

Senate Bill No. 1319

CHAPTER 663

An act to amend Sections 1516, 1526.8, and 1530.5 of, and to amend and repeal Section 1596.792 of, the Health and Safety Code, and to amend Sections 4094, 11462, 11466.2, and 18987.62 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 27, 2012. Filed with
Secretary of State September 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1319, Liu. Child welfare.

Existing law, the California Community Care Facilities Act, provides for the licensure and regulation by the State Department of Social Services of community care facilities, as defined. Violation of the provisions relating to community care facilities is a misdemeanor.

The act exempts from its provisions a public recreation program operated as prescribed for kindergarten and grades 1 to 12, inclusive, that operates less than 16 hours per week and for a total of 12 weeks or less during a 12-month period. Existing law, effective January 1, 2013, expands that exemption to include such a program that operates less than 20 hours per week and for a total of 14 weeks or less during a 12-month period.

Existing law includes foster family agencies that certify foster family homes and licensed foster family homes within the provisions regulating a community care facility, and requires the department, in establishing these regulations, to consider these homes as private residences, and to establish regulations for these foster family homes and certified family homes of foster family agencies as a separate regulation package from regulations for all other community care facilities. Under existing law, certified family homes are not subject to civil penalties under the act, and licensed foster family homes are only subject to specified civil penalties.

This bill would provide instead that licensed foster family homes, as well as certified family homes of foster family agencies, are not subject to civil penalties under the California Community Care Facilities Act, except that the certified family homes and foster family homes both would be subject to certain penalties relating to fingerprinting requirements and operating without a valid license.

Existing law, until January 1, 2014, defines and regulates crisis nurseries and requires the State Department of Social Services to authorize the use of volunteers as caregivers in a crisis nursery, under certain circumstances.

This bill would delete the repeal of these provisions thereby making them operate indefinitely. Because this bill would extend the application of a crime, it would impose a state-mandated local program.

The California Child Day Care Facilities Act provides for the licensing and regulation of child day care facilities, as defined. The act does not apply to specified entities, and, until January 1, 2014, includes crisis nurseries among the specified entities.

This bill would delete the repeal of these provisions, thereby making that exemption operate indefinitely.

Existing law provides for the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which counties provide payments to foster care providers on behalf of qualified children in foster care. Under existing law, foster care providers licensed as group homes have rates established by classifying each group home program and applying a standardized schedule of rates. Existing law requires the department to determine the rate classification level (RCL) for new and existing providers and for those programs requesting an RCL increase, which is based, in part, on a program audit of documentation and other information. Existing law also requires the department to perform group home program and fiscal audits as needed.

This bill would provide that for audit purposes, if a group home program serves a mixture of AFDC-FC eligible and ineligible children, the weighted hours for services provided and the capacity of the home shall be adjusted by the ratio of AFDC-FC eligible children to all children in the placement.

Existing law requires the State Department of Mental Health to establish, by regulation, specified program standards for any facility licensed as a community treatment facility and authorizes the State Department of Health Care Services to adopt or amend regulations pertaining to these program standards. Existing law establishes, until January 1, 2014, certain standards with respect to the required nursing staff at a community treatment facility that admits children who have been assessed not to require medical services that require 24-hour nursing coverage.

This bill would delete the expiration date of the provisions applicable to the nursing staff requirements described above, thereby making those staffing requirements operative indefinitely.

Under existing law, each county may enter into performance agreements with nonprofit agencies to encourage innovation in the delivery of children's services, to develop services not available in the community, and to promote change in the child welfare services system. Existing law authorizes the State Department of Social Services to waive otherwise applicable regulations relating to foster care payments and the operation of group homes for a period of up to 3 years, in order to facilitate these performance agreements. Existing law authorizes the department to extend the regulation waivers for up to 3 additional years, based on a review and analysis of specified information.

This bill would revise the waiver extension provisions to instead authorize the department to extend the waiver in increments of 3 years, based on a review and analysis of the information specified in existing law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1516 of the Health and Safety Code, as added by Section 2 of Chapter 519 of the Statutes of 2010, is amended to read:

1516. (a) For purposes of this chapter, “crisis nursery” means a facility licensed by the department to provide short-term, 24-hour nonmedical residential care and supervision for children under six years of age, who are voluntarily placed for temporary care by a parent or legal guardian due to a family crisis or stressful situation for no more than 30 days.

(b) A crisis nursery shall be organized and operated on a nonprofit basis by either a private nonprofit corporation or a nonprofit public benefit corporation.

(c) “Voluntary placement,” for purposes of this section, means a child, who is not receiving Aid to Families with Dependent Children-Foster Care, placed by a parent or legal guardian who retains physical custody of, and remains responsible for, the care of his or her children who are placed for temporary emergency care, as described in subdivision (a). Voluntary placement does not include placement of a child who has been removed from the care and custody of his or her parent or legal guardian and placed in foster care by a child welfare services agency.

(d) (1) Except as provided in paragraph (2), the maximum licensed capacity for a crisis nursery program shall be 14 children.

(2) A facility licensed on or before January 1, 2004, as a group home for children under the age of six years with a licensed capacity greater than 14 children, but less than 21 children, that provides crisis nursery services shall be allowed to retain its capacity if issued a crisis nursery license until there is a change in the licensee’s program, location, or client population.

(e) Each crisis nursery shall collect and maintain information, in a format specified by the department, indicating the total number of children placed in the program, the length of stay for each child, the reasons given for the use of the crisis nursery, and the age of each child. This information shall be made available to the department upon request.

(f) Notwithstanding Section 1596.80, a crisis nursery may provide child day care services for children under the age of six years at the same site as the crisis nursery. A child may not receive child day care services at a crisis nursery for more than 30 calendar days in a six-month period unless the department issues an exception. A child who is receiving child day care services shall be counted in the licensed capacity.

(g) Exceptions to group home licensing regulations pursuant to subdivision (c) of Section 84200 of Title 22 of the California Code of

Regulations, in effect on August 1, 2004, for county-operated or county-contracted emergency shelter care facilities that care for children under the age of six years for no more than 30 days, shall be contained in regulations for crisis nurseries.

(h) This section shall become operative on July 1, 2012.

SEC. 2. Section 1526.8 of the Health and Safety Code is amended to read:

1526.8. (a) It is the intent of the Legislature that the department develop modified staffing levels and requirements for crisis nurseries, provided that the health, safety, and well-being of the children in care are protected and maintained.

(b) The department shall allow the use of fully trained and qualified volunteers as caregivers in a crisis nursery, subject to the following conditions:

(1) Volunteers shall be fingerprinted for the purpose of conducting a criminal record review as specified in subdivision (b) of Section 1522.

(2) Volunteers shall complete a child abuse central index check as specified in Section 1522.1.

(3) Volunteers shall be in good physical health and be tested for tuberculosis not more than one year prior to, or seven days after, initial presence in the facility.

(4) Prior to assuming the duties and responsibilities of a crisis caregiver or being counted in the staff-to-child ratio, volunteers shall complete at least eight hours of initial training divided as follows:

(A) Four hours of crisis nursery job shadowing.

(B) Two hours of review of community care licensing regulations.

(C) Two hours of review of the crisis nursery program, including the facility mission statement, goals and objectives, and special needs of the client population they serve.

(5) Within 90 days, volunteers who are included in the staff-to-child ratios shall complete at least 20 hours of training divided as follows:

(A) Twelve hours of pediatric first aid and pediatric cardiopulmonary resuscitation.

(B) Eight hours of child care health and safety issues.

(6) Volunteers who meet the requirements of paragraphs (1), (2), and (3), but who have not completed the training specified in paragraph (4) or (5) may assist a fully trained and qualified staff person in performing child care duties. However, these volunteers shall not be left alone with children, shall always be under the direct supervision and observation of a fully trained and qualified staff person, and shall not be counted in meeting the minimum staff-to-child ratio requirements.

(c) The department shall allow the use of fully trained and qualified volunteers to be counted in the staff-to-child ratio in a crisis nursery subject to the following conditions:

(1) The volunteers have fulfilled the requirements in paragraphs (1) to (4), inclusive, of subdivision (b).

(2) There shall be at least one fully qualified and employed staff person on site at all times.

(3) (A) There shall be at least one employed staff or volunteer caregiver for each group of three children, or fraction thereof, from 7 a.m. to 7 p.m.

(B) There shall be at least one paid caregiver or volunteer caregiver for each group of four children, or fraction thereof, from 7 p.m. to 7 a.m.

(C) There shall be at least one employed staff person present for every volunteer caregiver used by the crisis nursery for the purpose of meeting the minimum caregiver staffing requirements.

(d) There shall be at least one staff person or volunteer caregiver awake at all times from 7 p.m. to 7 a.m.

SEC. 3. Section 1530.5 of the Health and Safety Code is amended to read:

1530.5. (a) The department, in establishing regulations, including provisions for periodic inspections, under this chapter for foster family homes and certified family homes of foster family agencies, shall consider these homes as private residences, and shall establish regulations for these foster family homes and certified family homes of foster family agencies as an entirely separate regulation package from regulations for all other community care facilities. Certified family homes of foster family agencies and foster family homes shall not be subject to civil penalties pursuant to this chapter, except for penalties imposed pursuant to Sections 1522 and 1547. The department, in adopting and amending regulations for these foster family homes and certified family homes of foster family agencies, shall consult with foster parent and foster family agency organizations in order to ensure compliance with the requirement of this section.

(b) This section shall not apply to small family homes or foster family agencies as defined in Section 1502.

SEC. 4. Section 1596.792 of the Health and Safety Code, as amended by Section 4 of Chapter 519 of the Statutes of 2010, is amended to read:

1596.792. This chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) do not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any community care facility, as defined by Section 1502.

(d) Any family day care home providing care for the children of only one family in addition to the operator's own children.

(e) Any cooperative arrangement between parents for the care of their children when no payment is involved and the arrangement meets all of the following conditions:

(1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.

(2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.

(3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of which may not exceed the actual cost of the activity.

(4) No more than 12 children are receiving care in the same place at the same time.

(f) Any arrangement for the receiving and care of children by a relative.

(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for kindergarten and grades 1 to 12, inclusive, in the public school district where the program is located, or operated only during periods when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 20 hours per week.

(B) For a total of 14 weeks or less during a 12-month period. This total applies to any 14 weeks within any 12-month period, without regard to whether the weeks are consecutive.

In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, when appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and that satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:

(1) Is operated only during periods of the year when students in kindergarten and grades 1 to 12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections and Rehabilitation that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

(n) Any crisis nursery, as defined in subdivision (a) of Section 1516.

SEC. 5. Section 1596.792 of the Health and Safety Code, as amended by Section 5 of Chapter 519 of the Statutes of 2010, is repealed.

SEC. 6. Section 4094 of the Welfare and Institutions Code is amended to read:

4094. (a) The State Department of Mental Health shall establish, by regulations adopted at the earliest possible date, but no later than December 31, 1994, program standards for any facility licensed as a community treatment facility. This section shall apply only to community treatment facilities described in this subdivision.

(b) Commencing July 1, 2012, the State Department of Health Care Services may adopt or amend regulations pertaining to the program standards for any facility licensed as a community treatment facility.

(c) A certification of compliance issued by the State Department of Health Care Services shall be a condition of licensure for the community treatment facility by the State Department of Social Services. The department may, upon the request of a county, delegate the certification and supervision of a community treatment facility to the county department of mental health.

(d) The State Department of Health Care Services shall adopt regulations to include, but not be limited to, the following:

(1) Procedures by which the Director of Health Care Services shall certify that a facility requesting licensure as a community treatment facility pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code is in compliance with program standards established pursuant to this section.

(2) Procedures by which the Director of Health Care Services shall deny a certification to a facility or decertify a facility that is licensed as a community treatment facility pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, but no longer complying with program standards established pursuant to this section, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Provisions for site visits by the State Department of Health Care Services for the purpose of reviewing a facility's compliance with program standards established pursuant to this section.

(4) Provisions for the community care licensing staff of the State Department of Social Services to report to the State Department of Health Care Services when there is reasonable cause to believe that a community treatment facility is not in compliance with program standards established pursuant to this section.

(5) Provisions for the State Department of Health Care Services to provide consultation and documentation to the State Department of Social Services in any administrative proceeding regarding denial, suspension, or revocation of a community treatment facility license.

(e) The standards adopted by regulations pursuant to subdivisions (a) and (b) shall include, but not be limited to, standards for treatment, staffing, and for the use of psychotropic medication, discipline, and restraints in the facilities. The standards shall also meet the requirements of Section 4094.5.

(f) (1) A community treatment facility shall not be required by the State Department of Health Care Services to have 24-hour onsite licensed nursing staff, but shall retain at least one full-time, or full-time-equivalent, registered nurse onsite if all of the following are applicable:

(A) The facility does not use mechanical restraint.

(B) The facility only admits children who have been assessed, at the point of admission, by a licensed primary care provider and a licensed psychiatrist, who have concluded, with respect to each child, that the child does not require medical services that require 24-hour nursing coverage. For purposes of this section, a "primary care provider" includes a person defined in Section 14254, or a nurse practitioner who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of care, and for initiating referral for specialist care.

(C) Other medical or nursing staff shall be available on call to provide appropriate services, when necessary, within one hour.

(D) All direct care staff shall be trained in first aid and cardiopulmonary resuscitation, and in emergency intervention techniques and methods approved by the Community Care Licensing Division of the State Department of Social Services.

(2) The State Department of Health Care Services may adopt emergency regulations as necessary to implement this subdivision. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be exempt from review by the Office of Administrative Law and shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

(g) During the initial public comment period for the adoption of the regulations required by this section, the community care facility licensing regulations proposed by the State Department of Social Services and the program standards proposed by the State Department of Health Care Services shall be presented simultaneously.

(h) A minor shall be admitted to a community treatment facility only if the requirements of Section 4094.5 and either of the following conditions are met:

(1) The minor is within the jurisdiction of the juvenile court, and has made voluntary application for mental health services pursuant to Section 6552.

(2) Informed consent is given by a parent, guardian, conservator, or other person having custody of the minor.

(i) Any minor admitted to a community treatment facility shall have the same due process rights afforded to a minor who may be admitted to a state hospital, pursuant to the holding in *In re Roger S.* (1977) 19 Cal.3d 921. Minors who are wards or dependents of the court and to whom this subdivision applies shall be afforded due process in accordance with Section 6552 and related case law, including *In re Michael E.* (1975) 15 Cal.3d 183. Regulations adopted pursuant to Section 4094 shall specify the procedures for ensuring these rights, including provisions for notification of rights and the time and place of hearings.

(j) Notwithstanding Section 13340 of the Government Code, the sum of forty-five thousand dollars (\$45,000) is hereby appropriated annually from the General Fund to the State Department of Health Care Services for one personnel year to carry out the provisions of this section.

SEC. 7. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(3) (A) The department shall determine, consistent with the requirements of this chapter and other relevant requirements under law, the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department.

(B) The department shall adopt regulations to implement this paragraph. The adoption, amendment, repeal, or readoption of a regulation authorized by this paragraph is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement to describe specific facts showing the need for immediate action.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each RCL has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986-87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) (i) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless

the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate.

(ii) For audit purposes, if the group home program serves a mixture of AFDC-FC eligible and ineligible children, the weighted hours for child care and social work services provided and the capacity of the group home shall be adjusted by the ratio of AFDC-FC eligible children to all children in placement.

(iii) Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider, for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the fieldwork portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the

department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department’s RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director’s decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department’s RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department’s RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for the 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years is:

Rate	Point Ranges	FY 2002–03, 2003–04,
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Classification Level		2004–05, 2005–06, 2006–07, and 2007–08 Standard Rate
1	Under 60	\$1,454
2	60– 89	1,835
3	90–119	2,210
4	120–149	2,589
5	150–179	2,966
6	180–209	3,344
7	210–239	3,723
8	240–269	4,102
9	270–299	4,479
10	300–329	4,858
11	330–359	5,234
12	360–389	5,613
13	390–419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, 2007–08, 2008–09, and 2009–10 fiscal years, the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for the 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, 2007–08, 2008–09, and 2009–10 Fiscal Years
1	Under 54
2	54– 81
3	82–110
4	111–138
5	139–167
6	168–195
7	196–224
8	225–253
9	254–281
10	282–310
11	311–338
12	339–367
13	368–395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, 2007–08, 2008–09, and 2009–10 fiscal years shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(D) Rates applicable for the 2009–10 fiscal year pursuant to the act that adds this subparagraph shall be effective October 1, 2009.

(3) (A) For group home programs that receive AFDC-FC payments for services performed during the 2009–10 fiscal year the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for the 2009–10 Fiscal Years
1	Under 39
2	39–64
3	65–90
4	91–115
5	116–141
6	142–167
7	168–192
8	193–218
9	219–244
10	245–270
11	271–295
12	296–321
13	322–347
14	348 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2009–10 fiscal year shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations as contained in Title 22 of the California Code of Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of

subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level (RCL) for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(4) Effective January 1, 2008, the amount included in the standard rate for each RCL for the wages for staff providing child care and supervision or performing social work activities, or both, shall be increased by 5 percent, and the amount included for the payroll taxes and other employer-paid benefits for these staff shall be increased from 20.325 percent to 24 percent. The standard rate for each RCL shall be recomputed using these adjusted amounts, and the resulting rates shall constitute the new standardized schedule of rates.

(5) The new standardized schedule of rates as provided for in paragraph (4) shall be reduced by 10 percent, effective October 1, 2009, and the resulting rates shall constitute the new standardized schedule of rates.

(6) The rates of licensed group home providers, whose rates are not established under the standardized schedule of rates, shall be reduced by 10 percent, effective October 1, 2009.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program that received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program that received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider, or for an existing program at a new location of an existing provider, unless the provider submits a letter of recommendation from the host county, the primary placing county, or a regional consortium of counties that includes all of the following:

(A) That the program is needed by that county.

(B) That the provider is capable of effectively and efficiently operating the program.

(C) That the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(D) That, if the letter of recommendation is not being issued by the host county, the primary placing county has notified the host county of its intention to issue the letter and the host county was given the opportunity of 30 days to respond to this notification and to discuss options with the primary placing county.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) For the purpose of this subdivision, “program change” means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(l) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 of each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care that may have significant fiscal impact on providers of group homes care.

The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

SEC. 8. Section 11466.2 of the Welfare and Institutions Code is amended to read:

11466.2. (a) (1) The department shall perform or have performed group home program and fiscal audits as needed. Group home programs shall maintain all child-specific, programmatic, personnel, fiscal, and other information affecting group home ratesetting and AFDC-FC payments for a period not less than five years.

(2) Notwithstanding paragraph (1), the department shall not establish an overpayment based upon a nonprovisional program audit conducted on less than a one-year audit period.

(3) Notwithstanding paragraph (2), the department may conduct audits covering a period of less than 12 months. Based upon the findings of these audits, the department may reduce a group home program's AFDC-FC rate or RCL pursuant to this paragraph.

(A) In an audit of a period of less than 12 months, if a provider's audited RCL is no more than three levels below the paid RCL, the provider's rate and RCL will be reduced to the audited RCL. The provider will be allowed the opportunity to bring a program into compliance with the paid RCL.

(B) In an audit of a period of less than 12 months, if the provider's audited RCL is more than three levels below the paid RCL, the department shall conduct an audit as identified in paragraph (2) of subdivision (a) of Section 11466.2. The provider will be allowed the opportunity to bring a program into compliance with the paid RCL.

(C) For audit purposes, when the group home program serves a mixture of AFDC-FC eligible and ineligible children, the weighted hours for child care and social work services provided and the capacity of the group home shall be adjusted by the ratio of AFDC-FC eligible children to all children in placement.

(D) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(b) (1) The department shall develop regulations to correct a group home program's RCL, and to adjust the rate and to recover any overpayments resulting from an overstatement of the projected level of care and services.

(2) The department shall modify the amount of the overpayment pursuant to paragraph (1) in cases where the level of care and services provided per child in placement equals or exceeds the level associated with the program's RCL. In making this modification, the department shall determine whether services other than child care supervision were provided to children in placement in an amount that is at least proportionate, on a per child basis, to the amount projected in the group home's rate application. In cases where these services are provided in less than a proportionate amount, staffing for child care supervision in excess of its proportionate share shall not be substituted for nonchild care supervision staff hours.

(c) (1) In any audit conducted by the department, the department, or other public or private audit agency with which the department contracts, shall coordinate with the department's licensing and ratesetting entities so that a consistent set of standards, rules, and auditing protocols are maintained. The department, or other public or private audit agency with which the department contracts, shall make available to all group home providers, in writing, any standards, rules, and auditing protocols to be used in those audits.

(2) The department shall provide exit interviews with providers whenever deficiencies found are explained and the opportunity exists for providers to respond. The department shall adopt regulations specifying the procedure for the appeal of audit findings.

SEC. 9. Section 18987.62 of the Welfare and Institutions Code is amended to read:

18987.62. (a) Upon request from a county, the director may waive regulations governing foster care payments or the operation of group homes to enable counties to implement the agreements established pursuant to Section 18987.61. Waivers granted by the director shall be applicable only to services provided under the terms of the agreement and for the duration of the agreement, whichever is earlier, unless the director authorizes an extension of the waiver pursuant to subdivision (f). A waiver shall only be granted when all of the following apply:

(1) The agreement promises to offer a worthwhile test of an innovative approach or to encourage the development of a new service for which there is a recognized need.

(2) The regulatory requirement prevents the implementation of the agreement.

(3) The requesting county proposes to monitor the agreement through performance measures that ensure that the purposes of the waived regulation will be achieved.

(b) The director shall take steps that are necessary to prevent the loss of any substantial amounts of federal funds as a result of the waivers granted under this section. The waiver may specify the extent to which the requesting county shall share in any cost resulting from any loss of federal funding.

(c) The director shall not waive regulations that apply to the health and safety of children served by participating private nonprofit agencies.

(d) The director shall notify the appropriate policy and fiscal committees of the Legislature whenever waivers are granted and when a waiver of regulations was required for the implementation of the county's proposed agreement. The director shall identify the reason why the development of the services outlined by the agreement between the county and the service provider are hindered by the regulations to be waived.

(e) The county or private nonprofit agency shall fund an independent evaluation of the waiver as described in subdivision (f) of Section 18987.61.

(f) The director may grant a county's request to extend the waiver, in increments of three years, based upon a review and analysis of all of the following information:

(1) The results of the report, if required under subdivision (e) of Section 18987.61.

(2) The results of the independent evaluation of the waiver pursuant to subdivision (e) of this section.

(3) Justification for the extension, and verification of continued compliance with this section.

(g) (1) For any waiver approved on or before January 1, 2010, an extension of the waiver for up to an additional three years may be based upon the department's review and analysis of the information required to be submitted in subdivision (f).

(2) If an independent evaluation has not yet been completed, the department may grant an extension based upon its review of available information. However, an independent evaluation shall be required to be completed within one year prior to the end of the waiver.

SEC. 10. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), until regulations are filed with the Secretary of State, the State Department of Social Services may implement the amendments made to Sections 11462 and 11466.2 of the Health and Safety Code by this act through all-county letters or similar instructions from the Director of Social Services.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.