



CDSS

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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**

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REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

July 9, 2014

ALL COUNTY INFORMATION NOTICE NO. I-29-14

TO: ALL COUNTRY WELFARE DIRECTORS  
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS  
ALL CHIEF PROBATION OFFICERS  
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: RELATIVE CAREGIVER AND NON-RELATIVE EXTENDED FAMILY MEMBER (NREFM): SMOKE-FREE ENVIRONMENT

REFERENCE: ASSEMBLY BILL (AB 352) (CHAPTER 292, STATUTES OF 2013); HEALTH AND SAFETY CODE (H&S) SECTIONS 1530.7 AND 118948

This All County Information Notice (ACIN) provides county child welfare and probation departments and Title IV-E agreement tribes with updated information on new health and safety smoking prohibitions for relative and NREFM caregivers. The AB 352 became effective January 1, 2014. Its passage created H&S Code section 1530.7. This code section creates new health and safety responsibilities for relative and NREFM caregivers and their visitors and guests.

**BACKGROUND**

The Center for Disease Control and Prevention publishes fact sheets on the adverse health effects of secondhand tobacco smoke for adults and children. The research shows that in children, secondhand smoke causes ear infections, asthma attacks, respiratory symptoms and infections (bronchitis and pneumonia) and a greater risk of sudden infant death syndrome.<sup>1</sup>

<sup>1</sup> [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2006/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm)

### ***Serious Health Risks to Children***

Children are particularly vulnerable to the effects of secondhand smoke because they are still developing physically, have higher breathing rates than adults, and have little control over their indoor environments. Children exposed to high doses of secondhand smoke run the greatest risk of experiencing damaging health effects.

### ***Foster Homes***

In California approximately 60,000 children live with foster families. These children face higher than usual health-related challenges due to backgrounds that may include abuse, malnutrition, and in-utero alcohol or drug exposure. Research has discovered that approximately 80 percent of all foster children suffer from at least one chronic medical condition, commonly with serious respiratory illness. In addition, continuous exposure to the toxic chemicals in secondhand smoke may cause lung cancer, cardiac disease, asthma attacks, and ear and respiratory infections. These serious health problems may present parenting challenges that may negatively impact a foster child's reunification or adoption efforts.<sup>2</sup>

### **PROVISIONS OF AB 352**

The H&S section 118948 and California Code of Regulations, Title 22, Division 6, Chapter 9.5, Article 3, section 89374(a)(1) precludes anyone from smoking inside a motor vehicle when a child under the age of 18 is present.

The new law in H&S Code section 1530.7 extends the health and safety protection specifically to foster children by providing that:

- Persons who are licensed or certified to provide residential care in a foster family home or certified family home shall not smoke or permit any other person to smoke inside the facility, or on the outdoor grounds when the child is present;
- In addition, a person licensed or certified to provide residential foster care shall not smoke in any motor vehicle regularly used to transport the child.

The provisions of H&S Code section 1530.7 apply to licensed or certified foster family homes. Federal law requires that approved relative and NREFM caregivers are held to the same health and safety standards as licensed foster family homes (commonly called "same/same"). The Welfare and Institutions Code (W&IC) section 309(d)(1) establishes that the standards used to determine the suitability of a relative or NREFM to provide

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<sup>2</sup> Smoke-free Foster Care: Policy Options and the Duty to Protect, Public Health Law Center March 2011

care shall be the same standards set forth in the regulations for the licensing of foster homes. Consequently, this law equally pertains to approved relative and NREFM homes, licensed foster family homes and certified foster family homes.

As part of the home approval process, social workers should discuss the requirements of AB 352 with relatives and NREFM caregivers, to ensure that these potential placements understand and are willing to comply with the new law. Any applicant unwilling to comply with the smoking prohibitions is an inappropriate placement and cannot be approved.

***Enforcement***

To further clarify statute, the Community Care Licensing Division is currently in the process of developing regulations to implement AB 352. As previously discussed, the regulations are applicable to relative and NREFM homes under the federal doctrine of “same/same.

Once regulations are developed, more specific instructions and definitions will be forthcoming in an All County Letter. Until then, the California Department of Social Services recommends that all relative and NREFM caregivers be apprised of the new law.

If you have any questions or concerns about the policies regarding the new provisions of AB 352, please contact the Foster Caregiver Policy and Support Unit at (916) 651-7465 or via email at [kinship.care@dss.ca.gov](mailto:kinship.care@dss.ca.gov).

Sincerely,

***Original Document Signed By:***

KAREN B. GUNDERSON, Chief  
Child and Youth Permanency Branch  
Children and Family Services Division