



CDSS

WILL LIGHTBOURNE
DIRECTOR

cdss

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

744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

August 9, 2012

REASON FOR THIS TRANSMITTAL

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

ALL COUNTY LETTER NO. 12-29

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CaWORKs PROGRAM SPECIALISTS
 ALL COUNTY WELFARE-TO-WORK COORDINATORS
 ALL CONSORTIUM PROJECT MANAGERS
 ALL REFUGEE PROGRAM COORDINATORS
 ALL CHILD CARE COORDINATORS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CaWORKs) PROGRAM: ADDITIONAL CLARIFYING GUIDANCE FOR CHANGES TO ASSEMBLY BILL (AB) 98 SUBSIDIZED EMPLOYMENT PROGRAM RESULTING FROM SENATE BILL (SB) 72

REFERENCE: AB 98 (CHAPTER 589, STATUTES OF 2007), SB 72 (CHAPTER 8, STATUTES OF 2011); ALL COUNTY LETTERS (ACLs) 10-43, 11-32, and 11-58; COUNTY FISCAL LETTERS 01/02-58 AND 10/11-65; WELFARE AND INSTITUTIONS CODE (W&IC) SECTIONS 10604.5 AND 11322.63; CDSS MANUAL OF POLICIES AND PROCEDURES (MPP) SECTIONS 42-701, 42-711, 44-350

The purpose of this ACL is to provide County Welfare Departments (CWD) additional clarifying guidance from the California Department of Social Services (CDSS) for implementing the changes made to the AB 98 subsidized employment (SE) program through the enactment of SB 72.

Effective March 24, 2011, SB 72 expanded the eligible population for AB 98 SE program wage subsidies, increased the duration of qualifying job positions, and increased the maximum contribution that CDSS will provide counties outside of the single allocation. These changes were implemented by ACL 11-32, released on

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April 6, 2011. This ACL is a follow-up to the previous AB 98 SE question and response letter, ACL 11-58, released on August 31, 2011.

CDSS hopes the information provided in this letter is helpful to counties in supporting their SE programs. If you have SE policy questions, please contact your CDSS Employment Bureau County Consultant at (916) 654-2137. Please direct fiscal policy or claiming questions to the Fiscal Systems Bureau electronic mailbox at fiscal.systems@dss.ca.gov. For data reporting questions, please contact the CalWORKs and CalFresh Estimates Bureau at (916) 657-2357.

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Welfare to Work Division

Attachment

QUESTIONS AND
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES' RESPONSES

1. **Question:** If a participant's initial Assembly Bill (AB) 98 subsidized employment (SE) placement ends, can the participant be placed in another AB 98 placement? For example, a participant is in an AB 98 placement for 6 months and he or she is on California Work Opportunity and Responsibility to Kids Program (CalWORKs) cash aid, can the participant be placed in another AB 98 placement for up to another 6 months?

CDSS Response: Statute does not direct the county to automatically place any welfare-to-work (WTW) clients into a different AB 98 SE activity if the placement ends prematurely or the client does not obtain unsubsidized employment at the end of an AB 98 placement. As indicated in Welfare and Institutions Code (W&IC) Section 11322.63(a)(2), "State participation in the total wage costs pursuant to this section shall be limited to a maximum of six months of wage subsidies for each participant." However, a placement may end earlier than planned or the placement may not have been the best fit for the participant's skills or the current employment market. Providing a different AB 98 activity may be an effective county policy for WTW clients who may benefit from the opportunity to increase job skills and make further progress toward obtaining unsubsidized employment.

Therefore, the statutory language above does not prohibit a subsequent placement of a former AB 98 participant. However, before providing a different AB 98 participation activity for a WTW client, the county must determine on a case-by-case basis that this would be appropriate. For example, if AB 98 SE is the sole activity in a client's WTW plan, and the client did not obtain unsubsidized employment at the end of the AB 98 participation, the county will need to determine if a different SE activity will be effective. As indicated in the CDSS Manual of Policies and Procedures (MPP) 42-711.71, the county is required to conduct a reappraisal of any participant who does not obtain unsubsidized employment upon completion of all activities in his or her WTW plan. The county also needs to take this opportunity to evaluate whether there are extenuating circumstances, as defined by the county, that prevent the participant from obtaining employment in the local labor market.

2. **Question:** Can a former AB 98 participant who was discontinued from CalWORKs due to AB 98 income and whose subsidy has ended be placed into a new AB 98 placement?

CDSS Response: No. An individual whose CalWORKs cash aid has been discontinued and whose AB 98 subsidy has ended cannot be placed in another AB 98 SE position as long as the individual remains off CalWORKs.

As indicated in W&IC Section 11322.63(a)(3), only current CalWORKs recipients, sanctioned individuals, or individuals who have exceeded the CalWORKs time limit and are receiving benefits for their eligible children are eligible to enter AB 98 SE. If the client reapplies for and is eligible for CalWORKs cash aid, then the client may be eligible for an AB 98 SE placement. Refer to the CDSS response to question 1 for further information.

3. **Question:** If a participant ends her or his SE position before the six months is over and the county wants to place the former participant with another employer, how much time between SE activities needs to occur before the county recalculates the grant amount for the month prior to the start of the SE? Would the county use the original grant amount instead?

CDSS Response: If an AB 98 SE position ends prior to the original date that it was set to end—e.g., as stated in the WTW plan—and the client is benefitting from AB 98 SE, then another placement can be made as soon as reasonably possible. Refer to the CDSS response to question 1 for further information. Additionally, ACL 11-32 states that CDSS' contribution outside of the Single Allocation shall not be recalculated for the duration of the SE placement. However, once a placement ends, a recalculation may be required depending on how long after the end of the original placement that the new placement starts, as follows:

- No recalculation of the grant is needed if the client is placed into another AB 98 position before one full calendar month has passed. The county may continue to use the computed grant from the month prior to the previous AB 98 placement.
- If the time between placements is longer than one full calendar month, then the county will need to base the cap of the state's contribution toward the AB 98 subsidy on the computed grant for the month prior to the participant's new entry into an AB 98 placement. In this situation, there has been sufficient time between the previous placement and new placement to have a full month's computed grant to base the cap on. This update of the computed grant will assist with the cost neutrality goal of the AB 98 SE program; please see ACLs 11-32 and 11-58 for more information regarding cost neutrality.

Following are examples of how to determine whether or not the grant needs to be recalculated:

1. If the participant's original AB 98 SE placement ended on July 15, 2012 and the new placement began on August 20, 2012, then the county will use the computed grant from the month prior to the last entry into AB 98 SE.

2. If the original placement ended July 15, 2012, and the new entry into AB 98 SE did not start until September 1st, 2012, the county would use the computed grant for August 2012 to determine the cap for the state's contribution toward wage costs because a full calendar month had passed.
4. **Question:** Can a client who is participating in Community Service (CS) or Work Experience (WEX) less than the minimum hours for the full 32 or 35 hour participation (e.g. 12 hours deemed) be placed in AB 98 SE (or any SE) at the same site? Does this violate the Fair Labor Standards Act (FLSA)? Does it matter if it is a different job at the same site?

CDSS Response: WTW participants should not be placed in CS or WEX and SE concurrently because this is not in keeping with the intent of CS and WEX to prepare participants for paid employment and because it could lead to situations that violate the FLSA. According to CDSS regulations, CS and WEX are training activities to develop basic job skills, under the close supervision of the activity provider, so that WTW participants can move into paid employment: see CDSS Manual of Policies and Procedures (MPP) sections 42-701.2 (c)(3) and (w)(3). Therefore, if the participant is ready to be placed in SE, she or he should no longer need CS or WEX to prepare for paid employment. For this reason alone, WTW participants should not be in CS or WEX and SE at the same time. Further, during a work-week, even if the job duties are expressly different, it may not always be clear when the participant is performing either CS or WEX and when the employee is performing SE. Therefore, placing a WTW participant in CS or WEX and SE concurrently at the same employer has the potential to create conflicts including, but not limited to, minimum wage (deeming hours), overtime, and which party is responsible for any workers' compensation claims (e.g. government or employer).

5. **Question:** If an individual is eligible for WTW because she or he is in CalWORKs family reunification but has no grant due to the children being removed from the home, can the client be placed in AB 98? If yes, how does the county determine the maximum amount the county can claim?

CDSS Response: A CalWORKs family reunification client with no cash aid is not eligible for AB 98 SE. The following AB 98 program criteria apply to this situation:

- To enter AB 98 SE, the participant must not be otherwise employed and must be an aided CalWORKs recipient, in a WTW sanction, or in safety net status receiving benefits for her or his children as indicated in W&IC Section 11322.63(a)(3).

- The state's share of the wage subsidy outside of the single allocation cannot exceed 100 percent of the computed grant as indicated in W&IC Section 11322.63(a)(1)(A).

The family reunification client without a cash grant is not a CalWORKs aid recipient or in sanction and is not eligible for safety net benefits for her or his children. Thus, the family reunification client is not eligible for entry into AB 98 SE. Further, since there is no grant, the county cannot claim a subsidy outside of the single allocation. The client may become eligible for AB 98 SE if the child is returned to the home and the assistance unit (AU) is receiving a CalWORKs cash aid grant and no longer receiving CalWORKs family reunification services. However, the county is encouraged to consider SE alternatives not funded by the AB 98 program to serve CalWORKs reunification parents while they are not receiving a grant. This way the county can fulfill the requirements of the reunification plan whether or not the reunification AU is eligible for the AB 98 program at a later time.

6. **Question:** If an AU reapplies for CalWORKs within three calendar-months of AB 98 SE ending, does the county use current recipient disregards for the entire AU's income, or does the county try to separate the former AB 98 participant's income from the other members of the AU, such as a second parent, before applying income disregards?

CDSS Response: When determining eligibility, the entire AU's income is considered regardless of whether or not an individual was previously in AB 98 SE. If the reapplication is within three months of the end of AB 98 SE, current recipient disregards will apply to the entire AU's income. Also, the 100-hour work rule, which states that earners in the home shall be employed less than 100 hours during the four-week period prior to CalWORKs eligibility, will not apply.

7. **Question:** If an individual obtains and loses unsubsidized employment after her or his AB 98 SE ends and then reapplies for CalWORKs within three calendar-months of the AB 98 SE, can the AU be considered a current recipient for the purposes of eligibility?

CDSS Response: Yes. The employment status of AU members does not impact the three-calendar-month period for eligibility between the end of the AB 98 subsidy and reapplication. Also, the reason the unsubsidized employment ended is not a factor in the three calendar-month period. If an AU is otherwise eligible within three calendar-months of the date AB 98 SE ended, current recipient income disregards shall apply and the 100-hour work requirement shall not apply.

8. **Question:** Can counties require a Quarterly Reporting 7 form (QR7) from an individual who continues in the AB 98 program, but whose family is no longer eligible for CalWORKs cash aid due to the AB 98 income?

CDSS Response: No. QR7's can only be required of AUs when there is a need to determine continued eligibility for CalWORKs cash assistance. Counties may request that former CalWORKs clients who are still participating in AB 98 SE provide monthly information (e.g. a pay stub) to verify hours or, with the clients' permission, counties may contact employers for this information. Counties may also develop a form for post-aid AB 98 participants to fill out on a monthly basis to provide information on current participation information including hours worked and gross pay. County claims for AB 98 wage and non-wage costs can only be made for 50 percent less \$56 of the total wage costs paid by the employer to the employee, not to exceed 100 percent of the AU's computed grant in the month prior to entry into AB 98 SE. Each county will need to develop a policy to obtain hours and pay information for post-CalWORKs cash aid AB 98 participants to ensure that the county is claiming the correct amount based on total wage costs.

9. **Question:** How are overpayments to be handled for AB 98 SE claims when the county bases the maximum amount for the subsidy on a computed grant with an overpayment?

CDSS Response: According to CDSS MPP section 44-350.15, "An overpayment is any amount of any aid payment an AU received to which it was not eligible. An overpayment may be all or a portion of an aid payment." The amount paid to the AU for the grant that the subsidy is based on is an overpayment and the county needs to follow policies as described in MPP 44-350 to recoup the overpayment from the AU. The incorrect amount paid to the employer and claimed by the county to the state under AB 98 is not an overpayment as defined in MPP because it is not an aid payment to the AU.

As indicated in W&IC Section 11322.63(a) and (a)(1)(C), counties can claim 50 percent less \$56 of total wage costs (the gross amount paid by the employer to the AB 98 participant). The claimed amount is not to exceed 100 percent of the AU's correctly computed grant in the month prior to the participant's entry into AB 98. In order to maintain the intended cost neutrality of this program, it is essential that counties base the AB 98 wage subsidy on the correctly computed grant for the AU in the month prior to the client entering AB 98 SE. If the wage subsidy was calculated based on an incorrectly computed grant—regardless of the reason the grant was computed incorrectly—the wage subsidy will need to be corrected. The AB 98 SE participant is not liable for repayment of the excess amount of the wage subsidy paid to the employer.

Furthermore, if the amount claimed to CDSS by the county was in excess of 50 percent less \$56 of the total wage costs or 100 percent of the correct grant, then the county shall submit a claim adjustment for any claims made in excess of the correct AB 98 subsidy amount following the information in W&IC Section 10604.5 and County Fiscal Letter 01/02-58. The correct subsidy is the lower of either 50 percent less \$56 of the total wage costs or the correct computed grant amount for the month prior to entering AB 98 SE.

Additionally, the county will need to determine a strategy to handle the subsidy payments to the employer. Since the county will have a contract with the employer establishing the amount the county will subsidize for the participant's AB 98 total wage costs, the county may have two options:

- Option 1: The county continues to pay the employer the contracted amount using a non-AB 98 source of funding (e.g. single allocation) to make up the difference between the contracted amount and the amount the county can claim to the state under AB 98 until the termination of the contract.
- Option 2: The county can attempt a renegotiation with the employer in order to amend the SE contract to allow the county to pay a reduced subsidy amount.