

# Resource Family Approval Written Directives



**VERSION 7**

EFFECTIVE DATE: 01/13/2021

Prepared by:

California Department of Social Services



## RESOURCE FAMILY APPROVAL PROGRAM

Single-underlined text with yellow highlights – Reflect changes made to the Written Directives in Version **7**.

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- (1) Prior to the service of a Notice of Action, **Accusation, or Statement of Issues** 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.

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- (d) (1) A County shall serve a Notice of Action, Accusation, or Statement of Issues 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, Accusation, or Statement of Issues, 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.
- (2) A County may serve a Notice of Action, Accusation, or Statement of Issues 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, Accusation, Statement of Issues 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.
- (4) Service shall be provided as described in Section 12-08.
- (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. 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 shall be consolidated with the pending denial or rescission, 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. 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, 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.
- (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 applicable section of the Administrative Action Records System (AARS) database maintained by the Department, as applicable. The action shall be documented immediately after it is served.

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- (h) A County or the Department, as applicable, may withdraw a Notice of Action notwithstanding the requirements of the CDSS Manual of Policies and Procedures section 22-001 et seq., if the matter has resolved informally prior to a hearing and failing to proceed with the administrative action to obtain a formal resolution on the record poses no risk or threat to the health, safety, protection or well-being of a child or nonminor dependent, and is not likely to result in a loss of evidence.
- (1) For State Hearings Division matters, a withdrawal may be filed at any time prior to the issuance of a hearing decision and order. If a County withdraws a Notice of Action, the appeal will be dismissed.
- (2) Nothing in this subsection shall be construed to limit the authority of a County or the Department, as applicable, to file a later Notice of Action on the same or new allegations to the extent authorized by law; however, a Respondent shall have the right to appeal and a hearing as set forth in this Article.
- (i) The legal consult as defined in Section 12-04 shall be arranged in a manner that helps ensure that the Notice of Action is served close in time to service of the Written Report.

### **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 actions filed against a Respondent or more than one program action, 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 or the Administrative Procedures Act, as applicable, notwithstanding the receipt of an appeal.

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- (3) When an action for rescission of approval, criminal record exemption rescission, or exclusion also includes an action for application denial, the applicable appeal timeline for the rescission of approval, criminal record exemption rescission, or exclusion specified in paragraphs (a) and (b) shall apply to the action for application denial.
- (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, or may prepare their 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.
- (g) For State Hearings Division matters, a Respondent may withdraw their appeal at any time prior to a hearing.
- (1) Withdrawal of an appeal by a Respondent shall have the same effect as failing to file an appeal to the Notice of Action, and the Notice of Action or Amended Notice of Action, as applicable, shall be deemed a final action as to that Respondent unless:
- (A) The Notice of Action or Amended Notice of Action, as applicable, is withdrawn by the County;
- (B) A stipulation, waiver and order are issued for a conditional withdrawal; or
- (C) A County pursues an action for the record as authorized by Welfare and Institutions Code section 16519.6(m), and a decision and order are issued.
- (2) CDSS Manual of Policies and Procedures section 22-054.211(b) shall not apply to withdrawal of an appeal on an action described in this Article.

### **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, or the presiding administrative law judge or administrative law judge assigned to hear the case determines the review is unnecessary. 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 or administrative law judge assigned to hear the case on their 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 telephone, by electronic means, or if all parties agree, by the submission of written argument, as determined by and at the discretion of the State Hearings Division.
- (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.