INITIAL STATEMENT OF REASONS

TITLE 17. CALIFORNIA CODE OF REGULATIONS
DIVISION 2.
CHAPTER 3: COMMUNITY SERVICES
SUBCHAPTER 17: RATE ADJUSTMENTS, AUDIT ADJUSTMENTS AND RATE APPEALS FOR IN-HOME RESPITE SERVICES AGENCY VENDORS
ARTICLE 2: RATE ADJUSTMENTS
SECTION 58420, GENERAL PROVISIONS

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

Welfare and Institutions Code Section 4690 requires the Director of the Department of Developmental Services (Department) to establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment for nonresidential services. The revisions proposed in this action are intended to maintain an equitable rate process for in-home respite services. The problem addressed herein is that some in-home respite service agencies are not able to cover their fixed costs under the current rate structure when usage drops a significant amount. Since they cannot stay in business while losing money, these agencies are in danger of closing unless some provisions are made for rate adjustments in situations where the usage of these services has dropped significantly.

(b)Specific Purpose and Rationale for Necessity

<u>Section 58420 (a), (b), (c), (d), (e)</u>

Specific Purpose:

This proposal would delete the word “program” form the references to both anticipated and unanticipated changes addressed by this regulation. The purpose of this change is to eliminate confusion in the regulations, since many of the anticipated and unanticipated changes allowed by existing regulations are in fact not “program” changes (actually changing the program, such as a staffing ratio change), but fiscal or business changes (such as a loss of vendor income or the loss of a lease).

Rationale for Necessity:

Existing regulations allows vendors to request rate adjustments, under specific circumstances. These circumstances include a loss or gain of vendor income, or the loss of a lease. Although the regulations refer to anticipated and unanticipated “program” changes, these types of changes are clearly not “program” changes, and the regulations lack clarity as written. By removing the specific reference to “program" changes, both program and non-program changes are allowed.

Section 58420(b)(3)

Specific Purpose:

The purpose of the new proposed subsection (b)(3) is to allow in-home respite service agencies, which have been adversely affected by large fluctuations in the amount of services that are being purchased from them, to apply for rate adjustments. The threshold for the amount of fluctuation necessary before a vendor may apply for a rate adjustment is proposed to be 25% or more annually from the units of service used in the cost statement upon which their rate was based.

Rationale for Necessity:

In recent years, families of developmentally disabled consumers have increasingly turned to the use of respite services in order to keep their families together and to keep the consumers living at home whenever possible. Although many regional centers purchase different mixes of service types, there are basically three options available to these centers. These options include: 1) purchasing services from a respite service agency; 2) purchasing services from individuals vendored to provide respite services; and 3) providing families with vouchers which may be used to hire their own workers to provide the services, including family members not living in the home.

There are approximately 27,090 family members of consumers who procure respite services utilizing a voucher issued by the regional center. Under the vouchered service, the regional center reimburses the vouchered family member who, in turn, has responsibility for the selection, supervision, and level of payment of the individual worker. The family member may select an individual, an agency, or a facility to perform respite services. Within a given period of time, the family member may utilize several different individuals, a respite agency, and/or, if out-of-home respite is required, a respite facility to provide the respite service. The family member has the flexibility to hire an individual, or individuals, at a lower rate of pay in order to increase the number of respite hours available to them, or they may reimburse the workers at varying levels of pay depending on the qualifications of the worker. By regulation, reimbursement for these workers may not exceed $8.57 per hour.

If the regional centers hire the respite workers directly (i.e., they are vendored as individual respite workers), the maximum reimbursement rate is also $8.57 per hour. In fiscal year (FY) 1999-00, $67 million was spent on respite services. Of this $67 million, approximately $48 million was spent for respite services procured by the vendored parents/guardians via vouchers (see Table 1 and Chart 2).

On the other end of the scale, respite agencies, which maintain offices from which they recruit, train and place staff, have the highest reimbursement rates, ranging up to $18.82 per hour for fiscal year 2000/01, with a mean rate of $15.76 per hour (see Table 2).

Because purchase of service dollars are limited, the units of service (respite hours) purchased by regional centers from respite service agencies has declined significantly as the units of service purchased through family members vendored to procure respite services via a voucher has increased significantly (see attachments). For example, in FY 1994-95, expenditures on respite agencies and expenditures on family members vendored to procure respite services via a voucher accounted for 55% and 42% of the total respite expenditures, respectively. By FY 1999-00, expenditures on family members vendored to procure respite services via a voucher swelled to 71% of the total expenditures, while the expenditures on respite agencies dropped to 23% (see Table 1). While there is an issue of cost effectiveness, the respite agencies still provide a quarter of the respite services, and they must remain a viable option in order to keep families together.

Under the current rate structure, the respite agencies' rates are based on FY 1995-96 cost statements, plus various raises that have been allocated for specific purposes since then. Agencies in areas where regional centers have used vouchers heavily to procure respite services (called 'units of service' in regulations) cannot recover the fixed cost portion of expenses in light of the decreased usage. Regulatory changes are needed to allow these agencies to seek rate adjustments where it can be demonstrated that the increased use of vouchers has had such an impact on their operations that they can no longer cover their basic fixed overhead costs without such rate adjustments.

The Department chose the 25% threshold by analyzing the changing patterns in the purchase of services from both in-home respite service agencies and families vendors to provide services using the voucher process. While smaller percentages of change were considered normal for any business, possibly in the 10-20% range, the Department recognized that at some point agencies with fixed overhead costs would start going out of business, unable to meet the most basic fixed costs. The Department analyzed how many in-home respite service agencies had experienced 33% and 25% drops in the units of service purchased by regional centers in the eight years for which we had statistics (see Table 1 and Chart 3). 14%, or approximately 1 in 6 vendors, would be affected at the 33% threshold level, while greater than 1 in five (21%) would be affected at the 25% threshold level. It was the Departments best judgment that action should be taken at the 25% threshold to allow vendors to apply for relief, in that a loss of 1 in 5 vendors would have a significant impact on the lives of families who depend on respite services to keep the family unit intact.

In the interest of fairness and in consideration of the State's fiduciary responsibility to taxpayers, language is proposed to also allow for the possibility that the units of service (hours of respite service) could also increase at some point. In theory, a vendor which received a rate increase under these new proposed provisions could later experience a large increase in the units of service being purchased for any number of reasons (e.g., a change in purchase of service policy by a specific regional center, a large placement of consumers back with their families, supported by respite services, etc.). It would not be in the public interest to allow these same vendors to reap a windfall profit due to the increased rate and increased usage. The language proposed would allow rates to be adjusted in these circumstances also.

AUTHORITY AND REFERENCE
Authority: Sections 4691 and 4691.5, Welfare and Institutions Code.
Reference: Sections 4691 and 4691.5, Welfare and Institutions Code.