

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814
(916) 322-5330



December 26, 1984

ALL-COUNTY INFORMATION NOTICE I- 113-84

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: SB 1579 (CHAPTER 1441, STATUTES OF 1984); REGARDING TECHNICAL
OVERPAYMENTS

REFERENCE: ACIN I-99-84, DATED NOVEMBER 5, 1984

This letter is to inform you, for planning purposes, of the impending implementation of Welfare and Institutions (W & I) Code provisions added by SB 1579. These provisions become effective on January 1, 1985. A copy of the bill is attached for your information.

SB 1579 provides that no applicant or recipient of AFDC FG/U or RCA/ECA will be assessed an overpayment because he/she fails to take an action constituting a condition of eligibility when the failure is a result of an error caused by a state agency or the county welfare department and the amount of the grant received would not have been different had the condition been met. The conditions of eligibility affected by this law include, but are not limited to: WIN/ES registration, Social Security Number procurement, and cooperation with the District Attorney.

The Department will be issuing emergency regulations applying the provisions of W & I Code Section 11004(d) retroactively effective January 1, 1985. These regulations will specify that no assessment of an overpayment will be made to cases with circumstances which qualify under the provisions of this law and which are discovered on or after January 1, 1985. In addition, counties will be required to stop recouping overpayments in cases qualifying under the provisions of this law. Any amount recouped between January 1, 1985 and the date the regulations are issued will have to be refunded.

The regulations will define "an error caused by a state agency or the county welfare department" as either: 1) the failure of a state agency to notify the county, in the month of occurrence, that the recipient no longer meets the specified eligibility requirement, or 2) the county's failure to inform the applicant or recipient either verbally or in writing that he/she must perform the act constituting a condition of eligibility.

Because the regulations will be effective January 1, 1985, we recommend that you flag affected AFDC FG/U and FCA/ECA cases beginning on that date for easy identification.

If you have any questions, please contact Jim Dunelew, AFDC Policy Implementation Bureau, at (916) 322-5330.



ROBERT A. HOREL
Deputy Director

Attachment

cc: CWDA

CHAPTER 1441

An act to amend Section 11004 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1579, Rosenthal. Public assistance: overpayments.

Existing law provides for various aid programs, including the Aid to Families with Dependent Children (AFDC) program, under which needy families with dependent children are provided with cash assistance.

Existing law contains provisions for various methods of recouping overpayments made to aid grant recipients, including recoupment through subtraction from future aid grants.

This bill would create a state-mandated local program by providing that no determination of ineligibility shall be made retrospectively so as to result in an assessment of an overpayment in circumstances where there is a failure on the part of an applicant or recipient to perform an act constituting a condition of eligibility, if the failure is caused by an error made by a state agency or a county welfare department, and if the amount of the grant received by the applicant or recipient would not have been different had the act been performed.

In addition, counties would be required to inform an applicant, recipient, or payee of certain responsibilities regarding eligibility for those services.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

The people of the State of California do enact as follows:

SECTION 1. Section 11004 of the Welfare and Institutions Code is amended to read:

11004. The provisions of this code relative to public social services for which state grants-in-aid are made to the counties shall be administered fairly to the end that all persons who are eligible and apply for such public social services shall receive the assistance to which they are entitled promptly, with due consideration for the needs of applicants and the safeguarding of public funds.

(a) Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of eligibility and grant.

(b) Any applicant for, or recipient or payee of, such public social services shall be responsible for reporting accurately and completely within his or her competence those facts required of him or her pursuant to subdivision (a) and to report promptly any changes in those facts.

(c) Current and future grants payable to an assistance unit may be reduced because of prior overpayments to the extent permitted by federal law. In every case, grant payments shall be reduced to a level no lower than 90 percent of the grant, when added to the family's liquid resources and income, appropriate to families in similar conditions to the assistance unit being adjusted. If permitted by federal law, grant payments to be adjusted because of prior overpayments caused by agency errors shall be reduced to a level no lower than 95 percent of the grant when added to the family's liquid resources and income, appropriate to families in similar conditions to the assistance unit being adjusted.

(d) No determination of ineligibility shall be made retrospectively so as to result in an assessment of an overpayment in circumstances where there is a failure on the part of an applicant or recipient to perform an act constituting a condition of eligibility, if the failure is caused by an error made by a state agency or a county welfare department, and if the amount of the grant received by the applicant or recipient would not have been different had the act been performed.

(e) Prior to effectuating any reduction of current grants to recover past overpayments, the recipient shall be advised of the proposed reduction and of his or her entitlement to a hearing on the propriety of the reduction.

(f) If the department determines after a hearing that an overpayment has occurred, the county providing the public social services shall seek to recover in accordance with subdivision (c) the full amount of the overpayment to the assistance unit, including any amount paid while the hearing process was pending, if required in order to conform to federal law or regulation. Such adjustment shall

be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of such recovery the extent of liability for restitution.

(g) If the individual responsible for the overpayment to the assistance unit is no longer eligible for public social services or if he or she becomes a member of another assistance unit, recoupment of overpayments shall be made against the individual or his or her present assistance unit, or both, to the extent consistent with the provisions of federal law.

(h) Where an overpayment has been made to an assistance unit which is no longer receiving public social services, recovery shall be made by appropriate action under state law against the income or resources of the individual responsible for the overpayment or against the family.

(i) No civil or criminal action may be commenced against any person based on alleged unlawful application for or receipt of public social services, where the case record of such person has been destroyed after the expiration of the four-year retention period pursuant to Section 10851.

(j) When an underpayment or denial of public social service occurs and as a result the applicant or recipient does not receive the amount to which he or she is entitled, the county shall provide public social services equal to the full amount of the underpayment unless prohibited by federal law.

Any corrective payments made pursuant to this subdivision shall be disregarded in determining the income of the family and shall be disregarded in determining the resources of the family in the month the corrective payment is made and in the following month.

(k) This subdivision shall be applicable only to applicants, recipients and payees under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9. Any suits to recover overpayments described in subdivision (f) shall be brought on behalf of the county by the county counsel unless the board of supervisors delegates such duty to the district attorney by ordinance or resolution.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.