

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814

**REASON FOR THIS TRANSMITTAL**

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

March 21, 2008

ALL COUNTY LETTER NO. 08-10

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL COUNTY ADOPTION AGENCIES
ALL COUNTY FISCAL OFFICERS
ALL COUNTY PROGRAM MANAGERS

SUBJECT: TITLE IV-E FOSTER CARE OVERPAYMENT AND COLLECTIONS

REFERENCE: SENATE BILL 84, (CHAPTER 177, STATUTES OF 2007)
ALL COUNTY LETTER NO. 06-48
ALL COUNTY LETTER NO. 07-15
ALL COUNTY INFORMATION NOTICE NO. I-60-07

Senate Bill (SB) 84 (Chapter 177, Statutes of 2007) requires the California Department of Social Services (CDSS) to implement processes, procedures and solutions to comply with federal reporting requirements for Title IV-E foster care and adoption assistance overpayments.

The CDSS was informed by the federal Department of Health and Human Services (DHHS) that California is out of compliance with the Improper Payments Information Act (IPIA) of 2002. Furthermore, the state's prior practice of repaying the federal share of overpayments only upon collection is not acceptable to the DHHS. To be in compliance with the IPIA, CDSS must credit the DHHS for the full amount of the federal share overpaid immediately upon the overpayment having been identified and after completion of due process.

The CDSS issued All County Letter (ACL) No. 06-48, dated December 12, 2006, in which the above information was initially distributed to county welfare directors and probation officers. This ACL also indicated that CDSS had begun working with the County Welfare Director's Association (CWDA) to identify best practices

to mitigate overpayments and to modify the county claim process to ensure that overpayments can be properly identified on county claim forms. Counties were directed to identify and track all federal foster care and adoption assistance overpayments beginning October 1, 2006. All County Information Notice (ACIN) No. I-60-07, dated October 27, 2007, identifies best practice guidelines.

In an effort to ensure state and county compliance with federal reporting requirements for Title IV-E overpayments, SB 84 added Welfare and Institutions Code (W&IC) Section 11466.23 and Section 11466.235. Additionally, SB 84 amended W&IC Section 11466.24 to add clarity and consistency regarding county overpayments made to foster family homes, relative homes, non related extended family members and legal guardians. The additions and changes are described below.

W&IC Section 11466.23

This section defines a federal foster care or adoption assistance overpayment as any amount of aid paid to which a foster care provider, as described in Section 11400, or adoption assistance recipient, as described in 2.1 (commencing with Section 16115) of part 4, was not entitled. The addition of this section identifies those placement categories described in W&IC Section 11400 as Certified Family Homes, licensed or approved Family Homes, Small Family Homes, Foster Family Agencies, Group Homes, Relatives, and Non-Relative Extended Family Members as placement categories that are now statutorily eligible for overpayment identification and collection.

This section requires counties to remit the identified federal fund overpayment amounts following the completion of due process, unless any of the following occurs:

- The amount is legally uncollectible pursuant to Section 11466.24.
- The cost of the collection exceeds the overpayment.
- The foster family agency (FFA) or group home (GH) is no longer in business or licensed by Community Care Licensing.

This law specifies that remittance of qualifying overpayments of federal Aid to Families with Dependent Children- Foster Care (AFDC-FC) funds and federal Adoption Assistance Program (AAP) funds will be shared using the 40 percent state and 60 percent county sharing ratio. However, counties are not required to remit payment of the federal share of overpayments until CDSS adopts emergency regulations on or before December 31, 2008. The state is required to repay the federal share of all overpayments with state only funds until emergency regulations are adopted.

Counties are required to continue collecting overpayments and remitting voluntary overpayments when collected. Once the county has collected any overpayments from providers or recipients, the county must ensure that the total amount reimbursed to the state reflects the federal as well as the state share of the overpayment costs.

The ACL No. 07-15, dated March 31, 2007, required counties to submit a list of overpayments identified during the period of October 1, 2003 through December 31, 2006, and where due process concluded as of December 31 2006. These lists were submitted to CDSS in April 2007 (or revised if needed by July 10, 2007) and reported balances of the amount due for these overpayments as of March 31, 2007, which CDSS repaid to DHHS. In addition, CDSS continues to repay the DHHS for any collections reported by the counties on their monthly Foster Care Federal Assistance Claims (CA 800 FC FED) and the Adoptions Federal Assistance Claims (CA 800A FED). A forthcoming County Fiscal Letter (CFL) will require Counties to provide summarized data for the collections reported that would have resulted in duplicate payments to DHHS.

Counties should continue to use the same format identified in ACL No. 07-15 and compile a list of identified overpayments that have completed due process between January 1, 2007 and February 29, 2008. Counties must submit their Excel list in electronic format to: FCOverpayments@dss.ca.gov, no later than March 28, 2008. Please submit a hard copy with final approval and sign off by your County Welfare Director and the County Auditor Controller to:

California Department of Social Services
Foster Care Audits and Rates Branch
744 P Street, M.S. 9-23
Sacramento, California 95814
Attn: Teresa Torreyson

Further instructions will be published in a forthcoming CFL regarding submission of these newly identified overpayments that completed due process between January 1, 2007 to February 29, 2008. An additional CFL will be issued to provide instructions on reporting overpayments that complete due process each month beginning with the March 2008 claiming month.

W&IC Section 11466.235

This section directs CDSS to work with the CWDA to develop regulations to identify, determine, track, notify and collect foster care and adoption assistance overpayments by county agencies. The CDSS must specify the required processes and procedures of county agencies, as appropriate, for collection and repayment of federal AFDC-FC overpayment funds. These processes to be described in regulations will include:

- Development of a Notice of Action (NOA)
- Due process procedures
- Voluntary repayment procedures
- Involuntary repayment procedures
- Determination of the accrual of interest

The recovery of these overpayment funds must be done in a way that does not jeopardize the overall availability of placements for foster or adoptive children, as well as to act in the best interests of the foster or adoptive child.

Furthermore, the statute directs CDSS to identify procedures no later than October 1, 2007, to help counties assemble the appropriate state approvals of advanced planning documents to accomplish automated solutions which should help minimize and eliminate overpayments. The CDSS has a similar process in place, which can be accessed on the CDSS website at:

<http://www.hwcws.cahwnet.gov/Projects/CFP//>.

Once the completed documents are submitted to CDSS by the counties, they will be forwarded to the appropriate federal authority within 30 days.

Additionally, SB 84 has directed that no later than December 31, 2007, CDSS will begin a process for counties to obtain at no cost, all of the necessary data from the Child Welfare Services /Case Management System that counties can use for identification of overpayments. The CDSS has initiated a data extract that is being finalized to help counties address their foster care overpayment issues. Each county using this data extract will receive a preliminary full download and the extract will be updated on a regular basis, with a full refresh download quarterly. All counties have been given the opportunity to provide input to this process and to receive this data extract.

The CDSS will continue to work with counties to alleviate any implementation issues with the data extract. More information will be distributed as the process is finalized. The CDSS must adopt emergency regulations to implement this section.

W&IC Section 11466.24

This section has been amended to expand the population of foster care placements subject to overpayment collection and due process procedures to include an approved home of a nonrelative extended family member. In addition to identifying the conditions under which a county should not collect an overpayment, this section adds language that identifies the types of costs counties should consider when determining the cost effectiveness of collecting overpayments. These costs are identified as total administrative, personnel, legal filing fees, investigative costs, and any other applicable costs.

Furthermore, language has been added that clarifies the different situations in which an overpayment should not be collected. For example, a child may be temporarily absent from the provider's home in addition to having been temporarily removed from the home; or, the child was on runaway status and payment was owed to the provider to maintain the child's placement or to meet the child's needs. The amended section also provides consistency for provider due process through the use of both informal and formal hearings rather than a review.

The CDSS will be responsible for implementing necessary state law and regulation changes affecting state audits; county identification, tracking, and collection of overpayments; identifying and repaying the federal share of overpayments; providing ongoing technical assistance and clarification to counties regarding federal requirements for overpayments.

If you have any questions regarding the information in this ACL, please contact Debra Williams, Chief, Foster Care Rates Policy, at (916) 651-9152. If you have questions on claiming or remittance of the federal share of overpayments, please email: assistance.claims@dss.ca.gov.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Acting Deputy Director
Children and Family Services division

c: CWDA
CPOC