

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 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 28, 2008

ALL COUNTY LETTER NO. 08-17

TO: ALL COUNTY WELFARE DIRECTORS
ALL ADOPTIONS DISTRICT OFFICES
ALL LICENSED ADOPTION AGENCIES
ALL ADOPTION FACILITATORS
ALL CHIEF PROBATION OFFICERS
ALL ADMINISTRATIVE LAW JUDGES
ALL COUNTY PLACEMENT SUPERVISORS

SUBJECT: DUAL AGENCY CARE RATES FOR CHILDREN WITH
DEVELOPMENTAL DISABILITIES WHO RECEIVE AID TO FAMILIES
WITH DEPENDENT CHILDREN-FOSTER CARE OR ADOPTION
ASSISTANCE PROGRAM BENEFITS

REFERENCE: SENATE BILL 84, CHAPTER 177, STATUTES OF 2007
ALL COUNTY LETTER NO. 03-60, DATED NOVEMBER 13, 2003
ALL COUNTY LETTER NO. 98-28, DATED MAY 4, 1998
ALL COUNTY INFORMATION NOTICE NO. I-74-04,
DATED MAY 4, 1998

This All County Letter (ACL) provides information regarding the new dual agency care rates, effective July 1, 2007, for children who are served by both California Regional Centers and California Child Welfare and Probation Agencies. These are children receiving Aid to Families with Dependent Children-Foster Care (AFDC-FC) or Adoption Assistance Program (AAP) benefits. Welfare and Institutions Code (W&IC) Section 11464, recently enacted by Senate Bill (SB) 84, clarifies the roles and responsibilities of child welfare service and probation agencies and regional centers and is intended to promote the timely and appropriate placement of developmentally disabled children with foster and adoptive families.

Children who are consumers of regional center services and recipients of either AFDC-FC or AAP benefits are hereinafter referred to as "dual agency children". By providing a new rate structure and rate setting process, SB 84 ensures consistency in

statewide program administration and benefits for this population of children. It also preserves higher rates established before July 1, 2007, and the continuation of regional center services to dual agency children.

1. MAJOR DUAL AGENCY CARE RATE CHANGES ENACTED BY SB 84

Establishes a new rate of two thousand and six dollars (\$2,006) for the care and supervision of dual agency children three years of age and older.

Establishes a new rate of eight hundred ninety-eight dollars (\$898) for the care and supervision of children under three years of age who receive services under the California Early Start Intervention Services Act, but are not yet determined to have a developmental disability, as defined in the Lanterman Developmental Disabilities Services Act, (hereinafter referred to as "the Lanterman Act").

Establishes that if a regional center subsequently determines that a child under three years of age is an individual with a developmental disability, as defined in the Lanterman Act, the rate to be paid from the date of that determination is \$2,006.

Establishes a new supplement to the \$2,006 rate not to exceed one thousand dollars (\$1,000) for dual agency children three years of age and older with extraordinary care and supervision needs.

Requires the California Department of Social Services (CDSS) and the Department of Developmental Services (DDS), in consultation with stakeholders, to develop objective criteria for determining eligibility for a supplement to the rate as well as rate levels of the supplement. The criteria must be implemented by an ACL within 120 days of the date on which the changes in dual agency care rates became effective.

Requires regional centers to separately purchase or secure services that are in a dual agency child's Individualized Family Service Plan (IFSP) or Individual Program Plan (IPP).

Establishes that dual agency children who are recipients of AFDC-FC and residing in the approved home of a relative; the licensed family home of a non-relative; the approved home of a non-relative extended family member; the approved home of a non-related legal guardian or former non-related guardian when the guardianship of a child otherwise eligible for AFDC-FC has been dismissed due to a child attaining 18 years of age; or nonvendored licensed foster family home (i.e., facility as defined in Health and Safety Code Section

1502 (a)(5) or (6)) shall not be prohibited from receiving respite care services from a regional center.

Specifies that for dual agency children who are placed in licensed community care facilities that have been vendorized by a regional center, that the AFDC-FC rate paid will be based on the facility Alternative Residential Model (ARM) rate established by DDS.

Specifies that neither AFDC-FC nor AAP benefits may be counted by the regional centers as benefits or gross income that can be calculated for the purposes of the Family Cost Participation Program requirements for regional center services.

Specifies regional centers may not deny a dual agency child any service or reduce services based on receipt of AFDC-FC or AAP benefits. AFDC-FC and AAP benefits are not a generic resource under the Lanterman Act.

Establishes a process for determining care and supervision rates on behalf of dual agency children who were receiving AFDC-FC or AAP benefits before these rate changes were enacted.

Requires the CDSS and DDS to collect various data regarding dual agency children for the purpose of reporting to the Legislature semiannually.

2. DEFINITIONS

Who is a Dual Agency Child?

A dual agency child is a child in a foster care home, a child in adoptive placement, or adopted from the foster care system, who receives AFDC-FC or AAP benefits and who is concurrently a consumer of California Regional Center services due to a developmental disability, as defined by the Lanterman Act, and/or children receiving services under the California Early Start Intervention Services Act.

What is a California Regional Center?

A California Regional Center is an agency that provides evaluations, assessments, case management, and services for individuals with developmental disabilities who are residents of the State of California.

Who is a Foster Care Provider?

For purposes of dual agency rate setting, a foster care provider receives a per child, per month, AFDC-FC rate for providing care and supervision to a foster child placed with that provider in one of the following:

- 1) the approved home of a relative;
- 2) the licensed family home of a non-relative;
- 3) the approved home of a non-relative extended family member; or
- 4) the home of a non-related legal guardian or former non-related guardian when the guardianship of a child otherwise eligible for AFDC-FC has been dismissed due to a child attaining 18 years of age. (W&IC Sections 11402, 11461, and 362.7).

3. FOSTER CARE – NEW DUAL AGENCY CARE RATES

General Rate Provisions

W&IC Section 11464, as enacted by SB 84, establishes a new rate effective July 1, 2007, in the amount of \$2,006 (and the supplement to the rate, if applicable), per child, per month, for dual agency children who receive AFDC-FC benefits, are in a nonvendorized foster care placement, and are consumers of regional center services. The child must be residing with a foster care provider as defined in the aforementioned section titled "Who is a Foster Care Provider?"

For foster care providers receiving an AFDC-FC rate for a dual agency child where the rate was set prior to July 1, 2007, and that rate is higher than the \$2,006 rate, (and the supplement to the rate, if applicable), the higher rate will remain in effect until a change in placement warrants a redetermination of the rate or the child is no longer AFDC-FC eligible.

For foster care providers receiving an AFDC-FC rate for a dual agency child paid before July 1, 2007, that is lower than the \$2,006 rate, (and the supplement to the rate, if applicable), counties shall increase the lower rate to the \$2,006 rate, (and the supplement to the rate, if applicable), retroactive to July 1, 2007.

For licensed community care facilities which have been vendorized by a regional center and providing care and supervision to dual agency children, AFDC-FC rates will continue to be based on the facility ARM rate established by DDS.

Rate for Children Under the Age of Three Years

The rate for the care and supervision of a child under three years of age who is receiving AFDC-FC benefits and services under the California Early Start Intervention

Services Act but who has not yet been determined by the regional center to have a developmental disability, as defined in the Lanterman Act, is \$898 per child, per month. **There is no supplement to this rate.**

If a regional center subsequently determines that a child under three years of age has a developmental disability, as defined in the Lanterman Act, the rate to be paid from the date of the determination is \$2,006. **There is no supplement to this rate.**

For foster care providers receiving an AFDC-FC rate that is higher than the \$898 rate for a dual agency child under three years of age paid before July 1, 2007, foster care providers will continue to receive the higher rate until a change of placement warrants a redetermination of the rate or the child is no longer AFDC-FC eligible.

For foster care providers receiving an AFDC-FC rate that is lower than the \$898 rate for a dual agency child under three years of age paid before July 1, 2007, counties shall increase the lower rate to the \$898 rate, retroactive to July 1, 2007.

Supplement to the Rate

W&IC Section 11464 (c)(2)(A), gives a county sole discretion to authorize a supplement to the rate not to exceed \$1,000 for dual agency children three years of age and older, if it determines the child has the need for extraordinary care and supervision that cannot be met within the \$2,006 rate. Upon request of a foster care provider, **or** upon referral from a regional center, the county must determine the eligibility of a dual agency child for a supplement to the rate.

The CDSS and DDS, in consultation with stakeholders representing county child welfare agencies, regional centers, advocates, legislative staff and foster and adoptive parents are currently developing objective criteria that counties will use to determine eligibility for the supplement to the rate, pursuant to W&IC Section 11464 (c)(2)(A). The CDSS will issue a separate ACL that will provide implementation instructions regarding the objective criteria and the supplement to the rate.

Rates for Children for Whom a Facility ARM Rate Determination was Requested and Pending Before July 1, 2007

W&IC Section 11464, as added by SB 84, Chapter 177, Statutes of 2007, includes provisions for dual agency children who are receiving AFDC-FC benefits and for whom an ARM rate determination request was pending with a regional center before July 1, 2007. Specifically, these children will receive the ARM rate determined by the regional center through an individualized assessment, or the \$2,006 rate, (and the supplement to the rate, if applicable), whichever is greater. This process is limited to ARM rate requests that had been made and were pending before July 1, 2007. The

county must verify with the regional center that the rate request was made before July 1, 2007, and establish the rate accordingly.

To confirm that a rate request was made either in writing or verbally prior to July 1, 2007, it is suggested that county social workers:

Review their files for a letter sent to the regional center requesting a facility rate determination (commonly referred to as "a request for an ARM rate letter").

Contact the responsible regional center to request verification that a rate determination request was made.

Contact the foster care provider or adoptive parent to confirm that a request for a facility rate determination was made directly to the regional center prior to July 1, 2007.

Except for the circumstances described in this section, effective July 1, 2007, the regional centers will no longer establish ARM rates for AFDC-FC purposes, and counties may not accept such letters from the regional centers to have rates established.

4. ADOPTION ASSISTANCE – NEW DUAL AGENCY CARE RATES

General Rate Provisions

W&IC Section 16121, as amended by SB 84, provides that rates for dual agency children who receive AAP benefits, and are consumers of regional center services, are based on the dual agency AFDC-FC rates for such children. Specifically:

\$2,006 (and the supplement to the rate, if applicable), per child, per month, for children three years of age and older; or

\$2,006 (**there is no supplement to the rate**), per child, per month, for children under three years of age determined by a regional center to have a developmental disability as determined by the Lanterman Act; or

\$898 per child, per month, for children under three years of age who are receiving services under the California Early Start Intervention Services Act, but not yet determined by their regional center to have a developmental disability as defined by the Lanterman Act.

These rates are subject to the requirements of W&IC Section 16119 (d)(1), which includes the requirement of a negotiated rate based upon the needs of the child and the circumstances of the family.

AAP agreements signed on or after July 1, 2007, must be negotiated between the county and the adoptive parent for a rate not to exceed \$2,006, (and the supplement to the rate, if applicable), with an effective date no earlier than July 1, 2007. A supplement to the rate may also be negotiated if the child is determined to be eligible. (The procedures for the supplement to the rate will be addressed in a subsequent ACL).

AAP agreements signed on or after July 1, 2007, must be negotiated between the county and the adoptive parent for a rate not to exceed \$898 for children under the age of three years who are receiving services under the California Early Start Intervention Services Act, but have not yet been determined by a regional center to have a developmental disability, as defined by the Lanterman Act.

If a regional center subsequently determines that a child under three years of age is an individual with a developmental disability, as defined by the Lanterman Act, the AAP rate to be paid from the date of the determination is \$2,006. **There is no supplement to this rate.**

If an AAP agreement was signed before July 1, 2007, and the rate is higher than \$2,006 (and the supplement to the rate, if applicable), the adoptive family will continue to receive the higher rate until such time as the child is no longer eligible for AAP benefits.

If an AAP agreement was signed before July 1, 2007, and the agreement provides for an amount of AAP benefits less than the \$2,006 rate, (and the supplement to the rate, if applicable), the benefit amount will be increased not to exceed \$2,006 (and the supplement to the rate, if applicable), effective July 1, 2007.

Counties may increase AAP benefits retroactive to July 1, 2007, by:

- 1) increasing all benefit amounts at the same time;
- 2) increasing benefit amounts upon reassessment of the individual AAP agreement; or
- 3) increasing benefit amounts immediately upon parental request before reassessment of the AAP agreement.

If an AAP agreement was signed before July 1, 2007, for a child under three years of age, who is receiving or eligible to receive services under the California Early Start Intervention Services Act, but has not been determined by the regional center to have

a developmental disability, as defined by the Lanterman Act, and the agreement provides for an amount of AAP benefits that is less than the \$898, the counties will increase the AAP benefit amount to \$898, retroactive to July 1, 2007. Once set, the rate will remain in effect and may only be changed in accordance with W&IC Section 16119.

Adoptive parents may request a rate increase if their child would be eligible for a higher rate under the new dual agency rate structure. For example, a child with a current AAP rate below the \$2,006 (and the supplement to the rate, if applicable), whose agreement was signed before these rate changes took effect, may have the AAP agreement renegotiated upon the request of the adoptive parent or at the time of reassessment.

An AAP agreement with an approved ARM rate signed before July 1, 2007, cannot be increased beyond a maximum amount of \$3,006, for children three years of age and older.

County and state adoption district offices must inform prospective, new, and current adoptive families with dual agency children about the AAP benefits to which a dual agency child may be entitled and how families may request the information or the new rate.

Children Whose ARM Determination was Requested and Pending Before July 1, 2007

W&IC Section 16121 sets forth special provisions for dual agency children who were receiving AAP benefits or for whom execution of an AAP agreement and a request for an ARM rate determination had been made before July 1, 2007. Specifically, the statute provides that these children will receive the ARM rate determined by the regional center through an individualized assessment, or the \$2,006 rate, (and the supplement to the rate, if applicable); whichever is greater, provided the following conditions existed before July 1, 2007:

- 1) the child had been deemed eligible for, or sought an eligibility determination for, regional center services and an eligibility determination had been made, and
- 2) an ARM rate determination had been requested before July 1, 2007, and was pending.

If a county receives an ARM letter, the county must verify with the regional center that a rate determination request had been made and was pending before July 1, 2007, and establish the rate accordingly.

To confirm that a rate request was made either in writing or verbally prior to July 1, 2007, it is suggested that county social workers:

Review their files for a letter sent to the regional center requesting a facility rate determination (commonly referred to as "a request for an ARM rate letter").

Contact the responsible regional center to request verification that a rate determination request was made.

Contact the foster care provider or adoptive parent to confirm that a request for a facility rate determination was made directly to the regional center prior to July 1, 2007.

Except for the circumstances described in this paragraph, effective July 1, 2007, regional centers will no longer establish ARM rates for AAP purposes and counties may not accept such letters from regional centers for rate setting purposes.

5. COUNTY AND REGIONAL CENTER RESPONSIBILITIES

Counties and all licensed adoption agencies remain obligated under the new dual agency rate setting process to refer any child with a suspected developmental disability to a regional center for an assessment. Based upon the results of the assessment, an IFSP or IPP will be developed if the child is determined to be eligible for regional center services.

For children three years of age and older, determined by a regional center to have a developmental disability, as defined by the Lanterman Act, counties have the discretion to authorize a supplement to the rate not to exceed \$1,000 upon determination that the dual agency child has needs for extraordinary care and supervision that cannot be met within the \$2,006 rate. Further instructions regarding the supplement to the rate will be provided in a subsequent ACL.

Counties must request information from regional centers to facilitate determination of a dual agency child's eligibility for a supplement to the rate.

Regional centers are responsible for evaluating children who are recipients of AFDC-FC or AAP benefits to determine their eligibility for regional center services and for assisting county welfare and probation departments in identifying appropriate placement resources for children eligible for regional center services.

Regional centers are responsible for purchasing or securing the services that are needed by AFDC-FC and AAP recipients and specified in the child's IFSP or IPP.

6. CARE AND SUPERVISION

AFDC-FC paid by counties to foster care providers under W&IC Section 11464, is for the care and supervision needs of the child as defined in W&IC Section 11460(b). AAP benefits are paid to prospective adoptive or adoptive families for the purpose of enabling them to meet the needs of the child (W&IC Section 16115.5). According to SB 84, AFDC-FC and AAP benefits are not to be considered in the family's gross income for purposes of the Family Cost Participation Program for regional center services. Regional centers are financially responsible for separately purchasing or securing the services that are contained in a dual agency child's IFSP or IPP, pursuant to W&IC Section 4684, without regard to receipt of these benefits.

7. INFORMATION FOR RECIPIENTS

Counties must inform all recipients of AFDC-FC and AAP benefits and any prospective and new foster/adoptive parents of:

- 1) the new rates established for the care and supervision of dual agency children;
- 2) that the law authorizes a supplement to the \$2,006 rate not to exceed \$1,000 for children three years of age and older who require extraordinary care and supervision, and;
- 3) that their child may be eligible to continue to receive a higher rate, pursuant to the ARM system for a rate established or requested and pending prior to July 1, 2007. Suggested informing language to be used as a minimum for counties is as follows:

Due to changes in law, you are now receiving an increase in the rate for care and supervision of a dual agency child who is a consumer of regional center services and a recipient of AFDC-FC or AAP benefits. The program changes became effective July 1, 2007.

OR

Due to changes in law, you are now receiving an increase in the rate for a dual agency child who is a consumer of regional center services and a recipient of AAP benefits. The program changes became effective July 1, 2007.

8. FORMS

The CDSS is currently in the process of updating the Adoption Assistance Agreement,

to comply with SB 84.

9. DATA REPORTING REQUIREMENTS

W&IC Section 11464(h) requires CDSS and DDS to report to the Legislature regarding various data on a semiannual basis. The first report was due October 1, 2007. Subsequent reports are due on March 1st and October 1st of each year. The data to be reported include:

The number of, and services provided to, children who are consumers of regional center services, and who are receiving AFDC-FC, or AAP benefits, categorized by children receiving the amount of \$2,006, \$898, and the level of the supplement to the rate.

A comparison of services provided to children and similar children who are regional center consumers who do not receive AFDC-FC or AAP benefits, categorized by those children receiving the \$2,006, \$898, and the level of the supplement to the rate.

The number and nature of appeals filed regarding services provided or secured by regional centers for children, categorized by children receiving the \$2,006, \$898, and the level of the supplement to the rate.

The number of children who are adopted before and after the Act, categorized by children receiving the \$2,006, \$898, and the level of supplement to the rate.

The number and levels of the supplement to the rate requested.

The total number and levels of supplements to the rate authorized and the number of these supplements to the rate authorized upon appeal.

The number of appeals requested regarding the decision by counties to deny the request for the supplement to the rate.

Instructions for Recording Dual Agency Data in the Child Welfare Services/ Case Management System (CWS/CMS)

The end-user is requested to use the following guidelines to enter information regarding "dual agency" children receiving AFDC-FC.

Within the **Health Notebook**, the end-user must place a check mark in the Regional Center box.

Within the **Placement Notebook**, all counties except Los Angeles must perform the following steps:

- 1) Go to the *Ongoing Requests* tab.
- 2) End-user must select the basic rate and radio button, and insert the applicable rate in the field "basic rate"; or
 - a) Enter \$898 for a child under three years of age;
 - b) Enter \$2,006 if the child under three years of age is determined to be a regional center client;
 - c) Enter \$2,006 for a child three years of age and older.

Los Angeles (L.A.) County end-users currently have the L. A. APPS Rate Frame. Within the **Placement Notebook**, L.A. County must perform the following steps:

- 1) Go to the *Ongoing Requests* tab;
- 2) End-user must select the basic rate radio button from the APPS Schedule/Level dropdown RF-for Non-Group Homes;
- 3) Enter the start date;
- 4) Select the appropriate basic rate amount; or
 - a) Enter \$898 for a child under three years of age;
 - b) Enter \$2,006 if the child under three years of age is determined to be a regional center client;
 - c) Enter \$2,006 for a child three years of age and older.

Counties will receive further guidelines to enter information regarding dual agency children receiving AAP benefits.

10. COUNTY STATISTICAL REPORTS

CDSS will request statistical reports from all counties on a quarterly basis to obtain the statutorily required data for the supplement to the dual agency rates. This report will include information regarding supplemental rates approved, denied, or appealed and approved subsequent to the appeal.

Please begin manually tracking all rates established for dual agency children beginning July 1, 2007, including foster and adopted children. It is anticipated that this data will be tracked in CWS/CMS in the future.

11. REGULATIONS

As specified in SB 84, regulations must be adopted as emergency regulations on or

before July 1, 2009, and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

12. ADMINISTRATIVE HEARINGS

W&IC Section 11464 (a)(4) specifies that children who receive rates pursuant to the new dual agency rate provisions are afforded the same rights to due process as all children who apply for AFDC-FC or AAP benefits pursuant to W&IC Section 10950. This ACL informs administrative law judges of the new dual agency care rates.

If you have any questions regarding this letter, please contact me at (916) 657-2614 or Nina Ures, Analyst, Rates Policy Unit at (916) 651-9152.

Sincerely,

Original Document Signed By:

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

c: CWDA
CPOC