

**State of California  
Office of Administrative Law**

**In re:**

**Department of Social Services**

**Regulatory Action:**

**Title MPP, California Code of Regulations**

**Adopt sections:**

**Amend sections: 11-403**

**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Section 11349.1 and  
11349.6(d)**

**OAL File No. 2014-1209-02 C**

---

The Legislature enacted Senate Bill (SB) 1013 (Chapter 35, Statutes of 2012) on June 27, 2012. Section 92 of SB 1013 repealed Welfare and Institutions Code (WIC) section 11463 which governs Foster Family Agency (FFA) rates. Section 93 of SB 1013 added back WIC section 11463 to reflect increases in the basic care and supervision rates. The Department of Social Services (Department) adopted an emergency regulatory action to amend section 11-403 of the Department's Manual of Policies and Procedures to implement changes made by Section 93 of SB 1013. That regulatory filing was deemed an emergency and exempt from review by the Office of Administrative Law pursuant to subdivision (p) of WIC section 11463. The current regulatory filing is a certificate of compliance for that emergency regulatory action.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: 1/23/2015

**CRIG TARPENNING**

---

Craig S. Tarpenning  
Assistant Chief Counsel

For: DEBRA M. CORNEZ  
Director

Original: Will Lightbourne  
Copy: Everardo Vaca

NOTICE PUBLICATION/REGULATIONS SUBMISSION



(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2014-0707-02</b>	REGULATORY ACTION NUMBER <b>2014-1209-02C</b>	EMERGENCY NUMBER
------------------	---	--	------------------

ENDORSED - FILED

In the office of the Secretary of State of the State of California

JAN 23 2015

1:35 PM

For use by Office of Administrative Law (OAL) only

2014 DEC -9 AM 11:30

OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
--------	-------------

AGENCY WITH RULEMAKING AUTHORITY  
California Department of Social Services

AGENCY FILE NUMBER (if any)  
ORD #0414-04

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER <b>2014, 292</b>	PUBLICATION DATE <b>7/18/2014</b>	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Foster Family Agency Rates	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2014-0620-02EF
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND Section 11-403
	REPEAL

TITLE(S)  
MPP

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
N/A

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
---	---	--	--

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Everardo Vaca, Analyst, Office of Regulations	TELEPHONE NUMBER (916) 657-2363	FAX NUMBER (Optional) (916) 654-3286	E-MAIL ADDRESS (Optional) everardo.vaca@dss.ca.gov
--	------------------------------------	---	---

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 12/1/2014
TYPED NAME AND TITLE OF SIGNATORY Pete Cervinka, Program Deputy Director for Benefits and Services	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 23 2015

Office of Administrative Law

Amend Section 11-403 to read:

11-403 FOSTER FAMILY AGENCY RATES

11-403

(a) Rate Determination Process

- (1) The Department shall set rates for each foster family agency utilized by counties which place AFDC-FC children.
  - (A) Treatment: The rate for a foster family agency program which provides treatment services for children who have treatment needs shall be set in accordance with Sections 11-403(a)(2) and 11-403(b)-(j). (Continued)
2. The payment to foster parents of a foster family agency shall be at least as great as the Department's schedule of foster family agency basic rates pursuant to Welfare and Institutions Code section 11463(m)(1) plus an additional increment established by the Department pursuant to Section 11-403(c)(1)(B) below in recognition of the specialized nature of the children placed in such homes.

HANDBOOK BEGINS HERE

Welfare and Institutions Code section 11463(m)(1) provides:

On and after July 1, 2012, the basic rate payment that shall be made to the certified parent pursuant to this section for care and supervision of a child who is living in a certified home of a foster family agency, as defined in Section 11400, shall equal the basic rate for children based in a licensed or approved home, as specified in paragraph (1) of subdivision (g) of Section 11461.

HANDBOOK ENDS HERE

- (B) Non-Treatment: The rate for a foster family agency program which does not provide treatment services shall be the basic rates as specified in Welfare and Institutions Code section 11461(g)(1) for foster family homes.

HANDBOOK BEGINS HERE

Welfare and Institutions Code section 11461(g)(1) provides:

Notwithstanding subdivisions (a) to (d), inclusive, for a child, or on and after January 1, 2012, a nonminor dependent, placed in a licensed or approved family home with a capacity of six or less, or placed in an approved home of a relative or the approved home of a nonrelative extended family member as

described in Section 362.7, or placed on and after January 1, 2012, in a supervised independent living placement, as defined in subdivision (w) of Section 11400, the per child per month basic rate in the following schedule shall be in effect for the period commencing July 1, 2011, or the date specified in the final order, for which the time to appeal has passed, issued by a court of competent jurisdiction in California State Foster Parent Association v. William Lightbourne, et al. (U.S. Dist. Ct. C 07-08056 WHA), whichever is earlier, through June 30, 2012.

#### HANDBOOK ENDS HERE

1. A specialized care rate as defined in Section 11-400s.(7) may be paid for a child placed in a certified family home of a foster family agency program as described in (B) above when the following conditions are met:
  - (i) The placing agency has determined that the child has care needs greater than those of a normal foster child; and
  - (ii) The placing county has a specialized care system as specified in Section 11-401.3.
2. When a child is placed in a certified home in a county that is different from the county with payment responsibility, the county with payment responsibility shall pay the specialized care rate as specified in Section 11-401.42.

(2) (Continued)

(b) Allowable Costs

- (1) Reported costs shall be actual allowable and reasonable as defined in federal statutes and regulations including 2 CFR Part 200 (formerly referred to as 2 CFR Part 230), 45 CFR Part 74, 45 CFR Part 1356, and Sections 11-402.8 and 11-404. (Continued)

(c) Rate Calculation

- (1) The foster family agency rate per month per child shall consist of the sum of components (A) through (E) below as established in Welfare and Institutions Code section 11463(n):

HANDBOOK BEGINS HERE

Welfare and Institutions Code section 11463(n) provides:

"Notwithstanding any other law, the changes to the basic rate payment specified in subdivision (m) shall not change the remaining components of the foster family agency rate. The new foster family agency rate shall be increased only by the amounts specified pursuant to subdivision (m). The resulting amounts shall constitute the new schedule of rates for foster family agencies, which shall be issued by all-county letters or similar instructions from the department."

HANDBOOK ENDS HERE

- (A) The foster family agency child basic rate shall be the rate, which varies according to the age of the child, as specified in Welfare and Institutions Code section 11461(g)(1).
- (B) An additional ~~standard increment, amount,~~ amount, as established ~~by the Department in Welfare and Institutions Code section 11463(n),~~ for each child in recognition of the specialized nature of the children.
- (C) An additional ~~standard~~ amount, as established ~~by the Department in Welfare and Institutions Code section 11463(n),~~ for social work services, or the actual allowable amount for the most recent program fiscal year reported by the provider, whichever is less;
- (D) An additional standard amount for recruitment, training, and administration as established ~~by the Department in Welfare and Institutions Code section 11463(n).~~
- (E) An annual cost of living adjustment shall be applied to the child basic rate component of the foster family agency rate identified in (A) in accordance with Welfare and Institutions Code section 11463(m)(2).

HANDBOOK BEGINS HERE

Welfare and Institutions Code section 11463(m)(2) provides:

"The basic rate payment to the certified parent made pursuant to paragraph (1) shall be adjusted annually on July 1, by the annual percentage change in the California Necessities Index, in accordance with paragraph (2) of subdivision (g) of Section 11461. The adjustment in this paragraph shall be in lieu of any adjustment pursuant to subdivision (e)."

HANDBOOK ENDS HERE

- (F) The department shall publish the Foster Family Agency Rates and identify the applicable annual cost of living adjustment to the child basic rate component of the foster family agency rate on the Department's website.

HANDBOOK BEGINS HERE

The department's website may be accessed at:  
[http://www.childsworld.ca.gov/res/pdf/FFA\\_RatesSchedule.pdf](http://www.childsworld.ca.gov/res/pdf/FFA_RatesSchedule.pdf)

HANDBOOK ENDS HERE

- (d) Rate Adjustments for Existing Foster Family Agency Rates
- (1) When, based on rate calculation provisions specified in Section 11-403(c), the newly calculated rate is higher than the existing rate, any cost-of-living increases provided in accordance with Welfare and Institutions Code section 11463 shall be applied until the difference between the existing rate and the newly calculated rate is eliminated.
- (e) On-going Foster Family Agency Rate Request Submission
- (1) Rate Request Submission (Continued)
- (B) A rate request shall be considered complete when all required forms, program statement, and other supporting documentation have been completed and submitted to the Department.
1. A complete rate request shall include: (Continued)
- e. Documentation of non-profit status, e.g., the organization's tax exempt status letter from either the Internal Revenue Service (IRS) or the California Franchise Tax Board designating the provider as tax exempt; if any changes have occurred since submission of the last tax exempt status letter. (Continued)
- g. A declaration signed by the non-profit Board of Directors that the non-profit will operate during the rate period in the public interest for scientific, education, service or charitable purposes; is not organized for profit making purposes; and uses its net proceeds to maintain, improve or expand its operations.
- (i) The provider shall immediately notify the Department if the non-profit ceases to operate on a non-profit basis.
- (ii) The provider shall immediately notify the Department whenever the non-profit becomes inactive, suspended, or otherwise is not in good standing.

- h. A copy of the credentials submitted to Community Care Licensing for each social worker providing services for the program if not submitted with a previous rate request.
  - (C) A complete rate request shall be due according to the biennial schedule determined by the Department. The Department shall provide reasonable written notice of the scheduled biennial due date. (Continued)
  - (D) Exceptions to these due dates are specified in Section 11-403(f).
- (2) Effective Date of Rates (Continued)
- (B) Exceptions to the effective dates of rates are specified in Section 11-403(f).
- (3) Rate Reestablishment
- (A) A rate reestablishment is a process to reestablish a foster family agency program rate for the remainder of the scheduled rate period that could not be established in accordance with Section 11-403(e)(1)(C)1. or was terminated for failure to submit a financial audit report as specified in Section 11-405.219. A program rate shall be reestablished when the Department determines that all applicable rate request requirements have been met.
    - 1. The effective date of the rate for a complete rate request shall be no earlier than the first day of the second month following the rate request due date.
    - 2. A foster family agency rate that is terminated pursuant to Section 11-405.219, shall not be reestablished until the non-profit corporation submits a financial audit report in accordance with Section 11-405.21. (Continued)
- (f) Deviations from the Ongoing Foster Family Agency Rate Request Process
- (1) New Foster Family Agency Providers
    - (A) A new foster family agency provider shall be one who: (Continued)
      - 3. Has a program that has changed its corporate identification
    - (B) The rate for new foster family agency providers shall be determined in accordance with Section 11-403(a)(1).
      - 1. The rate effective date for a new provider or a new program shall be the later of the:

- a. date the Department received a complete rate request as specified in Section 11-403(e)(1)(B); or (Continued)
  - (C) In order to establish a rate, new foster family agency providers shall submit to the Department a complete rate request in accordance with Section 11-403(e)(1)(B).
- (2) New Foster Family Agency Programs
  - (A) A new foster family agency program is one that serves a different population at a different level of service than that currently served by the foster family agency's existing program(s); and with a rate set in accordance with Section 11-403(a)(1).
  - (B) Foster family agencies requesting a new program rate shall obtain and submit to the Department:
    - 1. Verification that the provisions of Section 11-403(f)(2)(A) are met;
    - 2. Verification that the need for the new program(s) is justified and
    - 3. A letter of recommendation from the host county, the primary placing county, or a regional consortium of counties that the foster family agency is needed and is able to provide services at the level of care represented.
- (g) The administrative review procedure for foster family agencies is specified in Section 11-430.
- (h) State Audit Requirements: Audit requirements for foster family agencies are specified in Section 11-405.1.
- (i) Overpayments: Overpayment requirements for foster family agencies are specified in Section 11-402.6. An overpayment shall be caused by, but is not limited to, the expenditure of AFDC-FC program funds on items not allowable as specified in paragraph (b) above.
- (j) Accounting Requirements: Accounting requirements for foster family agencies are specified in Section 11-402.84.
- (k) Good Cause for Late Foster Family Agency Rate Request (Continued)
  - (2) Within 15 calendar days of the postmarked date of a provider's request for a 30-day good cause extension, the Department shall either approve or deny the request and shall notify the provider in writing of the determination. (Continued)



- (B) Rate requests which are not submitted in accordance with Subsection (A) shall be subject to the appropriate penalty contained in Section 11-403(e)(3).
- (C) When the Department denies a good cause request, the provider shall submit a complete rate request prior to the first of the next calendar month and shall be subject to the applicable penalty provisions as specified in Section 11-403(e)(3). The effective date of the rate shall be set in accordance with Section 11-403(e)(1)(B).

Authority cited: Sections 10553, 10554, 11463, 11463(l)(2) and 11466.21(c), Welfare and Institutions Code.

Reference: Sections 11461(a), 11461(g)(1), 11463, 11463(b), (i), (l) and (m), 11466.21, 11466.22, 11466.24, 11468, and 11468.2, Welfare and Institutions Code; Public Laws 98-502 and 104-156; Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; Government Auditing Standards of the Comptroller General of the United States (Yellow Book); Department of Health and Human Services, Administration for Children and Families letters dated April 19, 2001, February 22, 2002 and May 7, 2002; 2 CFR Part 200 and 230; 45 CFR Part 74; 45 CFR Part 1356 and Internal Revenue Code Section 4958.