

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, California 95814

**REASON FOR THIS TRANSMITTAL**

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

December 27, 2007

All COUNTY LETTER NO. 07-55

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY PROBATION OFFICERS

SUBJECT: 2006 TITLE IV-E FOSTER CARE ELIGIBILITY REVIEW RESULTS  
AND FINDINGS

REFERENCE: All County Letter No. 98-01, Dated January 2, 1998  
All County Letter No. 00-22, Dated March 27, 2000  
All County Letter No. 01-33, Dated June 20, 2001  
All County Letter No. 04-58, Dated December 22, 2004  
All County Letter No. No. 05-20, Dated December 28, 2005  
ERRATA to All County Letter No. 05-20, Dated March 10, 2006  
All County Information Notice I-27-06, Dated April 25, 2006  
All County Letter No. 06-25, Dated August 4, 2006

In August 2006, the U.S. Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), conducted California's second Title IV-E Foster Care Eligibility Review. The Period Under Review (PUR) was October 1, 2005 through March 31, 2006. Of the 80 cases reviewed, four cases were found in error which enabled California's Title IV-E foster care maintenance program to be determined to be in substantial compliance with Federal child and provider eligibility requirements for the PUR. In addition, the Review identified three non-error cases with ineligible payments and twelve cases with overpayments only.

The California Department of Social Services (CDSS) is issuing this All County Letter (ACL) to clarify some issues that were identified as a result of the federal review and to prepare counties for the next federal review scheduled for 2009. Please note subsequent to the 2006 IV-E Review, there are new federal requirements; these additional requirements will be dealt with in a separate ACL.

## **GENERAL REQUIREMENTS**

Reviewers determined whether appropriate documentation existed in each case to substantiate compliance with the following requirements: Judicial determinations; voluntary placement agreements; state agency responsibility for placement and care; Aid to Families with Dependent Children eligibility (as of July 16, 1996); placement in a licensed foster family home or child care institution; and criminal records check and other safety requirements for foster care providers. Counties are reminded to continue to ensure compliance with CDSS' Eligibility and Assistance Standards (EAS) Manual sections 45-100 through 300 for determination of foster care eligibility.

## **COURT ORDER FINDINGS**

Overall, counties' efforts and practices in obtaining judicial determinations necessary for Title IV-E eligibility appeared to be effective. To ensure that counties are adequately prepared for the upcoming federal review in 2009, CDSS strongly suggests that as each case comes up for annual redetermination, counties confirm that the appropriate court orders and findings have been made in each Aid to Families with Dependent Children-Foster Care (AFDC-FC) case and are appropriately documented in the case file. **Refer to ACL No. 05-20 for a complete list of documentation that is strongly suggested for counties to keep in the income maintenance file.**

The following court order requirements must be verified by the Eligibility Worker (EW) or appropriate county staff, prior to the approval of, or continuance of, AFDC-FC benefits: continuance in the home is contrary to the welfare of the minor; reasonable efforts to prevent or eliminate the need for removal; and responsibility for placement and care is vested with one of the agencies listed in EAS Manual, Section 45-202.6 (federal) or 45-203.5 (State) and in accordance with 45 CFR 1356.21.

### **Contrary to the Welfare Finding**

County staff must verify that the court made a finding that "continuance in the home is contrary to the welfare of the minor" or a finding to that effect. Other acceptable examples include: "there is substantial danger to the welfare of the minor without removing the minor," or "the welfare of the minor requires that custody be taken from parents."

For federal AFDC-FC, this court finding must be in the first court order, which removes the child from his or her home (typically, the detention hearing). For removals occurring on or after March 27, 2000, **if this finding is not made at the first hearing which removes the child from his/her home, the child is *ineligible* for federal AFDC-FC funding for the duration of that episode in foster care.** Special attention should be

given in cases where continuances are requested at the detention hearing. If the continuance is granted without a contrary to the welfare finding, the child will be ineligible for federal AFDC-FC for the duration of that episode in foster care. If a continuance is requested, county court staff should request that the judge make the contrary to the welfare finding prior to granting the continuance if the child is out of the home. A court order permitting the child to remain in the home should not include the contrary to the welfare determination since the child has not been removed.

For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC benefits, but need not be in the first court order removing the child from his or her home.

The CDSS recommends that social workers and EW work collaboratively with courts to ensure the contrary-to-the-welfare finding is made in the first court order and so documented in the income maintenance file.

### **Placement and Care Finding**

County staff must also verify that the court made a finding that “placement and care” is vested with one of the agencies listed in EAS Manual, Section 45-202.6 (federal) or 45-203.5 (State), or a finding to that effect. Other acceptable examples include: “temporary placement and care is vested with the county” or “care, custody, and control is vested with the county”. **This finding may be in any court order, but State and federal AFDC-FC foster care cannot be granted prior to the finding being made.**

If “placement and care” is vested with the county probation department, a written agreement must be in effect between the county welfare and probation departments. Updates to this agreement must be made in conformance with EAS Manual, Section 45-202.612 in order to claim AFDC-FC for foster children supervised by the probation department. Refer to ACL No. 00-22 and ACL No. 06-15 for instructions on maintaining updates to the agreements.

As verified in EAS Manual, Section 25-200.4, counties must ensure that Title IV-E foster care maintenance payments are not paid to providers once the agency has closed the case and no longer has responsibility for placement and care and, if an unallowable payment is made, that adjustments are made accordingly.

### **Reasonable Efforts Finding**

County staff must verify that the court made a finding that “reasonable efforts to prevent or eliminate the need for removal” have been made by the county. This finding must be made by the court no later than sixty (60) days from the date the child is removed from the home; **if this finding is not made timely, the child is ineligible for federal**

**AFDC-FC funding for the duration of that episode in foster care.** For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be made within sixty (60) days from the date of removal. Neither State AFDC-FC nor Title IV-E can be claimed until the month in which the judicial determination is rendered and all other eligibility requirements are met.

A finding that reasonable efforts to prevent removal and/or reunify the family is NOT required when the county obtains a finding from a judge that reasonable efforts were not necessary because:

- The parent has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, or sexual abuse; or
- The parent has been convicted of murder or voluntary manslaughter of another child of the parent; or
- The parent has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter; or
- The parent has been convicted of a felony assault that results in serious bodily injury to the child or another child of the parent; or
- The parental rights of the parent have been terminated for a sibling of the child in foster care.

#### **Other Court Order Findings (Federal AFDC-FC Only)**

The practice of seeking judicial determinations about whether reasonable efforts were made by the agency to finalize a child's permanency plan was found to be a noteworthy practice in helping to ensure that permanency plans are assessed timely. The following ongoing court order requirements are required to ensure federal AFDC-FC eligibility: (see 45 CFR 1356.21(b) (2)).

#### **Date of Entry into Foster Care**

The date of entry into foster care "starts the clock" for the required timeframe for the first permanency hearing. The date the child entered foster care is defined as the earlier of the following dates: 1) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or 2) sixty (60) days from the date of removal from the home. This court finding generally occurs at the jurisdictional or dispositional court hearing (these hearings are often combined). It must be noted that the "prima facie" finding, which is often made at the detention order, does not constitute a judicial finding that abuse or neglect occurred.

### **First Permanency Hearing Finding**

County staff must verify that in the court order the court made a finding that the agency has made “reasonable efforts to finalize the permanency plan” within 12 months of the “date the child entered foster care”.

**If this finding is not made timely, the child ceases to be eligible for federal AFDC-FC at the end of the 12<sup>th</sup> month after he or she entered care and remains ineligible until the finding is made.**

### **Ongoing Permanency Hearing Finding**

County staff must verify that in the court order the court continues to make a finding that the agency has made “reasonable efforts to finalize the permanency plan” every 12 months from the date of the original permanency planning hearing. **If this finding is not made timely, the child ceases to be eligible for federal AFDC-FC at the end of the 12<sup>th</sup> month after the last hearing and remains ineligible until the finding is made.** As a reminder to counties, long term foster care should not be a permanency goal, especially for young children. See ACL No. 01-33 and All County Information Notice (ACIN) No. I-27-06 for further information on the court order requirements in the AFDC-FC program. Counties are encouraged to ensure that eligibility workers review court orders to ascertain the timeliness of determinations “regarding reasonable efforts to finalize the permanency plan were made by the agency” and to reverse any Title IV-E payments that were paid for periods of time when the judicial determination to finalize permanency was late.

## **VOLUNTARY PLACEMENT AGREEMENTS**

There were no cases found out of compliance that had voluntary placement agreements.

## **PLACEMENT IN A LICENSED FOSTER FAMILY HOME OR CHILD CARE INSTITUTION**

Pursuant to 45 CFR 1355.20(a), foster family homes and child care institutions must be fully licensed (or in California, approved as meeting licensing standards) to be Title IV-E eligible placements. Placements out of state must also be licensed by, and in accordance with the licensing standards of, the receiving state if the county wishes to claim Title IV-E. During the Review, it became apparent that not all counties were clear regarding proper documentation required for out-of-state placements in order to be eligible for Title IV-E funding. The following section provides clarification regarding acceptable documentation regarding out-of-state placements in foster family homes

and child care institutions.

### **Licensing/Approval Standards (out-of-state)**

The Department of Health and Human Services has provided clarification that the Interstate Compact on the Placement of Children (ICPC) form 100A does NOT suffice for licensure (as well as meeting the requirements for background clearances). In regards to out-of state placements, further clarification is provided as follows:

- Child welfare workers, eligibility workers, and ICPC liaisons are to be informed that out-of-state placements must be properly licensed by the resident state if Title IV-E is to be claimed;
- Copies of the licenses are to be routinely obtained for the files to ensure the child's out-of-state placement is and continues to be fully licensed.
- Out-of-state background clearances (i.e. criminal record and child abuse registry) must be obtained.

**When placing a foster child out-of-state**, it is the county's responsibility to ensure that the out-of-state facility is licensed properly in order to be federally and state eligible and that the placement is appropriately safe. Refer to ACL No. 94-76 for information on out-of-state placements. In regards to out-of-state background clearances, more guidance on this issue will be forthcoming.

### **Background Clearances and Other Safety Requirements**

During the review, background checks were generally received timely and results requested from the fingerprint checks of the California criminal records, the FBI records, and the California Child Abuse Index (CACI) usually came in the same day.

In accordance with 45 CFR 1356.30, counties are reminded that Title IV-E cannot be claimed until the foster family home, including NREFM foster family homes are fully licensed/approved. Licensing and approval standards also apply to the State AFDC-FC Program. Counties are strongly encouraged to keep copies of any appropriate documentation including criminal background clearances, and relative/NREFM approval forms (SOC 815, SOC 817, SOC 818) in the income maintenance file. Refer to ACL No. 05-20 for information on documentation which should be included in an AFDC-FC Income Maintenance file.

## **OVERPAYMENTS**

Out of the 80 cases reviewed, there were a total of 15 cases with overpayments. The majority of these overpayments entailed paying two providers foster care maintenance payments for the same time period. Individual letters have been issued to counties regarding the recoupment of ineligible maintenance payments and related administrative costs associated with cases during the review that had identified overpayments.

If you have any questions about this ACL, please contact your county Foster Care Funding and Eligibility Consultant at (916) 651-9152.

Sincerely,

***Original Document Signed By:***

MARY L. AULT  
Deputy Director  
Children and Family Services Division

C: CWDA