



CDSS

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**DEPARTMENT OF SOCIAL SERVICES**

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GOVERNOR

REASON FOR THIS TRANSMITTAL

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

October 20, 2015

ALL COUNTY INFORMATION NOTICE NO. I-76-15

TO: ALL COUNTY WELFARE DIRECTORS  
 ALL CHIEF PROBATION OFFICERS  
 ALL FOSTER CARE MANAGERS  
 ALL INDEPENDENT LIVING PROGRAM COORDINATORS  
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS  
 TITLE IV-E AGREEMENT TRIBES  
 ALL ADMINISTRATIVE LAW JUDGES  
 ALL COUNTY ELIGIBILITY SUPERVISORS  
 ALL CONSORTIA PROJECT MANAGERS  
 CHILD WELFARE SERVICES NEW SYSTEM

SUBJECT: EXTENDED FOSTER CARE (EFC) UPDATE

REFERENCE: ASSEMBLY BILL (AB) 2454 (CHAPTER 769, STATUTES OF 2014),  
 AB 787 (CHAPTER 487, STATUTES OF 2013), AB 1712  
 (CHAPTER 846, STATUTES OF 2012), AB 212 (CHAPTER 459,  
 STATUTES OF 2011), AB 12 (CHAPTER 559, STATUTES OF 2010);  
 PUBLIC LAW (P.L.) 110-351; WELFARE AND INSTITUTIONS CODE  
 (W&IC) 388, 388.1, and 727 ; ALL COUNTY LETTERS (ACL) 11-61,  
 11-69, 11-77, 11-85, 12-05, 12-12,12-48 AND 13-100.

The purpose of this All County Information Notice (ACIN) is to provide counties with information regarding the statutory changes to the W&IC through enactment of AB 2454 and AB 787 regarding the extension of foster care, also known as “The After 18 Program”. This ACIN also clarifies that existing child welfare laws that allow minors to extend foster care also apply to Nonminor Dependents (NMDs). References to foster youth in this ACIN include both dependents and those youth on probation who are wards of the court with an order for foster care placement.

## The EFC Program Clarifications

### Re-entry of Nonminors

Under W&IC section 388(e), a nonminor who exited from foster care after age 18, may petition the court to resume dependency jurisdiction and re-enter foster care up until age 21. 787 adds a new provision to W&IC section 388.1. It provides a parallel process for a nonminor who receives Kinship Guardianship Assistance Payments (Kin-GAP), Adoption Assistance Payments (AAP) or is in a non-related legal guardianship established as part of a dependency proceeding to petition the court to re-enter foster care should the guardian or adoptive parent die before the youth reaches age 21. The AB 2454 further expanded the category of youth in these programs who are eligible to petition for re-entry under W&IC section 388.1. Under these bills, a youth who meets the specified conditions can petition the court for a hearing under W&IC section 388.1 to determine whether he or she is able to return to foster care. The new categories of nonminors who are eligible to return to foster care under the new provisions of AB 2454 and AB 787 are as follows:

Effective January 1, 2014, the nonminor seeking re-entry under W&IC section 388.1 must be either:

- A nonminor former dependent, as defined in W&IC section 11400(aa), whose legal guardian(s) received aid after the youth attained 18 years of age (*includes aid received the month of the nonminor's 18<sup>th</sup> birthday*) under the state or federal Kin-GAP Program or as a Non-Related Legal Guardian (NRLG) whose guardianship was established in dependency court, and whose guardians have died after the nonminor attained 18 years of age, but before he or she attains 21 years of age; or
- A nonminor whose adoptive parent(s) received AAP after the youth attained 18 years of age (*includes aid received the month of the nonminor's 18<sup>th</sup> birthday*) and his or her adoptive parent or parents died after the nonminor attained 18 years of age, but before he or she attains 21 years of age.

Beginning January 1, 2015, in addition to the conditions set forth above, a nonminor may seek re-entry under WIC 388.1 section if either condition applies:

- A nonminor former dependent, as defined in W&IC section 11400(aa), whose legal guardian(s) received aid after the youth attained 18-years-of-age (*includes aid received the month of the nonminor's 18<sup>th</sup> birthday*) under the state or federal Kin-GAP Program, or as a NRLG whose guardianship was established in dependency court, and whose former guardian or guardians no longer provide ongoing support to, and no longer receive aid on behalf of, the nonminor after the nonminor attained 18 years of age, but prior to attaining 21 years of age; or
- A nonminor whose adoptive parents received AAP after attaining 18 years of age (*includes receiving aid in the month of the nonminor's 18<sup>th</sup> birthday*) and his or her adoptive parent or parents no longer provide ongoing support to, and no longer

receive aid on behalf of, the nonminor after the nonminor has attained 18 years of age, but before he or she attains 21 years of age.

Once the petition is filed and the court determines there is sufficient information to indicate that the nonminor meets one of the conditions for re-entry, a hearing will be scheduled within 15 judicial days. The child welfare or probation department will prepare a court report that addresses how the nonminors will meet one of the five EFC participation criteria cited in ACL 11-69 and the appropriate placement setting for the nonminor. If re-entry into foster care is in the nonminor's best interest, the court will assume dependency jurisdiction over the nonminor and order placement and care responsibility with the child welfare or probation agency.

The nonminor may sign the Voluntary Re-entry Agreement (SOC 163) prior to filing the petition to assume court jurisdiction. By doing so, the nonminor is entitled to placement and supervision pending the court's assumption of jurisdiction. In this scenario, the placing agency is also responsible for filing the petition to resume dependency jurisdiction on behalf of the nonminor within 15 judicial days of the date the re-entry agreement was signed. These nonminors are entitled to the same range of placements available to other NMDs. The case manager should confer with the nonminor to determine which type of placement would be most appropriate for him/her prior to arranging the placement.

The information provided in ACL 12-12, on re-entry procedures under W&IC section 388 relating to county responsibility, eligibility determination/new episodes, authority for placement, and the Transitional Independent Living Case Plan, is also relevant to re-entry under W&IC section 388.1. The youth who re-enter foster care are eligible for Aid to Families with Dependent Children—Foster Care (AFDC-FC). When the re-entry is considered a new foster care episode, a new eligibility determination is needed. Eligibility for federal AFDC-FC funds requires that linkage to the AFDC program be established. The linkage determination for a re-entering NMD is based on the youth's status as an adult; only the income and property of the youth is considered, without regard to the income of the parent, relatives, or legal guardians in the home from which the youth was originally removed as a younger child, and without regard to the income of any relatives with whom the youth is currently residing. As these youth are re-entering foster care, they are eligible for the same placement options as other NMDs. For more information on placement options, refer to [ACL 11-77](#).

### Probation Wards

The AB 787 amends W&IC section 727 to clarify the courts' ability to make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of a nonminor dependent that is adjudged a ward of the court and orders the care, custody, and control of the nonminor to be under the supervision of the county probation department. Previously, the statute only referenced minors.

The amendments to W&IC section 727 also clarify that nonminor wards may be placed in an approved Supervised Independent Living Setting, (i.e. Transitional Housing Program Plus Foster Care, or a Supervised Independent Living Placement). For more information on placement options, refer to [ACL 11-77](#).

The AB 787 added the definition of “transition dependent” to W&IC section 11400(ac). Transition jurisdiction is a type of court jurisdiction, applicable to delinquent youths who meet the specified conditions, which was created by AB 212 by adding W&IC section 450. Courts normally terminate delinquency jurisdiction over wards that have completed their rehabilitation goals. However, modification of the court’s delinquency jurisdiction to transition jurisdiction allows the continuation of juvenile court jurisdiction over eligible wards after delinquency jurisdiction is terminated, thus enabling them to remain in foster care and to participate in EFC after reaching age 18, provided the eligibility criteria are met. The W&IC section 450(b) clarifies that a minor subject to the court’s transition jurisdiction is referred to as a transition dependent, while W&IC section 450(c) states that youth over the age of 18 years who are subject to the court’s transition jurisdiction are referred to as NMDs. The W&IC section 11400 contains definitions of both NMD, at W&IC section 11400(v) which was added by the enactment of AB 12, and “transition dependent” at W&IC section 11400(ac), which was added by AB 787. For more information regarding probation youth access to After 18 Program, refer to [ACL 11-85](#).

### Family Reunification

The AB 1712 clarified that an in-progress family reunification case plan may continue for a NMD if the NMD and the parent(s), or legal guardian is in agreement, and the court finds that it is in the best interest of the NMD (W&IC sections 361.6, 727.25, and 16507). The AB 1712 also added W&IC section 366.31, which clarified court report requirements for cases in which it is determined the NMD cannot remain safely in the home. For NMDs who are ordered to return home upon a determination by the court that the NMD may reside there safely, AB 787 added W&IC section 366.31(d) (3), which authorizes continued court jurisdiction under W&IC section 303, including status hearings every six months , after the NMD has returned home. This code section also provides directives regarding the status review hearing requirements.

### **Other Program Clarifications**

#### Voluntary Out-of-Home Placement

Currently if a minor is voluntarily placed in an out-of-home placement by his or her parents pursuant to a voluntary placement agreement with the county welfare department, the minor may remain in the out-of-home placement for no more than 180 consecutive days, unless a petition to establish dependency is filed and a court finding that remaining in the out-of-home placement is in the child’s best interest is made prior to the end of the 180 day period. For a youth age 17 who has been placed pursuant to a voluntary placement agreement, if it is determined that it is in the youth’s best interest to remain in an

out-of-home placement as a nonminor dependent, AB 787 amended W&IC section 16507.6 to require that the dependency petition be filed at least 90 days prior to the minor attaining 18 years of age. In addition, the court must issue a disposition order with a best interest finding prior to the minor attaining 18 years of age. The best interest finding must be made before the 180 days expire for continued federal or state EFC eligibility.

#### NMD Adoption

If extended AAP benefits were received on a nonminor's behalf and the adoptive parent(s) dies, the nonminor may be adopted again and shall be eligible for AAP benefits, pursuant to W&IC section 16120(m)(1). The AB 787 also added language to this section to clarify that the juvenile court may resume dependency jurisdiction over a nonminor whose adoptive parent(s) die, pursuant to subdivision (e) of W&IC section 388. For further information on NMD adoption, refer to ACL 13-100.

#### Data Entry

These bills did not create any changes to the process of entering re-entry information into CWS/CMS. Instructions for entering NMD-related data into CWS/CMS can be found in ACL 12-05. The CWS/CMS Release 6.8 provided initial EFC related-changes (e.g. NMD safety assessments and opening client cases). The CWS/CMS Release 7.1, released on May 17, 2014, provided additional EFC clean up (e.g., adding participation code criteria to FR cases).

If you have any questions about this ACIN, please contact the Foster Care Support Services Bureau, Independent Living Program Policy Unit at [ILPPolicy@dss.ca.gov](mailto:ILPPolicy@dss.ca.gov).

Sincerely,

#### ***Original Document Signed By:***

Jennifer Buchholz, Acting Chief  
Child and Youth Permanency Branch  
Children and Family Services Division

c: County Welfare Directors Association  
Chief Probation Officers of California  
Judicial Council of California