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**DEPARTMENT OF SOCIAL SERVICES**

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REASON FOR THIS TRANSMITTAL

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

June 6, 2013

ALL COUNTY INFORMATION NOTICE NO. I-29-13

TO: ALL COUNTY WELFARE DIRECTORS  
 ALL CHIEF PROBATION OFFICERS  
 ALL FOSTER CARE MANAGERS  
 ALL INDEPENDENT LIVING PROGRAM COORDINATORS  
 ALL CHILD WELFARE SERVICES PROGRAM MANAGERS  
 TITLE IV-E AGREEMENT TRIBES  
 ALL ADMINISTRATIVE LAW JUDGES

SUBJECT: EXTENDED FOSTER CARE (EFC) UPDATE

REFERENCE: SENATE BILL (SB) 1013, CHAPTER 35, STATUTES OF 2012;  
 ASSEMBLY BILL (AB) 1712, CHAPTER 846, STATUTES OF 2012;  
 AB 12, CHAPTER 559; STATUTES OF 2010; PUBLIC LAW (PL)  
 110-351; WELFARE AND INSTITUTIONS CODE (W&IC); ALL COUNTY  
 LETTER (ACL) NOS. 11-61, 11-69, 11-77, AND 12-48.

The purpose of this All County Information Notice (ACIN) is to inform counties about the statutory changes to the Welfare and Institutions Code (W&IC) via passage of AB 1712, signed on September 30, 2012, and SB 1013, signed on June 27, 2012, concerning the EFC Program. Information regarding changes to the Kinship Guardianship Assistance Payment (Kin-GAP) and Adoption Assistance Payment (AAP) programs will be released in a separate ACL or ACIN.

Both pieces of legislation make changes to several sections of the W&IC that cover EFC, also known as After 18 Program; however, most of these changes clarify that existing child welfare laws also apply to Nonminor Dependents (NMDs). References to foster youth in this ACIN include both dependents and those youth on probation who are also under an order for foster care placement.

The SB 1013 made two significant changes to the EFC program. The first change removed the phased-in maximum age limits for foster care in 2012 and 2013 through the addition of W&IC section 10103.5. This allows a NMD who continuously remains in foster care to stay until the age of 21. However, the phased-in maximum age limits still apply for re-entry

(W&IC 388[e]) in 2013, which is explained on pages four and five. The changes in age limitations are further described in [ACL No. 12-43](#). Second, it requires that a provider for the Transitional Housing Program-Plus-Foster Care be licensed by Community Care Licensing Division as described in [ACL No. 12-44](#). These changes were effective July 1, 2012.

## **EFC PROGRAM CLARIFICATIONS**

The EFC program began January 1, 2012. This program allows a youth who turns 18 while in foster care to voluntarily remain in foster care provided one of the participation conditions is met, as outlined in [ACL No. 11-69](#). With the passage of SB 1013, a NMD may stay in foster care up to age 21 provided that she/he continues to meet the participation conditions. Any NMD who turned age 19 and exited foster care in 2012 due to reaching the age maximum is allowed to re-enter foster care by filing a SOC 163, the *Voluntary Re-entry Agreement*. Completion of the SOC 163 begins the process for filing a 388(e) petition to either resume dependency jurisdiction, or to resume or assume transition jurisdiction, as appropriate. This applies to both federally eligible and non-federally eligible youth.

A young adult previously under the care of a Non-Related Legal Guardian (NRLG) whose benefits ended in 2012 due solely to reaching the age of 19 may complete the applicable sections of the SOC 163 to resume both the care and support relationship with the guardian and the foster care payment benefits. In these cases, a 388(e) petition is not filed as the non-minor is not “re-entering” court dependency. Completion of the SOC 163 signifies the young adult’s willingness to remain under the care of the guardian and meet the participation conditions to maintain extended payments. See [ACL No. 12-12](#) for more information about re-entry and [ACL No. 12-48](#) for more information about a NRLG.

See [ACL No. 12-43](#) for more information regarding the changes to the maximum age eligibility added to the W&IC in section 10103.5. These provisions became effective July 1, 2012, and do not apply to young adults who turned 19 in 2011 or whose guardianship was established in the probate court.

### Court Processes

All foster youth who turn 18 while under the court’s order for foster care placement is considered a NMD. There has been confusion as to whether a court hearing or specific finding is required to establish the foster youth as a NMD. Neither a hearing nor additional court findings are required for NMD status or to be considered participating in EFC. See W&IC section 11400(v) for the definition of NMD. The EFC is only an extension of foster care, not a separate foster care program. The hearing described in W&IC section 366.31(b) identifies the preparation required by a case manager prior to the foster youth reaching age 18 to ensure that the youth is willing and able to meet the participation conditions for participation in EFC. See [ACL No. 11-69](#) for a discussion of participation conditions.

See W&IC section 450 and 727.2(i) for requirements of wards and transition dependents at the hearing prior to reaching age 18.

The AB 1712 made the following clarifications regarding court processes:

**1. Notice of hearings for a NMD:**

- a. Parents of a NMD are not provided notice unless the parent is receiving court ordered Family Reunification (FR) Services [W&IC section 295(b)].
- b. Siblings of a NMD shall be provided notice under specific conditions as detailed in W&IC section 295(a)(5).
- c. A Caregiver of a NMD shall be provided notice [W&IC section 295(a)(7)].

**2. Status review hearings:** Six-month hearings continue for a NMD and shall be conducted in accordance with W&IC sections 366.3, 366.31(e), 366.32, or 16503.

**3. FR services:** An in-progress FR case plan may continue for a NMD as long as the NMD and the parent, parents, or legal guardian are in agreement and the court finds that it is in the best interests of the NMD and that there is a substantial probability that the NMD will be able to safely reside in the home of the parent or guardian by the next review hearing (W&IC 361.6, 727.25, 16507). Consideration by the court to continue or terminate FR shall be in accordance with W&IC section 366.31(d). Any of the involved parties, including the NMD, may file a petition to terminate FR services (W&IC 388).

It should be noted that, to date, EFC participation code criteria cannot be entered into the Child Welfare Services/Case Management System (CWS/CMS) under the FR service component. The ability to enter this data will be made available in CWS/CMS Release 7.1, scheduled to be released in Spring 2014.

If a NMD is placed back in the home of the parent while still a dependent, foster care payments are suspended. If the NMD returns to an eligible foster care placement, payments can resume.

**4. Counsel for the NMD/parent:** Court appointed counsel continues for a NMD.

Counsel for parents must discontinue once the minor turns age 18, unless the NMD is still receiving court ordered FR services [W&IC section 317(d)].

**5. Court Appointed Special Advocate (CASA):** A CASA may continue for a NMD with the consent of the NMD [W&IC section 102(c)]. The CASA may only have access to a NMD's records with the written consent of the NMD [W&IC 107(b)].

**6. Psychotropic Medications:** Court authorization is not required for a NMD taking psychotropic medications [W&IC section 369.5(f)].

7. **Court file:** An NMD will have a separate court file and specific individuals are permitted access to that file as detailed in W&IC section 362.5. All others seeking information from the juvenile court file of the NMD must file a petition with the court under W&IC section 827.
8. **NMD eligible for Regional Center Services:** The appointment of a developmental services decision-maker also applies to a NMD. The W&IC section 361 permits the court to appoint a developmental services decision-maker if the court finds it to be in the best interest of the NMD.
9. **Adoption of an NMD:** Adult adoption of a NMD in the juvenile court is allowable [W&IC 366.31(e) & (f)]. A NMD who is adopted is eligible for AAP benefits up to age 21, assuming all other eligibility criteria are met (W&IC section 16120). An ACL regarding adult adoption of a NMD is forthcoming.
10. **Inter-county Transfers:** Existing law allows the court in the county of jurisdiction to order the transfer of an entire case to the court in the county of residence. With respect to a NMD, the court may order the transfer of an entire case to the county of residence after the NMD has lived in the county as a NMD for 12 consecutive months and the NMD has expressed an intent to remain in that county. For a NMD who re-enters EFC, the time period the youth was residing in the county prior to the filing of the 388 petition is included as part of the 12 consecutive month period required for residency [W&IC section 17.1(f) & (g) and 375(b)].

#### Re-entry to EFC

As noted earlier, SB 1013 removed the phased-in maximum age limits for foster care in 2012 and 2013 through the addition of W&IC section 10103.5, allowing a NMD who continuously remains in foster care to stay until age 21. However, the phased-in maximum age limits still apply for re-entry in 2013 [W&IC section 388(e)].

The W&IC section 10103.5(a) states, in part, that an NMD

“... who has been **receiving** that aid between January 1, 2013, and December 31, 2013, and who attains 20 years of age prior to January 1, 2014 may continue to receive aid under the applicable program up to 21 years of age,...” provided that the youth meets applicable eligibility requirements.

This means that a NMD who has turned age 20 in 2013 while in EFC placement can remain in EFC continuously until age 21. However, neither SB 1013 nor AB 1712 changed the age limitations for re-entry in W&IC section 388. For 2013, W&IC section 388(e) continues to allow re-entry up to age 20. Therefore, if the NMD exits EFC during 2013 at age 19 and subsequently turns age 20 while NOT in placement, the NMD will have to wait until 2014 to re-enter foster care when the maximum age limit is 21. It is

only an NMD who remains in care continuously that can remain until age 21. The NMD can exit and return multiple times during 2013 as long he/she is under the age of 20.

The SB 1013 expressly changed the re-entry provisions for 19 year olds in 2012. A youth who turned 19 in 2012 and exited care solely due to the fact that he or she attained age 19 are permitted to re-enter foster care effective July 1, 2012, despite the 2012 age restrictions in W&IC section 388(e). The youth does not need to be under age 19 in 2013 to re-enter.

As stated in [ACL No. 12-12](#), re-entry to foster care is a new foster care placement episode and a new eligibility determination is made based solely on the youth's circumstances.

Additionally, a NRLG whose payments were terminated can have benefits resumed if still under (or returning to) the care of his or her guardian. The applicable sections of the SOC 163 (*Voluntary Re-entry Agreement*) must be completed but there is no 388(e) petition to be filed, as the youth is not a dependent of the court.

#### Health and Education Passport (HEP)

Under federal law, a caregiver is required to be provided with medical and education information regarding the child placed with the caregiver. California meets this requirement through the HEP. Agencies/case managers are required to provide the HEP to a caregiver when a NMD is first placed in the home, as all federal requirements that apply to a minor dependent applies to a NMD. The case manager must explain to the NMD the requirement and the benefits and liabilities of sharing this information with a caregiver. However, the HEP can only be included in a NMD's court report with the NMD's written consent [W&IC section 16010(b) & and (c)]. Any other stricter federal law regarding medical confidentiality for the NMD must be observed as well.

There have been several questions regarding a NMD and the Child Health and Disability Prevention (CHDP) annual exam. The CHDP exam is a service offered to a foster child and as such, is required to be offered to a NMD. The examination is a state requirement; therefore, a NMD, as an adult, has the right to refuse an annual exam. The case manager and caregiver, when appropriate, should explain to the NMD why the exam is important to help maintain good health.

#### Emancipated Youth Stipend

The W&IC section 10609.3 no longer limits the use of these monies solely for emancipated youth. The language now allows for flexibility in the use of the stipend to help a NMD with independent living needs.

#### Mutual Agreements

Although most NMDs will sign a mutual agreement to remain in EFC, some youth are exempted from this requirement. A NMD who is unable to make an informed decision regarding voluntarily remaining in foster care is not required to sign the mutual agreement [W&IC section 303(d)(1)]. Further, a NMD remaining under delinquency jurisdiction in order to meet rehabilitative goals is not required to sign a Mutual Agreement to remain in EFC [W&IC section 303(d)(2)]. Upon successful completion of the terms of probation, the Mutual Agreement must be completed if the NMD wishes to remain in EFC. See [ACL No. 11-85](#) regarding jurisdiction for probation youth.

## PLACEMENT CLARIFICATIONS

### Supervised Independent Living Settings (SILS)

There are two types of SILS – A Transitional Housing Placement-Foster Care (THP+FC) and a Supervised Independent Living Placement (SILP). Both are eligible placements for a NMD and may receive Aid to Families with Dependent Children-Foster Care (AFDC-FC) benefits.

- **Job Corps:** This setting is allowable as a SILP. A NMD may receive housing through Job Corps and receive an AFDC-FC payment for a SILP. The housing accommodations provided by Job Corps are not considered earned or “in-kind” income; therefore, this is allowable and does not affect the NMD’s eligibility for AFDC-FC benefits. Job Corps housing is exempted from the SOC 157B housing inspection checklist that is required to approve a SILP. As there is no category on the form for this type of housing, it can be marked as University Housing and Job Corps can be written in until the form is updated.
- **Out of state SILP/placement:** There will be a forthcoming ACL providing additional information and instructions.
- **THP+FC:** Information was released in [ACL No. 12-44](#).
- **California Work Opportunities and Responsibility for Kids (CalWORKs):** A foster youth receiving aid via CalWORKs while residing with a relative caregiver is eligible to transition to a SILP placement as the NMD is still in foster care under the jurisdiction of the court. The county must assess the NMD as ready to live in a SILP and complete the SOC 157A and B.
- **Guardianship Non-minor:** A youth in guardianship who is no longer under the jurisdiction of the court (non-dependent) is not eligible for foster care placements such as THP+FC. However, upon reaching age 18, the youth is allowed to live outside the home of the guardian as long as he/she is still meeting the requirements for extended benefits and the guardian agrees to continue to provide support to the non-minor.

Payments must be made to the guardian even if the non-minor is living outside of the guardian's residence. The only exception is for a non-minor in an NRLG who is attending school, work, or vocational training per Manual of Policies and Procedures Division 45-301.214; these non-minors may receive payment directly. The Division 45 regulations are in the process of being revised to also include youth over the age 18.

### Group homes for NMDs

The citation detailing group home placements for a NMD has changed to W&IC section 16501.1(c)(3). There have been no substantive changes to the statute regarding group home placements.

When a foster youth placed in a group home decides to remain in care as an NMD, preparations to transition the NMD to a less restrictive, more family like setting shall occur and be documented in the case plan. Group home placements for a NMD is only allowed for the completion of high school or until the NMD reaches age 19, whichever occurs first. The only exception is for a NMD who meets the medical condition criteria for EFC (refer to [ACL No. 11-69](#)). The NMD participating in EFC due to a medical condition can remain in the group home after age 19, but only as a short-term transition to a more appropriate system of adult care. Please refer to question number 4 at the following link for information on adult residential facilities: <http://www.childsworld.ca.gov/PG2916.htm>

### **ADDITIONAL INFORMATION**

**Reminder: The California Department of Social Services (CDSS) is the single state agency responsible for the oversight of foster care funding and determination of foster care eligibility. Counties should rely only on ACLs, ACINs, County Fiscal Letters or other guidance issued by CDSS as the official communication of program or fiscal policy. Information shared in trainings, conferences, or other similar forums by CDSS or other entities is for the purposes of providing a general overview and is intended to be helpful for practice. Any information provided in these forums regarding eligibility or other policy not written in an ACL should be verified by CDSS by emailing: [ab12@dss.ca.gov](mailto:ab12@dss.ca.gov) .**

### Federal Guidance

Current federal guidance does not allow federal reimbursement in the circumstances identified below:

- Youth in Juvenile Hall: A probation youth who is under an order for foster care placement but in juvenile hall on his/her 18<sup>th</sup> birthday is eligible for EFC, but not federal reimbursement at this point. The CDSS is pursuing this matter with the federal government.

A NMD in an unapproved SILP: The [ACL No. 11-77](#) states that the county has ten business days to approve a new SILP placement if a NMD moves to a different SILP without notice. After that ACL was released, CDSS received federal guidance that the period of time while the NMD is in an unapproved SILP is not federally eligible. The CDSS is seeking clarification on other processes to ensure continuity of payment eligibility for a NMD who makes an unplanned SILP move. Additionally, if a NMD is making a planned move from a foster home placement to a SILP and the SOC 157A and B are not completed prior to the NMD's move, the SILP is not considered an eligible placement.

Links for ACLs and Questions and Answers regarding EFC can be located at:  
<http://www.childsworld.ca.gov/PG2902.htm>.

Questions regarding EFC can be sent to: [ab12@dss.ca.gov](mailto:ab12@dss.ca.gov).

Sincerely,

***Original Document Signed By:***

KAREN B. GUNDERSON, Chief  
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Children and Family Services Division