, 905, 906, and 907, Title 11 of the CCR, pertaining to child abuse reports recordkeeping. Penal Code section 11170(a) requires DOJ to maintain an index of all reports of child abuse submitted pursuant to Penal Code Section 11169 and to continually update the index. DOJ currently maintains the Automated Child Abuse System (ACAS) as the index required to carry out provisions of the statute. Agencies receiving reports of child abuse and severe neglect are required to send a summary of its investigatory findings to DOJ, except for those cases determined to be unfounded. The summary report to DOJ is to be submitted on the Form SS 8583.

The proposed changes relate to the policies and practices of DOJ with regard to Form SS 8583. Among other things, the proposed changes would delete the definition of the term Child Protective Agency and the acronym CPA from DOJ's regulations, and substitute appropriate wording (e.g., reporting agencies or investigating agencies). This change conforms DOJ's regulations to statutory law as amended by AB 1241 (Rod Pacheco) (Chapter 916, Statutes of 2000), which eliminated the term Child Protective Agency from Penal Code section 11165.9.

The changes would also define the term "active investigation" as the activities of an agency in response to a report of known or suspected child abuse. For purposes of reporting information to the Child Abuse Central Index, the activities shall include, at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s), and any known suspect(s) and witness(es); gathering and preserving evidence; determining whether the incident is substantiated, inconclusive, or unfounded; and preparing a report that will be retained in the files of the investigating agency. According to DOJ, some agencies are not entirely familiar with the requirement that they conduct an active investigation prior to submitting a report to DOJ, and other agencies apply inconsistent interpretations of what constitutes an active investigation. DOJ contends that a standard definition of what constitutes an active investigation for purposes of child abuse reports recordkeeping will alleviate these problems.

DOJ also proposes to add information items to the "Child Abuse Investigation Report" portion of Form SS 8583, which will require specific verification, with "yes" or "no" boxes to be checked, that an active investigation was conducted and that the victim(s) and any known suspects and witness(es) were contacted. An explanation from the investigating agency will be required if an item is not completed and/or "no" is checked. Additionally, the changes will make this a mandatory reporting item.

Another change would add information items to the "Child Abuse Investigation Report" portion of Form SS 8583, which will require specific verification, with "yes" or "no" boxes to be checked, that each known suspect was given notice in writing that he/she has been reported to the Index, including the date the notice was given, as per Penal Code section 11169(b). An explanation from the investigating agency will be required if notice was not provided. This will also be made a mandatory reporting item.

DOJ also proposes to add language providing that when an agency takes a report for which it lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction.

DOJ held a public hearing on the proposed amendments on June 19 in San Diego and June 26 in Sacramento. At this writing, the changes await review and approval by OAL. [For more information, visit caag.state.ca.us/childabuse/notices.htm.]

Impact on Children: The state tracks child abuse reports to county “hotlines,” many from so-called “mandated reporters” obligated to report suspected child abuse (e.g., teachers, physicians, and counselors). About 600,000 such calls are received by the state’s 58 counties each year. In addition, the federal jurisdiction also reports on incidence among the several states. The data tracking has historically been impeded statewide, and even more so nationally, by differences in terminology, procedures, and reporting protocols among the states and within California.

The rules attempt to conform reporting to the common practice of subjecting intake reports to a series of filtering steps. A report must state a problem within the jurisdiction of applicable law. The local agency (Child Protective Services within county departments of social services) then decides whether an investigative response is warranted, then whether removal is appropriate for the protection of the child. An intermediary option of family preservation services offered without removal may be selected. Where removal occurs a detention hearing, following by a jurisdictional hearing and subsequent proceedings in juvenile dependency court commence on a schedule designed to reach final decision parental rights and child placement within one year.

Tragic consequences can follow the failure of local authorities to investigate cases properly. Those consequences occur to children not in a position of political power or legal advantage. Exacerbating the lack of check on local failure efficacy of these investigations is the U.S. Supreme Court’s infamous decision in *DeShaney v. Winnebago County Social Services Department* (1989) 489 U.S. 189, holding that the state has no liability exposure for failing to protect a child — even where that failure is the result of gross negligence. The Court opined that the state cannot be found to be negligent through a failure to act where it lacked a cognizable “duty” to so act and curiously found no such duty applicable to local child protective (or other) agencies.

In this light, the proposed rules may benefit children marginally. First, they define “active investigation” for consistency between counties for reporting purposes, includes an expansive definition, and requires reporting of disposition. The reporting includes notation of who was contacted, important should a subsequent report occur. Importantly, the investigation must be completed prior to reporting the matter to the Department of Justice, which allows more complete reporting of disposition to reach state policymakers.

For a discussion of child abuse investigation and reporting procedures and demographics, see the Children’s Advocacy Institute’s *California Children’s Budget 2001–02* (San Diego, CA; June 2001) at 8-1 to 9, available at www.sandiego.edu/childrensissues.

Transitional Shelter Care Regulations

Currently, children in need of short-term care, removed from their homes or placement in community care facilities and awaiting subsequent placement in other

community care facilities, are placed in licensed group homes or county operated emergency shelter care facilities. In 1985, the DSS Director exempted from group home licensure emergency shelter care facilities operated by counties, pursuant to Health and Safety Code section 1505(o). The lack of regulations addressing specific needs of these children in temporary care has led to overcrowding, improper placement of children, and mixing of populations, which created a risk of harm to children in these facilities.

In August 1998, the Youth Law Center commenced litigation to compel DSS to adopt regulations to implement AB 1334 (Gotch) (Chapter 950, Statutes of 1994), which created a children's short-term residential care facility category designated as a transitional shelter care facility and required DSS to adopt regulations and develop standards that govern such facilities (*Booraem v. Orangewood, et al.*, Orange County Superior Court No. 798871.) In December 2000, DSS published notice of its intent to adopt transitional shelter care regulations (see below). Also in December 2000, however, the Youth Law Center filed another suit to compel DSS to license all county shelters (*Warren v. Saenz*, Sacramento County Superior Court No. 317487). In that proceeding, the court's amended order for DSS to license all county shelters was entered on April 17, 2001.

On December 28, 2001, DSS published notice of its intent to adopt regulations in response to the court order. Specifically, DSS proposes to amend sections 84001, 84022, 84061, 84063, and 84065, renumber sections 84800–84807 (noninclusive) to 84300–84369 (non-inclusive) and make other amendments to those sections, and adopt new sections 84400, 84401, 84410, 84422, 84461, 84465, 84468.1, 84468.2, 84468.4, and 84478, Title 22 of the CCR.

Specific provisions of the DSS-proposed regulations include the following:

- The terms "transitional care children" or "children in transition" would mean children as defined in Health and Safety Code section 1502.3(c) who have been placed in a transitional shelter care facility. These children include but are not limited to children who have been placed in the facility from another community care facility and are awaiting placement appropriate to their needs.

- The term "transitional shelter care facility" would mean a licensed county group care facility whose sole purpose is to provide care in a short-term residential program for children who have been removed from their homes as a result of abuse or neglect, or both; for children who have been adjudged wards of the court; and for children who are seriously emotionally disturbed.

- If a facility admits clients in excess of the maximum occupancy established by the fire authority having jurisdiction, the licensee is operating in violation of its fire clearance. Operation in excess of maximum occupancy constitutes imminent health and safety risks and the licensee shall immediately reduce the census to the maximum occupancy.

- If the facility exceeds the capacity as set forth on the license, the licensee is operating in violation of its license.

- Each facility's plan of operation shall contain, among other things, a description of the transitional care services to be provided, protocols for the delivery of transitional care services within ninety days of admission of each child; protocols for the provision of individualized assessments of each child that focuses on why each child was moved from his/her prior living arrangement(s) and the provision of services the child will need for transition to his/her next placement; and protocols to ensure the safety of children in care.

The licensee must obtain written approval from DSS before making any change to its plan of operation.

- Upon the occurrence of any of the following events, a licensee shall notify DSS by the end of the Department's next business day, and shall submit a written report within seven days: a child violates the personal rights of another child at the facility; any other person violates the personal rights of a child; a child is assaulted by another child or another person at the facility; a child is detained in a juvenile institution; or a child requires physical health care in an acute care hospital or mental health services in an acute psychiatric hospital or community treatment facility. Upon occurrence of any of these events, notification shall be made to the child's authorized representative by the end of DSS' next business day.

- In addition to other required training, as specified, all administrators, facility managers, social work staff, and direct care staff must receive four hours of training on the specialized needs of children in transition on an annual basis. Administrators, facility managers, social work staff, and direct care staff hired after the effective date of the regulations must receive four hours of training on the specialized needs of children in transition before being responsible for supervising children, being left unsupervised with children, or being counted in the staff-to-child ratio.

- In addition to other specified information, the facility shall obtain from the child's authorized representative the list of the child's prior community care facility placements and/or residences and the reasons why the child was removed from each of these living arrangements. The facility shall also assess whether the child may represent a threat to self or to any other child in care, or whether the child may be at risk of harm from another child in care.

- In addition to other requirements, each child's needs and services plan shall include an assessment of the child to determine the most appropriate subsequent placement for the child utilizing the prior placement information provided as set forth above. Such assessments shall be documented within thirty days of admission.

- A licensee, if other than the county, shall not discharge a child without the permission of the county, except when a child commits an unlawful act and must be detained in a juvenile institution; requires physical health care in an acute care hospital; or requires mental health services in an acute psychiatric hospital or community treatment facility.

- The facility shall complete a discharge report for children who reside in the facility for thirty consecutive days or more. This report shall include the child's prior community care facility placements and/or residences and the reasons why the child was removed from each of these living arrangements; an assessment of factors determining whether the child may represent a threat to self or to another person, or whether the child may be at risk of harm from others; a recommendation for the most appropriate subsequent placement or residence for the child; and a recommendation for the ongoing services that the child will need.

- A transitional shelter care facility shall not admit any child when this presents an imminent health and safety risk to any child. When a child residing in the facility poses a threat to him/herself or others, the licensee must employ methods of protection that may include separation, closer monitoring, or increased and/or specialized staff.

On December 28, 2001, DSS published notice of its intent to adopt these regulations on a permanent basis. Public hearings on the package are scheduled to be conducted on February 13, 2002, in Sacramento, and February 14, 2002, in Culver City. [For more information, visit http://www.dss.cahwnet.gov/ord/CDSSPropos_308.htm.]

Impact on Children: These rules pertain to the “receiving facilities” where children removed from their homes are taken at the county level. Termed transitional shelters, they are usually intended for temporary housing pending foster care placement and are often institutional in nature. As discussed above, the Youth Law Center brought two actions challenging the practices of many of these institutions statewide, and petitioning the court to require these facilities to meet the same licensing standards applicable to private community care facilities housing dependent children (and others).

The Youth Law Center prevailed in both actions and resulting court orders required the rules here proposed. The beneficial impact on affected children from the court judgments here entered and from these implementing rules may be profound. The new rules address many of the abuses cited in the first of the Youth Law Center cases (overcrowding, bullying of children by others, lack of mental health or medical treatment, failure to assess for special education qualification, *et al.*). Perhaps most important is the required justification for moving foster care children between certain placements — a problem experts term “foster care drift,” and which courts are increasingly recognizing as an actionable harm.

[Update on Previous Rulemaking Packages](#)

Adoption Assistance Program

On November 30, 2000, and again on March 30, 2001, DSS adopted emergency changes to sections 35001, 35013, 35067, 35177, 35179, 35211, 35325, 35326, 35333, 35334, 35337, 35339, 35341, 35343, 35344, and 35351, Title 22 of the CCR, and sections 11-401 and 45-803 of the MPP, to implement legislative changes to the Adoption Assistance Program (AAP). Among other things, the regulatory changes require adoption agencies to determine the amount and duration of the AAP benefit without the use of an income means test; consistently determine the maximum AAP benefit, which is the foster family home payment that would have been made on the child’s behalf if the child had not been placed for adoption; not use the foster family agency (FFA) rate to determine the AAP benefit; determine the circumstances of the family and how the family is going to incorporate the child into its household; and adjust the AAP benefit automatically whenever the state-approved basic foster care maintenance payment is adjusted. (For background information on this rulemaking package, see *Children’s Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 20.)

Update: On September 6, 2001, OAL approved the permanent adoption of these changes. [For more information, visit ccr.oal.ca.gov.]

Transitional Shelter Care Facilities

On December 1, 2000, DSS published notice of its intent to amend and/or adopt sections 80001, 84300, 84322, 84361, 84365, 84368.1, 84368.2, and 84368.4, Title 22 of the CCR, and sections 31-112 and 31-410 of the MPP, to implement statutory provisions

requiring DSS to adopt regulations and develop standards that govern transitional shelter care facilities. (For background information on this rulemaking package, see *Children's Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 21.)

Update: On November 30, 2001, DSS published notice of its decision not to proceed with this rulemaking action, and instead instituted the new rulemaking proceeding described above.

Community Care Licensing—Minor Parent Regulations

AB 2773 (Chapter 1056, Statutes of 1998) requires DSS to adopt regulations regarding children under six years of age residing in a group home with a minor parent who is their primary caregiver. In February 2000, DSS published notice of its intent to amend sections 84001, 84065.2, 84065.5, 84065.7, 84200, 84201, 84222, 84265, 84265.1, 84268.1, 84268.3, 84272, 84272.1, 84274, 84275, 84276, 84277, 84278, 84278.1, 84287.2, 84279, Title 22 of the CCR, in order to implement new standards for minor parent programs. The proposed changes would apply to mother (parent) and infant programs that serve children who are younger than six, are dependents of the court, reside in a group home with a minor parent, and have a primary caregiver who is the minor parent. Among other things, the regulations provide for minor parent programs to be exempt from the “family-like setting” requirement that is applicable to most group homes, because it is thought that the minor parent provides the family-like environment for his or her child. While the new rules provide that certain duties previously reserved for staff may be provided by the minor parent, staff members still retain supervisory duties. The regulations provide that children of minor parents are counted in the home’s staff-to-child ratio to ensure that the young children are cared for when the minor parent is not doing so. In addition, the proposed changes require parenting education classes and activities in which the minor parents can spend time with the children.

Update: At this writing, DSS has not submitted the proposed changes to OAL. [Editor’s Note: It appears that DSS has, at least temporarily, withdrawn this rulemaking proposal from consideration.]

JUVENILE JUSTICE

New Rulemaking Packages

Voluntary Psychotropic Medication to Minors

Welfare and Institutions Code section 1755.3 provides that whenever any person under CYA’s jurisdiction, or any minor under the jurisdiction of the Department of Corrections, is in need of medical, surgical or dental care, CYA or the Department of Corrections, as applicable, may authorize, upon the recommendation of the attending physician or dentist, as applicable, the performance of that necessary medical, surgical or dental service. Sections 4730–4741, Title 15 of the CCR, reflect CYA’s authority to authorize medical, surgical or dental care, upon the recommendation of the attending physician, as established in section 1755.3, but do not include voluntary psychotropic medications for wards under the age of 18.

According to CYA, the lack of swift court procedures for the voluntary administration of psychotropic medication to minors may jeopardize the health and safety of a Youth Authority ward. On September 30, 2001, a ward under the age of 18, who might have benefitted from voluntary psychotropic medication, committed suicide while CYA was awaiting court authorization for the administration of voluntary psychotropic medication.

On November 29, 2001, CYA adopted new section 4746.5, Title 15 of the CCR, on an emergency basis, to provide wards under the age of 18 with access to timely medical intervention, including voluntary psychotropic medication, as determined by two physicians. The proposed regulation establishes procedures for review and concurrence by a psychiatrist and one other physician that the ward has been diagnosed with a mental health condition and is in need of psychotropic medication. The proposed regulation includes procedures for the immediate voluntary administration of psychotropic medication upon submission of the form Application for Order for Psychotropic Medication-Juvenile (Judicial Council Form JV 220 (1/1/01)) to the court of commitment, and also provides that in the event that the court does not authorize the administration of voluntary psychotropic medication, the medication shall be terminated in keeping with medical standards.

On December 14, 2001, CYA published notice of its intent to permanently adopt section 4746.5. A public hearing on the proposed section is scheduled for January 29, 2002, in Sacramento. [For more information, visit www.cya.ca.gov/reg_action/mhs2_47465.html.]

Impact on Children: The rules implement a kind of “fast track” procedure to administer various tranquilizing (*et al.*) drugs to juveniles subject to CYA jurisdiction. The rules are precipitated by the suicide of a youth who CYA contends could have been saved but for a lack of speedy medication. However, the other side of the coin is the over-medication of youth in order to facilitate their management. That abuse will not produce the dramatic event leading to rulemaking, but may portend more extensive long-term harm. The routine administration of Ritalin and other “behavior” drugs has become common by persons managing difficult or resistant children. While sometimes warranted, institutions tend to rely on such remedies reflexively. Their operations understandably elevate manageability above other concerns.

The new rules highlight the ironic difference in procedural emphasis: a desire by an institution for psychotropic medication for a youth is placed on a format for routine-judicial approval (form submitted and signed unless affirmative objection appears). (It is unclear who and how such an intervening objection may occur for affected youth — who are not effectively represented by counsel post-CYA commitment.) This fast track occurs purportedly for the benefit of the youth, but is driven by the institution’s perception of its needs. On the other hand, no such fast track is available to assure mental health treatment for such children, or to monitor them for disability treatment or compensation (e.g. SSI), or to enforce special education rights.

Youthful Offender Parole Board Revisions

On March 30, 2001, the Youthful Offender Parole Board published notice of its intent to adopt section 4945.5 and amend sections 4927, 4963, 4978, and 4995, Title 15

of the CCR, to implement, interpret, or make specific numerous sections of the Welfare and Institutions Code. Among other things, the proposed changes would make the following changes:

- A ward's appearance at Youth Authority institutional hearings would be mandatory unless the ward is unable to attend due to medical reasons, or the ward is housed at or committed to any non-Youth Authority facility.

- The full Board panel would be unlimited in its authority to set the confinement time interval to the maximum of two years in those cases where continued confinement has been extended pursuant to Welfare and Institutions Code section 1800. In these cases, the committing court has granted an order directing that the ward remain subject to the control of the Youth Authority beyond the time originally scheduled and determined that the discharge of a person from the control of the Youth Authority would be physically dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality.

- The changes clarify that a furlough is a temporary release, granted by the Board, from an institution or camp. Properly authorized and escorted activities, as specified, are not furloughs. Disciplinary Decision Making Authority (DDMS) action may be used for any infraction during the furlough and may result in termination of furlough privileges.

- The changes provide that a work furlough, the temporary release of a ward to engage in daily community employment, is used to improve a ward's readiness for parole; after daily scheduled work, a ward shall return to the institution where he/she is housed.

- The revisions define a transitional program furlough as the temporary release of a ward to a pre-release community residential center. These centers supplement institutional training and treatment in preparation for parole. Transitional programs are supervised programs which provide intensive services directed toward community reintegration.

- Section 4995 previously provided that a ward shall have met at least one of the following two criteria before receiving an honorable discharge: having a minimum of one year or eighteen months of satisfactory behavior, as specified, or having demonstrated a pattern of behavior reflecting personal, social, and economic growth with a satisfactory plan for continued positive growth in the future. The changes add a third set of criteria by which a ward could qualify to receive an honorable discharge: paying all court-ordered restitution, demonstrating satisfactory compliance with all laws, and confirming a pattern of responsibility to victims of their previous crime involvement.

The Board held a public hearing on these proposed changes on May 14, 2001, in Sacramento. On July 25, OAL approved the adoption of these regulatory changes. [For more information, visit www.yopb.ca.gov/regulations.html.]

Impact on Children: Most of these proposed CYA rule changes should benefit affected youth. Requiring the presence of a youth at an institutional hearing affecting him may appear to be elementary due process, but has historically not always occurred. The other changes may facilitate some consistency in the treatment of youthful offenders by clarifying terminology. The rules may impede flexibility in their somewhat restrictive definitions of "furlough" and "temporary release." However, decisions beneficial to children will depend, as they have on the past, on the sound discretion of the Youthful Offender Parole Board, parole and probation officers, and juvenile courts.

Similarly, the definition of “honorable discharge” includes broad enough criteria to vest substantial discretion with those same public officials. However, the emphasis on recompensing victims of past offenses is consistent with basic notions of justice, and with the important lesson to be transmitted in a rehabilitative effort — to lead a youth to see the world through the eyes of others outside his or her peer group, and beyond his or her own immediate needs.

[Update on Previous Rulemaking Packages](#)

Mental Health Services/Standards for Medical and Dental Services

In August 2000, CYA gave notice of its intent to add Article 1.5, sections 4742, 4743, 4744, 4745, 4746, and 4747 to the existing regulations within Title 15, in order to address the lack of regulatory standards for mental health services. Among other things, the provisions establish standards for mental health services, assessment, and referral, and for suicide prevention and response for CYA wards. In addition to adopting Article 1.5, the Youth Authority proposed amendments to sections 4730, 4732, 4733, 4734, 4735, 4736, 4737, 4739, and 4740, Title 15 of the CCR, to comply with Correctional Treatment Center regulations and licensure law. (For background information on this rulemaking package, see *Children’s Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 24.)

Update: On August 29, 2001, OAL notified CYA of its disapproval of the proposed amendments. According to OAL, the rulemaking file failed to satisfy the necessity and clarity requirements of the Administrative Procedure Act. Also, the Youth Authority Global Assessment of Functioning (YA-GAF) screening form, incorporated by reference into the amendments, was not included in the rulemaking file, nor did the text of the regulation include the name and revision date of the form.

CYA amended the rulemaking package in response to OAL’s findings, and resubmitted the package on December 12, 2001; at this writing, it is being reviewed by OAL. [For more information, visit www.cya.ca.gov/reg_action/ma1xs47xx.html.]

Youth Authority Standards for Correspondence

In August 2000, the Youth Authority gave notice of its intent to amend section 4695, Title 15 of the CCR, to change the regulatory standard with regard to the inspection of reviewable mail and correspondence between inmates of separate correctional facilities. The amendment’s purpose is to discourage violence and crime within correctional facilities. (For background information on this rulemaking package, see *Children’s Regulatory Law Reporter*, Vol. 3, No. 1 (2001) at 25.)

Update: On September 20, 2001, OAL approved this permanent revision. [For more information, visit www.cya.ca.gov/reg_action/wcs4695.html.]

Agency Descriptions

Following are general descriptions of the major California agencies whose regulatory decisions affecting children are discussed in the *Children’s Regulatory Law Reporter*:

California Department of Child Support Services. The Department of Child Support Services (DCSS) was created by AB 196 (Kuehl) (Chapter 478, Statutes of 1999), effective January 1, 2000, to oversee the California child support program at both the state and local levels. AB 196, along with several other bills, created a massive restructuring of the child support program in California. In addition to creating DCSS within the California Health and Human Services Agency and expanding the state's role, the legislation requires that responsibility of the program at the local level be moved out of the district attorney's offices into new local child support agencies in each county. DCSS' enabling act is found at section 17000 *et seq.* of the Family Code; DCSS' regulations appear in Title 22 of the CCR. DCSS' website address is www.childsup.cahwnet.gov.

California 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 developmental 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 developmental 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. DDS' website address is www.dds.ca.gov.

California Department of Education and State Board 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. CDE's enabling act is found at section 33300 *et seq.* of the Education Code; CDE regulations appear in Title 5 of the CCR. CDE's website address is www.cde.ca.gov; the Board's website address is www.cde.ca.gov/board.

California Department of Health Services. The California Department of Health Services (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. DHS website address is www.dhs.ca.gov.

California 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 at 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. DMH's website address is www.dmh.ca.gov.

California Department of Social Services. The California Department of Social Services (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. DSS' website address is www.dss.cahwnet.gov.

California Victim Compensation and Government Claims Board (formerly the Board of Control Victims of Crime Program). This Board's activities are largely devoted to reimbursing eligible victims for certain expenses incurred as a direct result of a crime for which no other source of reimbursement is available. The Board 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 Board's enabling act is found at section 13900 *et seq.* of the Government Code; its regulations appear in Title 2 of the CCR. The Board's website address is www.boc.ca.gov.

California Youth Authority. State law mandates the California Youth Authority (CYA) 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. CYA'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 CYA's program strategy. CYA's enabling act is found at section 1710 *et seq.* of the Welfare and Institutions Code; CYA's regulations appear in Title 15 of the CCR. CYA's website address is www.cya.ca.gov.

Youthful Offender Parole Board enhances public safety, creates offender accountability, and reduces criminal recidivism by ensuring appropriate lengths of confinement and by prescribing treatment-effective programs for individuals seeking parole from the California Youth Authority. Welfare and Institutions Code section 1719 authorizes the Board to revoke or suspend parole; set a parole consideration date; recommend treatment programs; determine the date of next appearance; authorize release on parole and set conditions thereof; discharge persons from the jurisdiction of the Youth Authority; return persons to the court of commitment for redispotion by the court; return nonresident persons to the jurisdiction of the state of legal residence; and adjust length of incarceration based on institution violations (add time) or for good behavior (reduce time). The Board's enabling act is found at section 1716 *et seq.* of the Welfare and Institutions Code; the Board's regulations appear in Title 15 of the CCR. The Board's website address is www.yopb.ca.gov.

For Further Information

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 2001-02* is currently available at www.sandiego.edu/childrensissues.

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, 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).

**USD LOGO (as on back of Vol. 3, No. 1)
School of Law**

Children's Advocacy Institute

**University of San Diego
School of Law**

5998 Alcalá Park
San Diego, CA 92110
(619) 260-4806
(619) 260-4753 (fax)

Sacramento Office

926 J Street, Suite 709
Sacramento, CA 95814
(916) 444-3875
(916) 444-6611 (fax)

www.sandiego.edu/childreissues