

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 11-425.122(a)

Specific Purpose:

The addition of this section will assist counties and the state in determining the fiscal viability of potential group home and foster family agency care providers.

Factual Basis:

SB 84 (Chapter 177, Statutes of 2007) added Welfare and Institutions Code Section 11466.23(c) which requires the repayment of overpaid federal share of funds upon identification which is described as having met due process. It is a common practice of nonprofit corporations to abandon their license and program when an overpayment is assessed, never repaying the overpayment, in part or in full. In these circumstances, those same providers will come back into the business under a different corporation, license and group home. The addition of this section will allow counties to deny county support letters to applicants of a group home rate if those applicants were ever a part of a corporation that has not repaid an assessed overpayment. The determination and denial of a county support letter is limited to those individuals who were part of a Board of Directors, Executive Director, licensee, or Program Administrator as these are the positions with fiscal and programmatic responsibility.

Section 22-001(c)(2)(G)

Specific Purpose:

This section is added to the definitions to identify foster care providers, including group home and foster families agencies as those persons or entities identified as a claimant, who request a hearing to challenge an overpayment under Sections 45-304, 45-305, 45-306.

Factual Basis:

This section is added to the definitions to ensure the rights of foster care providers, including group homes and foster family agencies, to be identified as a claimant for the purposes of requesting a hearing to challenge a county action to recover overpayments that have been identified in Sections 45-304, 45-305, and 45-306.

Section 22-003.15

Specific Purpose:

This section is added to identify that state hearing rights are not available to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(d)(1) which requires the establishment of new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayment by counties agencies to foster care providers and adoption assistance recipients. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section is added as clarification that by entering into a voluntary repayment agreement, the provider has agreed that the overpayment determination and the overpayment amount are correct; therefore, it is not necessary to place a financial burden on conducting hearings where the provider has agreed to the overpayment determination and the overpayment amount.

Section 22-009.11

Specific Purpose:

This section is amended to reflect the addition of Section 45-306.3, which clarifies the formal hearing timeframe as 90 days. Section 45-306.3 was added to clarify and provide guidance to counties regarding the suspension of the 90-day timeframe if the provider has filed for an informal hearing and to clarify when the 90-day timeframe starts for providers to file a formal hearing.

Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This amended section includes the added clarification and guidance section regarding the timeframes between informal and formal hearing requests.

Sections 45-302.231(a) and (b) and Handbook

Specific Purpose:

Existing language in Section 45-302.23 does not adequately define temporary absence for the purpose of determining whether or not an overpayment has been made. Section 45-302.231(a) is added to clarify that a temporary absence is defined as no more than 14 days in

a calendar month. This clarification is made to avoid potential Title IV-E overpayments by identifying in regulation that a payment may be made to an eligible facility for a child absent not more than 14 days. This clarification is further identified and added to Section 45-304.113. Current Section 45-302.231(a) is renumbered to 45-302.231(b) for consistency.

A handbook section is added to provide current language found at Child Welfare Policy Manual, Section 8.1B, Question #24, which limits temporary absences to a period not to exceed 14 days. This handbook section also provides examples illustrating temporary absences provided by the Administration for Children and Families, Region IX.

Factual Basis:

SB 84 identifies in Welfare and Institutions Code Section 11466.24(a), situations in which the county will not collect an overpayment; this section expands those situations to include a temporary removal (such as hospitalization) or the child was on runaway status and subsequently returned to the same home. The clarification is further defined as no more than 14 days in a calendar month as identified in the Child Welfare Policy Manual at Section 8.1B, Question #24. This section is amended for clarity and additional regulatory guidance is provided for consistency with Section 45-304.113.

Sections 45-303.2, .21, .22, and .23

Specific Purpose:

These sections are added to identify the conditions of payment delivery the county may require of foster care providers to ensure correct payment of AFDC-FC funds; thereby, avoiding an overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23 which identifies that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Act of 2002, which further identifies that a federal foster care or adoption assistance overpayment is defined as any amount of aid paid to which a foster care provider or adoption assistance recipient was not entitled. An overpayment can occur when the provider does not report in a timely manner that a child received care for the entire month, or does not report the date the child left the provider's care when the provider did not care for the child for the entire month. This includes timely reporting the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 14 days or more. It is the county's responsibility to identify, collect and repay these overpayments. This addition will give counties the authority to require providers to submit all relevant verifications upon the county's request as a condition of payment delivery to providers.

### Section 45-303.3

#### Specific Purpose:

This section is added to provide regulatory relief for counties for complying with requirements for timely payment delivery to the provider. Current regulations require payment being made no later than the 15th day of the following month. Counties may ask providers for all relevant verifications regarding the number of days of the month the provider cared for the child. The provider may not provide that information timely, allowing the county to issue the check by the 15th day of the following month. This added section allows the county the time to receive and process requested information prior to issuing a check to avoid an overpayment.

#### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23 which identifies that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Act of 2002, which further identifies that a federal foster care or adoption assistance overpayment is defined as any amount of aid paid to which a foster care provider or adoption assistance recipient was not entitled. An overpayment can occur when the provider does not report in a timely manner that a child received care for the entire month, or does not report the date the child left the provider's care when the provider did not care for the child for the entire month. This includes timely reporting the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 14 days or more. The addition of Section 45-303.2 allows counties to request all relevant verifications of the number of days a child was in care in order to avoid an overpayment. The addition of Section 45-303.3 allows the county to request the verification, review and process the information and issue a check no later than 15 days after the information is submitted to the county.

### Section 45-304 (Title)

#### Specific Purpose:

The title is amended to clarify that all foster care providers are subject to overpayments and expands in regulation the definition of AFDC-FC overpayments to include all categories of foster care providers. Existing language restricts the ability of the county to collect overpayments from those foster care providers not currently identified in regulations.

#### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(b) which allows the expansion of the definition of facilities and providers for whom overpayments can be assessed by identifying foster care providers as those described in Section 11400. Current regulations specifically identify foster family homes, relative homes, nonrelative extended family members, and nonrelative legal guardians. By identifying all foster care providers, this

definition will also include Group Homes, Foster Family Agencies, Small Family Homes, and any other subsequent types of providers licensed by the Department to care for foster children.

Section 45-304.1

Specific Purpose:

This section is amended to expand the category of providers, to all providers receiving foster care funds, for which overpayment recovery is applicable. This provision resolves ambiguity over the authority of counties to collect overpayments made to Group Homes, Foster Family Agencies and Small Family Homes.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(b) which allows the expansion of the definition of facilities and providers for whom overpayments can be assessed assessed by identifying foster care providers as those described in Section 11400. Overpayments occur for all categories of foster care providers; therefore, this amendment is necessary to accurately capture all of the placements in which overpayments can occur and recovery is applicable.

Section 45-304.11

Specific Purpose:

This section is amended to delete the reference to a provider not entitled to aid where the provider did not care for the child in her or her home for the period of time for which he or she was paid.

Factual Basis:

This section is amended for clarity. The provisions of SB 84 in Welfare and Institutions Code Section 11466.23(b) requires a more detailed definition of an overpayment. The repealed sentence is redundant and the definition of an overpayment is explained more thoroughly throughout the adopted regulatory language.

Section 45-304.111

Specific Purpose:

This section is adopted to provide State oversight to ensure that counties develop internal controls to avoid making overpayments.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state, and county funds by requiring the counties to develop and implement the appropriate internal controls to avoid making overpayments; thereby, avoiding repayment of public funds.

Section 45-304.111(a)

Specific Purpose:

This section is adopted to provide direction in implementing internal controls that may include policies and activities the counties can put into practice prior to issuance of the payment in order to avoid the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state, and county funds by requiring the counties to develop the appropriate policies and procedures to avoid making overpayments.

Section 45-304.111(b)

Specific Purpose:

This section is adopted to cross references Section 45-303 which allows counties to apply conditions to payment delivery if necessary. This section authorizes counties to require providers to timely report days of care to ensure the correct payment is made and avoid overpayments prior to payment delivery. This system of timely reporting by providers has been implemented in Alameda County where there has been a significant decrease in overpayments.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state, and county funds by

authorizing the counties to implement, if necessary, conditions under which a payment can be made to a provider to avoid making overpayments.

Sections 45-304.111(b)(1), (2), and (3)

Specific Purpose:

These sections are adopted as a cross reference to Section 45-303.2 and to provide the specific reporting conditions that counties may require of providers as a condition of payment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding these sections in regulations, the State is protecting federal, state and county funds by authorizing the counties to implement, if necessary, conditions a provider to avoid making overpayments.

Section 45-304.111(c)

Specific Purpose:

This section is adopted as a cross reference to Section 45-303.2 and to provide relief to counties for timely payment if the provider does not provide all the relevant verifications upon the county's request.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23 which identifies that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Act of 2002, which further identifies that a federal foster care or adoption assistance overpayment is defined as any amount of aid paid to which a foster care provider or adoption assistance recipient was not entitled. An overpayment can occur when the provider does not report in a timely manner that a child received care for the entire month, or does not report the date the child left the provider's care when the provider did not care for the child for the entire month. This includes timely reporting the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 14 days or more. The addition of Section 45-304.111 allows counties to request all relevant verifications of the number of days a child was in care in order to avoid an overpayment. The addition of Section 45-304.111(c) allows the county to request the verification, review and process the information and issue a check no later than 15 days after the information is submitted to the county.

#### Section 45-304.112

##### Specific Purpose:

This section is adopted to clarify the terms under which a prorated payment can be issued to the provider and addresses circumstances under which timely reporting has identified the child was not in placement for the entire month. Additionally, this section cross references those instances where overpayments cannot be demanded to protect specific placement categories that are not subject to overpayment collection.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state and county funds by authorizing the counties to prorate payment when it has been determined that the provider is not entitled to the full month payment. Additionally, this section cross references Section 45-304.123 that identifies for counties that specific placement categories are not subject to overpayment collection.

#### Section 45-304.113

##### Specific Purpose:

This section is adopted for clarity and consistency with Section 45-302.23, which defines the circumstances under which an overpayment does not occur.

##### Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24 identifying situations in which the county will not demand an overpayment. This section in Welfare and Institutions Code expands those situations to include a temporary removal or the child was on runaway status and subsequently returned to the same home. Clarity was required for temporary absence in these circumstances. The clarification is further defined as 14 days in a calendar month as identified in the Child Welfare Policy Manual at Section 8.1B, Question #24. This section is amended for clarity and provides consistency with Section 45-302.23.

#### Section 45-304.12

##### Specific Purpose:

This section is amended to require counties to take reasonable steps to assess whether an overpayment has been made to a provider.



Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that overpayments be determined. The amendment to this section provides authority for counties to take all reasonable steps to assess or determine whether an overpayment has been paid as the first step in possible recovery of the overpayment.

Section 45-304.121

Specific Purpose:

This section is adopted to clarify that identification of overpayment assessments will include the discovery of the overpayment and the documentation of the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that overpayments be determined and tracked. The addition of this section allows counties to implement processes and procedures to facilitate the determination and tracking of overpayments.

Section 45-304.121(a)

Specific Purpose:

This section is adopted to provide guidance, instruction and authority to counties regarding discovery of overpayments. In order to provide a comprehensive system of avoiding overpayments, counties must ensure that internal controls exist to address the detection of overpayments in a timely manner.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that overpayments be determined. This addition requires CDSS and counties to develop regulations for the identification, determination, tracking, notification and collection of foster care and adoption assistance overpayments. In order to complete this process, counties must have or develop the appropriate internal controls for which discovery and determination can be made.

Section 45-304.121(a)(1)

Specific Purpose:

This section is adopted to provide counties with guidance on the methods by which overpayments could be determined. The methods identified in this section are intended as minimal quality assurance processes that do not limit the county from implementing local

best practices and making determinations of the quality assurance practices that may work best in their locale.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the discovery of overpayments, which requires local agencies to ensure there is an adequate internal control and quality assurance system. This section is adopted to identify a baseline of internal controls that should be employed to ensure that internal controls are in place and continuously used on an ongoing basis to discover, in a timely manner, any potential overpayments. Putting these basic quality assurance requirements into regulations allows counties the administrative authority to develop additional county specific flexibility for internal controls based on local needs.

Section 45-304.121(b)

Specific Purpose:

This section is adopted to direct counties to fully document any overpayments made to foster care providers and provides the minimum documentation requirements. Counties will continue to determine other areas of documentation that best suit their local policies and practices.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which mandates that counties have specific processes in place to identify, determine, track, notify and collect overpayments that were made to foster care providers by the counties. It is the intent of the legislature that by putting these processes in place, future Title IV-E overpayments can be reduced or eliminated. This added section provides the minimal documentation areas as agreed to within the collaborative workgroup and is being added to maintain clarity and consistency with Section 45-304.5

Section 45-304.121(c)

Specific Purpose:

This section is adopted to clarify that identification of overpayments has a defined process that must be met prior to repayment of the federal share of the overpayment. These processes are further described for counties in Section 45-304.5 and include due process for the foster care provider.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires remittance of the appropriate amount of federal funds following completion of due process.

Section 45-304.122

Specific Purpose:

This section is adopted to provide authority to counties to collect overpayments from all categories of providers with the exception for specific conditions which are identified in Sections 45-304.123 and 45-304.125.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(a) which authorizes counties to demand and collect overpayments from all providers with specific exceptions. Those exceptions include circumstances which exist in statute and regulation for foster family homes, relative homes, nonrelative extended family members, and approved homes of nonrelative legal guardians. Welfare and Institutions Code Section 11466.24(a)(1) also added exceptions for all providers which include the cost of pursuing the collection, that is, an exception applies when the cost would exceed the amount of the overpayment.

Section 45-304.123 (Renumbered from 45-304.121)

Specific Purpose:

This section was amended to specifically identify in regulation that counties will not demand collection of overpayment from foster family homes, approved relatives, non-relative extended family members, and non related legal guardians under certain conditions. It was important to identify in regulation those family home providers who are not subject to collection under specific conditions differently from those providers who are subject to collection under the same conditions.

Factual Basis:

This amendment identifies specifically those foster family homes, approved relatives, non-relative extended family members, and non related legal guardians who are not subject to a demand by counties for overpayment collection under specific circumstances. This interprets existing statute under Welfare and Institutions Code Section 11466.24. Additionally, Welfare and Institutions Code Section 11466.23(a)(1) authorizes counties to determine if the cost of collection exceeds the overpayment. Under Welfare and Institutions Code Section 11466.23(c)(1), where the overpaid provider is not obligated to repay the overpayment, the counties are not required to repay the overpayment to the state or federal government. The State is however required to repay the federal share under these circumstances.

Section 45-304.123(a)

Specific Purpose/Factual Basis:

This regulation was moved to Section 45-302.231(a) for clarity and consistency with the development of the regulations.

Sections 45-304.123(b), (c), and (d) (Renumbered to 45-304.123(a), (b), and (c) respectively)

Specific Purpose/Factual Basis:

These sections were renumbered to reflect the movement of Section 45-304.123(a) to ensure consistency with the regulations.

Section 45-304.123(e)

Specific Purpose/Factual Basis:

This section is repealed and is now addressed in Section 45-304.125, which provides additional guidance to counties regarding circumstances under which counties will not pursue an overpayment and the documentation requirements for making that determination. Welfare and Institutions Code Section 11466.23(c)(1)(A) identifies those circumstances under which counties are relieved of repayment of the overpayment which includes amounts legally uncollectible under Welfare and Institutions Code 11466.24, the cost of collection exceeds the overpayment, and the foster family agency or group home is no longer in business or licensed by the department.

Section 45-304.124

Specific Purpose:

Section 45-304.123 requires the county not demand an overpayment under certain conditions. This section is added to allow counties the authority to request that a provider voluntarily return overpayments described in Section 45-304.123.

Factual Basis:

In some cases an overpaid foster care provider is willing to repay the overpayment that they are not legally obligated to repay. This section provides authority for counties to ask that a provider voluntarily return an overpayment, provided that the county informs the provider that the provider has no legal or other obligation to return the overpayment and that failure to return the overpayment will not result in any adverse action against the provider and the child/children in the home. Within the workgroup process between CDSS and CWDA, counties were concerned with their ability to ask for a voluntary repayment from providers

and providers often will return overpayments. The addition of this section allows the counties to ask but not demand the overpayment be returned to the county.

Section 45-304.125

Specific Purpose:

This section is adopted to clarify that the counties will not pursue collection of overpayments where the cost of collection exceeds the overpayment amount.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c)(1)(B) which allows counties to not be required to repay overpayments when the cost of collection exceeds the overpayment.

Section 45-304.125(a) Renumbered from 45-304.123(c)(1)

Specific Purpose/Factual Basis:

This section is renumbered from Section 45-304.123(c)(1)

Sections 45-304.125(b) through (b)(4)

Specific Purpose:

These sections are adopted to require counties to have a written debt write-off policy approved by the Board of Supervisors. Additionally, this section provides counties with guidelines regarding the types of write-off situations that should be addressed in the approved policy and procedures.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the federal share of overpayments upon identification and after completion of due process. It also identifies circumstances under which counties are not required to repay the federal share of the overpayment, and includes situations where the cost of collection exceeds the amount of the overpayment. This section requires counties to have a Board of Supervisor approved debt write-off policy that will ensure that county overpayment write-offs are consistent with county policy and standards established by its Board of Supervisors.

Sections 45-304.125(c)(1) through (5)

Specific Purpose:

These sections are adopted to require counties to maintain documentation to support the county's decision to write off any overpayment that meets the criteria for an uncollectible overpayment. Additionally, these sections provide guidance to counties on the types of adequate documentation that counties should maintain.

Factual Basis

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the federal share of overpayments upon identification and after completion of due process. It also identifies circumstances under which counties are not required to repay the federal share of the overpayment, and includes situations where the cost of collection exceeds the amount of the overpayment. In order to support the county's decision to write off the overpayment, this section requires counties to maintain the documentation to support the decision and provides guidance regarding the minimum documentation necessary. Documentation of this type will ensure that overpayment write-offs are legitimate and fact based.

Section 45-304.125(c)(6)

Specific Purpose/Factual Basis:

This section is adopted to clarify that if the overpayment amount does not exceed the de minimus amount, the county's documentation should only consist of documenting the amount of the overpayment. The addition of this section will relieve counties of the administrative burdens associated with documenting the cost of collection if the overpayment is below a specified amount of funds.

Section 45-304.126

Specific Purpose:

This section is adopted as a result of statute to authorize counties not to pursue collection activities or initiate financial or fiscal audits on group homes or foster family agencies that are no longer in business or licensed by the department.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the federal share of overpayments upon identification and after completion of due process. It also identifies circumstances under which counties are not required to repay the federal share of the overpayment and specifically addresses group homes and foster family agencies that are no longer in business or licensed by the department.

Sections 45-304.126(a) and (b)

Specific Purpose:

These sections are adopted to require counties to coordinate with the department when initiating or taking further action on conducting fiscal or financial audits on group home or foster family agency providers who are no longer in business or licensed by the department.

Factual Basis

SB 84 added Welfare and Institutions Code Section 11466.23(c)(1)(C) which requires counties to remit the appropriate amount of the federal share of overpayments except under specific circumstances. One of those circumstances is that the group home or foster family agency is no longer in business or licensed by the department. Under current federal law, the California Department of Social Services is obligated to remit the federal share of identified foster care overpayments, regardless of whether or not the county has a duty to remit the state and federal share of overpayments. Accordingly, a county audit of a group home or foster family agency provider who is no longer in business or is no longer licensed could result in an identified overpayment that only the State is obligated to repay. This provision requires suspension of a county audit under these circumstances, which will allow the State the opportunity to consult with the county and decide whether or not to allow the county to continue the audit activity, and to incur the financial liability for any overpayment identified in a county audit.

Section 45-304.127 (Renumbered from 45-304.122)

Specific Purpose/Factual Basis:

This section is renumbered and cross references are updated to clarify that sections relating to collectible and uncollectible overpayments continue to be subject to collection resulting from the payment of aid paid pending.

Section 45-304.212

Specific Purpose:

This section is repealed from the existing sequence of activities and a new activity added to provide clarity and consistency to counties in investigations of overpayments. Existing Section 45-304.212 is modified and added in 45-305.213

Factual Basis:

The events surrounding investigation of overpayments has been expanded with the inclusion of all providers as specified in SB 84 (Welfare and Institutions Code Section 11466.23(c)). This section is amended and moved in the sequence of activities and renumbered to provide

an organized sequence of activities associated with investigation of overpayments. The new section requires counties to calculate the amount of the overpayment as a second step in determining if an overpayment was made.

#### Section 45-304.213

##### Specific Purpose:

This section is amended to provide clarity and consistency with the sequence of activities associated with investigating and determining if an overpayment has been made and could be collectible.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following the completion of due process. Further, Section 11466.23(c)(1)(A) also identifies those circumstances where the county is not required to repay the overpayment, including when the amount is legally uncollectible under Welfare and Institutions Code Section 11466.24. This amendment requires counties to determine if the overpayment is collectible or uncollectible as the third step in the sequence of activities in determining and investigating an overpayment.

#### Section 45-304.214 (Renumbered to 45-304.213(a))

##### Specific Purpose:

Section 45-304.214 is renumbered as 45-304.213(a) to provide direction to counties after determining if an overpayment has been made and could be collectible. This is the first of three steps the counties will take to recover overpayments.

##### Factual Basis:

This section placement requires the county to determine from whom the overpayment may be recovered which is a sequential part of the investigation and determination process.

#### Section 45-304.213(b)

##### Specific Purpose:

This section is adopted to sequentially require counties to apply Section 45-305 which provides guidance on collecting and methods of overpayment collection if the overpayment is collectible.



Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following the completion of due process. Further, Section 11466.23(c)(1)(A) also identifies those circumstances where the county is not required to repay the overpayment, including when the amount is legally uncollectible under Welfare and Institutions Code Section 11466.24. This amendment requires counties to determine if the overpayment is collectible or uncollectible, and if collectible to apply the regulations as identified in Section 45-305.

Section 45-304.213(c)

Specific Purpose:

This section is adopted to allow counties to seek voluntary collection of any overpayment identified.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following the completion of due process. Further, Section 11466.23(c)(1)(A) also identifies those circumstances where the county is not required to repay the overpayment, including when the amount is legally uncollectible under Welfare and Institutions Code Section 11466.24. This section allows counties to seek a voluntary repayment whether or not the overpayment is legally uncollectible and directs counties to Section 45-305.231 for procedures regarding voluntary repayment.

Section 45-304.214

Specific Purpose:

This section is adopted to identify the fourth step that counties are required to take when investigating and determining overpayments.

Factual Basis:

This section requires counties to perform alternative activities after seeking a voluntary repayment on overpayments. When a county enters into a voluntary repayment agreement with a provider and the recovery of the overpayment is not achieved in full, counties are directed to make a determination of continued pursuit as specified in Section 45-304.125, which addresses not pursuing the collection under specific circumstances, including cost effectiveness of pursuing the collection, and/or balance of the overpayment.

Section 45-304.215

Specific Purpose/Factual Basis:

This section is repealed because it is no longer necessary and has been addressed in previous amended sections.

Handbook Section 45-304.321

Specific Purpose/Factual Basis:

The section number is deleted and the section is amended for clarity.

Section 45-304.33

Specific Purpose:

This section is adopted to give counties the authority to offset the administrative portion of payments made to group homes and foster family agencies for overpayments assessed.

Factual Basis:

Group Home and Foster Family Agency rates include an administrative portion for costs associated with non-profit corporation overhead such as salaries, benefits, and leases. This section allows counties to offset the administrative portion of assessed overpayments for group homes and foster family agencies in order to reduce the impact to children in placement. SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or jeopardize the best interest of the foster or adoptive child. By allowing counties to offset the administrative portion of payments made to group homes and foster family agencies, the portion of the rate identified for care and supervision of the child will not be impacted, only the administrative portion of the payment.

Section 45-304.41

Specific Purpose:

This section is amended to allow counties to collect interest on the repayment of an overpayment if interest is included in the provider's repayment agreement.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the department, in consultation with the CWDA, to develop specific processes to implement collection and repayment of overpaid federal AFDC-FC funds. State statute identifies that

part of this process will include the accrual of interest on overpayments. The department and CWDA, through the workgroup consultation process, agreed that regulations should indicate that interest should only be collected if it is part of the repayment agreement signed by the provider.

#### Section 45-304.42

##### Specific Purpose:

This section regulates the limitations of the recoupment of overpayments and is amended to more accurately clarify for counties the timeframes for which they can initiate any recovery of overpayments.

##### Factual Basis:

The California Code of Civil Procedure Section 338 provides a three-year statute of limitations on initiation of recovery of debts such as overpayments. The Code also provides that where the action for relief is on the grounds of fraud or mistake, the statute of limitations does not commence until discovery of the facts constituting the fraud or mistake. SB 84 added Welfare and Institutions Code Section 11466.235(a) to define the steps associated with overpayments as identification, determination, tracking, notification, and collection and remittance of the federal share of the overpayment. This amendment notifies counties that initiation of the recovery must occur within three years of the discovery of the overpayment; otherwise, recovery is not legally an overpayment debt. Additionally, if the recovery is initiated within three years from the date the county discovers the overpayment, the overpayment debt is owed from that point on.

#### Section 45-304.421

##### Specific Purpose:

This section is adopted to clarify for counties that an overpayment collection that has been initiated within one year of discovery is collectible for the life of the debt.

##### Factual Basis:

As identified in Section 45-304.42, the county must initiate overpayment recovery within one year of discovery in order for that debt to be a legal debt for the life of the debt. This added section requires and authorizes counties to continue to recover those debts, once initiated, for the life of the debt.

Handbook Section 45-304.421

Specific Purpose/Factual Basis:

The handbook section number is deleted and the section is amended for clarity and consistency.

Section 45-422

Specific Purpose/Factual Basis:

This section replaces the term "determination" with "discovery" for consistency and clarity with other regulation amendments.

Section 45-304.5

Specific Purpose:

This section is adopted to provide direction to counties regarding identification and remittance of the federal share of the overpayment. This section also provides a cross reference to Section 45-304.12, requiring counties to take all reasonable steps to promptly assess whether an overpayment has been made.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(a) to reflect that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Information Act with respect to the remittance of the federal share of foster care overpayments. Section 11466.23(c) also directs counties to remit the appropriate amount of the federal share upon identification of the overpayment, following the completion of due process. This added section provides state oversight and guidance to counties regarding the activities required of counties after identification of the overpayment is made.

Section 45-304.51

Specific Purpose:

This section is adopted to clarify for counties the date upon which an overpayment is identified if an appeal has not been filed. The date of identification of the overpayment is the date the federal share of the overpayment must be remitted to the federal government.

Factual Basis:

For the purpose of meeting Welfare and Institutions Code Section 11466.235(a) requirements to establish new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments made by

county agencies to foster care providers and adoption assistance recipients, the identification of an overpayment is the point at which due process is exhausted. Due process requires formal notification and specific time frames to file for an appeal; therefore, the date of official identification, if an appeal is not filed, is defined as a time period after the appeal should have been filed, allowing for normal mailing periods.

#### Section 45-304.52

##### Specific Purpose:

This section is adopted to clarify for counties the date upon which an overpayment is identified if a provider requests an appeal of the overpayment finding. If a provider files an appeal, the appeal process must take place before the federal share of the overpayment is remitted to the federal government.

##### Factual Basis:

For the purpose of meeting Welfare and Institutions Code Section 11466.235(a) requirements to establish new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments made by county agencies to foster care providers and adoption assistance recipients, the identification of an overpayment is the point at which due process is exhausted. Due process requires formal notification and specific time frames to file for an appeal; therefore, the date of official identification, if an appeal is filed, is defined as the date the overpaid provider exhausts due process under Section 45-306, which identifies the formal and informal hearing procedures.

#### Section 45-304.53

##### Specific Purpose:

This section is adopted to provide guidance and oversight to counties regarding the remittance of the federal share of the overpayment once identified and after due process has been exhausted.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following completion of due process. This section identifies that counties must make an aid claim adjustment within 20 calendar days after the end of the month the overpayment was identified, and specifies the sharing ratios for overpayments, other than those specified in Sections 45-304.122, .123 and .124. These sections identify overpayments for which the county is not liable to repay. Under those circumstances, the overpayment is the responsibility of the state; therefore, the county sharing ratio would not apply to overpayments that are the responsibility of the state.

#### Section 45-304.54

##### Specific Purpose:

This section is adopted to provide oversight and guidance to counties to clarify that counties are not responsible for the federal share of overpayments that are uncollectible as defined in Sections 45-304.123, .125(b)(4), .125, and .126.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment following completion of due process. Section 11466.23(c)(1) also identifies circumstances under which the county is not required to repay the overpayment. Those circumstances are identified in Sections 45-304.541, .542, .543, and .544.

#### Sections 45-304.541, .542, .543, and .544

##### Specific Purpose:

These sections are adopted to identify the cross sections in the regulations that are specific to overpayments where counties are not required to remit the federal share of overpayments.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which identifies that counties are not required to repay the overpayment when the overpayment was made to: a Foster Family Home, an approved home of a relative or non-relative extended family member, and/or an approved home of a nonrelated legal guardian; the cost of collection exceeds the overpayment; or when a group home or foster family agency is no longer in business or licensed by the department. These sections provide cross references to sections that specifically identify and clarify those circumstances of uncollectible overpayments where the county is not required to repay the overpayment. Under these circumstances, the state is required to repay the federal share of the uncollectible overpayment.

#### Section 45-304.55

##### Specific Purpose:

This section is adopted to require counties to monthly report all legally uncollectible overpayments and uncollected overpayments to the department.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c)(1) which specifies that counties are not required to repay the overpayment under specific circumstances as identified in Section 45-304.54. Legally uncollectible and uncollected overpayments that counties are not required to repay must be repaid by the state. This section requires counties to provide documentation to support all legally uncollectible overpayments identified in Section 45-304.125 and Section 45-304.126 and uncollected overpayments made as identified in Section 45-304.123.

Section 45-305

Specific Purpose:

The section title is amended to identify that the section provides regulatory instruction to counties for collectible AFDC-FC overpayment for all foster care providers when determining methods of overpayment recovery.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the department in consultation with the County Welfare Director's Association to update existing regulations and establish new regulations where lacking for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments by county agencies to foster care providers or adoption assistance recipients, and requires the regulations to specify the required actions of county agencies to recoup overpayments. This section is amended to give instruction and provide authority to counties regarding procedures to recoup overpayments from all foster care providers.

Section 45-305.1

Specific Purpose:

This section is numbered and amended to direct counties to utilize a Statewide Notice of Action form to inform foster care providers of the overpayment, and that providers are required to repay the overpayment if it is a legal overpayment. This amendment also provides counties with guidance and clarifies specific information that must be in the Statewide Notice of Action form. Providing adequate notice to the overpaid provider of the overpayment is required Due Process under the State and Federal Constitution.

Factual Basis:

A Statewide Notice of Action provides consistency statewide in compliance with Due Process notice requirements under the State and Federal Constitution. This form has been developed in consultation with the County Welfare Director's Association and workgroup members and will be used as an official notification to foster care providers of legally

collectible overpayments. This form is NA 1261 (5/09), which is incorporated by reference and is not printed in the CDSS' Manual of Policies and Procedures (MPP) because it would be cumbersome and impractical; however, the form will be available at the CDSS website.

Sections 45-305.11 through .17

Specific Purpose:

These sections are adopted to identify, for clarity and consistency, the elements of notification that will be used in the Statewide Notice of Action. Counties will be authorized to request overpayments, but must provide information to the provider regarding the overpayment to assist providers in determining if an appeal of the request for repayment of the overpayment is needed.

Factual Basis:

To facilitate consistency statewide, a Statewide Notice of Action form has been developed, and will be used to notify providers of overpayments. This regulatory addition describes the content of the Statewide Notice of Action, which is required Due Process notice under the State and Federal Constitution.

Section 45-305.2 (Renumbered from 45-305.1)

Specific Purpose/Factual Basis:

This section is renumbered to reflect the addition of Section 45-305.1.

Sections 45-305.21 through .213

Specific Purpose/Factual Basis:

These sections are adopted to provide the order of priority when a provider agrees to voluntarily repay an overpayment.

Sections 45-305.22 and .221

Specific Purpose:

These sections are adopted to provide the definition of a Voluntary Lump Sum Repayment as one of the voluntary repayment options.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(c)(1) and requires that specific processes to implement collection and repayment be developed which includes voluntary repayment procedures. By adding a process for the provider to voluntarily repay



the overpayment by lump sum prior to the date agreed upon by the county and the provider, it releases the provider from written repayment agreements and reduces costs associated with hearings if the provider fails to comply with written repayment agreements.

Sections 45-305.23 and .231 (Renumbered from 45-305.11 and .111 respectively)

Specific Purpose:

These sections are renumbered for consistency in regulation development. Section 45-305.231 is amended to authorize and clarify for counties the process for entering into a voluntary repayment agreement with providers. This section directs counties entering into a voluntary repayment agreement with providers to ensure the county and the provider sign repayment agreements which will include the terms of repayment and the consequences for failure to comply with the terms of the agreement.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(c)(1) and requires that specific processes to implement collection and repayment be developed which includes voluntary repayment procedures. This section describes the types of provisions that are required content of the voluntary repayment agreement.

Section 45-305.231(a)

Specific Purpose:

This section is adopted to provide assurances in regulation, for both counties and providers, that when voluntary repayment agreements are made, that the provider has sufficient funds for care of the children after payment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section requires that the voluntary repayment agreement contain a provision that the provider has sufficient funds to provide adequate care and supervision after the payment.

Section 45-305.231(b)

Specific Purpose:

This section is adopted to direct counties to include language in the voluntary repayment agreement that informs the provider that the provider is responsible to inform the county of

any financial circumstances that may indicate hardship in providing care and supervision to children during the period the agreement is in effect.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section requires that voluntary repayment agreement provide that the provider has a duty to timely notify the county of any circumstances where continued payment may impair its ability to provide adequate care and supervision.

Section 45-305.231(c)

Specific Purpose:

This section is adopted to require counties to include in the voluntary repayment agreement provisions of specific consequences for non-compliance with the terms of the voluntary repayment agreement. This provision will promote compliance with the voluntary repayment agreement, and provide adequate notice to the provider of the consequences for failure to pay.

Factual Basis:

In order to provide authority to counties to apply consequences for failure to comply with voluntary repayment agreements and to provide providers with notice of these consequences, this provision requires that the voluntary repayment agreement contain possible consequences for failure to repay.

Section 45-305.231(d) and Handbook

Specific Purpose:

This section is adopted to ensure that a provider entering into a voluntary repayment agreement is aware that they are waiving their right to appeal of the overpayment determination, thereby providing the county with authority to dismiss any appeal the provider may have filed in that matter. The handbook section provides, for ease of reference, the regulatory language of MPP Section 22-003.15 which is cross-referenced in regulation Section 45-305.231(d).

Factual Basis:

This section is necessary to provide notice to a provider entering into a voluntary repayment agreement that it has waived its appeal of the overpayment determination. By inference, it provides authority for counties to dismiss any pending or future appeals by the provider of the overpayment at issue.

Section 45-305.231(e)

Specific Purpose/Factual Basis:

This section is adopted to ensure that voluntary repayment agreements can be amended only with the written consent of both the provider and the county. This provision will avoid confusion associated with verbal agreements, by requiring that the agreement can be modified only by written consent of both parties.

Sections 45-305.24 and .241 (Renumbered from 45-305.12 and .121 respectively)

Specific Purpose:

Section 45-305.24 is renumbered for consistency in regulation. Section 45-305.241 has been renumbered and amended to provide instruction to counties regarding the content of voluntary grant offsets. This section clarifies that if a voluntary grant offset is agreed to between the county and the provider that specific information regarding the repayment will be in the agreement.

Factual Basis:

Voluntary grant offset is an alternative way a provider can make overpayment repayment. Grant offset relieves a provider from having to make a monthly payment, which may be more convenient for the provider. Grant offset also avoids missed payments.

Section 45-305.241(a) (Renumbered from 45-305.121(a))

Specific Purpose:

This section is renumbered and amended to indicate that the voluntary grant offset agreement must ensure that the provider has sufficient funds to provide care and supervision to all children in care after the offset.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section requires that the provider and counties entering into a voluntary grant offset ensure that sufficient funds to provide adequate care and supervision will exist after the offset occurs.

Section 45-305.241(b) (Renumbered from 45-305.121(b))

Specific Purpose:

This section is renumbered and amended to delete language where it assumes a grant offset has already been agreed to by the provider and establishes in regulation a maximum amount for a grant offset. This amendment is provided for clarity and consistency in regulation.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This provision further ensures that the amount of the offset will be modest, and will not likely impair the ability of the provider to provide adequate care and supervision to children in care.

Handbook Section 45-305.241(b)(1) (Renumbered from 45-305.121(b)(1))

Specific Purpose/Factual Basis:

The section number is deleted.

Section 45-305.241(c) (Renumbered from 45-305.121(c))

Specific Purpose:

This section is renumbered and amended to specifically address a voluntary grant offset. This section is also amended to clarify that the voluntary grant offset may only apply to the child's grant for which the overpayment was assessed.

Factual Basis:

This amendment is necessary to clarify that only the grant of a child for whom the overpayment was assessed may be voluntarily offset.

Handbook Section 45-305.241(b)(1) (Renumbered from 45-305.121(c)(1))

Specific Purpose/Factual Basis:

The section number is deleted.

Section 45-305.241(d)

Specific Purpose:

This section is adopted to provide clarity and guide counties to reassure providers to communicate any fiscal hardships that jeopardize the care and supervision of the children, under a voluntary grant offset.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section is added to clarify that providers are responsible to notify counties of any financial changes that may require the offset to be reconfigured to ensure the best interest of the children are being met.

Section 45-305.241(e) and Handbook

Specific Purpose:

This section is adopted to ensure that a provider entering into a voluntary offset agreement is aware that they are waiving their right to appeal of the overpayment determination, thereby providing the county with authority to dismiss any appeal the provider may have filed in that matter. The handbook section provides, for ease of reference, the regulatory language of MPP Section 22-003.15 which is cross-referenced in regulation Section 45-305.241(e).

Factual Basis:

This section is necessary to provide notice to a provider entering into a voluntary offset agreement that it has waived its appeal of the overpayment determination. By inference, it provides authority for counties to dismiss any pending or future appeals by the provider of the overpayment at issue.

Section 45-305.241(f)

Specific Purpose/Factual Basis:

This section is adopted to ensure that voluntary repayment grant offset agreements can be amended and must be done with the written consent of both the provider and the county. Existing regulation allows for voluntary grant offset agreements and this added language provides county and provider protection against jeopardizing the placement of the child(ren). This section allows for amendments to those agreements, and it must be agreed to in writing by both parties.

Sections 45-305.3, .31, .32, .321 (Renumbered from 45-305.2, .21, .22, and .221 respectively)

Specific Purpose/Factual Basis:

These sections are renumbered to provide consistency in regulation development. Renumbered Section 45-305.231 is amended to provide added clarification to counties identifying that repayments of overpayments from providers only apply to legally collectible overpayments.

Section 45-305.321(a) and Handbook (a)(1) (Renumbered from Section 45-305.221 and Handbook (a)(1) respectively)

Specific Purpose:

This section is renumbered and amended to increase the deduction recovered by involuntary grant adjustment, from 5 percent to 10 percent. The handbook number is deleted and the example provided amended to reflect the percent change from 5 to 10.

Factual Basis:

This provision ensures that the amount of the offset will be modest, and will not likely impair the ability of the provider to provide adequate care and supervision to children in care while being consistent with the voluntary grant offset calculation. Existing regulations for voluntary grant offset sets the offset calculation at 10 percent. It is inconsistent that a provider who voluntarily establishes a grant offset should pay more than a provider who does not. Changing the involuntary grant offset to 10 percent provides some measure of equity for providers who voluntarily repay overpayments and those who do not voluntarily repay overpayments.

Section 45-305.321(b) and Handbook (b)(1) (Renumbered from 45-305.221(b) and Handbook (b)(1) respectively)

Specific Purpose/Factual Basis:

This section is renumbered and the handbook number is deleted for consistency.

Section 45-305.32(c)

Specific Purpose:

This section is adopted to provide regulatory authority for counties to reduce involuntary grant adjustments if it is determined that the grant adjustment is jeopardizing the care and supervision to children in care.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section has been added to provide regulatory assurances that if an involuntary grant adjustment is jeopardizing the care and supervision of children in care, the county must reduce the grant adjustment amount to ensure the provider has sufficient funds to care for the children.

Section 45-305.32(d)

Specific Purpose:

This section is adopted to provide clarity and guide counties to reassure providers to communicate any fiscal hardships that jeopardize the care and supervision of the children, under an involuntary grant adjustment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section has been added to clarify that providers are responsible to notify counties of any financial changes that may require the offset to be reconfigured to ensure the best interest of the children are being met.

Section 45-305.33

Specific Purpose/Factual Basis:

This section is adopted to provide counties with authority to apply interest on overpayments under specific conditions. Welfare and Institutions Code Section 11466.235(a) requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds to include a process for determining the accrual of interest on overpayments.

Section 45-305.331

Specific Purpose:

This section is adopted to provide authority and guidance to counties on the collection of interest for overpayments under certain circumstances.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds to include a process for determining the accrual of interest on overpayments. This section is added to clarify that counties are required to collect interest on the overpayment only if the provider fails to enter a voluntary repayment agreement or the provider does not comply with the terms of a voluntary repayment agreement. This section also identifies that there are circumstances where interest on overpayments will not be assessed and collected.

Sections 45-305.331(a), (a)(1), (2) and (3)

Specific Purpose:

These sections are adopted to clarify for counties the circumstances under which interest on the overpayment will not be assessed and collected.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(a) to allow counties to collect overpayments from foster family homes, an approve home of a relative, an approved home of a nonrelative extended family member, or an approved home of a nonrelative legal guardian except under certain conditions, in which case counties are not authorized to collect overpayments. Specifically, Welfare and Institutions Code Section 11466.24 provides that for overpayments made to specified providers for any period of time in which the foster child was not cared for in that home, interest may not be collected. This added section clarifies that interest will not be assessed on overpayment collection made to specified providers if the overpayment was as a result of the described circumstances.

Section 45-305.331(b)

Specific Purpose:

This section is adopted to provide guidance to counties and an assurance to providers that the collection of interest must not provide a financial hardship jeopardizing the availability of placements for foster or adoptive children.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which mandates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child.



#### Section 45-305.34

##### Specific Purpose:

This section is adopted to clarify for counties that the collection of overpayments for group homes and foster family agencies will be done in accordance with existing regulations identified in the Manual of Policies and Procedures Section 11-402.66.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds to include a process for determining the accrual of interest on overpayments. The collection of overpayments for group homes and foster family agencies arising from rate audits conducted by the department is in existing regulations; and, this regulatory addition applies those collection rules to county overpayments to group homes and foster family agencies. Counties must reference and apply those regulations for implementing collection from those providers.

#### Existing Section 45-305.23

##### Specific Purpose/Factual Basis:

This section is repealed as demand for repayments are being addressed throughout Section 45-305.

#### Section 45-305.35 (Renumbered from 45-305.24)

##### Specific Purpose:

This section is renumbered for consistency in regulation development. Additionally, this section is amended to provide guidance to counties to apply civil judgment processes and procedures in those cases where the overpayment debt is uncollectible because of non compliance or other circumstances, unless the costs of pursuing civil judgment exceeds the amount of the overpayment.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds. Existing regulation allows counties to take action to refer and record a civil judgment against the provider for the overpayment debt. This section is amended to direct the county to take civil judgment action where applicable, unless the costs exceed the amount of the overpayment.

Section 45-305.351, .352, and .353 (Renumbered from 45-305.24 (partial), .241, and .242 respectively)

Specific Purpose/Factual Basis:

These sections are renumbered for consistency in regulation development and amended to provide clarity in regulatory language.

Section 45-305.354

Specific Purpose:

This section is adopted to require counties to document those cases where it did not pursue civil judgment because the costs of recovery exceeded the amount of the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds. Welfare and Institutions Code Section 11466.23(c)(1) also identifies circumstances under which counties are not required to repay the federal share of the overpayment, and includes situations where the cost of collection exceeds the amount of the overpayment. In this case, the county should document the county's decision to write off the overpayment. This section requires counties to maintain the documentation as specified in Section 45-304.125(c), to support the decision. Documentation of this type will ensure that overpayment write-offs are legitimate and fact based.

Section 45-306

Specific Purpose:

The section title is amended to reflect that this section addresses informal and formal hearing procedures. The introductory paragraph is amended to provide direction to counties regarding the appeal right of providers for collectible overpayments and clarifies that informal and formal hearing processes are not available to providers who have entered into voluntary repayment agreements, to contest the overpayment determination or amount.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the establishment of new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments by county agencies to foster care providers and adoption assistance recipients. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section clarifies that hearing rights apply to only collectible overpayment assessments;

and, reiterates that providers who enter into a voluntary repayment agreement are waiving their right to the hearing process for the purpose of contesting the determination or the amount of the overpayment.

#### Section 45-306.1

##### Specific Purpose:

This section is amended to change the phrase "interfere with" to "preclude" the provider's right to a state hearing. This amendment provides clarity and consistency with regulation development.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the establishment of new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayment by counties agencies to foster care providers and adoption assistance recipients. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section clarifies that the informal hearing process does not preclude the provider from filing a state hearing.

#### Section 45-306.21

##### Specific Purpose:

This section is amended to require counties to provide written notice to providers regarding the hearing process at the time the counties notice the providers of the overpayment on the Statewide Notice of Action Form.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of a Notice of Action. A Statewide Notice of Action would provide consistency statewide for the noticing of overpayments which will include information on the provider's rights to appeal. This form has been developed in consultation with the County Welfare Director's Association and workgroup members and will be used as an official notification to providers of collectible overpayments. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section clarifies that counties will inform providers of the overpayment and the appeal rights through the Statewide Notice of Action.

#### Section 45-306.22

##### Specific Purpose:

This section is amended to inform providers and authorize counties to conduct an informal hearing no later than 30 calendar days after the Statewide Notice of Action is mailed to a provider notifying them of the overpayment, unless both parties agree to a later informal hearing date.

##### Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of a Notice of Action. Existing regulation identifies providing an informal hearing no later than 30 days after notification. This section establishes a 30 calendar-day timeframe for the conduct of the informal hearing from the date of the request, unless both parties agree to a later informal hearing date. This amendment provides clarity and consistency to counties and providers.

#### Section 45-306.23

##### Specific Purpose:

This section is amended to more specifically prescribe that the informal hearing will be conducted by a designated county employee who is knowledgeable in the subject area, but not the same person who made the initial determination.

##### Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing. This section deletes language that requires that the hearing be conducted by a person who is at least one supervisory level above the employee who made the determination, and instead allows the hearing to be conducted by a person who is knowledgeable in the subject area, but not the person who made the overpayment determination. This change will permit counties more flexibility in designating the informal hearing officer, and may lower costs for the informal hearing process.

#### Section 45-306.24

##### Specific Purpose:

This section is amended to update existing regulatory language for clarity and consistency. This section is also amended to facilitate use of more convenient hearing locations and hearings by telephone.

Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing. Existing regulations allow for informal hearings to be conducted in an office or facility of the CWD unless it is necessary to hold the hearing elsewhere or by telephone. This section amendment provides more flexibility for the parties to agree to other hearing locations or to conduct the informal hearing by telephone.

Section 45-306.26

Specific Purpose/Factual Basis:

This section is amended to correct a cross reference that is being changed in this regulation package and to change the word "should" to "may" regarding the county's discussions of the methods of overpayment recovery with providers. These amendments provide consistency in regulatory language development.

Section 45-306.27

Specific Purpose:

This section is amended to reflect that the results of an informal hearing will be issued through a letter instead of a Notice of Action.

Factual Basis

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of a Notice of Action. A Statewide Notice of Action would provide consistency statewide for the noticing of overpayments which will include information on the provider's rights to appeal. This form has been developed in consultation with the County Welfare Director's Association and workgroup members and will be used as an official notification to providers of overpayments. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing. This section clarifies that counties will inform providers of results of the informal hearing through a letter that also informs the provider they can appeal the informal hearing decision. The Statewide Notice of Action will be used to notify providers of the determination of a collectible overpayment. The results of an informal hearing can be issued through a letter which also informs the provider of their appeal rights of the informal hearing decision.

Handbook Section 45-306.27

Specific Purpose/Factual Basis:

This handbook section provides an example on how to apply the time frames specified in the regulations.

### Section 45-306.3

#### Specific Purpose:

This section is adopted to clarify the formal hearing timeframe as 90 days. This section also clarifies and provides guidance to counties regarding the suspension of the 90 day timeframe if the provider has filed for an informal hearing and to clarify when the 90 day timeframe starts for providers to file a formal hearing after the informal hearing, when the provider withdraws the request for an informal hearing, or fails to appear for the informal hearing.

#### Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section is necessary to provide clarification and guidance to counties regarding the timeframes between informal and formal hearing requests.

### Handbook Section 45-306.3

#### Specific Purpose/Factual Basis:

This handbook section provides examples on how to apply the time frames specified in Section 45-306.3.

#### b) Identification of Documents Upon Which Department Is Relying

- Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32, 33, and 34
- Implementation Guidance for the Improper Payments Information Act of 2002, P.L. 107-300

#### c) Local Mandate Statement

These regulations do impose a mandate on local agencies but not on school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California. Any local costs associated with this order can be avoided through local agency compliance with State rules requiring accurate payments for foster care providers.

#### d) Statement of Alternatives Considered

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.