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July 3, 2014

ALL COUNTY LETTER (ACL) NO. 14-33

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CHIEF PROBATION OFFICERS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC) COUNTY LIAISONS
ALL COUNTY CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CalWORKs) PROGRAM SPECIALISTS

SUBJECT: NONMINOR DEPENDENTS (NMDs) PLACED OUT OF STATE

REFERENCE: ASSEMBLY BILL (AB) 12 (CHAPTER 559, STATUTES OF 2010); PUBLIC LAW 110-351; WELFARE AND INSTITUTIONS CODE (W&IC); MANUAL OF POLICIES AND PROCEDURES; ACLs 06-04, 08-24, 08-31, 10-12, 11-15, 11-61, 11-68, 11-69, 11-77, 11-78, 11-88, 12-12, 12-44, 12-48; COUNTY FISCAL LETTER 12/13-08; ALL COUNTY INFORMATION NOTICE 1-40-11; ICPC REGULATION NO. 4; ICPC ARTICLE V.

The purpose of this ACL is to provide counties with instructions regarding the policies and procedures when placing NMDs (dependents over the age of 18) who are in Extended Foster Care (EFC) or NMDs who receive a CalWORKs payment out-of-state. The EFC Program was created through AB 12, which allows foster youth age 18 and over to remain in foster care and receive foster care benefits (Aid to Families with Dependent Children-Foster Care [AFDC-FC] payments) and services up to age 21. A NMD may be placed out-of-state in a Supervised Independent Living Placement (SILP), group home, licensed or certified foster family home or the approved home of a relative or non-relative extended family member (NREFM).

Applicability of the ICPC for NMDs

The ICPC ensures the protection of and provision of services to children who are placed across state lines for foster care or adoption purposes. The compact is a uniform law that has been enacted by all 50 states, the District of Columbia and the United States

REASON FOR THIS TRANSMITTAL

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

Virgin Islands. It establishes orderly procedures for the interstate placement of children and fixes responsibility for those involved in placing the child.

The ICPC articles and regulations *do not* specify an age restriction at the time of placement, but rather use the broad definition of “child.” The placing state’s law may permit the extension of juvenile court jurisdiction and foster care maintenance payments to eligible NMDs up to age 21. Consistent with Article V, such youth should be served under ICPC if requested by the placing state and with concurrence of the receiving state. Therefore, the compact can be used as the vehicle to place NMDs and to ensure that appropriate services and/or supervision are provided to the NMD if the receiving state agrees to utilize the ICPC for such a placement.

The California Department of Social Services (CDSS) surveyed other states in an attempt to identify those states that might be willing to provide supervision and/or services for NMDs over the age of 18 via the ICPC. Willingness to consider the provision of services and/or supervision via the ICPC can vary based on the age of the NMD, whether the NMD was in placement via the ICPC prior to turning 18 or whether the placement would be considered a new placement under the ICPC. To help counties determine the requirements of different states, the CDSS is establishing a list of those states that would consider an ICPC placement for a NMD. This listing will be available in the near future at Childsworld.ca.gov. The CDSS will try to update this listing as new information becomes available. However, it is important for counties to be aware that this information is based on state survey responses. As such, it is subject to change and actual experiences encountered by counties may vary depending on the circumstances of each case. Therefore, counties are encouraged to use this listing only as a guide and to confirm ICPC applicability with individual states on a case-by-case basis at the time of placement consideration.

Requesting ICPC Approval for a NMD

When considering a new placement of a NMD out-of-state or the continuation of an existing out-of-state placement, the county placing agency must contact the ICPC office in the other state to determine whether that state would be willing to accept and/or continue an ICPC for the NMD placement and provide for the requisite supervision and/or services. It is highly recommended that this contact be made by the county ICPC liaison to help ensure consistent communication with other state ICPC liaison staff regarding ICPC program requirements. Some states may not be willing as a general policy to support use of the ICPC for NMDs but may be willing to provide supervision and/or services on a case-by-case basis.

If the receiving state permits and/or requires the use of the ICPC for the NMD placement and the provision of supervision and/or services, the placement *must* be

made in accordance with and adhere to all existing ICPC regulations. Additionally, any special requirements or documents needed by the receiving state should be discussed with and provided to that state.

If the receiving state is unwilling to accept and/or continue the ICPC placement, then the ICPC *may not* be used as the vehicle to provide supervision of and/or services to the NMD. Therefore, the county placing agency will be responsible for ensuring that monthly supervision and/or services are provided to these NMDs. The county placing agency should also consult with county counsel to determine whether providing direct services in the receiving state would violate any law in the receiving state.

Group Home Placements

General Provisions

A NMD may only reside in a group home after turning 18 if the placement allows the NMD to finish high school or is a short-term transition period to a more family-like or less restrictive setting. Once the NMD graduates from high school or reaches age 19, whichever is sooner, group home placement is prohibited unless the NMD has a documented medical condition that prevents participation in EFC as described in ACL No. 11-69 (W&IC section 11403[b] [5]) and the group home placement is a short-term transition to an appropriate system of care. Whenever possible and appropriate, county placement agencies should begin planning for the transition out of a group home when it becomes clear that the foster child and/or ward will remain in a group home until the age of 18 (W&IC 16501.1 [c][3]). Before the initial placement of a child who might transition into NMD status while placed in a group home, the case plan should specify the following (as explained in ACL No. 11-77):

- Why a group home is the best placement to meet the needs of the NMD;
- How this placement will assist the NMD's transition to independent living;
- The treatment strategies that will be used to prepare the NMD for discharge to a less restrictive setting or more family-like setting;
- A target date for discharge from the group home; and
- Periodic review of the placement to ensure that it remains the best option for the NMD and progress is being made toward achieving the goal of independent living.

Prior to placing a NMD into a specific out-of-state group home, county placing agencies must verify that the facility's state licensing agency allows for either continued placements and/or new placements of a youth 18 or older.

Group Home Certification Requirements

In order to care for California foster youth 18 or older and to receive public funding, the out-of-state group home must meet the certification requirements for out-of-state group homes. The out-of-state group home must be certified by the CDSS, be in good standing with both the CDSS and the in-state licensing entity and comply with in-state licensing requirements. To maintain its certification, the group home shall comply with all California licensing standards for group homes operated in California. For NMDs, this now includes the "AB 12 Interim Licensing Standards for Non-minor Dependents in Foster Care," posted on the Community Care Licensing Division (CCLD) website at <http://cclid.ca.gov>. These standards will remain in effect until regulations are adopted. To be certified for NMDs, the group home must submit required documents to the CCLD Out-Of-State Certification Unit (OSCU) within time frames specified by the CCLD. (For more information about this process, refer to CCLD Information Release No. 2013-02, *Out-of-State Group Home Certification for Youth Turning 18 [Nonminor Dependents]*) or view it at <http://cclid.ca.gov/res/pdf/201302.pdf>.

The NMDs currently placed in an out-of-state group home can remain there while the facility updates its Program Statement and certification to provide care for youth age 18 and older. If the facility decides it will not serve NMDs, those NMDs in care at the facility must be removed from the out-of-state group home by the county placing agency, and the county must send a 100B to the CDSS ICPC unit closing out the ICPC placement. Once the out-of-state group home has received an updated certification with approval to serve NMDs, the group home may admit any new California NMDs.

ICPC Group Home Requirements

The ICPC Regulation 4, Residential Placement, will apply to the placement of NMDs placed in out-of-state group homes via the ICPC. This regulation establishes the ICPC procedures for children placed in residential facilities across state lines. The intent of this regulation is to provide protection and safety for the children being placed in a residential facility in another state.

In the event the other state is willing to continue the ICPC placement of a NMD in a group home, the county placing agency should inquire as to whether any additional documentation is required by the receiving state (i.e., new court orders, mutual agreement, etc.) If additional documentation is required by the receiving state, the county placing agency must provide a copy of the additional documentation to the CDSS ICPC unit to update the ICPC packet maintained by the CDSS ICPC. The CDSS ICPC unit will then forward that documentation to the receiving state for approval.

If the receiving state does not permit the use of the ICPC for placement of a NMD in a group home, ICPC Regulation 4 will not apply to the placement of the NMD. When the NMD reaches the age of majority, the county placing agency will be required to provide a 100B form to the CDSS ICPC unit closing out the ICPC placement. The county must note on the form that the youth will remain in placement as a NMD at the facility listed and the NMD is either continuing his or her education or is transitioning to an appropriate system of care.

The CDSS ICPC unit will then forward the 100B form to the receiving state ICPC office to close out the ICPC. Once the NMD physically leaves the placement, another 100B form is required to be sent to the CDSS ICPC unit to close out the NMD's out-of-state placement so the CDSS is aware the NMD is no longer in placement.

Supervised Independent Living Placement (SILP)

A California youth in an ICPC approved out-of-state placement may wish to remain out-of-state and be placed in a SILP upon turning 18 years old. Additionally, a NMD residing in California may wish to be placed in a SILP in another state. As with any SILP placement, an out-of-state SILP must be consistent with the developmental needs of the NMD and must be specified in the NMD's case plan as described in W&IC section 16501.1(c)(1). A NMD must first be assessed as ready for placement in a SILP, which must be documented through completion of the SOC 157A (Supervised Independent Living Placement Approval and Placement Agreement). Refer to ACL No. 11-77 for more information on the SILP assessment and approval process.

It is important to note that the term "SILP" may not be recognized in other states. California developed the SILP to be consistent with federal law (see 42 United States Code 672[c]), which allows states to develop a supervised placement setting in which the NMD lives independently. Pursuant to federal law and guidance, other states may have developed these placement types but may call the placement settings by other names, such as the federally recognized Supervised Independent Living Setting (SILS). Therefore, when requesting ICPC approval for this type of placement, the county placing agency may need to explain to the receiving state what is meant by a "SILP."

Per federal Program Instructions, states are allowed to develop their own safety protocol and approval process for SILPs. Therefore, when seeking placement of a NMD into an out-of-state SILP via the ICPC, California counties can request a proposed SILP in the receiving state be assessed using California standards without risking the loss of Federal Financial Participation (FFP) for the placement. This is true regardless of whether the receiving state has an EFC program.

Requesting SILP Approval through ICPC

As with all types of placements, the county must first contact the receiving state to determine whether that state permits and/or requires adherence to the ICPC for placements of NMDs. When requesting SILP approval, the county should inform the receiving state that California is requesting the SILP approval under California SILP standards. That standard would include inspection of the proposed SILP using California documents (i.e., SOC 157A&B), in addition to any other documentation necessary to make the ICPC request. Like any other ICPC request, a request for a SILP approval would include monthly face-to-face supervision (including quarterly reports) and services as identified in the case plan.

When the receiving state permits and/or requires that placement into a SILP be made via the ICPC, the specifics of the ICPC request may differ based on the SILP setting and willingness of the receiving state to complete the SILP approval process. The differences in the SILP approval process depending on the SILP setting are described below. If the receiving state is not willing to process the placement through ICPC, the county may contract with a private agency within the receiving state for placement approval and supervision. Additional information regarding the out-of-state supervision requirements can be found on page nine of this letter.

A receiving state may agree to process a SILP placement via the ICPC (only for supervision and/or provision of services) but may be unable or unwilling to complete the inspection and/or approval California requires via the SOC 157B. Counties are encouraged to work creatively with the receiving states to ensure that the SILPs are assessed and placements are made. Options to ensure SILP approval include, but are not limited to, the county contracting with an agency in the receiving state to inspect the SILP using the SOC 157B or performing the inspection yourself and sending that documentation to the receiving state.

Completing the SOC 157A:

The NMDs must be assessed as ready to live independently, even if already living out-of-state. It is the county's responsibility to ensure that a NMD is assessed as SILP ready prior to placement in a SILP. For a NMD already out-of-state, counties have the discretion to determine if the county or the receiving state is most appropriate to assess the NMD's readiness for independent living. Because the SOC 157A (section II) documents the completion of the SILP readiness assessment, the county should request the receiving state complete the SOC 157A when the receiving state has conducted the readiness assessment. If the county has developed a SILP readiness form to use in conjunction with the assessment, this should be forwarded to the

receiving state for completion as well. Refer to ACL No. 11-77 for more information on assessment options.

Completing the SOC 157B:

The SOC 157B (SILP Inspection: Checklist of Facility Health and Safety Standards) is used to document the proposed placement meets basic health and safety standards.

- I. For University Approved Housing/Job Corps:** Under California policy, such housing does not need to be independently inspected by the receiving state. However, the SOC 157B still needs to be completed as it works in conjunction with the SOC 157A.
Note: For these SILP settings, the NMD does not need to be assessed for SILP readiness. However, six month assessments continue for the purposes of updating the Transitional Independent Living Plan (TILP). Refer to ACL No. 11-77 for more information.
- II. For other types of SILPs (i.e., renting a room, living in an apartment, etc.):** The county placing agency should request that the receiving state inspect the housing unit using the SOC 157B in order to determine whether the physical location is safe and appropriate. Once the SILP physical location is approved and the SOC 157B is signed, the date of the SILP inspection is documented on the SOC 157A (section VII).

The SOC 157A and B must be completed prior to placement into a SILP. After both forms are completed, they should be faxed or e-mailed back to the placing county for payment information (section IV) and final signature. Once the SOC 157A and B are completed and signed by all parties, the SILP is considered approved for payment.

Note: The FFP cannot be claimed for any period of time during which a NMD is in an unapproved SILP. This includes a prohibition on claiming FFP in situations where a youth has moved unexpectedly to a new SILP without providing sufficient notice to the county or receiving state to inspect and approve the SILP prior to the move. When first discussing SILP placements with NMDs, this may be an appropriate time to discuss that frequent moves can disrupt funding and help the NMD to understand the importance of communicating in advance with their specific case manager if a move is unavoidable.

Additional ICPC requirements for SILP approval:

Potentially, a receiving state may require the placement be approved according to the standards of the receiving state. Although this is not required in order to ensure federal eligibility funding of the placement, it may be necessary to secure ICPC approval and associated supervision and/or services. Even if the receiving state uses a different method of approval, the SOC 157A and B must be completed; otherwise, it will be viewed as ineligible/unapproved by California standards.

When the ICPC is not Permitted/Approved

If the receiving state does not permit and/or require a SILP placement through the ICPC, the county will be responsible for ensuring the proposed SILP is inspected and approved and the SOC 157B is completed. Additionally, the county will be responsible for providing monthly face-to-face supervision and ensuring the provision of services pursuant to the case plan. These responsibilities may be done through contracting services with an agency in the receiving state.

Relative/Non-Relative Placements

As previously indicated, when either considering a new placement of a NMD with a relative or NREFM who resides out-of-state or the continuation of an existing relative/NREFM placement out-of-state, the county should contact the ICPC office in that state to determine whether the state would be willing to permit and/or continue the NMD placement via the ICPC.

If the receiving state permits and/or requires the use of the ICPC for the NMD placement and the provision of supervision and/or services, the placement must be made in accordance with and adhere to all existing ICPC regulations. This is true whether the placement is continuing or is a new placement after the child has turned 18 years old.

In the case of continuing an ICPC placement of a youth who becomes a NMD while placed out-of-state with a relative/NREFM, the county must contact the ICPC office in the receiving state to determine whether supervision and/or services to the NMD may continue. If the receiving state will not continue supervision/services, the county will be required to submit an ICPC 100B form to close out the youth's ICPC placement upon the youth turning 18 years old. In addition, the county placing agency will be responsible for ensuring the supervision of and the provision of services to these NMDs.

If a receiving state or its local child welfare office is unwilling to accept a NMD for a new placement with a relative under ICPC, then the sending county placing agency must reconsider the relative/NREFM placement. A county placing agency may not utilize

California's relative/NREFM assessment/approval process to effectuate a new NMD placement out-of-state as the placement would not meet federal Title IV-E eligibility requirements. Federal law (42 United States Code 672[c]) defines a foster family home as "a foster family home for children which is licensed by the state in which it is situated by the agency of such state having responsibility for licensing homes of this type." Therefore, the home must be licensed or approved by the receiving state for funding purposes. Nothing prohibits a sending county placing agency from assessing whether another placement, such as a placement as a SILP near or in the home of a relative/NREFM, is appropriate for the NMD based on the developmental needs of the NMD.

Non-Related Legal Guardians

In the case of NMDs placed with nonrelated legal guardians, according to Regulation No. 1, the ICPC would apply if there is an open dependency and the legal guardian moves across state lines and the receiving state permits and/or requires the use of the ICPC for the placement. If the court has terminated dependency jurisdiction, then ICPC would not apply.

Out-of-State Visit/Supervision Social Worker Requirements

The same federal monthly visitation requirements that apply to minors in foster care apply to NMDs. In accordance with federal law (42 United States Code 624[f]), California is required to meet the following performance standards:

- i) Monthly caseworker visits. The total number of visits made by caseworkers on a monthly basis must not be less than 90 percent (or, in the case of Fiscal Year 2015 or thereafter, 95 percent) of the total number of visits that would have occurred if each dependent child/NMD was visited once every month while in care.
- ii) Visits in the home. At least 50 percent of the total number of monthly visits made by caseworkers to the dependent child/NMD in foster care must occur in his/her residence.

In the event that a county placing agency contacts the ICPC liaison of the receiving state and is informed that they will not approve or continue an ICPC placement of a NMD or provide requisite services and/or supervision, the CDSS suggests the county placing agency contact the receiving state's child welfare offices at the local level to see if the offices would be willing to provide supervision on the county's behalf or provide information regarding local agencies with whom the county may contract with to provide such services.

The local child welfare service (CWS) offices can often be very helpful in identifying potential resources for such services. However, if the receiving state is unable to provide supervision for the NMD, it becomes the county's responsibility to conduct the monthly face-to-face visits in accordance with federal requirements. As a reminder, recent federal guidance regarding face-to-face visits clarifies that the use of video conferencing or other technology such as "Skype" or "Facetime" is not considered an acceptable method for conducting visits. Please see ACL No. 11-69 for more information on monthly visits.

Pursuant to Regulation No. 4 (Residential Placements) and Family Code section 16516.5 (a), when NMDs are placed in a group home, it is the county placing agency's responsibility to provide face-to-face monthly visits until the NMD physically leaves placement. Courtesy supervision is not an option with group home placements.

Funding/Eligibility

A SOC 162 (Mutual Agreement) for EFC must be completed for all NMDs under dependency or transition jurisdiction. A Title IV-E eligible NMD maintains Title IV-E eligibility up to age 21 if placed into a Title IV-E eligible placement, as long as the NMD meets one of the following participation criteria:

- Completing high school or an equivalency program;
- Enrolled in post-secondary education or vocational school;
- Participating in a program or activity that promotes or removes barriers to employment;
- Employed at least 80 hours per month; or
- Is incapable of participating in any activity as described above due to a documented medical condition.

The NMDs who continue to be under delinquency (wardship) jurisdiction in order to complete their rehabilitative goals and continue to be in court-ordered, out-of-home placements are not voluntarily remaining in foster care. The Mutual Agreement for EFC (SOC 162) is not required for continued placement in an out-of-state group home for these NMD's. When a probation NMD has completed his or her rehabilitative goals and chooses to remain in foster care, the SOC 162 must be completed. A SOC 162 must be completed with all NMDs under dependency or transition jurisdiction.

For further detailed information regarding NMD placements, social worker requirements and visits, see ACL No. 11-69 and 11-77.

Rates for Out-of-State Placements

The rate paid for a NMD placed in an out-of-state group home shall be the rate as set by the rate-setting authority of the state where the youth is placed. This rate shall not exceed the rate set for California's current fiscal year standard rate for Rate Classification Level (RCL) 14.

The rate paid for a NMD placed in a licensed or approved out-of-state foster home shall be the rate as set by the rate-setting authority in the receiving state for the placement of a youth aged 18 to 20 in a licensed or approved foster home. If the rate-setting authority in the receiving state has not established a rate for such a placement, counties shall pay the highest rate established by the rate-setting authority in that state for placement in a licensed or approved foster home. No rate for any case should ever exceed the highest California rate for such a placement.

The rate paid for a NMD placed in an out-of-state SILP shall be the rate paid for the 15 to 20 age category set by California. The rate policy for SILP placements is an exception to the general rate policy, established in ACL 10-21, of paying the rate of the receiving state because a SILP is a new and different placement type. Unlike traditional foster care placements, out-of-state SILPs may be approved according to the criteria of the sending state, there is no standard SILP setting and not all states have placement options that mirror California SILP placements. For further discussion of SILPs, see ACL 11-77.

The rate paid for federally eligible NMDs placed in out-of-state licensed or Title IV-E approved relative placements shall be the rate as set by the rate-setting authority in the receiving state for the placement of a youth aged 18 to 20. No rate for any case should ever exceed the highest California rate for such a placement. If the rate-setting authority in the receiving state has not established a rate for such a placement, counties must pay the highest rate established by the rate-setting authority in that state for placement in a licensed or Title IV-E approved foster family home.

CalWORKs NonMinor Dependents

The NMDs placed in approved and/or licensed homes of relatives residing out-of-state may be eligible for extended CalWORKs if they meet the eligibility requirements as set forth in ACL No. 11-78. This may occur if: (1) the NMD is placed with an approved relative in another state, or (2) the approved relative the NMD is currently placed with moves to another state. The NMD's grant amount is the same grant amount for a non-exempt assistance unit (AU) of one.

The NMDs service case manager will provide documentation of eligibility via the SOC 161 (Six-Month Certification of Extended Foster Care Participation) and SOC 162 to the CalWORKs eligibility worker, who in return will then issue the CalWORKs payment. Continuing documentation of eligibility via the SOC 161 by the NMDs social services case manager will occur every six months.

Re-entry

Any NMD currently placed out-of-state who chooses to exit EFC has the option to re-enter. Please refer to ACL No. 12-12 for more information regarding re-entry.

Questions regarding the out-of-state ICPC process should be directed to the CDSS Out-of-State Placement Policy Unit in the Children's Services Operations and Evaluation Branch at ICPC@dss.ca.gov or (916) 651-8100. All questions related to certification of group homes should be directed to CDSS CCLD OSCU, at (916) 651-5380. For questions related to Foster Care Rates/Funding/Eligibility, contact the Foster Care Audits and Rates Branch at (916) 651-9152. For questions related to all other types of NMD out-of-state placements contact the Child and Youth Permanency Branch at (916) 651-7465 or AB12@dss.ca.gov. Questions regarding CalWORKs should be directed to the CalWORKs Eligibility Bureau at (916) 654-1322.

Sincerely,

Original Document Signed By

GREGORY E. ROSE
Deputy Director
Children and Family Services Division