

FINAL STATEMENT OF REASONSBackground

These regulations implement new federal mandates contained in the Child and Family Services Improvement Act of 2006 [Public Law (PL) 109-288] which require states to provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. It also required the California Department of Social Services (CDSS) to develop a plan to meet this goal. The CDSS convened a workgroup of interested county staff and developed the plan. These regulations reflect the requirements in PL 109-288 as well as the outcome of the workgroup.

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

Section 31-002(v)(1)(A)Specific Purpose

This definition has been amended to clarify who a visit is between, and who is authorized to make a visit, including foster family social worker, out-of-state social worker, and probation officer.

Factual Basis:

PL 109-288, Section 7, mandated monthly caseworker visits to children in foster care. Program Information Notice (PI) 07-08 and Child Welfare Policy Manual, Section 7.3 both allow the state to “define who a caseworker is for the purposes of title IV-B provisions...” Accordingly, CDSS is modifying its definition of who can make a visit with a child to include those social workers employed by foster family agencies, out-of-state social workers, and probation officers. Because the state will be penalized heavily for failing to meet monthly visit requirements, it is essential that the broadest range of persons be included in those who can visit with the child.

Final Modification:

Section 31-002(v)(1)(A) was amended for clarity after receipt of public testimony.

Section 31-003(s)(1)

Specific Purpose/Factual Basis:

This section is being added to include an existing form used as a placement contract between the county placing agency and a group home. This form is necessary to support the implementation of the new federal mandates of Public Law 109-288.

Final Modification:

Section 31-003(s)(1) was amended to clarify proper title of form.

Section 31-003(s)(2)

Specific Purpose/Factual Basis:

This section is being added to include a new form used as a placement contract between the county placing agency and a foster family agency. This form is necessary to support the implementation of the new federal mandates of Public Law 109-288.

Final Modification:

Section 31-003(s)(2) was amended to clarify proper title of form.

Section 31-003(s)(3)

Specific Purpose/Factual Basis:

This section is being added to include an existing form used as a placement contract between the county placing agency and a foster family home. This form is necessary to support the implementation of the new federal mandates of Public Law 109-288.

Final Modification:

Section 31-003(s)(3) was amended to clarify proper title of form.

Section 31-003(s)(4)

Specific Purpose/Factual Basis:

This section is being added to include a new form used as a reporting form between the county placing agency and a foster family agency. This form is necessary to support the implementation of the new federal mandates of Public Law 109-288.

Final Modification:

Section 31-003(s)(4) was amended to clarify proper title of form.

Section 31-003(s)(5) (renumbered from Section 31-003(s)(1))

Specific Purpose/Factual Basis:

This section is being renumbered to accommodate added forms in ascending order.

Section 31-003(s)(6) (renumbered from Section 31-003(s)(2))

Specific Purpose/Factual Basis:

This section is being renumbered to accommodate added forms in ascending order.

Section 31-003(s)(7) (renumbered from Section 31-003(s)(3))

Specific Purpose/Factual Basis:

This section is being renumbered to accommodate added forms in ascending order.

Section 31-003(s)(8) (renumbered from Section 31-003(s)(4))

Specific Purpose/Factual Basis:

This section is being renumbered to accommodate added forms in ascending order.

Section 31-075.3(b)

Specific Purpose

This section is being amended to include foster family agency social workers, out-of-state social workers, and probation officers to the list of contacts with a child which should be documented in the case record.

Factual Basis:

PL 109-288, Section 7, mandated monthly caseworker visits to children in foster care. PI 07-08 and Child Welfare Policy Manual, Section 7.3 both allow the state to “define who a caseworker is for the purposes of title IV-B provisions...” Accordingly, CDSS is modifying its definition of who can make a visit with a child to include those social workers employed by foster family agencies, those social workers from another state performing visits pursuant to the Interstate Compact on the Placement of Children (ICPC), and probation officers. Because the state will be penalized heavily for failing to meet monthly visit requirements, it is essential that the broadest range of persons be included in those who can visit with the child. Once these visits are made, they must be documented in the case record. Accordingly, this section is amended to include these visits.

Section 31-075.3(s)(9)

Specific Purpose

This section is added to include a new form which should be included in a case record.

Factual Basis

PL 109-288, Section 7, mandated monthly caseworker visits to children in foster care. PI 07-08 and Child Welfare Policy Manual, Section 7.3 both allow the state to “define who a caseworker is for the purposes of title IV-B provisions...” Accordingly, CDSS is modifying its definition of who can make a visit with a child to include those social workers employed by foster family agencies. Because the state will be penalized heavily for failing to meet monthly visit requirements, it is essential that the broadest range of persons be included in those who can visit with the child. In order for foster family agency social workers to be included in the definition of a caseworker, an agreement must be signed with the agency that they will meet new and continuing federal requirements. There is no current Agency-Foster Family Agency Agreement, most counties utilize the Group Home Agreement when placing with Foster Family Agencies. In order to meet the new federal requirements, it was necessary to develop a new form. This form was developed in conjunction with the county workgroup as well as the California Alliance of Child and Family Services (an advocacy group for Foster Family Agencies).

Section 31-075.3(s)(10)

Specific Purpose/Factual Basis

This section is renumbered to accommodate the addition of a new section.

Section 31-206.242

Specific Purpose

This section is being deleted in order to comply with new federal mandates.

Factual Basis:

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. In order to achieve this goal, CDSS must discontinue the visit exceptions currently allowed in regulations at 31-320. Section .242 is being deleted as the exceptions to be documented elsewhere.

Handbook Sections 31-320.11 through .114

Specific Purpose/Factual Basis:

These handbook sections are being deleted and added as section 31-320.5 through .59.

Section 31-320.4

Specific Purpose

This section is being added to require that the majority of caseworker visits occur in the child's foster home/placement.

Factual Basis

PL 109-288, Section 7, mandated monthly caseworker visits to children in foster care. It also mandated that more than 50% of those visits occur in the child's foster home/placement. This section implements that requirement.

Section 31-320.41

Specific Purpose

This section is being added to mandate that caseworkers visit children in private whenever possible.

Factual Basis

PL 109-288, Section 7, mandated that States develop plans for "the content and frequency" of caseworker visits. In developing its plan, CDSS decided that privacy was essential for a quality caseworker visit and is, therefore, including this requirement.

Sections 31-320.5 through .59

Specific Purpose

These sections are being added to define the purpose and content of a caseworker visit.

Factual Basis

These sections are being moved from former handbook section 31-320.11 through .114 and updated. PL 109-288, Section 7, mandated that States develop plans for "the content and frequency" of caseworker visits. These sections mandate what should be done at each caseworker visit with a child.

Sections 31-320.6 and .61 (renumbered from Sections 31-320.4 and .41)

Specific Purpose/Factual Basis

These sections are being renumbered to accommodate the addition of new sections.

Section 31-320.611 (renumbered from Section 31-320.411)

Specific Purpose/ Factual Basis

This section is being amended to use more exact language and renumbered to accommodate the addition of new sections.

Final Modification:

Section 31-320.611 was amended for clarity after receipt of public testimony.

Section 31-320.611(b) (renumbered from Section 31-320.411(b))

Specific Purpose

This section is being amended to clarify that the child must have lived in the same placement for six months prior to a foster family agency social worker being delegated responsibility for monthly visits.

Factual Basis

Section 31-320.411(d)(2) is being deleted but required that a child be in a stable placement for 12 months before visit exceptions were permitted. That section has been deleted, but county caseworkers must ensure a placement is stable before delegating responsibility for monthly visits to foster family agency social workers. A minimum of six months is necessary to ensure stability.

Section 31-320.611(c) through (d) (renumbered from Section 31-320.411(c) through (e))

Specific Purpose

These subsections are being amended to comply with new federal mandates regarding caseworker visits. Including, subsection (d) is deleted in its entirety and replaced with subsection (e), which is being renumbered to (d) and amended to clarify that only written reports will meet the monthly requirement for caseworkers. It also clarifies that these visits must be recorded in CWS/CMS.

Factual Basis

PL 109-288, Section 7, mandated monthly caseworker visits to children in foster care. PI 07-08 and Child Welfare Policy Manual, Section 7.3 both allow the state to “define who a caseworker is for the purposes of title IV-B provisions...” Accordingly, the CDSS is modifying its definition of who can make a visit with a child to include those social workers employed by foster family agencies. Because the state will be penalized heavily for failing to meet monthly visit requirements, it is essential that the broadest range of persons be included in those who can visit with the child. In order for foster family agency social workers to be included in the definition of a caseworker, an agreement must be signed with the agency that they will meet new and continuing federal requirements. In addition, the CDSS must ensure that the foster family agency social worker is qualified to perform visits by ensuring they meet the minimum qualification in Community Care Licensing (CCL) regulations (Title 22, Section 88065.3). There is no current Agency-Foster Family Agency Agreement, most counties currently utilize the Group Home Agreement when placing with Foster Family Agencies. In order to meet the new federal requirements, it was necessary to develop a new form. This form was developed in conjunction with the county workgroup as well as the California Alliance of Child and Family Services (an advocacy group for Foster Family Agencies). This form is referenced in this section. Further, PL 109-288, Section 7, mandated monthly caseworker visits to children in foster care. These visits must be inputted to CWS/CMS and then reported annually to the U.S. Department of Health and Human Services. In order to ensure that all visits that are completed are actually documented, CDSS is requiring written reports from social services staff and input into CWS/CMS.

Final Modification:

Section 31-320.611(d) was amended to clarify what type of report is expected after receipt of public testimony.

Sections 31-320.412 through .412(d)

Specific Purpose:

These sections are being deleted to comply with federal mandates regarding caseworker visits.

Factual Basis:

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. In order to achieve this goal, CDSS must discontinue the visit exceptions currently allowed in regulations at 31-320. Accordingly, these sections are being deleted.

Sections 31-320.612 through .613 (renumbered from Sections 31-320.413 and .414)

Specific Purpose/Factual Basis:

These sections are being renumbered to reflect deletions of previous sections and to accommodate the addition of new sections.

Section 31-320.7 (renumbered from Section 31-320.5)

Specific Purpose

This section is being renumbered to accommodate the addition of new sections and amended to clarify which staff must meet the minimum visit requirements.

Factual Basis

PL 109-288 mandated monthly visit requirements that must be completed by a caseworker. This section is being modified to clarify that this section applies to county social worker/probation officers.

Section 31-320.71 (renumbered from Sections 31-320.51 and .52)

Specific Purpose/Factual Basis

These sections are being combined to amend and make the section more clear, and renumbered to accommodate the addition of new sections.

Section 31-320.711 (renumbered from Section 31-320.53)

Specific Purpose

This section is renumbered to accommodate the addition of new sections and amended to clarify that the section applies to the county social worker/probation officer and to clarify duties.

Factual Basis

PL 109-288 mandated monthly visit requirements that must be completed by a caseworker. This section is being modified to clarify that this section applies to county social worker/probation officers. In addition, language is being added to clarify the social worker/probation officers duties when a child's whereabouts are unknown. It is not enough that the social worker document that the child's whereabouts are unknown, they must actually attempt to locate the child and document those attempts.

Final Modification:

Section 31-320.711 was amended for clarity after the public hearing.

Section 31-320.712 (renumbered from Section 31-320.54)

Specific Purpose/Factual Basis

This section is renumbered to accommodate the addition of new sections.

Sections 31-320.6, .61, .62, and .7

Specific Purpose

These sections are being deleted to reflect new federal mandates and replaced by the renumbering of previous sections.

Factual Basis

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. In order to achieve this goal, CDSS must discontinue the visit exceptions currently allowed in regulations at 31-320. Accordingly, these sections are being deleted.

Section 31-505.1

Specific Purpose/Factual Basis

This section is being amended to correct incorrect cross references.

Sections 31-505.123(a)(i)

Specific Purpose

This section is being added to reflect new federal mandates.

Factual Basis

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. In order to achieve this goal, CDSS must ensure that even those children placed outside of the county which has placement responsibility for the child are visited monthly. This section is added to clarify that if the receiving (host) county accepts responsibility for providing courtesy supervision, this includes meeting the monthly visit requirement.

Sections 31-505.123(b)

Specific Purpose

This section is being amended to reflect new federal mandates.

Factual Basis

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. In order to achieve this goal, CDSS must ensure that even those children placed outside of the county which has placement responsibility for the child are visited monthly. This section is added to clarify that if the receiving (host) county accepts responsibility for providing courtesy supervision, this includes meeting the monthly visit requirement and sending reports on those visits conducted with the child. Periodic is changed to quarterly to ensure that reporting gets done timely.

Sections 31-505.123(e)

Specific Purpose

This section is being added to reflect new federal mandates.

Factual Basis

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. In order to achieve this goal, CDSS must ensure that even those children placed outside of the county which has placement responsibility for the child are visited monthly. Other sections of this regulations package have been added to clarify that if the receiving (host) county accepts responsibility for providing courtesy supervision, this includes meeting the monthly visit requirement and sending periodic reports on those visits conducted with the child. Because the state will be penalized heavily for failing to meet monthly visit requirements, it is essential that all visits conducted with the child are documented in the CWS/CMS system so that they are then reported to DHSS. Accordingly, this section is added to include documentation of all receiving county social worker visits with the child in CWS/CMS.

Section 31.510.39

Specific Purpose

This section is added to reflect new federal requirements.

Factual Basis

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. Child Welfare Policy Manual, Section 7.3, states that the monthly visit requirements of PL 109-288 also apply to out-of-state placements. Because the state will be penalized heavily for failing to meet monthly visit requirements, it is essential that all visits conducted with the child are documented in the CWS/CMS system so that they are then reported to DHSS. Accordingly, this section is amended to include documentation of all social worker visits by the ICPC worker with the child in CWS/CMS.

Sections 31-510.434(b)

Specific Purpose

This section is being deleted as it is inconsistent with current state statute and regulation.

Factual Basis

Section 31-510.434(b) is being deleted as it is inconsistent with current California statute as set forth in Welfare and Institutions Code sections 16501.1(f)(4) and 16516.5(a) requiring that children placed by counties in group homes both in and out of state should be visited at least monthly by a county social worker or probation officer. In addition, MPP section 31-320.414 requires the social worker/probation officer to visit the child in a group home at least once each calendar month and document the visits in the child's case plan. It is not the receiving state's responsibility to provide these reports for a child in a group home or residential treatment center. See also, Interstate compact on the Placement of Children's Regulation 11, 3(c).

Section 31.510.49

Specific Purpose

This section is added to reflect new federal requirements.

Factual Basis

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. Child Welfare Policy Manual, Section 7.3, states that the monthly visit requirements of PL 109-288 also apply to out-of-state placements. Because the state will be penalized heavily for failing to meet monthly visit requirements, it is essential that all visits conducted with the child are documented in the CWS/CMS system so that they are then reported to DHSS. Accordingly, this section is amended to include documentation of all social worker visits with the child in CWS/CMS.

Section 31.510.9 and .91

Specific Purpose

These sections are added to reflect new federal requirements.

Factual Basis

PL 109-288, Section 7, mandates that states provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011. Child Welfare Policy Manual, Section 7.3, states that the monthly visit requirements of PL 109-288 also apply to out-of-state placements. Because California is a member of the ICPC, the state is required to meet these requirements with respect to the children placed by other states inside California. Accordingly, this section is amended to mandate that counties perform these functions for children placed in California by other states and to provide the necessary documentation to the sending state.

b) Identification of Documents Upon Which Department is Relying

Child and Family Services Improvement Act of 2006 (PL 109-288), Section 7

Child Welfare Policy Manual, Section 7.3

Welfare and Institutions Code 361.2

Program Instruction 07-08

Association of Administrators of the Interstate Compact on the Placement of Children
Regulation Number 11 "Responsibility of States to Supervise Children"

c) Local Mandate Statement

These regulations implement new federal mandates contained in PL 109-288 which require states to provide caseworker visits to children in foster care on a monthly basis by federal fiscal year 2011.

At this time, it is unknown what fiscal impact these new and revised federal mandated regulations will have on CDSS, local agencies, or school districts. The CDSS does not anticipate an impact on small business.

d) Statement of Alternatives Considered

The CDSS has determined 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 Private Persons or Business

The CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting private persons or businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on November 17, 2010 in Sacramento, California. Written testimony was received during the 45-day comment period from October 1, 2010, to 5:00 p.m. November 17, 2010. The comments received and the Department's responses to those comments follow:

- **Connie Linas, Supervising Program Specialist, Alameda County DCFS (Comment Nos. 1-5)**

1. Comment

The current and proposed definitions of a "Visit" in 31-002 (v)(1)(A) do not actually define a "Visit". They instead identify who is authorized to make a visit with the child. I would suggest that the revision is changed to define what a visit is and who is authorized to make the visit with the child. This will make the definition for (A) consistent with how (B) is written and also with the definition for "Contact" in 31-002(c)(25).

Proposed Language

31-002

(v) (1) "Visit" means a face-to-face contact between:

~~(A) A social worker or other person authorized by the Division 31 regulations to make visits with the child, the child's family, and/or the out of home care provider; or~~
A child and, as authorized by MPP 31-320, a social worker, probation officer, foster family agency social worker, or caseworker in another State under the ICPC who has case management responsibilities for the child, the child's family, and/or the out-of-home care provider; or

Response

The Department has revised the regulation to provide clarity on who a visit is between, and who is authorized to make a visit. The proposed language was considered; however, it was not clear in identifying and including visits between the caseworker and the child's family, and/or the out of home care provider.

Regulation 31-002 (v)(1)(A) has been amended by the Department to read:

“A child, the child's family, and/or the child's out-of-home care provider, individually or collectively; **and**, as authorized by MPP 31-320, a social worker, probation officer, foster family agency social worker, or caseworker in another state (who has case management responsibilities for the child under the ICPC); or”

2. Comment

The purpose of the reference to 31-320.3 in the revised regulation 31-320.4611 is unclear. The language of 31-320.3 refers to the frequency of visits for children with approved case plans. I think the language of .4611 should be rewritten to clarify if it is referring to the children identified in .3 or instead to the purposes of the visit as outlined in, for example, the proposed 31-320.5.

Response

The Department agrees that the revised regulation 31-320-4611 is unclear.

Regulation 31-320.4611 has been amended by the Department to read:

“The social worker shall be permitted to have less frequent visits, no less than necessary to ensure the safety and well being of the child as referenced in 31-320.5. In no case shall the visits be less frequent than one every six calendar months, provided the following criteria are met and documented in the case plan, and written supervisory approval has been obtained:”

3. Comment

Part (c) of 31-320.4611 is to be modified to remove the requirement for visits prior to case plan development or any exception. I agree with this change for case plans but see the need for a similar requirement prior to the substitution of county social worker visits for FFA visits. Given the varying quality of FFA’s, counties should be required to have made consecutive visits with a child before FFA visits are used instead of a county social worker.

Proposed Language

~~(c) Subsequent to development of the case plan, and prior to any exception, the child has been visited in three of the most recent four consecutive months.~~

The child is visited once each calendar month by social worker staff of a foster family agency provided they meet the minimum qualifications at Title 22, Section 88065.3 and are providing services pursuant to a case plan. A written placement agreement, on the form prescribed by the CDSS, shall be required between the foster family agency and the county and documented in the case record.

Prior to the social worker beginning less frequent visits, the social worker shall have visited the child in three of the most recent four consecutive months.

Response

Amending part (c) of 31-320.4611 is unnecessary as 31-320.4611(b) requires the child to be in the same placement for six months and the social worker to determine that the placement is stable prior to allowing an exception for monthly visits to be made by social worker staff of a foster family agency .

4. Comment

I also find part (d)—what is currently 31-320.4611(e)—to be confusing. The revised language appears to require the documentation in CWS/CMS of only two visits every six months for children with less frequent visits under .4611. Instead, documentation should be mandatory for at least one visit per month, otherwise this will limit the state’s chances of being in compliance with federal regulations.

Proposed Language

(~~ed~~) The social worker shall ensure that at least one verbal or written reports ~~of at least one per month visit are~~ is received from the FFA social worker and documented in the CWS/CMS case record.

Response

The Department agrees that the revised regulation 31-320.4611(~~ed~~) is unclear.

Regulation 31-320.4611(~~ed~~) has been amended by the Department to read:

“The social worker shall ensure that at least one written report of a visit is received each calendar month and documented in the CWS/CMS case record.”

5. Comment

I suggest that a reference to the TILP is added to the proposed section 31-320.5. The following is a possibility.

Proposed Language

.541 Complete the TILP and monitor the effectiveness of services provided as part of 31-236

Response

The TILP is a vital component of a youth’s (age 16 and above) case plan; however, there are existing regulations in Division 31 implementing the TILP and the Department believes that additional regulation is not necessary for promulgation of the TILP.

g) Substantive Changes to Regulations with No Comments After 15-Day Renotice

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. No written testimony on the modifications renoticed for public comment from February 18, 2011, to 5:00 p.m. March 4, 2011, was received.