

**Final Statement of Reasons
Proposed Amendments to:**

**California Code of Regulations
Title 17. Public Health
Division 2. Health and Welfare Agency
Department of Developmental Services
Chapter 3: Community Services**

**SubChapter 2: Vendorization
Article 3: Vendor Numbers and Service Codes
Section 54342 - Types of Services**

and

**SubChapter 4.1: Family Home Agency (FHA) Regulations
Article 1: Definitions
Section 56076 - Definitions**

NOTE: THIS DOCUMENT IS AN AMENDMENT OF THE INITIAL STATEMENT OF REASONS (ISOR) AND CHANGES TO THE LANGUAGE OF THE ISOR ARE REFLECTED HEREIN BY STRIKEOUTS FOR LANGUAGE DELETED, AND UNDERLINING FOR LANGUAGE ADDED.

ALL APPARENT REFERENCES TO SUBSECTION (a) OF SECTION 56076 SHALL BE READ AS REFERENCES TO SUBSECTION (e) OF THAT SECTION

Description of the Public Problem, Administrative Requirement or Other Condition or Circumstance the Regulations are Intended to Address

The Department of Developmental Services (DDS) promulgated California Code of Regulations, Title 17, Division 2, Chapter 3. Community Services, SubChapter 4.1. Family Home Agency (FHA) Regulations in 1995 under emergency authority, with final adoption completed in 1996. This adoption was in response to the adoption of Chapter 1095, Statutes of 1994, which added Section 4689.1 to the portion of the Welfare & Institutions Code (W&IC) known as the "Lanterman Act." As required by W&IC Section 4689.1, Family Home Agencies (FHA) are vendored by regional centers for the purpose of developing, certifying, providing supports to, and supervising the community living option known as "adult family homes." The adult family homes are the residences of ordinary families and individuals (family home provider) willing and able and found compliant with established standards to provide living space for individuals with developmental disabilities (consumers), in which no more than two adult consumers may reside as though members of the family.

AB 2100 (Chapter 831, Statutes of 2004), established "family teaching homes" as an additional community living option for consumers, and added this option to the responsibilities of FHAs through amendments to W&IC Section 4689.1. As defined in Section 4689.1, a family teaching home is owned, leased, or rented by the FHA, and consists of two separate residential units, either contiguous or attached. The family home provider lives in one, and no more than three adult consumers live together in the other. The FHA supervises the family home provider responsible for the family teaching home, under the same regulatory requirements applying to the FHA's supervision of the agency's certified Adult Family Homes. The family home provider of a family teaching home, similarly, is required to meet certain of the needs of the consumer or consumers residing in the contiguous or attached residential unit.

The initial implementation of family teaching homes is intended to help meet the community residential needs of an estimated 58 consumers who are currently residing at Agnews Developmental Center, and who over the years immediately ahead will be relocated to San Francisco Bay Area communities consequent to the planned closure of Agnews Developmental Center in June 2007. The costs of this relocation to the state are considerable, due to the relatively intense service and support needs of developmental center residents. These state costs may be substantially mitigated by federal financial participation, because adult family homes have been established as a waiver service in California's Home and Community-based Waiver (HCBW) Agreement with the federal government. The Department estimates that with the adoption of the proposed regulation amendments, the state will receive HCBW reimbursement from the federal government in the amount of \$745,000 in FY 2005/2006, \$3,278,000 in FY 2006/2007, and \$4,762,000 in FY 2007/2008.

The current FHA regulations (California Code of Regulations, Title 17, Division 2, Chapter 3. Community Services, SubChapter 4.1) provide for the implementation of adult family homes under the FHAs, but do not reference the newly created family teaching homes living option added by AB 2100 (Chapter 831, Statutes of 2004) to W&IC 4689.1. Consequently no regulations presently address the family teaching homes living option. Regulations are necessary for this new living option to be included under the FHA waiver service, so that the state will not be required to bear the full cost of this new regional center service among the services available under California's Home and Community-based Waiver (HCBW) Agreement with the federal government, and so that the state may be reimbursed a portion of its costs through federal financial participation.

Consistent with W&IC Section 4689.1, as amended by SB 2100, the Department proposes that all regulatory requirements applicable to adult family homes shall apply equally to family teaching homes. This may be accomplished by adding family teaching homes to the responsibilities of FHAs, through a new definition that specifies "Family Teaching Home" as another service provided by the FHA. All regulations currently applying only to adult family homes would consequently apply in equal measure to family teaching homes. This change to the existing FHA regulations would satisfy federal Home and Community-based Services waiver requirements, thereby assuring federal financial participation in the cost of this new community residential option to

consumers, and saving the state approximately \$8,785,000 in total over the period of FY 2005/2006 through 2007/2008..

The public comments filed under Tab 8, and the Department's responses filed under Tab 9 of the Rulemaking File, are incorporated herein as if fully set forth below.

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

There were no alternatives proposed by any parties during the public comment period other than the comments responded to under Tab 9 of the Rulemaking File. The Department considered the alternative of not adopting regulations, and rejected that alternative as it did not provide the safeguards and assurances to the consumer's health and well being that the Department is seeking.

The Department has determined that the adopted regulations do not impose any mandate on local agencies or school districts.

SubChapter 2: Vendorization

Article 3: Vendor Numbers and Service Codes

Section 54342 (a) (28) (A) through (C).

Specific Purpose:

This proposal is being adopted to add family teaching homes to the responsibilities of Family Home Agencies.

Rationale for Necessity:

This proposal is necessary to make specific the requirements of W&IC 4689.1, as amended by Chapter 831, Statutes of 2004, to expand Family Home Agency responsibilities to include the new community living option known as family teaching homes. Unless this amendment is adopted, the definition of Service Code 904 (Family Home Agency) will not include family teaching homes. Family Home Agencies would consequently have no regulatory authority to provide this new service, family teaching homes would remain unregulated, and federal financial participation as anticipated in the Home and Community-based Waiver would not be forthcoming to mitigate state costs.

SubChapter 4.1 Family Home Agency (FHA) Regulations

Article 1: Definitions

Section 56076 (a) (5).

Specific Purpose:

This proposal is being adopted to make specific the requirements of W&IC 4689.1, as amended by Chapter 831, Statutes of 2004, by adding a requirement that wherever in subchapter 4.1 the term "family home" appears, the term shall be understood to include the term "family teaching home."

Rationale for Necessity:

This proposal is necessary to clarify that the body of regulations addressing the adult family home shall apply equally to family teaching homes. At present, family teaching homes are not referenced in the Title 17 regulations. Unless this amendment to reference adult teaching homes in the existing definition of "adult family homes" is adopted, it will be necessary to amend the regulations in each instance in which the term "family home" appears to add "adult teaching home." This alternative would waste time and effort, while achieving nothing more than will be achieved by expanding the definition of family homes in this subchapter to include family teaching homes.

Section 56076 (a) (8).

Specific Purpose:

This proposal is being adopted to make specific the requirements of W&IC 4689.1, as amended by Chapter 831, Statutes of 2004, by adding a new definition for "adult teaching homes" to the list of definitions applicable to the FHA regulations, and to specify that all subchapter requirements applicable to family homes shall apply equally to family teaching homes.

Rationale for Necessity:

This proposal is necessary to define the new community living option "family teaching home" in the FHA regulations, and to provide further emphasis to the Department's intention that all requirements applicable to family homes shall apply also to family teaching homes. Unless this amendment is adopted the FHA regulations will not expand to encompass the family teaching home model, with the consequent loss of federal financial participation in the cost of this new service, despite its specific inclusion as a qualifying service in the Home and Community-based Waiver.

Section 56076 (a) (8) through (a) (12).

Specific Purpose:

This proposal is being adopted to adjust the numbering of current subsections (a)(8) through (a)(12) to read (a)(9) through (a)(13).

Rationale for Necessity:

This proposal is necessary to maintain consistency in the numbering of the subsections of (a) in consequence of the insertion of new (a)(8). Unless this amendment is adopted the numbering of the definitions in Section 56076(a) will be incorrect, to the confusion of persons consulting the regulations. See also Rationale for Necessity for Section 56076(a)(8), above.