

Resource Family Approval Written Directives



VERSION 6.1
EFFECTIVE DATE: 01/07/2020

Prepared by:

California Department of Social Services



- (1) Prior to the service of a Notice of Action for the denial of an application, rescission of approval, or denial or rescission of a criminal record exemption.
 - (2) When seeking a temporary suspension order. In addition to the required legal consultation, a County shall obtain County Counsel approval prior to serving a temporary suspension order.
- (b) A County shall consult with the Legal Division, as follows:
- (1) When the county is recommending an exclusion action.
 - (2) When an individual against whom the County is seeking administrative action holds a Department license, certificate, or registration, is certified or approved by a licensed Foster Family Agency, or is associated to a licensed facility.
- (c) Prior to seeking a legal consultation, a County shall review the Licensing Information System (LIS) database history for any individual that is the subject of a County's proposed administrative action. If it is determined that the individual holds a Department license, certificate, or registration, is certified or approved by a licensed foster family agency, or is employed or present in a licensed facility, the County shall notify the Community Care Licensing Division of the Department so that a Department representative may attend the consult and evaluate whether a licensing action is necessary.

SECTION 12-05: Notices of Action and Exclusion Orders; Actions for the Record

- (a)
- (1) If a County is taking an action for denial of an application or rescission of Resource Family Approval, or denial or rescission of a criminal record exemption, a Notice of Action shall be served on the applicant, Resource Parent, or individual who is the subject of the action.
 - (2) If the Department is taking an exclusion action against an individual, an order of exclusion shall be served on the individual.
- (b) A Notice of Action or exclusion order shall contain all of the following:
- (1) A written notice informing the individual of the action the County or Department intends to take.
 - (2) The reasons for the action.
 - (3) Any applicable statutory or regulatory authority.
 - (4) Notice of the right to submit a written appeal to contest the action, timelines to submit an appeal, and the address to which the appeal must be submitted.
 - (5) The date on a Notice of Action or exclusion order shall be the same as the date of service.
- (c) If the Department seeks to exclude an individual from a Resource Family home, and the County is also taking an action identified in subsection (a)(1), an exclusion order shall be served with the Notice of Action. Nothing in this article shall be construed to prohibit the Department from issuing an exclusion order at an earlier or a later date if unable to issue the exclusion order at the time of service of a related Notice of Action.

- (d)
 - (1) A County shall serve a Notice of Action for the record, and if applicable, the Department shall serve an exclusion order for the record if a Resource Family chooses to surrender approval prior to the service of a Notice of Action, or when failure to proceed with an administrative action poses a risk to a child or nonminor dependent or is likely to result in a loss of evidence.
 - (2) A County may serve a Notice of Action for the record, and if applicable, the Department shall serve an exclusion order for the record when an applicant chooses to withdraw an application or there is a forfeiture of approval by operation of law, and failure to proceed with an administrative action poses a risk to a child or nonminor dependent or is likely to result in a loss of evidence.
 - (3) A Notice of Action or exclusion order for the record shall include a confirmation of the surrender of approval, withdrawal of the application, or forfeiture by operation of law.

- (e) Notwithstanding CDSS Manual of Policies and Procedures section 22-049.5, for matters identified in subsection (a) that are pending before the State Hearings Division, a County may file an amended or supplemental Notice of Action and the Department may file an amended exclusion order prior to submission of the matter for decision. All parties shall be notified thereof.
 - (1) Any new action identified in subsection (a) or amended grounds for action included in an amended or supplemental Notice of Action or exclusion order shall be consolidated with the pending denial, rescission, or exclusion matter, and no additional appeal shall be required. Any new action or grounds for action shall be deemed controverted, and any objections may be made orally and shall be noted in the record.
 - (2) A Respondent shall be given a reasonable opportunity to prepare a defense to any new charges or actions included in the amended or supplemental Notice of Action or exclusion order. If a Respondent states that he or she is not adequately prepared to address an issue raised in an amended or supplemental Notice of Action or exclusion order, and the Administrative Law Judge determines that the Respondent was not provided with timely notice, the Respondent shall be entitled to a postponement. An Administrative Law Judge may hold the record open or set additional days of hearing upon request of a party in order to provide additional time for a party to respond as a result of the filing of an amended or supplemental Notice of Action or exclusion order.

- (f) The effective date of an action or exclusion order shall be:
 - (1) The effective date of a final decision or order following an appeal, notice of defense or action for the record.
 - (2) The date specified in the notice of action or exclusion order, if no appeal, notice of defense or action for the record was filed.

- (g) A County or the Department, as applicable, shall document a Notice of Action or exclusion order in the Notice of Action (NOA) database maintained by the Department.

SECTION 12-06A: Appeal to a Notice of Action or Exclusion Order

- (a) If a Respondent chooses to appeal a Notice of Action for denial of an application, or denial of a criminal record exemption, he or she shall submit a written appeal to the County address listed in the Notice of Action within 90 calendar days from the date the notice was served on the Respondent. If a Respondent chooses to appeal a Notice of Action for rescission of Resource Family Approval or rescission of a criminal record exemption, he or she shall submit a written appeal to the County address listed in the Notice of Action within 25 calendar days from the date the notice was served on the Respondent. If the notice was served on the Respondent by mail, the time to respond shall be extended five days.
- (b) If a Respondent chooses to appeal an order of exclusion, he or she shall submit a written appeal to the Department at the address listed in the exclusion order within 25 calendar days from the date the notice was served on the Respondent. If the order was served on the Respondent by mail, the time to respond shall be extended five days.
- (c) For matters where different appeal timelines apply due to multiple action or program types, the following shall apply:
 - (1) For matters to be heard at the State Hearings Division, a County or the Department, as applicable, may accept an appeal on one action as a hearing request on all of the actions against the same Respondent(s), notwithstanding section 22-004 of the CDSS Manual of Policies and Procedures.
 - (2) For matters to be heard at the Office of Administrative Hearings, a County or the Department, as applicable, may accept an appeal on one action as an appeal on all of the actions against the same Respondent(s).
 - (A) Nothing in this Article shall be construed to limit the authority of a County or the Department to file an action for the record and resolve the matter with a final decision and order in accordance with Welfare and Institutions Code section 16519.6 and the Administrative Procedures Act, notwithstanding the receipt of an appeal.
- (d) To be effective, the appeal shall be in writing as required by Welfare and Institutions Code section 16519.6(d) and shall be delivered or postmarked on or before the due date specified in subsections (a) and (b).
- (e) A Respondent may submit an appeal using an appeal form provided with the Notice of Action or exclusion order may prepare his or her own written appeal.
- (f) A County and the Department shall notify each other in writing if either receives an appeal to a Notice of Action or exclusion order that is related to another action that was filed at or near the same time as the action by the County or Department.

SECTION 12-06B: Jurisdictional Review; Late Appeals

- (a) For any matter where jurisdiction to proceed under Welfare and Institutions Code section 16519.6 is disputed or unclear, the presiding administrative law judge of the State Hearings

Division may review the request for hearing and may request supplemental information from the parties to determine whether to set a hearing on the issue of jurisdiction. No jurisdictional review shall be required if all parties agree there is jurisdiction to proceed. A party may request that a hearing on the issue of jurisdiction be bifurcated from a hearing on the merits, or the presiding administrative law judge on his or her own motion may set a bifurcated jurisdictional hearing. The following shall apply to a jurisdictional proceeding conducted pursuant to this section:

- (1) A jurisdictional hearing may be held in person, by electronic means, or if all parties agree, by the submission of written argument.
 - (2) If a bifurcated jurisdictional hearing is held, the parties need not submit evidence on the substantive issues and the administrative law judge shall take evidence on the jurisdictional issue only.
 - (3) The determination shall be in writing and served on each party and their attorney of record.
 - (4) The determination shall not be made without affording the parties the opportunity to present either oral or written argument.
- (b) If a Respondent has filed an appeal no more than 30 calendar days after the due date for the appeal, then a County or the Department, as applicable, shall immediately refer the late appeal to the State Hearings Division for a jurisdictional review as described in subsection (c), except that no referral for a jurisdictional review shall be required if the County or Department, as applicable, agrees that the appeal meets the timeliness and good cause requirements for a late appeal and chooses to proceed in accordance with Section 12-09.
- (c) If the County or Department, as applicable, has referred the late appeal for a jurisdictional review, the State Hearings Division shall make a jurisdictional determination solely on whether the late appeal meets the timeliness and good cause requirements of Welfare and Institutions Code section 16519.6(e). Respondent shall have the burden of proving that good cause exists.
- (d) If the State Hearings Division determines that a late appeal meets the requirements of Welfare and Institutions Code section 16519.6(e), then the appeal shall be remanded to the County or Department, as applicable, to proceed in accordance with Section 12-09. The County or Department shall comply with any statutory, regulatory, or Written Directives timelines and shall use the date that the written determination was issued and served on all parties as the date of appeal.

SECTION 12-07: Exclusion Actions

- (a) The Department may exclude an individual from residing or being present in any Resource Family home or from having contact with a child or nonminor dependent when the individual has violated, aided, or permitted the violation by any other person of, any provision of Welfare and Institutions Code section 16519.5 et seq., the Written Directives, or any applicable law. The Department may issue an immediate exclusion order when a County recommends it and the Department determines it is necessary to protect a child or nonminor dependent from physical or mental abuse, abandonment, or any other substantial