

ASSEMBLY BILL

No. 1283

Introduced by Assembly Member Stone

February 19, 2021

An act to amend Section 16519.6 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1283, as introduced, Stone. Resource families: hearings.

Existing law provides for the implementation of the resource family approval process, which replaces the multiple processes for licensing foster family homes, certifying foster homes by foster family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families. Existing law requires the State Department of Social Services to provide a statewide fair hearing process for application denials, rescissions of approval, exclusion actions, or criminal record exemption denials or rescissions by a county or the department. Under existing law, a county's action on an approval is final, or for matters set before the State Hearings Division, an action is subject to dismissal, if the resource family, applicant, excluded individual, or individual who is the subject of a criminal record exemption denial or rescission does not file a timely appeal.

This bill would remove the reference to the action before the State Hearings Division being dismissed, and instead, provide that in a matter before the State Hearings Division, an appeal shall be subject to dismissal if an appeal to the notice of action or exclusion order is not filed within the prescribed time. The bill would also make the county's action final, and the appeal before the State Hearings Division subject

to dismissal, if the resource family, applicant, excluded individual, or individual who is the subject of a criminal record exemption denial or rescission withdraws the appeal or fails to appear at the hearing without good cause. Under the bill, good cause for failure to appear at the hearing would be as defined by the department in specified written directives or regulation.

Existing law authorizes the department to permanently exclude a resource family parent, applicant, or other individual from presence in any resource family home, from employment in, presence in, and contact with clients of, any facility licensed by the department or certified or approved by a licensed foster family agency, and from holding certain positions with a licensee of any licensed facility, for specified reasons.

This bill would require a temporary exclusion of an individual following a county's denial of an application for resource family approval, rescission of approval, or denial or rescission of a criminal record exemption to only be imposed as set forth in certain written directives or regulations adopted by the department. To the extent the bill would impose new duties on counties, the bill would impose a state-mandated local program.

Existing law authorizes the department, upon a finding of noncompliance with the law governing resource families, to require a foster family agency to deny a resource family application, rescind the approval of a resource family, or take other action deemed necessary for the protection of a child who is or who may be placed with the resource family.

This bill would repeal those provisions.

This bill would authorize a county and the department to coordinate the filing of actions related to resource families, file consolidated pleadings, or file a motion to consolidate multiple actions if a matter involves both a county and department action.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 16519.6 of the Welfare and Institutions
2 Code is amended to read:

3 16519.6. (a) ~~All hearings~~ A *hearing* conducted pursuant to
4 Section 16519.5 shall be conducted in accordance with the
5 requirements of this section and the written directives or regulations
6 adopted pursuant to Section 16519.5.

7 (b) For a resource family ~~hearings~~ *hearing* held at the
8 department's State Hearings Division, the procedures set forth in
9 Chapter 7 (commencing with Section 10950) of Part 2 shall apply,
10 except as otherwise provided in this section.

11 (c) (1) For a resource family ~~hearings~~ *hearing* held at the Office
12 of Administrative Hearings, the procedures set forth in the
13 Administrative Procedure Act (Chapter 4 (commencing with
14 Section 11370) of Part 1 of Division 3 of Title 2 of the Government
15 Code) shall apply, except as otherwise provided in this article.

16 (2) For purposes of the administrative action procedures set
17 forth in this article, "agency" ~~shall mean~~ means a county or the
18 department according to the authority to take action provided in
19 subdivisions (f) and (g) of Section 16519.5, except that "agency"
20 shall mean the department for purposes of a decision or a
21 posthearing procedure, as provided in Sections 11517 to 11522,
22 inclusive, of the Government Code.

23 (d) (1) Notwithstanding the time to appeal set forth in Section
24 10951 of this code and Section 1558 of the Health and Safety
25 Code, an applicant for approval or for a criminal record exemption
26 may file a written appeal within 90 days of service of a notice of
27 action, and a resource family, excluded individual, or individual
28 who is the subject of a criminal record exemption rescission may
29 file a written appeal within 25 days of service of a notice of action
30 or exclusion order.

31 (2) Pursuant to Section 1013 of the Code of Civil Procedure, if
32 the notice of action or exclusion order is served by mail, the time
33 to respond shall be extended five days.

34 (3) If different appeal timelines apply to a matter as a result of
35 multiple actions filed against a respondent, the following shall
36 apply:

1 (A) A county or the department, as applicable, shall accept an
2 appeal to one action as an appeal to all of the actions against the
3 same respondent, if requested to do so by the respondent.

4 (B) ~~When~~*If* an action for rescission of approval, criminal record
5 exemption rescission, or exclusion includes an action for
6 application denial, the applicable appeal timeline for a rescission
7 of approval, criminal record exemption rescission, or exclusion
8 specified in paragraph (1) shall also apply to the action for
9 application denial.

10 (4) ~~Nothing in this section shall be construed to~~ *This section*
11 *does not* impede or extend jurisdiction as set forth in the
12 Administrative Procedure Act (Chapter 4 (commencing with
13 Section 11370) of Part 1 of Division 3 of Title 2 of the Government
14 Code).

15 (e) (1) Notwithstanding Section 10951, *and except as provided*
16 *in subdivision (m)*, a county's action shall be final, or for matters
17 set before the State Hearings Division, an ~~action~~ *appeal* shall be
18 subject to ~~dismissal~~ *dismissal*, if the resource family, applicant,
19 excluded individual, or individual who is the subject of a criminal
20 record exemption denial or rescission does not file an appeal to
21 the notice of action or exclusion order within the prescribed time.
22 *time, withdraws the appeal, or fails to appear at the hearing*
23 *without good cause.*

24 (2) Notwithstanding paragraph (1), a resource family, applicant,
25 excluded individual, or individual who is the subject of a criminal
26 record exemption denial or rescission shall be entitled to a hearing
27 pursuant to Section 16519.5 if they file the appeal no more than
28 30 calendar days after the due date for the appeal, as specified in
29 subdivision (d), and the person provides good cause for the late
30 filing of the appeal. Good cause shall be determined by the
31 department in an administrative review procedure set forth in the
32 written directives or regulations adopted pursuant to Section
33 16519.5. The department shall not grant a late appeal for good
34 cause if the appeal is filed more than 30 calendar days after the
35 due date for the appeal, as specified in subdivision (d).

36 (3) For purposes of this ~~subdivision~~ “good cause” subdivision,
37 *the following definitions apply:*

38 (A) “Good cause” for the late filing of an appeal means a
39 substantial and compelling reason beyond the party's control,

1 considering the length of the delay, the diligence of the party filing
2 the appeal, and the potential prejudice to the other party. ~~The~~

3 (B) “Good cause” for failure to appear at the hearing shall be
4 as defined by the department in the written directives or regulations
5 adopted pursuant to Section 16519.5.

6 (C) The inability of a person to understand an adequate and
7 language-compliant notice, in and of itself, ~~shall does~~ not constitute
8 good cause.

9 (4) This section ~~shall does~~ not preclude the application of the
10 principles of equity jurisdiction as otherwise provided by law.

11 (f) Except as provided in subdivisions (g) and (h), and
12 notwithstanding Section 10952, a hearing under this section,
13 notwithstanding any time waiver, shall be held within 90 days
14 following the receipt of a timely appeal for matters to be set before
15 the State Hearings Division or within 90 days following the receipt
16 of a timely notice of defense for matters to be set before the Office
17 of Administrative Hearings, unless a continuance or postponement
18 of the hearing is granted for good cause.

19 (g) (1) The department may exclude a resource family parent,
20 applicant, or other individual from presence in any resource family
21 home, from employment in, presence in, and contact with clients
22 ~~of-~~ *of*, any facility licensed by the department or certified or
23 approved by a licensed foster family agency, and from holding the
24 position of member of the board of directors, executive director,
25 or officer of the licensee of any facility licensed by the department,
26 for any of the reasons set forth in Section 16519.61.

27 (2) The department may issue an exclusion order requiring the
28 immediate removal of an individual if, in the opinion of the
29 department, the action is necessary to protect a child from physical
30 or mental abuse, abandonment, or any other substantial threat to
31 the child’s health or safety. If the department has issued an
32 immediate exclusion order, the timelines for the service of an
33 accusation, conducting a hearing, and for a final determination set
34 forth in Section 1558 of the Health and Safety Code shall apply,
35 unless a continuance of the hearing is granted for good cause.

36 (3) A resource family’s failure to comply with the department’s
37 exclusion order after being notified of the order shall be grounds
38 for taking action against the resource family’s approval pursuant
39 to Section 16519.61.

1 (4) An exclusion order that was effective prior to the
2 implementation of the resource family approval program and
3 conversion of licensed foster family homes and certified family
4 homes to resource families shall be deemed to exclude the
5 individual from presence in any resource family home.

6 (5) (A) An exclusion shall be for the remainder of the excluded
7 person's life, unless otherwise ordered by the department, or as
8 prescribed in Section 1558.1 of the Health and Safety Code.

9 (B) Pursuant to Section 11522 of the Government Code, the
10 excluded individual may petition for reinstatement to the
11 department after one year has elapsed from the effective date of
12 an exclusion order that was not appealed or the effective date of
13 a decision and order by the department upholding an exclusion
14 order. The department shall provide the excluded person a copy
15 of Section 11522 of the Government Code with the exclusion order
16 and decision and order.

17 (C) *A temporary exclusion of an individual following a county's denial of an application for resource family approval, rescission of approval, or denial or rescission of a criminal record exemption, shall only be imposed as set forth in the written directives or regulations adopted by the department pursuant to Section 16519.5.*

22 (6) For purposes of this subdivision, a "facility licensed by the
23 department" means a facility licensed pursuant to Chapter 3
24 (commencing with Section 1500) of, Chapter 3.01 (commencing
25 with Section 1568.01) of, Chapter 3.2 (commencing with Section
26 1569) of, Chapter 3.3 (commencing with Section 1570) of, Chapter
27 3.4 (commencing with Section 1596.70) of, Chapter 3.5
28 (commencing with Section 1596.90) of, or Chapter 3.6
29 (commencing with Section 1597.30) of, Division 2 of the Health
30 and Safety Code.

31 (h) If a county or the department has issued a temporary
32 suspension order, the hearing shall be held within 30 days
33 following the receipt of a timely appeal for matters to be set before
34 the State Hearings Division, or within 30 days following the receipt
35 of a timely notice of defense for matters to be set before the Office
36 of Administrative Hearings. The temporary suspension order shall
37 remain in effect until the time the hearing is completed and the
38 department has made a final determination on the merits. However,
39 the temporary suspension order shall be deemed vacated if the
40 department fails to make a final determination on the merits within

1 30 days after receipt of the proposed decision by the county or
2 department.

3 (i) Upon a finding of noncompliance, the department may
4 require a foster family agency to deny a resource family
5 application, rescind the approval of a resource family, or take other
6 action deemed necessary for the protection of a child who is or
7 who may be placed with the resource family. The resource family
8 or applicant shall be afforded the due process provided pursuant
9 to this section.

10 (1) If the department requires a foster family agency to deny an
11 application or rescind the approval of a resource family, the
12 department shall serve an order of denial or rescission notifying
13 the resource family, applicant, and foster family agency of the
14 basis of the department's action and of the right to a hearing.

15 (2) The department's order of the application denial or rescission
16 of the approval shall remain in effect until the hearing is completed
17 and the department has made a final determination on the merits.

18 (3) A foster family agency's failure to comply with the
19 department's order to deny an application or rescind the approval
20 of a resource family by placing or retaining a child in care shall
21 be grounds for disciplining the foster family agency pursuant to
22 Section 1550 of the Health and Safety Code.

23 (i) *A county and the department may coordinate the filing of
24 actions, file consolidated pleadings, or file a motion to consolidate
25 multiple actions if a matter involves both a county and department
26 action.*

27 (j) A resource family, applicant, excluded individual, or
28 individual who is the subject of a criminal record exemption denial
29 or rescission who files an appeal to a notice of action or exclusion
30 order pursuant to this section shall, as part of the appeal, provide
31 their current mailing address. The resource family, applicant, or
32 individual who is the subject of a criminal record exemption denial
33 or rescission shall subsequently notify the county, and the excluded
34 individual shall notify the department, in writing of any change in
35 mailing address, until the hearing process has been completed or
36 terminated.

37 (k) Service by mail of a notice or other writing on a resource
38 family, applicant, excluded individual, or individual who is the
39 subject of a criminal record exemption denial or rescission in a
40 procedure provided herein pursuant to this section is effective if

1 served to the last mailing address on file with the county or
2 department. Service of a notice of action shall be by personal
3 service or by first-class mail, and service of an exclusion order
4 shall be by personal service or registered mail. If the last day for
5 performance of any *required* action required herein falls on a
6 holiday, then such the period shall be extended to the next day
7 which is not a holiday.

8 (l) In all proceedings conducted in accordance with this section,
9 the burden of proof on the department or county shall be by a
10 preponderance of the evidence.

11 (m) (1) A county or the department may institute or continue
12 an administrative proceeding against a resource family, applicant,
13 or individual who is the subject of a criminal record exemption
14 denial or rescission upon any ground provided by this section or
15 Section 16519.61, enter an order denying an application or
16 rescinding the approval of a resource family, exclude an individual,
17 issue a temporary suspension order, or otherwise take disciplinary
18 action against a resource family, applicant, or individual who is
19 the subject of a criminal record exemption denial or rescission
20 notwithstanding any resignation, withdrawal, *forfeiture*, surrender
21 of approval, or denial or rescission of the approval by a foster
22 family agency.

23 (2) The department may institute or continue an administrative
24 proceeding against an excluded individual upon any ground
25 provided by this section or Section 16519.61, enter an order to
26 exclude an individual, or otherwise take disciplinary action against
27 an excluded individual, notwithstanding any resignation,
28 withdrawal, *forfeiture*, surrender of approval, or denial or rescission
29 of the approval by a foster family agency.

30 (n) (1) Notwithstanding Sections 11425.10 and 11425.20 of
31 the Government Code, a proceeding conducted pursuant to this
32 section shall be confidential and not open to the public in order to
33 preserve the confidential information of a child or resource family
34 consistent with the confidentiality requirements in Sections 827,
35 10850, and 16519.55 of this code, Section 1536 of the Health and
36 Safety Code, and Section 11167.5 of the Penal Code.
37 Notwithstanding this requirement, an administrative law judge
38 may admit persons deemed to have a direct and legitimate interest
39 in the particular case or the work of the court on a case-by-case
40 basis and with any admonishments, limitations, and protective

1 orders as may be necessary to preserve the confidential nature of
2 the proceedings.

3 (2) Except as otherwise required by law, in any writ of mandate
4 proceeding related to an issue arising out of this article, the name,
5 identifying information, or confidential information of a child as
6 described in Sections 827, 10850, and 16519.55, and Section
7 11167.5 of the Penal Code, shall not be disclosed in a public
8 document and a protective order shall be issued by the court in
9 order to protect the confidential information of a child.

10 SEC. 2. To the extent that this act has an overall effect of
11 increasing the costs already borne by a local agency for programs
12 or levels of service mandated by the 2011 Realignment Legislation
13 within the meaning of Section 36 of Article XIII of the California
14 Constitution, it shall apply to local agencies only to the extent that
15 the state provides annual funding for the cost increase. Any new
16 program or higher level of service provided by a local agency
17 pursuant to this act above the level for which funding has been
18 provided shall not require a subvention of funds by the state or
19 otherwise be subject to Section 6 of Article XIIIIB of the California
20 Constitution.

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