

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



April 27, 2007

ALL COUNTY LETTER NO. 07-14

REASON FOR THIS TRANSMITTAL

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

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL COUNTY FISCAL OFFICERS
ALL COUNTY AUDITOR CONTROLLERS

SUBJECT: CHANGES TO TITLE IV-E FOSTER CARE AND ADOPTION
ASSISTANCE PROGRAM (AAP) ACTIVITIES THAT ARE
ELIGIBLE FOR FEDERAL FINANCIAL PARTICIPATION (FFP)
AS THE RESULT OF THE DEFICIT REDUCTION ACT (DRA)
OF 2005

REFERENCE: THE DEFICIT REDUCTION ACT, PUBLIC LAW 109-171,
DATED FEBRUARY 13, 2006, SECTIONS 472 AND 473 OF
TITLE IV-E OF THE SOCIAL SECURITY ACT
ACYF-CB-PI-06-02, DATED JUNE 9, 2006
ACYF-CB-PI-06-06, DATED AUGUST 23, 2006
ACL NO. 06-19, DATED JUNE 30, 2006
COUNTY FISCAL LETTER (CFL) NO. 05/06-44
DATED APRIL 27, 2006
CFL NO. 06/07-28, DATED MARCH 30, 2007

Background

The DRA of 2005 amended Sections 472 and 473 of Title IV-E of the Social Security Act (the Act) concerning reimbursable administrative and maintenance payment costs for eligible foster care and AAP placements. The Administration for Children and Families (ACF) issued ACYF-CB-PI-06-06 Program Instruction dated August 23, 2006, to provide guidance about the Title IV-E program statutory provision changes described below.

Administrative Costs

The DRA adds Section 472(i)1 to Title IV-E of the Act that designates certain activities as eligible for federal reimbursement. Effective February 8, 2006, new limitations on the claiming of administrative costs are as follows:

Relative Placements

Counties may claim FFP for the allowable administrative costs for an otherwise Title IV-E eligible child placed in foster care with a relative for whom approval is pending for a specific time period prior to approval. Federal law specifies that the time period for which claiming is allowed is, "up to twelve months or for the average length of time the state requires to license or approve the home." The California Department of Social Services (CDSS) has requested approval from Region IX to allow this claiming for six months prior to approval, which we feel is a reasonable estimate of the average length of time it, takes to approve a relative home. However, as of the date of this letter the CDSS has not yet received approval for use of this time period. Therefore, pending federal response, counties should flag these cases. Once CDSS receives confirmation from Region IX, further instructions will be issued. This limitation on administrative claiming applies to relatives for whom approval was pending on or after February 8, 2006.

Ineligible Facilities

FFP for allowable administrative costs may not be claimed for more than the calendar month that immediately proceeds the month in which a Title IV-E eligible child moves from a federally ineligible facility, into an eligible foster family home or child care institution. Claiming instructions describing the methodology to account for the one calendar month limitation for Title IV-E reimbursement for the period April 1, 2006, to June 30, 2007 are contained in CFL NO. 06/07-28.

Preplacement Candidacy Determination/Redetermination

Title IV-E administrative costs for children who meet the foster care candidacy criteria during the period they were residing in the home of removal are allowed provided specified conditions are met. Counties may begin claiming for allowable administrative functions performed on behalf of foster care candidates in the calendar month the child's candidacy is initially determined. In order to claim administrative costs, the child must be at "imminent risk of removal" and reasonable efforts must be made to prevent the child's removal from the home. In addition, counties must document every six months up to the time of removal from the home the status of the child who is at imminent risk of being removed. Children who were determined to be foster care candidates as of February 8, 2006, must have a redetermination of their candidacy completed by August 31, 2006, and every six

months thereafter. Counties may claim allowable administrative costs only if all criteria in Section 472(i)(2) are met, which includes documentation that the child is at imminent risk of removal from the home. A discussion of acceptable documentation supporting candidacy may be found in ACL NO. 04-32. Further, information on foster care candidacy will be provided in a subsequent letter.

Rosales vs. Thompson Court Decision

The ACF Program Instruction 06-06 dated August 23, 2006, confirms previous instructions regarding the DRA's overturning of the expansion of eligibility set forth in the Rosales vs. Thompson court case and its effective date in California. This instruction was first issued on June 9, 2006 via ACYF-CB-IM-06-12. As previously described, the 2003 decision of the United States Ninth Circuit Court of Appeal held that a foster child placed with a relative for whom eligibility cannot be found based on the home of removal, may be found eligible based instead on the child's eligibility for the former AFDC program in the relative's home. The DRA eliminated the Rosales expansion and reiterates the original federal requirement that the child's eligibility is based upon the AFDC eligibility of the original home of removal as the program was in effect on July 16, 1996.

All County Information Notice (ACIN) NO. I-19-06 dated March 30, 2006 and ACL NO. 06-19, dated June 30, 2006, provided initial information concerning the effect of the DRA on the Rosales eligibility criteria, as well as final court order instructions issued June 16, 2006, by the Eastern District in that case. ACL NO. 06-19 conveyed the court's instruction that in the Ninth Circuit States (which includes California), the effective date of the elimination of the Rosales eligibility expansion is June 9, 2006, rather than the date of February 8, 2006, as set forth in the DRA. ACYF-CB-PI-06-06 confirms this. Therefore, California County Welfare Departments must cease basing new eligibility on the Rosales vs. Thompson court decision as of June 9, 2006. This means that Manual of Policies and Procedures (MPP) Section 45-202.332 can no longer be used as a basis for eligibility after June 9, 2006, because there is no longer an approved state plan amendment that incorporates it.

Reminder: As determined by the Eastern District Court in its June 16th Order in Rosales, and reiterated by the federal program instruction and ACL 06-19, for cases made eligible under the Rosales case before June 9, 2006, counties should continue to pay foster care benefits until the next eligibility redetermination after this date. Eligibility redeterminations for all Rosales vs. Thompson cases must be done timely (within 12 months).

If the redetermination is not done timely, the case is ineligible for Title IV-E funding beginning the month immediately following the month the redetermination was due.

Adoption Assistance

The DRA included changes to Section 473(a)(2) of the Social Security Act regarding the AAP. Effective on or after October 1, 2005, for Title IV-E adoption assistance eligibility, a child must meet the AFDC eligibility criteria (as it existed July 16, 1996) at the time of his or her removal from the home. Previously, a child had to meet the AFDC eligibility criteria at the time the adoption proceedings were initiated but that is no longer required. In order to be eligible for AAP benefits, a child must be a child who has been determined to have special needs and who:

- Was removed from the home pursuant to a judicial determination that it was contrary to the child's welfare to remain in the home or was voluntarily placed in foster care and Title IV-E foster care maintenance payments were paid on his/her behalf;
- Met the requirements of Title XVI with respect to eligibility for Supplemental Security Income benefits prior to finalization of the adoption; or
- Was in a foster care placement the costs of which were covered by Title IV-E foster care maintenance payments made with respect to the child's minor parent.

Reminder: If a child receives Title IV-E adoption assistance and the adoption later dissolves or the adoptive parents die, that child may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. The only determination that must be made prior to the finalization of the subsequent adoption is whether the child is a child with special needs.

For more information on changes to Title IV-E eligibility requirements for foster care or AAP, please contact your Funding and Eligibility Unit County Consultant or AAP Consultant at (916) 651-9152.

Sincerely,

Original Document Signed By:

MARY L. AULT
Deputy Director
Children and Family Services Division

c: CWDA
CPOC