

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	
DEPARTMENT OF SOCIAL SERVICES)	DECISION OF DISAPPROVAL OF REGULATORY ACTION
)	
REGULATORY ACTION:)	(Gov. Code, sec. 11349.3)
Title 22, California Code of Regulations, and Manual of Policies and Procedures)	
)	OAL File No. 06-0630-03S
AMEND SECTIONS 83064, 83072, 84022, 84072, 84172, 86022, 86072, 88022, 89372, AND 89379)	
_____)	

DECISION SUMMARY

In this regulatory action, the Department of Social Services (“Department”) amends regulations in the general subject area of the licensing and operation of community care facilities. Specifically, the Department is implementing recent changes to Welfare and Institutions Code section 16001.9, a statute which sets forth the rights of children in foster care. The statutory changes being implemented in the amended regulations pertain to (1) the right of the children in foster care to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harassment based upon specified personal characteristics, and (2) the right of children in foster care at 16 years of age or older to have access to existing information regarding educational options available and regarding financial aid for postsecondary education. The amendments impact regulations in the areas of small family homes, group homes, community treatment facilities, the transitional housing placement program, foster family agencies, and foster family homes.

On August 11, 2006, the Office of Administrative Law (“OAL”) notified the Department of the disapproval of the above-referenced regulatory action. OAL disapproved the regulations because the rulemaking file contained a document (the STD. 399 Economic and Fiscal Impact Statement) which was incomplete and therefore defective.

DISCUSSION

Regulations adopted and amended by the Department in connection with the California Community Care Facilities Act must be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (the “APA;” Gov. Code, secs. 11340 through 11365). (See Health & Saf. Code, sec. 1530, which is cited as authority for each of the regulations contained in this rulemaking.) Any regulatory act a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the APA unless a statute expressly exempts or excludes the act from the requirements of the APA. (See Gov. Code, sec. 11346.) No exemption or exclusion applies to the regulatory action here under review. Thus, before the instant regulatory action may become effective, OAL must review it for compliance with both the procedural requirements of the APA and certain substantive standards.

The STD. 399 Economic and Fiscal Impact Statement Is Not Signed by the Agency Secretary and Therefore Does Not Comply with Government Code Section 11347.3, Subdivision (b)(5), and State Administrative Manual Section 6680

The Department’s rulemaking file fails to comply with the requirements of Government Code section 11347.3, subdivision (b)(5), and State Administrative Manual section 6680 because the rulemaking file fails to contain a completed STD. 399 Economic and Fiscal Impact Statement signed by the Agency Secretary of the California Health and Human Services Agency.

Government Code section 11347.3, subdivision (b)(5), provides that a rulemaking file shall include: “The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of [Government Code] Section 11346.5.” Government Code section 11346.5, subdivision (a)(6), requires:

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

The “instructions adopted by the Department of Finance” which govern the preparation of the fiscal impact estimate, as referenced in the statutory language quoted above, are contained in the State Administrative Manual (“SAM”), sections 6601 through 6680. These SAM provisions require that an agency proposing regulations complete the form entitled STD. 399 Economic and Fiscal Impact Statement (“STD. 399”) to disclose the various fiscal impacts of the proposed regulations. SAM section 6680 mandates that each STD. 399 form include the signature of the Agency Secretary with jurisdiction over the rulemaking department, board or commission, in those instances when the rulemaking entity is under an Agency Secretary. SAM section 6680 specifically states: “The STD. 399 form must be approved and signed by the Agency Secretary.” (Emphasis added.) The Agency Secretary approval and signature requirement is further reflected

on page 4 of the STD. 399 form where there is a signature line for “Agency Secretary Approval/Concurrence.”

The Department is under the jurisdiction of the Agency Secretary of the California Health and Human Services Agency. In connection with the Department rulemaking which is the subject of this decision, the rulemaking file does contain a STD. 399 form which discloses fiscal impacts of the regulations; however, that STD. 399 does not include the signature of the Agency Secretary of the California Health and Human Services Agency. Therefore, the STD. 399 does not comply with the Government Code and SAM requirements discussed above pertaining to having an Agency Secretary signature. OAL cannot approve the regulations in the absence of a completed STD. 399 meeting all applicable legal requirements.

Additional Concern

OAL notes the following additional concern with the regulations (which will require correction in the event of the resubmission of this regulatory action): The Department needs to amend regulation section 84272 of title 22 of the California Code of Regulations at the same time as it amends regulation section 84072. Section 84272(a) contains a cross-reference to “Sections 84072(d)(5), (25), (27), and (29).” This cross-reference needs to be revised in light of the subsection renumbering amendments being made to regulation section 84072.

CONCLUSION

For the reasons set forth above, OAL has disapproved this regulatory action. If you have any questions, please contact me at (916) 323-4237.

Date: August 16, 2006.

BRADLEY J. NORRIS
Senior Staff Counsel

for: WILLIAM L. GAUSEWITZ
Director

Original: Cliff Allenby, Interim Director
cc: Alison Garcia, Manager, Office of Regulations Development

