

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



December 11, 2006

ALL COUNTY LETTER NO. 06-48

TO: ALL COUNTY WELFARE DIRECTORS
 ALL COUNTY CHIEF FISCAL OFFICERS
 ALL CHIEF PROBATION OFFICERS
 ALL COUNTY LICENSING PROGRAM MANAGERS
 ALL CDSS ADOPTION DISTRICT OFFICES
 ALL PUBLIC ADOPTION AGENCIES

REASON FOR THIS TRANSMITTAL

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

SUBJECT: TITLE IV-E FOSTER CARE AND ADOPTION ASSISTANCE PROGRAM IMPROPER
 PAYMENTS

The purpose of this All County Letter (ACL) is to provide County Welfare Departments, County Fiscal Officers, Chief Probation Officers, County Licensing Program Managers, CDSS Adoption District Offices, and Public Adoption Agencies with information and guidance on requirements recently received from the Department of Health and Human Services Administration for Children and Families (ACF), Federal Region IX, regarding repayment of the federal share of improper payments identified under the Title IV-E Foster Care and Adoption Assistance programs.

Non-Compliance with Federal Law

The ACF Federal Region IX sent a letter to the California Department of Social Services (CDSS) on June 1, 2006 and expressed concern that the state's process for returning the federal share of improper payments or overpayments identified through audits or other methods is not in compliance with federal policy. Public Law (PL) 107-300, the Improper Payments Information Act of 2002, defines an improper payment as "any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements." Incorrect amounts include amounts that are overpaid and underpaid, and an improper payment includes payments that were made to an ineligible recipient or for an ineligible service. Also, the definition includes duplicate payments, payment for services not received, and payments that do not account for credit for applicable discounts. Improper payments are also referred to as overpayments or disallowed costs.

The ACF Federal Region IX indicated that states may only claim federal financial participation (FFP) for allowable expenditures, and therefore, overpayments made to or on behalf of ineligible children, or to providers for services they did not provide or for which they were paid incorrect amounts, are not allowable expenditures under the Title IV-E program. These improper payments, overpayments and disallowed costs that occur can result from a variety of factors, such as: a child has changed placement, a child has run-away and temporary absence does not apply, a child is no longer in foster care or adoptive placement, but the paperwork has not "caught up" with the change and the provider continues to receive payment (for all placement types), through compliance and/or fiscal audits of providers, accidental disbursement of multiple checks to a provider, etc.

On September 1, 2006, CDSS responded to ACF Federal Region IX and indicated this federal policy directive is a major departure from existing longstanding practices and procedures which CDSS believed in good faith to be proper and had no reason to believe were in error. As a result, CDSS proposed to implement the requirement for identifying and remitting any improper payments (overpayments and disallowed costs), beginning October 1, 2006, thus limiting application of this clarified policy prospectively. The ACF Federal Region IX rejected the proposal to waive retroactive application of the policy citing federal policy already existed for repayment of any federal share of overpayments or unallowable costs.

Based on this clarified policy, the federal government is entitled to the full amount of the federal share to be abated from assistance claims immediately upon the overpayment having been identified. The ACF Federal Region IX has indicated that this policy applies regardless of the state's or county's ability to collect from the provider.

With respect to repayment of the federal share upon immediate identification, the only exception is where a unique state law (as distinguished from common federal law basis for overpayments such as the child did not reside in the home for the time period over which payment was made) allows for due process to be completed before the overpayment is established. One example is for overpayments identified as a result of state audits of group homes. However, CDSS is seeking clarification from ACF Federal Region IX on the issue of when an overpayment is identified. Specifically, CDSS is advocating that an overpayment is identified upon completion of due process that is provided to the overpaid party. If ACF Federal Region IX rejects this position, the State and counties will need to identify the overpayment as soon as it determines the overpayment has occurred.

State/County Action Required

The CDSS has begun working with representatives of the County Welfare Director's Association (CWDA) and county program and fiscal staff to identify best practices for mitigation of overpayments, as well as to review and modify the county claim process to ensure that overpayments can be appropriately identified on county claim forms. The CDSS has already held several workgroup meetings and will continue to work with both program/policy and fiscal county personnel to resolve all outstanding state/county issues.

The clarification in federal policy requires the State and counties to identify and track all federal foster care and adoption assistance improper payments associated with any placement type and aid code, that have occurred beginning October 1, 2006, as acknowledged by ACF Federal Region IX in their response received on October 26, 2006. In order to accurately account for all types of improper payments, counties must make any changes to local tracking mechanisms so that each type of improper overpayment can be reported to CDSS.

This new federal directive will also apply to overpayments which are barred from being collected by state statute, regulations and/or court decree. This policy applies to all overpayments made to foster homes, relative caregivers, and non-related extended family members including those that are precluded from overpayment collection as a result of *Bass v. Anderson*. These payments must also be tracked and reported by the counties so that the appropriate amount can be credited back to ACF Federal Region IX. Tracking should begin upon discovery of the overpayment and regardless of whether due process has been completed.

Most counties already credit any collected improper payment, overpayment or disallowed cost on the county claim form and maintain the supporting documentation for these adjustments. This policy now applies to all overpayments regardless of whether or not they are collected. The CDSS will provide more specific reporting instructions as well as claiming instructions via County Fiscal letter once outstanding issues are clarified with ACF Federal Region IX. Another ACL will also be issued to provide additional information including identification of best practices.

If you have any program questions about this ACL, please call Debra Williams at (916) 654-0985, and if you have any fiscal questions please call Eddie Yamamoto at (916) 651-9986.

Original Document Signed By:

MARY L. AULT
Deputy Director
Children and Family Services Division

cc: CWDA