

## FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code section 11346.1. Further, Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. To determine the Office of Administrative Law five day comment period check <http://www.oal.ca.gov/> often.

## DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

In 2011, the California Department of Social Services (the Department) was named a party in the *Hartley v. Lightbourne* litigation. This litigation challenged the method that the Department used in establishing and recouping overpayments (OPs) from current and former California Work Opportunity and Responsibility to Kids (CaWORKs) clients. After releasing a series of All County Letters (ACLs) in 2012, the Department settled the lawsuit in Alameda County Superior Court (Case No.RG11605702) (Settlement Agreement) on November 5, 2012.

Pursuant to the Settlement Agreement, the Department is required to amend its Manual of Policies and Procedures to adhere to the terms of the settlement. It is imperative that the regulations package retain emergency status to adhere to the Stipulated Final Order; failure to retain emergency status could cause harm to the populations that it was intended to protect. In order to preserve the health, safety or general welfare of the public it is essential that these regulations are adopted on an emergency basis effective upon filing with the California Secretary of State.

## INFORMATIVE DIGEST

Before the implementation of ACLs 12-02, 12-23 and 12-66, it was possible for County Welfare Departments (CWDs) to establish and conduct OP recoupment processes against any members of an overpaid Assistance Unit (AU) at any time. This meant that if a child moved to a new AU from an overpaid AU, or had been in an overpaid AU as a child, he or she could be held liable for OPs incurred by the AU's parent or caretaker relative.

*Hartley v. Lightbourne* (Case No. RG11605702, 11/05/2012, Alameda Superior Court) challenged the Department's policy on OP recoupment against certain populations of persons, described above. In an attempt to proactively avoid prolonged litigation, the Department issued a series of ACLs addressing the opposing party's major concerns.

The release of ACLs 12-02, 12-23 and 12-66 reduced the population against whom OP recoupments shall be established. These ACLs mandated that, as of January 6, 2012, CWDs shall no longer collect OPs from the following: 1) adults or emancipated minors who were minors receiving cash aid in an AU when an OP occurred, and 2) any minor who becomes a member of a new AU when the OP occurred while the minor was a member of the previous AU.

#### *ANTICIPATED BENEFITS*

The Department anticipates that these proposed regulations will benefit needy and vulnerable adults and children who were receiving cash aid in a previous AU when an OP occurred by relieving them of the OP liability. Additionally, the proposed regulations will make other technical, conforming changes, such as renumbering of sections and amending cross references as necessary.

The Department reviewed existing program regulations and determined that no other regulations clarify the requirements provided for by the litigation. These proposed regulations are not only consistent and compatible with existing state regulations but also with the intent of *Hartley v. Lightbourne*.

#### **COST ESTIMATE**

1. Costs or Savings to State Agencies: Overpayment collections are not included in the Department's budget; however, some portion of the outstanding balance of overpayment collections may not be collected resulting in loss of state revenue, though the impact is assumed to be minimal. Any automation or administration cost associated with this change was determined absorbable within existing funds.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code sections 17500 - 17630: Overpayment collections are not included in the Local Assistance budget. Any automation or administration cost associated with this change was determined absorbable within existing funds.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: Overpayment collections are not included in the Local Assistance budget. Any automation or administration cost associated with this change was determined absorbable within existing funds.

#### **LOCAL MANDATE STATEMENT**

These regulations do impose a mandate on local agencies. If the Commission on State Mandates determines that these regulations contain reimbursable costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government code.

#### AUTHORITY AND REFERENCE CITATIONS

The Department adopts these regulations under the authority granted in Sections 10553, 10554, and 11004(h), Welfare and Institutions Code. Subject regulations implement and make specific *Hartley v. Lightbourne* (Case No. RG11605702, 11/05/2012, Alameda Superior Court).