

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814

October 19, 2007

ALL COUNTY LETTER NO. 07-40

TO: ALL COUNTY WELFARE DIRECTORS
ALL SAWS CONSORTIA PROJECT MANAGERS
ALL FOOD STAMP PROGRAM SPECIALISTS
ALL CalWORKs PROGRAM SPECIALISTS
ALL COUNTY CHILD CARE COORDINATORS

SUBJECT: ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES

The purpose of this letter is to provide counties with information regarding the use of electronic signatures, digital images of original documents, and the destruction of original paper documents. California Government Code § 12168.7 requires that the Office of the Secretary of State, in consultation with the Department of General Services, approve and adopt appropriate standards for electronic storage and recording of documents. These standards are not yet adopted. When they become available, the California Department of Social Services (CDSS) will notify the counties of any changes. The information contained in this letter is applicable and limited to the public social services programs administered by CDSS. The Department of Health Care Services sent out similar instructions for the Medi-Cal program (refer to All County Welfare Directors Letter No. 07-13).

Any county procedure adopted concerning the use of electronic signatures, digital images, or electronic document storage is subject to the following:

- All current CDSS Eligibility and Standards Manual (EAS) requirements remain in effect. No eligibility requirements have changed due to automation, including but not limited to, ensuring client access to case records and records retention.
- Welfare and Institutions Code § 10851 and other sections of law referenced therein specify the criteria which must be met before digitally stored images can be used in lieu of original documents. One of the references, California Civil Code § 1633.1 et seq., codifies the Uniform Electronic Transactions Act (UETA) standards on electronic storage, document transmission, and security procedures/electronic signatures, which counties must follow.
- There are numerous Information Technology (IT) industry standard practices in existence on the creation, storage, and transmission of electronic documents

REASON FOR THIS TRANSMITTAL

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

which counties may choose from to meet the aforementioned statutory requirements. The American National Standards Institute, the Association for Information and Image Management, and the International Organization for Standardization are private organizations that have published documents that are widely regarded in the IT industry as defining the standards for electronic information creation, storage, and transmission.

Counties and county counsels must ensure that any imaging system and related processes for imaging, storing, and transmission of documents used in the administration of public social service programs satisfy the legal requirements stated above and conform to IT industry standards.

Electronic Signatures

Current law supports the use of electronic signatures. However, any county using electronic signatures must ensure that the system design complies with established IT industry standards. County IT or Statewide Automated Welfare System consortium professionals will be able to assist in the development of procedures and electronic processes that will help satisfy the following considerations which are relevant to any procedures or policies regarding electronic signatures:

- An electronic signature is considered a signature if the signatory understands that an electronic signature is being used, consents to the use of an electronic signature, and intends the signature to have the same force and effect as a written signature;
- The county's ability to point to facts that show the signatory's understanding, consent and intent described in the previous bullet will support a conclusion that the signatory meant to "sign" the document, and will increase the likelihood of the electronic signature's acceptance should an issue arise concerning its validity; and
- The ability to logically associate the electronic signature with the authenticated data record will increase the likelihood of the signature's acceptance should an issue arise.

Electronic Storage of Original Documents

Records that originally existed in hard copy may be retained in electronic form by government agencies conditional upon the following:

- The agency uses IT industry standards for conversion and storage of records to an electronic form.

- The electronic documents are accurate reflections of the originals.
- The electronic documents are retained for as long as required for the originals.
- Reasonable security procedures are adopted to prevent changes.

There are certain original documents that should not be electronically stored. These include certain court orders or notices, certain official court documents, certain family law documents, and wills. If there are any questions regarding the applicability of these exceptions for specific documents, consult with your county counsel.

For the purpose of this letter, the term "original documents" refers to copies made of original documents submitted by clients.

Additionally, all data (including archived data) must be retrievable using the current document management software system in use by the county. There should be a plan for transfer by the holder of the record to an archival entity, which may include a server(s) that would preserve the data for the required records retention period.

Access to case records kept in connection with the administration of a public assistance program that may be in electronic form is required by Manual of Policies and Procedures section 19. All County Letter No. 07-29 and All County Information Notice 1-33-06 describe the necessity for withholding privileged information and provide possible methods a county may use to make records accessible to a recipient and/or his/her authorized representative when requested or in preparation for an administrative hearing.

Paper Document Destruction

Current law regarding electronic records does not preclude the destruction of paper documents. As stated earlier, the county electronic records system must comply with IT industry standards and with established CDSS record retention requirements. Once converted to electronic form, originals may be destroyed under the following conditions:

- Information electronically stored must accurately reflect the original and must remain accessible for reference over the retention period otherwise required by law for that particular record.
- The above-described conversion and storage requirements are satisfied.
- There is no other law that specifically requires the documents to be maintained in their original form.

There are certain original documents that should not be destroyed. These documents are similar to those which should not be electronically stored. They include certain court orders or notices, certain official court documents, certain family law documents, and wills. If there are any questions regarding the applicability of these exceptions for specific documents, consult with your county counsel.

Admissibility of Electronic Documents in Legal Proceedings

Current law regarding the admissibility of electronic signatures and electronic documents for administrative hearings or court proceedings does not prohibit their introduction as evidence. All electronic records and signatures treated according to the above-described guidelines (and in compliance with IT industry standards) will be both admissible as evidence in a court of law and effective for administrative record-keeping purposes. **However, electronic documents are subject to the same tests as other evidence as to the authenticity of signatures and documents, reliability of method of storage, testimony of experts as to its recording, and hearsay objections.** The party offering the evidence (the county) would shoulder the burden of proof.

In summary, the use of electronic signatures, the electronic storage of documents in lieu of originals, and the destruction of paper documents are not precluded by existing law. If further clarification is needed, please contact the office of your county counsel.

If you have any questions regarding this letter, please contact Yvonne Lee of the Program Technology Bureau at (916) 654-1874 or by email at yvonne.lee@dss.ca.gov.

Sincerely,

Original signed by

CHARR LEE METSKER,
Deputy Director
Welfare to Work Division

c: CWDA