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Repealed by Manual Letter No. EAS-90-04, effective 10/1/90.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

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Repealed by Manual Letter No. EAS-90-04, effective 10/1/90.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

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Repealed by Manual Letter No. EAS-90-04, effective 10/1/90.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

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Repealed by Manual Letter No. EAS-90-04, effective 10/1/90.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

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CHAPTER 45-600 KIN-GAP PROGRAM

The purpose of the Kinship-Guardianship Assistance Payment (Kin-GAP) Program is to enhance family preservation and stability in the permanency planning of a foster child by providing financial assistance to an approved relative caregiver who becomes the kinship guardian of a foster child placed in his or her home.

NOTE: Authority cited: Sections 11361 and 11378, Welfare and Institutions Code. Reference: Sections 360, 361.5, 366.21 and 11403.01, Welfare and Institutions Code.

45-601 DEFINITIONS**45-601**

- .1 The definitions in Sections 11-400, 31-002, and 45-101 apply to the Kin-GAP Program. The following definitions apply to the Kin-GAP Program only and supersede those in Sections 11-400, 31-002, and 45-101 where dual or conflicting definitions exist.
- (a) (1) Approved Home of a Relative for purposes of Kin-GAP means the home of a relative, who has been identified as the expected kinship guardian, which has been determined as one of the following:
 - (A) Approved foster family home as specified in Section 31-002(a)(9).
 - (B) Licensed home as defined in Title 22 California Code of Regulations, Section 89201 or certified family home as defined in Title 22 California Code of Regulations, Section 88001.
 - (C) Resource family home as specified in Welfare and Institutions Code section 16519.5.
 - (2) Applicant means a child or nonminor former dependent on whose behalf a request for Kin-GAP benefits is made.
 - (b) Reserved.
 - (c) (1) Case Plan means a written document which is developed based upon an assessment of the circumstances that required child welfare services intervention and in which the social worker identifies a case plan goal, the objectives to be achieved, the specific services to be provided, and case management activities to be performed.
 - (2) County of Payment Responsibility means the county that had placement and care responsibility of the child prior to the establishment of the kinship guardianship pursuant to Welfare and Institutions Code sections 360, 366.26 or 728 and the dismissal of the juvenile court jurisdiction.

45-601	DEFINITIONS (Continued)	45-601
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- (d) Reserved.
- (e) Reserved.
- (f) Federal Kin-GAP Program means aid made with federal financial participation provided on behalf of children in kinship care who were previously eligible to receive Title IV-E federal foster care benefits and who meet all general requirements specified in Section 45-602 and all federal requirements specified in Section 45-604.
- (g) Reserved.
- (h) Reserved.
- (i) Reserved.
- (j) Reserved.
- (k) (1) Kinship Guardian, as defined by Welfare and Institutions Code sections 11362(b) and 11391(b), means a person who meets both of the following requirements:
 - (A) The person has been appointed the legal guardian of a dependent child of the juvenile court pursuant to Welfare and Institutions Code sections 366.26 or 360, or the legal guardian of a ward of the juvenile court pursuant to Welfare and Institutions Code section 728(d); and
 - (B) The person is a relative of the child.
- (2) Kinship Guardianship Assistance Payments (Kin-GAP), as defined by Welfare and Institutions Code sections 11362(a) and 11391(a), means the financial assistance provided on behalf of a child or nonminor former dependent eligible to receive assistance under the federal or state Kin-GAP Programs.
- (l) Reserved.
- (m) Reserved.
- (n) Nonminor Former Dependent means, on and after January 1, 2012, a person who is at least 18 years of age, up to and including the day prior to his or her 21st birthday, who was a dependent child or ward of the juvenile court when the guardianship was established pursuant to Welfare and Institutions Code sections 360, 366.26 or 728(d) and the juvenile court dependency or wardship was dismissed following the establishment of the guardianship.
- (o) Reserved.
- (p) Reserved.

45-601 **DEFINITIONS** (Continued) **45-601**

- (q) Reserved.

- (r) (1) Recipient means a child or nonminor former dependent who meets all conditions of eligibility and for whom the county has entered into an agreement to approve Kin-GAP payments.

- (2) Relative, for the purposes of federal Kin-GAP only means an adult who meets one of the following:
 - (A) An adult who is related to the child by blood, adoption or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great" or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

 - (B) An adult who meets the definition of an approved, nonrelated extended family member, as defined in Welfare and Institutions Code section 362.7.

 - (C) An adult who is either a member of the Indian child's tribe or an Indian custodian.

 - (D) An adult who is the current foster parent of a child under the juvenile court's jurisdiction, who has established a significant and family-like relationship with the child, and the child and the county child welfare agency, probation department, Indian tribe, consortium of tribes or tribal organization that has entered into an agreement pursuant to Welfare and Institutions Code section 10553.1 identify this adult as the child's permanent connection.

- (3) Relative, for the purposes of state Kin-GAP and as defined by Welfare and Institutions Code section 11362, means an adult who is related to the child by blood, adoption or affinity within the fifth degree of kinship, including stepparents, stepsiblings and all relatives whose status is preceded by the words "great," "great-great" or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

- (s) (1) Sibling, as defined by Welfare and Institutions Code section 11391(d), means a child related to the identified eligible child by blood, adoption or affinity through a common legal or biological parent.

- (2) State Kin-GAP Program means aid provided on behalf of children in a kinship guardianship who are not eligible for the federal Kin-GAP program and who meet all general requirements specified in Section 45-602 and all state requirements specified in Section 45-605.

- (t) Reserved.

45-601	DEFINITIONS (Continued)	45-601
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- (u) Reserved.
- (v) Reserved.
- (w) Reserved.
- (x) Reserved.
- (y) Reserved.
- (z) Reserved.

.2 Definitions-Forms

- (a) Reserved.
- (b) Reserved.
- (c) Reserved.
- (d) Reserved.
- (e) Reserved.
- (f) Reserved.
- (g) Reserved.
- (h) Reserved.
- (i) Reserved.
- (j) Reserved.
- (k) (1) KG 1 (12/11) "Kin-GAP Mutual Agreement for 18 Year Olds," hereby incorporated by reference, is used for the purpose of obtaining an 18-year-old person's agreement to remain in the Kin-GAP Program after his or her 18th birthday, in accordance with the age requirements of Section 45-602.313.
- (2) KG 2 (1/11) "Statement of Facts Supporting Eligibility for Kinship-Guardianship Assistance Payment (Kin-GAP) Program," hereby incorporated by reference, is used to collect information necessary to determine Kin-GAP eligibility at the time of application and reassessment.

45-601 **DEFINITIONS** (Continued) **45-601**

- (3) KG 3 (12/11) "Kin-GAP Mutual Agreement for Nonminor Former Dependents," hereby incorporated by reference, is used to obtain the nonminor former dependent's agreement to remain in the Kin-GAP Program after his or her 18th birthday, in accordance with the age requirements of Section 45-602.313.

- (l) Reserved.

- (m) Reserved.

- (n) Reserved.

- (o) Reserved.

- (p) Reserved.

- (q) Reserved.

- (r) Reserved.

- (s) (1) SOC 369 (12/10) "Agency-Relative Guardianship Disclosure," hereby incorporated by reference, is used for the purpose of informing a prospective kinship guardian of the funding and program options available when choosing to take legal guardianship of a related foster child. This form, which is used in conjunction with the SOC 369A, constitutes the written agreement that memorializes the terms, conditions, rights, responsibilities, and agreements reached between the county child welfare agency, the probation department, or the Title IV-E agreement tribe and the relative prior to the establishment of a kinship guardianship. The SOC 369A amends and supplements the SOC 369.

- (2) SOC 369A (7/15) "Kinship-Guardianship Assistance Payment (Kin-GAP) Program Agreement Amendment," hereby incorporated by reference, is used for the purpose of amending and supplementing the SOC 369 to memorialize the terms, conditions, rights, responsibilities, and agreements reached between the county child welfare agency, the probation department, or the Title IV-E agreement tribe and a person who is already a kinship guardian. This form implements the state and federal requirement that there be a written, binding agreement with the kinship guardian stipulating, among other things, the Kin-GAP rate of payment and the manner in which the payment can be renegotiated based upon the needs of the child and the circumstances of the kinship guardian. Thus, the SOC 369A form is used both to establish the Kin-GAP rate of payment at the initiation of the case and, as necessary, to amend the initial agreement after the Kin-GAP case has been established.

45-601	DEFINITIONS (Continued)	45-601
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- (t) Reserved.
- (u) Reserved.
- (v) Reserved.
- (w) Reserved.
- (x) Reserved.
- (y) Reserved.
- (z) Reserved.

NOTE: Sections 10553, 10554, 10604, 11369, 11393 and 11400, Welfare and Institutions Code. Reference: Sections 1502(a)(1), 1505, and 1516, Health and Safety Code; Sections 309, 360, 361.3, 366, 366.21, 366.26, 366.3, 727.1, 728, 11054, 11360, 11363(d), 11364(a), 11385, 11386(h), 11387(a), 11391(c), 11400(b), 11400(m), 11400(r), 11400(u), 11401(b), 11401(e), 11402(b)(1), 11403.01, and 11466.24, Welfare and Institutions Code; 45 CFR 1356.21(d); Public Law 95-608; 25 U.S.C. 1915; and 42 U.S.C. 606.

45-602	GENERAL KIN-GAP ELIGIBILITY REQUIREMENTS	45-602
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- .1 Placement Requirement
 - .11 The child must be placed, via court order or voluntary placement, in the approved home of the relative who is the expected kinship guardian for at least six consecutive months immediately prior to the dismissal of dependency or wardship.
- .2 Eligible Facility
 - .21 The approved home of a relative need not be reassessed after a child transfers to the state or federal Kin-GAP Program.
- .3 Age Requirement
 - .31 A child or nonminor former dependent must meet one of the following age requirements:
 - .311 He or she is under 18 years of age.
 - .312 He or she is under 21 years of age and meets one of the requirements in 45-602.313.

45-602	GENERAL KIN-GAP ELIGIBILITY REQUIREMENTS (Continued)	45-602
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.313 Eligibility after age 18 must be based on one of the following:

- (a) If the negotiated payments began prior to the child's 16th birthday, a recipient may continue to be eligible for Kin-GAP up to age 19, provided the high school completion conditions pursuant to Welfare and Institutions Code section 11403.01 are met.
- (b) If the negotiated payments began after the child's 16th birthday, a recipient may continue to be eligible for Kin-GAP up to age 21, provided the extended Kin-GAP provisions of Section 45-606 are met.
- (c) Kin-GAP may continue to be provided up to 21 years of age if the recipient has a physical or mental disability that warrants the continuation of assistance.

.4 A child must meet one of the following jurisdictional statuses:

.41 A kinship guardianship was established by the juvenile court while the child was a 300 dependent, and dependency jurisdiction terminated pursuant to Welfare and Institutions Code section 366.3 concurrently or subsequently to the establishment of the kinship guardianship; or

.42 A kinship guardianship was established by the juvenile court while the child was a 600 ward in foster care, and wardship was terminated pursuant to Welfare and Institutions Code section 728 concurrently or subsequently to the establishment of the kinship guardianship.

.5 A child may not exceed the property limits in Section 42-201 et seq.

.51 For the purposes of determining property eligibility, a child in the Kin-GAP Program is treated in all aspects as a recipient, not as an applicant.

.52 For the purposes of determining property eligibility, an amount not to exceed \$10,000 in cash savings, including interest, in addition to any other property accumulated pursuant to Welfare and Institutions Code section 11257 or 11257.5.

HANDBOOK BEGINS HERE

See Sections 31-002(i)(1), 31-002(i)(1)(A) and 31-525 for the definition and description of the Independent Living Program (ILP).

The above-referenced Section 42-201 refers to the 1996 AFDC regulations.

HANDBOOK ENDS HERE

45-602 GENERAL KIN-GAP ELIGIBILITY REQUIREMENTS (Continued) 45-602

- .6 A child must meet the citizenship and alienage requirements in Sections 42-430 through 42-435.
- .7 Case records shall be maintained pursuant to the requirements of Section 48-000 and Section 31-075.
 - .71 These records shall be kept for a minimum of three years after the Kin-GAP case is closed.
- .8 Reassessment of Kin-GAP Eligibility
 - .81 A reassessment of a child's or nonminor former dependent's circumstances, which are subject to change, shall be completed no less frequently than every two years.
 - .82 At the time of the reassessment, the Kinship Guardian shall complete the "Statement of Facts Supporting Eligibility for Kinship-Guardian Assistance Payment (Kin-GAP) Program" (KG 2).
 - .83 Examples of a child's circumstances that are subject to change include, but are not limited to:
 - (a) Termination of the kinship guardianship.
 - (b) Failure of the relative to complete a reassessment request.
 - (c) Failure of the guardian to continue to support the child or the nonminor former dependent.
 - (d) Failure of the youth to continue to meet one of the education and employment participation conditions.
 - .84 The county shall make efforts to ensure that the relative legal guardian with whom the child resides is aware of the necessity to report any change in need or income for the child.

HANDBOOK BEGINS HERE

The above-referenced Sections 42-430 through 42-435 refer to the 1996 AFDC regulations.

HANDBOOK ENDS HERE

NOTE: Authority cited: Sections 10553, 10554, 11369 and 11393, Welfare and Institutions Code.
Reference: Sections 360, 366.26, 728, 11363, 11375, 11386, 11390(d), Welfare and Institutions Code.

45-604 FEDERAL KIN-GAP PROGRAM 45-604

- .1 To be eligible for federal Kin-GAP, a child or nonminor former dependent shall meet all federal requirements specified in this section and all general requirements specified in Section 45-602.
 - .11 Prior to and at the time the kinship guardianship is established, a child must be eligible to receive federal AFDC-FC pursuant to Sections 45-201 and 45-202.
- .2 Federal Kin-GAP may be provided on behalf of any youth, provided that one of the following conditions was met prior to the establishment of the kinship guardianship:
 - .21 He or she was removed from his or her home pursuant to a voluntary placement; or
 - .22 He or she was removed from his or her home as a result of a judicial determination, including being adjudged a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, to the effect that continuation in the home would be contrary to the welfare of the child; or
 - .23 He or she was removed from his or her home as a result of a judicial determination, including being adjudged a ward of the juvenile court pursuant to Welfare and Institutions Code sections 601 or 602, to the effect that continuation in the home would be contrary to the welfare of the child.
- .3 The approved relative caregiver must enter into a written binding agreement (SOC 369 & SOC 369A) with the county of placement prior to a court ordering the kinship guardianship pursuant to Welfare and Institutions Code sections 360, 366.26 or 728.
- .4 A federal Kin-GAP payment may be made on behalf of a sibling of a Title IV-E eligible child, regardless of the sibling's Title IV-E eligibility status, when the following conditions are met:
 - .41 An eligible child and his or her sibling are placed in the same kinship guardianship arrangement; and
 - .42 The kinship guardian and the county child welfare department, the probation department or the Indian tribe with a Title IV-E agreement, agree that the placement of the sibling is appropriate as evidenced by a determination that the guardianship arrangement meets the sibling's physical, mental and developmental needs; and
 - .43 Each sibling meets the citizenship and alienage requirements pursuant to Section 45-602.6.
 - .44 Each sibling meets the written agreement requirement pursuant to Section 45-604.3.

45-604	FEDERAL KIN-GAP PROGRAM (Continued)	45-604
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- .5 A child's case file shall contain the following forms or documents, as needed, to demonstrate eligibility for the federal AFDC-FC Program pursuant to Sections 45-202 and 45-203 prior to transferring to a Kin-GAP case:
- (a) CW 2.1 (Rev. 8/04) "Notice and Agreement for Child, Spousal and Medical Support" hereby incorporated by reference.
 - (b) CW 2.1 (Rev. 7/01) "Q-Support Questionnaire" hereby incorporated by reference.
 - (c) FC 2 (Rev. 11/04) "Statement of Facts Supporting Eligibility for Title IV-E Foster Care."
 - (d) FC 3 (Rev. 11/04) "Determination of Title IV-E Foster Care Eligibility."
 - (e) FC 3A (Rev. 11/04) "AFDC-FC Worksheet."
 - (f) If applicable, KG 1 (12/11) "Kin-GAP Mutual Agreement for 18-Year Olds."
 - (g) KG 2 (1/11) "Determination of Kin-GAP Eligibility."
 - (h) If applicable, KG 3 (12/11) "Kin-GAP Mutual Agreement for Nonminor Former Dependents."
 - (i) SOC 369 (12/10) "Agency-Relative Guardianship Disclosure."
 - (j) SOC 369A (7/15) "Kinship-Guardianship Assistance Payment Program Agreement Amendment."
 - (k) Any applicable county forms required to document the child's eligibility for a specialized care increment, a whole foster family home payment, a dual agency rate, a clothing allowance or other benefit that the child receives.
 - (l) Court order terminating dependency or wardship.
 - (m) Court order establishing kinship guardianship or a copy of the letters of guardianship.
 - (n) Relative approval documents, including criminal background and child abuse registry checks, pursuant to Welfare and Institutions Code section 361.4
 - (o) Case plan update submitted to a court prior to establishing kinship guardianship that includes information pursuant to Section 31-206.317.

HANDBOOK BEGINS HERE

Section 31-206.317 provides that a child's case plan shall include the following:

"A description of the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted.

The reason(s), if any, for any separation of siblings during placement.

The reason(s) why a guardianship with a fit and willing relative through kinship guardianship assistance arrangement is in the child's best interest.

The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment.

The efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reason(s) why not.

The efforts the agency has made to discuss with the child's parent(s) the kinship guardianship assistance arrangement, or the reasons why the efforts were not made."

HANDBOOK ENDS HERE

.6 Successor Guardian

- .61 A successor guardian, who was appointed pursuant to Welfare and Institutions Code section 366.3, can receive a federal Kin-GAP payment if the appointment was due to the death or incapacity of the kinship guardian and the successor guardian is named in the written agreement, or any amendment to the agreement. The six-month placement requirement will be waived for the successor guardian if an assessment has been done pursuant to Welfare and Institutions Code sections 361.3 and 361.4 and dependency jurisdiction has been terminated.

NOTE: Authority cited: Sections 10553, 10554, and 11393, Welfare and Institutions Code. Reference: Sections 7660 et. seq., 7800 et. seq., and 7911.1, Family Code; Section 1505, Health and Safety Code; Sections 366.26, 11400(m), 11400(o), 11401(b), 11401(e), 11401(f), 11402, 11402.1, 11385 to 11393 and 16507.4, Welfare and Institutions Code; Public Law 95-608; Public Law 96-272; 42 U.S.C. 606; 25 U.S.C. 1915; 42 U.S.C. 671; 42 U.S.C. 672(a)(2) and 672(a)(4); *Capitola Land et al. v. Anderson*, 55 Cal. App. 4th 69, 63 Cal. Rptr.2d 717, (1997); and *Anderson v. Superior Court*, 68 Cal. App. 4th 1240, 80 Cal. Rptr.2d 891, (1998).

45-605 STATE KIN-GAP PROGRAM 45-605

- .1 A child or nonminor former dependent is eligible to receive state Kin-GAP assistance if he or she is found to be ineligible to receive federal Kin-GAP. The child or nonminor former dependent shall meet all state requirements specified in this section and all general requirements specified in Section 45-602.
- .2 State Kin-GAP may be provided on behalf of any child or nonminor former dependent, provided that one of the following conditions was met prior to the establishment of the kinship guardianship:
 - .21 He or she was adjudicated a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300; or
 - .22 He or she was adjudicated a ward of the juvenile court pursuant to Welfare and Institutions Code section 601 or 602.
- .3 The kinship guardian enters into a written binding agreement (SOC 369 & 369A) with the county of jurisdiction pursuant to Welfare and Institutions Code sections 360, 366.26 or 728.
- .4 The case file shall contain the following forms, as needed, to demonstrate eligibility for the State Kin-GAP Program:
 - (a) CW 2.1 (Rev. 8/04) "Notice and Agreement for Child, Spousal and Medical Support" hereby incorporated by reference.
 - (b) CW 2.1 (Rev. 7/01) "Q-Support Questionnaire" hereby incorporated by reference.
 - (c) If applicable, the KG 1 (12/11) "Kin-GAP Mutual Agreement for 18-Year Olds."
 - (d) KG 2 (1/11) "Determination of Kin-GAP Eligibility."
 - (e) KG 3 (12/11) "Kin-GAP Mutual Agreement for Nonminor Former Dependents."
 - (f) SOC 369 (12/10) "Agency-Relative Guardianship Disclosure."
 - (g) SOC 369A (7/15) "Kinship-Guardianship Assistance Payment Program Agreement Amendment."
 - (h) County forms are required to document the child's eligibility for a specialized care increment, a whole foster family home payment, a dual agency rate, a clothing allowance or other benefits that the child receives.
 - (i) Court order terminating dependency or wardship.
 - (j) Court order establishing kinship guardianship or a copy of the letters of guardianship.

45-605	STATE KIN-GAP PROGRAM (Continued)	45-605
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- (k) Case plan update submitted to court prior to establishing kinship guardianship that includes information pursuant to Sections 31-225.17 and 31-206.317.

HANDBOOK BEGINS HERE

"A description of the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted.

The reason(s), if any, for any separation of siblings during placement.

The reason(s) why a guardianship with a fit and willing relative through kinship guardianship assistance arrangement is in the child's best interest.

The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment.

The efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reason(s) why not.

The efforts the agency has made to discuss with the child's parent(s) the kinship guardianship assistance arrangement or the reasons why the efforts were not made."

HANDBOOK ENDS HERE

.5 Subsequent Guardian

- .51 A subsequent guardian, or co-guardian who was appointed pursuant to Welfare and Institutions Code section 366.3 after the initial guardianship had been established, does not have to complete a six-month placement period. The six-month period will be waived for the subsequent guardian or co-guardian if an assessment has been done pursuant to Welfare and Institutions Code sections 361.3 and 361.4 and dependency jurisdiction has been terminated. The subsequent guardian need not have been named in the initial Kin-GAP agreement or any amendment thereto.

NOTE: Authority cited: Sections 10553, 10554, and 11369, Welfare and Institutions Code. Reference: Sections 7660 et. seq., 7800 et. seq., and 7911.1, Family Code; Sections 366.26, 11360 to 11376, 11400(m), 11400(o), 11401(b), 11401(e), 11401(f), 11402, 11402.1, and 16507.4, Welfare and Institutions Code; Section 366.3 and 1505, Health and Safety Code; 45 C.F.R. 1356.30; Public Law 95-608; Public Law 96-272; 25 U.S.C. 1915; 42 U.S.C. 606; 42 U.S.C. 671; 42 U.S.C. 672(a)(2) and 672(a)(4); *Capitola Land et al. v. Anderson*, 55 Cal. App. 4th 69, 63 Cal.Rptr.2d 717, (1997); and *Anderson v. Superior Court*, 68 California App. 4th 1240, 80 Cal.Rptr.2d 891, (1998).

45-606	EXTENDED KIN-GAP PROGRAM	45-606
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- .1 A nonminor former dependent meeting the age requirement pursuant to 45-602.313(b) shall be eligible for extended Kin-GAP when the following conditions are met:
 - .11 The nonminor former dependent and the county representative have completed and signed the Kin-GAP Mutual Agreement for Nonminor Former Dependents (KG 3) within 30 working days after the nonminor former dependent's 18th birthday; and
 - .12 The nonminor former dependent meets at least one of the following conditions:
 - .121 Is completing secondary education or a program leading to an equivalent credential.
 - .122 Is enrolled in an institution that provides postsecondary or vocational education.
 - .123 Is participating in a program or activity designed to promote, or remove barriers to employment.
 - .124 Is employed for at least 80 hours per month.
 - .125 Is incapable of doing any of the activities described in Sections 45-606.121 through 45-606.124, inclusive, due to a medical condition; and that incapability is supported by regularly updated information in the individual's case plan.

NOTE: Authority cited: Sections 10553, 10554, 11369 and 11393, Welfare and Institutions Code.
Reference: Sections 10103.5, 11364, and 11386, Welfare and Institutions Code.

45-607 PAYMENT**45-607**

- .1 Beginning Date of Aid
 - .11 When an AFDC-FC foster child becomes eligible for Kin-GAP during the month, the child shall continue to receive benefits under the AFDC-FC foster care program pursuant to Sections 45-202 or 45-203, as applicable, to the end of that calendar month and Kin-GAP shall begin on the first day of the following month.
 - .12 When a foster child receiving CalWORKs becomes eligible for Kin-GAP during the month, the child shall continue to receive benefits under the CalWORKs Program as appropriate to the end of that calendar month and Kin-GAP shall begin on the first day of the following month.
- .2 Suspension of Payment
 - .21 A Kin-GAP payment shall be suspended due to any of the following:
 - .211 The guardian fails to complete and return the Determination of Kin-GAP Eligibility (KG 2) within two weeks of the date it was mailed.
 - .212 The guardian is no longer providing support and care to the child or nonminor former dependent.
 - .213 The nonminor former dependent is no longer completing one of the extended Kin-GAP requirements pursuant to Section 45-606.12.
 - .214 The child or nonminor former dependent is subsequently incarcerated and wardship is established. Consistent with ACL 11-28, the child remains eligible for Kin-GAP payment if the child returns to the care of the relative guardian and all other eligibility conditions are met.
 - .215 A Kin-GAP payment can be resumed if the conditions listed in .211 through .214 are no longer applicable.
- .3 Kin-GAP Budgeting Methods
 - .31 The budget period for the computation of a Kin-GAP payment shall be the current month. The Kin-GAP payment shall be computed on the basis of known or estimated income in the current calendar month.
- .4 Last Date of Payment
 - .41 Date of termination of the guardianship with a kinship guardian shall terminate eligibility for Kin-GAP.
 - .42 Date the child or nonminor former dependent does not meet age requirements pursuant to Section 45-602.31 shall terminate eligibility for Kin-GAP.

45-607 **PAYMENT (Continued)** **45-607**

- .43 The date the voluntary placement agreement or court order transfers placement and care responsibility from the guardian to the county welfare or probation department shall terminate eligibility for Kin-GAP, unless the condition described in Section 45-607.214 applies.

- .5 Parent in Home With Youth
 - .51 If the parent moves into the home with the Kin-GAP youth and kinship guardian, the Kin-GAP payments shall continue, assuming all other eligibility requirements continue to be met.

- .6 The income requirements of Sections 44-100 through 44-133 and Section 44-207 shall apply unless the child or nonminor former dependent meet one of the following:
 - .61 Is participating in the Job Training Partnership Act of 1982 (Public Law 97-300); or
 - .62 Is a former dependent or ward of the juvenile court who is a full-time student pursuant to the Deficit Reduction Act of 1984 (Public Law 97-369); or
 - .63 Is a nonminor former dependent or ward of the juvenile court, or 16 years of age or older, and is participating in the Independent Living Program pursuant to the Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

- .7 Kin-GAP Payment Offset
 - .71 Earned income that does not meet one of the specified conditions under 45-607.61 through 45-607.63 is to be offset against the amount of the Kin-Gap payment.
 - .72 For a child or nonminor former dependent receiving state-funded Kin-GAP, Supplemental Security Income (SSI/SSP) or Social Security Survivor's benefits are to be treated as income. The state Kin-GAP payment is to be offset dollar for dollar against the SSI/SSP or Social Security Survivor's payment. For a child or nonminor former dependent receiving federally funded Kin-GAP, SSI/SSP or Social Security Survivor's benefits are not to be counted as income. The Social Security Administration will offset the SSI/SSP or Social Security Survivor's payment against the federal Kin-GAP payment.
 - .73 For a child or nonminor former dependent receiving state-funded Kin-GAP, Social Security Disability benefits are to be treated as income. The state Kin-GAP payment is to be offset against the Social Security Disability payment pursuant to the \$225 disregard regulations, Sections 44-111.23 and 44-113.214. For a child or nonminor former dependent receiving federally funded Kin-GAP, Social Security Disability benefits are not to be counted as income. The Social Security Administration will offset the Social Security Disability payment against the federal Kin-GAP payment.

45-607 PAYMENT (Continued) 45-607

- .8 Filing of a Welfare and Institutions Code section 388 Petition
 - .81 After the filing of a petition pursuant to Welfare and Institutions Code Section 388, the Kin-GAP payment shall continue unless any of the following occur:
 - .82 The guardianship is terminated; or
 - .83 The court orders that the child be removed from the guardian's home; or
 - .84 After the conclusion of the hearing on the 388 petition, dependency jurisdiction is maintained by the juvenile court; or
 - .85 The placement and care responsibility is transferred from the guardian to the county welfare or probation department.

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The above-referenced Sections 44-100 through 44-133 and 44-207 refer to the 1996 AFDC regulations.

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NOTE: Authority cited: Sections 10553, 10554, 11369, and 11393, Welfare and Institutions Code. Reference: Section 7911.1, Family Code; Sections 361.21, 366, 727.1, 11017, 11056, 11360 to 11376, 11385 to 11393; 11400(f), 11401, 11402, 11403, 11450, and 11466.24, Welfare and Institutions Code; Section 472(a)(1), Social Security Act.

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CHAPTER 45-800 ADOPTIONS ASSISTANCE PROGRAM (AAP)

45-801 DEFINITIONS 45-801

The definitions specified in Title 22, California Code of Regulations (CCR), Section 35000 shall apply in this chapter.

NOTE: Authority cited: Sections 10553 and 16118, Welfare and Institutions Code. Reference: Sections 16118, 16120 and 16120.05, Welfare and Institutions Code and 42 USC 673.

45-802 AAP ELIGIBILITY 45-802

- .1 To be eligible for AAP, the child shall meet the requirements under either the federal program or the state program specified in Welfare and Institutions Code Section 16120.
- .11 (Reserved)
- .12 Adoption Assistance Agreements signed prior to October 1, 1992, shall be governed by Welfare and Institutions Code Section 16121.05(b).
- .13 After the responsible public agency has determined that the child has met the conditions of Welfare and Institutions Code Section 16120, the county shall determine for purposes of federal and state AAP eligibility whether the child meets the requirements of Welfare and Institutions Code Section 16120 at the time the adoption petition is filed.

NOTE: Authority cited: Sections 10553 and 16118, Welfare and Institutions Code. Reference: Sections 16120 and 16121.05(b), Welfare and Institutions Code and 42 USC 673.

45-803 COUNTY OF RESPONSIBILITY 45-803

- .1 The county welfare department shall be responsible for determining federal eligibility and making payment for AAP.
- .2 The determination of the county responsible for the actions in Section 45-803.1 shall be made in accordance with Welfare and Institutions Code Section 16118(e).
- .3 Once established, the county of responsibility shall remain unchanged for the duration of adoption assistance payments for that child.

NOTE: Authority cited: Sections 10553 and 16118, Welfare and Institutions Code. Reference: Section 16118, Welfare and Institutions Code.

45-804 PAYMENT

45-804

.1 County Actions and Payment Amount

.11 Upon receipt of the Payment Instructions - Adoption Assistance Program form (AAP 2) and the Eligibility Certification - Adoption Assistance Program form (AAP 4) from the responsible public agency, the county shall determine whether the child meets the requirement for federal or state AAP eligibility as specified in Welfare and Institutions Code Section 16120.

.111 When the child meets the requirements of Welfare and Institutions Code Sections 16120(j), (m), and (l), FFP shall be claimed in the AAP payment up to the maximum of the AFDC-FC payment for the child if in a foster family home.

.112 In those cases where the child is federally eligible, and will receive a payment greater than the payment for the child if in a foster family home, state participation shall be available to supplement the remainder of the AAP payment.

a. In no case shall state participation be available in an amount greater than that which would have been paid had the child remained or been placed in foster care.

.113 When a child meets the requirements of Welfare and Institutions Code Sections 16120(i) and (l), state participation shall be claimed for the AAP payment up to the amount which would have been paid had the child remained or been placed in foster care.

.12 The county shall issue the payment in the amount indicated on the AAP 2 except as provided in .212 below.

.2 Beginning Date of Payment

.21 The beginning date of payment for AAP shall be the date indicated on the AAP 2.

.211 If the beginning date of the payment begins on the first day of the calendar month, payment shall be made for the full month.

.212 If the beginning date of payment begins after the first day of the calendar month, payment shall be prorated to cover only that portion of the month for which payment is authorized, including the beginning date of payment.

45-804 PAYMENT (Continued) **45-804**

.3 Payee and Delivery

.31 AAP payments shall be made to the adoptive parent(s).

.311 Upon the written instruction of the adoptive parent, payment may be made on the parent's behalf to a provider of out-of-home care services if the child is placed out of the adoptive home.

.32 Except as provided in .321 below, AAP payments shall be delivered monthly in advance.

.321 The warrant shall be placed in the mail in time to be received by the first day of the calendar month.

.322 The initial payment shall be delivered to the adoptive parent(s) no later than 20 days after the date on which the county receives the AAP 2 from the agency authorizing payment.

.323 After initial authorization of payment, the county shall take action to increase, decrease, or terminate payment as instructed by the responsible public agency on the AAP 2.

NOTE: Authority cited: Sections 10553 and 16118, Welfare and Institutions Code. Reference: Sections 16121, Welfare and Institutions Code and 42 USC 673.

45-805 REASSESSMENT **45-805**

.1 The county shall mail the adoptive parent(s) the Reassessment Information - Adoption Assistance Program form (AAP 3) at least 60, and not more than 90, calendar days prior to the date reassessment is due and shall document in the case record the date such form was mailed.

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.11 EXAMPLE: The beginning date of payment is May 13, 1993. Reassessment is due on April 30, 1995. The Reassessment Information form shall be sent to the adoptive parent(s) before March 2, 1995.

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NOTE: Authority cited: Sections 10553 and 16118, Welfare and Institutions Code. Reference: Section 16120.05, Welfare and Institutions Code.

45-806 NOTICE OF ACTION

45-806

- .1 The county shall mail the adoptive parent(s) adequate notice as defined in MPP Section 22-001(a)(1), and if applicable Section 22-001(l)(1), after receiving notice from the responsible public agency of any of the following events:
 - .11 Denial of a request for adoption assistance benefits.
 - .12 Completion of a deferred payment agreement.
 - .13 Authorization of the initial grant.
 - .14 Completion of the recertification process.
 - .15 Payment termination.
 - .16 An overpayment requiring collection.
 - .17 Any change in grant amount.
 - .2 The county shall send adequate notice of action between 60 and 70 days prior to the ending date of payment when the child reaches the age of 18, or when the adoption assistance agreement has specified that program benefits are for a specific, time-limited duration.
 - .3 When county action would result in a termination or decrease in payment, the county shall mail adequate and timely notice as defined in MPP Sections 22-001(a)(1) and 22-001(t)(1). Such notice shall be mailed to the adoptive parent(s) at least ten days prior to the effective date of the proposed action.
 - .4 When the county sends a Notice of Action to the adoptive parent(s), the county shall also send a copy of such notice to the responsible public agency.
 - .5 State hearings shall be conducted pursuant to the provisions of MPP Chapter 22-000.
- NOTE: Authority cited: Sections 10553 and 16118, Welfare and Institutions Code. Reference: Section 16121.05, Welfare and Institutions Code and 45 CFR 205.10 and 1355.30.

45-807 MAINTENANCE OF CASE RECORD 45-807

- .1 The county AAP case record shall contain copies of the following:
 - .11 All Payment Instructions - Adoption Assistance Program forms (AAP 2) received from the adoption agency.
 - .12 The Eligibility Certification - Adoption Assistance Program form (AAP 4).
 - .13 The Income and Property Checklist for Federal Eligibility Determination - Adoption Assistance Program form (FC 10).
 - .14 All Notices of Action sent to the adoptive parent(s) and the responsible public agency.

NOTE: Authority cited: Sections 10553 and 16118, Welfare and Institutions Code. Reference: Section 16118, Welfare and Institutions Code.

45-808 OVERPAYMENT RECOUPMENT 45-808

- .1 The county may attempt to recover all AAP overpayments.
 - .11 Recovery of overpayments from an adoptive parent no longer receiving assistance is not required when the cost of collection would exceed the amount of recovery.
 - .12 Recovery shall be made from the adoptive parent(s) who signed the Adoption Assistance Agreement form (AD 4320).
 - .121 If the overpayment resulted from a payment made to an out-of-home care provider upon request of the adoptive parent, as provided in Section 45-804.311, recovery of payments made for services not provided shall be made from the out-of-home care provider.
- .2 Methods of Recovery
 - .21 Grant Adjustment
 - .211 Subject to the limit in Section 45-808.212, the overpayment shall be subtracted from the current AAP payment. If the current AAP payment is insufficient to recover the entire overpayment, then the remaining amount of the overpayment shall be subtracted from the AAP payments to be received during the succeeding six months or less, or by the end of the child's eligibility for AAP benefits, whichever occurs first.

45-808 OVERPAYMENT RECOUPMENT (Continued) 45-808

- .212 The amount of the adjustment shall not exceed an amount which would cause the adoptive family's net income to be below the Aid to Families With Dependent Children (AFDC) Minimum Basic Standard of Adequate Care (MBSAC) as specified in Section 44-315.311.
- .22 Demand for Repayment
- .221 The county shall demand repayment of any amount not recovered by grant adjustment, or otherwise repaid using the appropriate Notice of Action form.
- .23 Civil Judgment
- .231 If the adoptive parent no longer receiving aid refuses or is unable to repay the amount demanded, the county shall refer the case to the appropriate county official for action on a civil judgment.
- (a) An abstract of civil judgment shall be recorded pursuant to Section 674, Code of Civil Procedure, in any county in which the recipient owns real property.
- (b) If a recipient is ineligible for further aid, the county shall take all appropriate action pursuant to Section 681, et seq., Code of Civil Procedure, to execute the judgment.
- .24 Nothing in Sections 45-808.21, .22 or .23 shall preclude the county from arriving at a reasonable settlement of its demand for repayment with the adoptive parent.

NOTE: Authority cited: Sections 10553, 16118 and 16121.05, Welfare and Institutions Code.
Reference: Section 16121.05, Welfare and Institutions Code.

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CHAPTER 46-100 STATE SUPPLEMENTARY PAYMENT (SSP) PROGRAM

46-105 ADMINISTRATION **46-105**

- .1 Compliance with all civil rights laws, rules and regulations of Division 21 is required in the administration of these regulations, including compliance by contractors and subcontractors.

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- .2 The State Supplementary Payment (SSP) Program provides money payments to eligible aged, blind, or disabled California residents. SSP is administered by the Social Security Administration (SSA) in conjunction with the federal Supplemental Security Income (SSI) Program. Applications for SSI/SSP are taken at SSA field offices. SSA determines the individual's eligibility and grant amount pursuant to Title XVI of the Social Security Act; Welfare and Institutions Code Sections 12000 - 12205 and 13910 - 13922; and an agreement between the Secretary of Health and Human Services (HHS) and the State Department of Social Services (SDSS). The SSI and SSP grant amounts are delivered in a combined monthly check. Members of eligible couples each receive their own SSI/SSP check. SSI/SSP recipients are Medi-Cal eligible and may qualify for the Special Circumstances Program as specified in Section 46-425, and In-Home Supportive Services (IHSS) Program as specified in MPP Section 30-700. Blind recipients may also qualify for the Food for Guide Dogs Program as specified in Section 46-430.

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NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code; Section 11135(b), Government Code; and Title VI of the Civil Rights Act of 1964.

46-110 ELIGIBILITY **46-110**

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- .1 Federal regulations governing eligibility for the SSI Program are set forth in the Code of Federal Regulations, Title 20, Part 416 (20 CFR 416). An individual is eligible for SSP if he/she meets the SSI eligibility requirements, with the exception of certain income requirements as specified in Welfare and Institutions Code Section 12152. An individual may also have countable income in excess of the SSI standard and still be eligible for SSP benefits provided that the countable income is less than the appropriate combined SSI/SSP benefit level specified in Section 46-120.

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46-110 ELIGIBILITY (Continued) **46-110**

- .2 No period of residency in the state shall be required to gain eligibility.
- .21 For SSP eligibility purposes, an individual shall cease to reside in the state if he/she leaves the state with the present intent to abandon it as his/her home.
- .22 In absence of evidence to the contrary, if an individual is physically absent from the state for more than 90 calendar days, this absence shall be considered as evidence of his/her present intent to abandon this state as his/her home.

NOTE: Authority cited: Section 10553, Welfare and Institutions Code. Reference: Sections 12103, 12150, 12152, 12201, and 12552, Welfare and Institutions Code; 20 CFR 416.200 through .269, and 20 CFR 416.1100 through .1182 Chapter 102, Statutes of 1981; and Sections 1616 and 1616(b), Social Security Act.

46-120 BENEFIT LEVELS **46-120**

.1 Effective January 1, 1987, SSI/SSP "monthly benefit levels" established in accordance with Welfare and Institutions Code Sections 12200, 12201, 12201.5, 12205, 13911, 13920, 13921, and 13922 are as follows:

<u>.11</u>	<u>ELIGIBLE INDIVIDUAL</u>	<u>BENEFIT LEVEL</u>
	Aged or Disabled	\$ 560.00
	Aged or Disabled without Cooking and Food Storage Facilities ("Restaurant Meals" Category)	\$ 620.00
	Blind	\$ 627.00
	Disabled Minor Under 18 Living with Parent	\$ 444.00
	Resident of "Nonmedical Out-of-Home Care" (NMOHC) Facility (This benefit is made up of the components shown below.)	\$ 632.00
		<u>Minimum</u>
	For Personal and Incidental Needs of the Recipient	\$ 74.00
		<u>Maximum</u>
	Room and Board	\$270.00
	Care and Supervision	<u>+288.00</u>
		\$558.00

46-120 BENEFIT LEVELS (Continued) 46-120

<u>.12</u>	<u>ELIGIBLE COUPLE</u>	<u>BENEFIT LEVEL</u>
	Both of Whom are Aged or Disabled	\$1039.00
	Both of Whom are Aged or Disabled without Cooking and Food Storage Facilities ("Restaurant Meals" Category)	\$1160.00
	Both of Whom are Blind	\$1221.00
	One of Whom is Blind and the Other is Aged or Disabled	\$1152.00
	Both of Whom are Residents in a "Nonmedical Out-of-Home Care" (NMOHC) Facility (This benefit level is made up of the components shown below.)	\$1264.00
		<u>Minimum</u>
	For Personal and Incidental Needs of the Recipient	\$ 148.00
		<u>Maximum</u>
	Room and Board	\$ 540.00
	Care and Supervision	<u>+576.00</u>
		\$1116.00

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.13 State law (Welfare and Institutions Code Section 13921) governs the minimum amount of the NMOHC benefit to be kept by the recipient for personal and incidental (P&I) needs. The minimum P&I amount for 1987 is \$74. If the recipient's P&I needs are provided for, in whole or in part, by the facility under an agreement between the recipient and the facility, the recipient pays the facility the agreed upon portion of the P&I allowance. A facility is expressly prohibited by state law (Welfare and Institutions Code Section 11006.9) from obtaining the recipient's P&I money as an additional cost of care.

An SSI/SSP recipient who has no income beyond his/her SSI/SSP grant has a maximum of \$558 available for the cost of his/her board, care and supervision (that is, the \$632 NMOHC benefit, minus the \$74 P&I minimum to be retained by the recipient equals \$558 available to pay the facility.)

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46-120 **BENEFIT LEVELS (Continued)** **46-120**

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A recipient who does have income beyond his/her SSI/SSP grant may have up to an additional \$20 available for his/her cost of care. This is because, under federal rules, the first \$20 of a recipient's income is not counted. Neither federal nor state law restrict the recipient in how this additional income is spent. Therefore, the recipient may be required by the facility to pay this additional amount for the cost of basic services. As a result the maximum that such a recipient may be charged for basic services is \$578.

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NOTE: Authority cited: Section 10553, Welfare and Institutions Code. Reference: Sections 11006.9, 12200, 12201, 12201.5, 13911, and 13920 through 13922, Welfare and Institutions Code.

46-130 **EXCEPTIONS TO BENEFIT LEVELS** **46-130**

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- .1 A recipient's benefit level is reduced by the amount of any countable income he or she has.
- .2 When a recipient resides in the home of another and receives both room and board in-kind from the householder, the SSI/SSP benefit level will be reduced by one-third of the applicable SSI payment standard. This reduction does not apply when a recipient or applicant is a child residing in the home of his/her parent(s).
- .3 An SSI/SSP recipient who received benefits for December 1973, under the former state aid programs of Old Age Security (OAS), Aid to the Blind (AB), or Aid to the Totally Disabled (ATD), will receive "mandatory state supplementation" (MSS) if he/she was converted to SSI/SSP in January 1974, and if the MSS payment is greater than the SSP amount the recipient would otherwise be eligible for under state and federal law. This MSS payment will, when added to his/her SSI payment (if any) and net countable income as determined under December 1973, regulations, equal the total of the recipient's cash grant and net countable income for December 1973.

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46-140 NONMEDICAL OUT-OF-HOME CARE (NMOHC) 46-140

.1 "Nonmedical out-of-home care" (NMOHC) shall mean a protective living arrangement outside the SSI/SSP recipient's own home where, as a minimum, he/she receives board, room, and personal nonmedical care and supervision related to his/her individual needs.

.11 NMOHC shall be provided only in:

- (a) a licensed foster care, community care, or residential care facility; or
- (b) a nonlicensed private residence of a recipient's relative or legal guardian/conservator, where the need for and the appropriateness of the care has been certified by the county welfare department. A "relative" shall mean a parent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first-cousin, or any such person denoted by the prefix "grand" or "great" (Exceptions to this rule are included in Section 46-140.13);
- (c) in a "certified family home" as identified in the Health and Safety Code Section 1506(d).

.12 Recipients' eligibility for the NMOHC payment rate shall apply in the following situations:

.121 Children (under age 18)

- (a) Blind children residing in a state licensed NMOHC facility;
- (b) Blind children residing in the home of a relative who is not his/her parent or legal guardian/conservator;
- (c) Disabled children residing in a state licensed NMOHC facility;
- (d) Disabled children residing in the home of a legal guardian/conservator who is not his/her relative;
- (e) Disabled children residing in the home of a relative who is not his/her parent;
- (f) Blind or disabled children in a "certified family home".

46-140	NONMEDICAL OUT-OF-HOME CARE (NMOHC) (Continued)	46-140
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.122 Adults (age 18 and over)

- (a) Aged, blind, or disabled individuals or couples residing in a state licensed NMOHC facility;
- (b) Aged, blind, or disabled individuals or couples residing in the home of a relative or legal guardian/conservator.

.13 Eligibility for the NMOHC payment rate shall not apply in the following situations:

- (a) Disabled children under 18 and living with his/her parent;
- (b) Individuals living in his/her own home;
- (c) Individuals living with a spouse who is not receiving SSI/SSP, regardless of where they live;
- (d) Blind children (under 18, or 18 to 21 and attending school or training full-time) living in the home of his/her parent or guardian.

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.2 With regard to a licensed facility or "certified family home" which provides NMOHC, "care and supervision" is defined in the California Administrative Code, Title 22, Section 80001 as follows:

"Care and supervision" means any one or more of the following activities provided by a person or facility to meet the needs of the clients:

- (a) Assistance in dressing, grooming, bathing, and other personal hygiene;
- (b) Assistance with taking medication, as specified in Section 80075;
- (c) Central storing and/or distribution of medications, as specified in Section 80075;
- (d) Arrangement of and assistance with medical and dental care. This may include transportation;

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- (e) Maintenance of house rules for the protection of clients;
- (f) Supervision of client schedules and activities;
- (g) Maintenance and/or supervision of client cash resources;
- (h) Monitoring food intake or special diets;
- (i) Providing basic services as defined in Section 80001(a)(8)."

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- .3 With regard to a nonlicensed private residence in which NMOHC is being provided, "care and supervision" shall be as set forth in California Administrative Code, Title 22, Section 80001, with the exception of Subsections (e), (g) and (i).
- .4 Authorization of Nonmedical Out-of-Home Care in Licensed Facility (Except Foster Family Home)

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- .41 The SSA field office handling the applicant's case will authorize the NMOHC benefit upon verification that the individual resides in a licensed facility. Each local SSA field office will receive from SDSS a monthly microfiche listing of licensed NMOHC facilities for counties in their service area. (Exceptions: some foster family homes which have been licensed by the county will not appear on this listing. See Handbook Section 46-140.5 for procedure regarding foster family homes.)

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- .42 The effective date of NMOHC eligibility for an individual who is residing in a licensed NMOHC facility at the time he or she initially establishes or re-establishes eligibility for SSI/SSP shall be whichever of the following dates is later:
 - (a) The date of the SSI/SSP application, or
 - (b) The date all SSI/SSP eligibility requirements are met.

46-140	NONMEDICAL OUT-OF-HOME CARE (NMOHC) (Continued)	46-140
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- .43 The effective date of NMOHC eligibility for an individual who is already receiving SSI/SSP and who subsequently enters a licensed NMOHC facility shall be the first of the month during any part of which the recipient resides in the licensed facility.

- .44 An SSI/SSP recipient who resides in a licensed facility that undergoes a change of ownership shall continue to receive the NMOHC benefit level during the facility's "pending" license status provided the facility continues to meet all licensing standards and remains at the same location. An SSI/SSP recipient who becomes a resident of such a facility during the period the license is pending shall receive the "independent living" benefit level until a permanent license is issued. When the permanent license is issued, the recipient shall receive the NMOHC benefit level retroactively to the date of entry into the facility.

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- .5 Certification of Nonmedical Out-of-Home Care in a Foster Family Home or certified family home.
 - .51 The SSA field office handling the applicant's case will authorize the NMOHC benefit upon verification that the individual resides in a foster family home or a certified family home. SSA will either obtain the verification from the monthly microfiche listing of licensed NMOHC facilities, or from SDSS Community Care Licensing Division, or will send a request for certification to the CWD on the prescribed certification form.

 - .52 The county is not required to certify that the child placed in a certified family home or foster family home needs NMOHC. By definition (California Administrative Code, Title 22, Sections 87001, 89185, and 89188) such homes provide twenty-four (24) hour nonmedical care and supervision of foster children.

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- .53 Upon request by SSA, the county shall verify the child's placement in the certified family home or foster family home on the prescribed certification form.

- .54 The county shall complete and return the certification form within thirteen (13) working days. This turnaround time begins the day the county receives the certification form and ends the day the county forwards the completed form to the local SSA field office. The county shall maintain controls to meet this time frame.

- .55 The effective date of NMOHC eligibility for a child residing in a certified family home or foster family home at the time he or she initially establishes or re-establishes eligibility for SSI/SSP shall be whichever of the following dates is later:

46-140 NONMEDICAL OUT-OF-HOME CARE (NMOHC) (Continued) 46-140

- (a) the date of the SSI/SSP application, or
 - (b) the date all SSI/SSP eligibility requirements are met.
- .56 The effective date of NMOHC eligibility for a child who is already receiving SSI/SSP and who subsequently enters a certified family home or foster family home shall be the first of the month during any part of which the recipient resides in the home.

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- .6 Certification of Nonmedical Out-of-Home Care in the Home of a Relative or Legal Guardian/Conservator
- .61 The SSA field office handling the applicant's case will authorize the NMOHC benefit upon receipt of the CWD's certification that the individual needs NMOHC and is receiving it in the home of a relative or legal guardian/conservator. The SSA field office will send a request for certification of NMOHC to the CWD on the prescribed certification form.

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- .62 The county shall certify that the recipient needs NMOHC in order to remain in a noninstitutional setting, and shall certify that the appropriate care is being provided in that living arrangement. When the county learns that a Department of Developmental Services (DDS) Regional Center is providing services to the applicant or recipient, the county may contact the Regional Center worker and base the certification on the worker's knowledge of the case.
- .63 The county shall complete the certification form within thirteen (13) working days. This turnaround time begins the day the county receives the certification form and ends the day the county forwards the completed form to the local SSA field office. The county shall maintain controls to meet this time frame.
- .64 The effective date of NMOHC eligibility for an individual who is receiving such care in the home of a relative or legal guardian/conservator at the time he or she initially establishes or re-establishes eligibility for SSI/SSP shall be whichever of the following dates is later:
- (a) the date of the SSI/SSP application, or
 - (b) the date all SSI/SSP eligibility requirements are met.

46-140 **NONMEDICAL OUT-OF-HOME CARE (NMOHC) (Continued)** **46-140**

.65 The effective date of NMOHC eligibility for an individual who is already receiving SSI/SSP and who subsequently begins receiving NMOHC in the home of a relative or legal guardian/conservator shall be the first of the month in which the county is asked to certify the NMOHC living arrangement. Exception: If the county has material evidence that the individual needed and was receiving care in the living arrangement continuously from an earlier date, NMOHC eligibility may extend back to the month in which the care began or three (3) months from the month the county is asked to certify the NMOHC living arrangement, whichever is later.

The county shall attempt to obtain material evidence of the date on which the care began. If the county cannot obtain sufficient material evidence, the county shall have the recipient indicate the onset date of the care and sign the "Client Statement for Retroactive Certifications" on the reverse side of the prescribed certification form. The county shall then enter the effective date in the appropriate space on the front of the prescribed form.

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.651 Examples: A recipient moves from his own home on September 23 to his aunt's home because he needs care and supervision. He notifies SSA of the change in living arrangement on September 25. On September 26 SSA asks the county to certify that the recipient needs and is receiving care and supervision in the aunt's home. The county certifies NMOHC on October 3 and so notifies SSA. The recipient's NMOHC payment is made retroactive to September 1.

A recipient moves into his brother's house on May 5 in order to receive care and supervision. He does not report this move to SSA until September 13. On September 14 SSA asks the county to certify that the recipient needs and is receiving care and supervision in his brother's home. The recipient provides the county with material evidence that he has been receiving care and supervision there since May 5. The county certifies NMOHC eligibility back to June 1.

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NOTE: Authority cited: Sections 10553, 10554, 11000, and 13911, Welfare and Institutions Code. Reference: Sections 1500 through 1502, and 1505, Health and Safety Code; Sections 10553, 10554, 11000, 12004, 12200(g), 12201.5, 12202, 13900 through 13902, 13910, 13911, Welfare and Institutions Code; Major v. McMahon Judgment; Sections 80001 and 89188, Cal. Code of Reg., Title 22; Section 1611(c), Social Security Act, Title XVI, and 20 CFR 416.501, .708, and .714.

46-150 RECIPIENTS IN MEDI-CAL (TITLE XIX-FUNDED) FACILITIES 46-150

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The SSI/SSP benefit for a recipient living in a medical facility and receiving more than 50 percent of the cost his/her care from Medi-Cal is \$35 a month. This amount is to cover the personal and incidental needs of the recipient, and includes a \$25 SSI payment and a \$10 SSP payment.

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46-160 ALLOWANCE FOR RESTAURANT MEALS 46-160

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- (a) An aged or disabled recipient or couple, both of whom are aged or disabled, whose living arrangement prevents the preparation of meals are entitled to an allowance for restaurant meals, in addition to any other payments for which they are eligible.
- (1) The following restaurant meals allowances, established in accordance with Welfare and Institutions Code Sections 12200, 12201, and 12205 apply effective January 1, 1987:

<u>Allowance for an Individual</u>	<u>Allowance for a Couple</u>
\$60.00 per month	\$121.00 per month

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- (b) "Living arrangements" shall include the recipient's immediate living quarters as well as other areas in the building in which the recipient's living quarters are located or areas adjacent to these living quarters to which the recipient has access for use of the cooking and food storage facilities.
- (c) Cooking and food storage facilities shall be considered accessible if the recipient or someone preparing meals on behalf of the recipient is allowed to use facilities within the living arrangement, whether owned by the recipient or by another, to prepare any of the recipient's meals. Cooking and food storage facilities shall not be required to be part of the immediate living quarters in order to be considered accessible.

46-160 ALLOWANCE FOR RESTAURANT MEALS (Continued) **46-160**

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- (d) There is another program under which an aged or disabled recipient may qualify for a comparable meals allowance even when the living arrangement does not prevent home meal preparation, if the recipient's disabilities prevent home meal preparation. Application for benefits based on a need due to disability rather than lack of meal preparation facilities should be made to the CWD under the In-Home Supportive Services (IHSS) Program.

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- (e) No recipient shall receive SSP and IHSS meals allowance benefits at the same time.

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- (f) Recipients who wish to apply for the Restaurant Meals Allowance shall file their application at the local SSA field office.
- (g) Eligibility for, and payment of the Restaurant Meals Allowance to SSI/SSP recipients is administered by the Social Security Administration according to criteria established by SDSS as stated in these regulations.

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- (h) Eligibility Requirements

An aged or disabled recipient of SSI/SSP or a recipient couple, both of whom are aged or disabled, shall qualify for the Restaurant Meals Allowance by meeting the following requirements:

- (1) Meals and adequate cooking and food storage facilities are not provided as part of the living arrangement. This requirement is not met when:
- (A) The recipient's immediate living quarters have adequate cooking and food storage facilities in which the recipient or another person who undertakes the responsibility of preparing meals on behalf of the recipient can prepare meals for the recipient on a daily basis.
 - (B) The recipient has access to adequate cooking and food storage facilities as part of his/her arrangement (but which are outside of his/her immediate living quarters) for the purpose of preparing any of his/her meals or having them prepared on his/her behalf on a daily basis. The recipient has access to adequate cooking and food storage facilities as part of his/her living arrangement when:

46-160 ALLOWANCE FOR RESTAURANT MEALS (Continued) 46-160

1. The recipient lives in a boarding house with a communal kitchen with adequate cooking and food storage facilities to which he/she has access for preparation for his/her meals.
 2. The recipient lives with friends or relatives in private living quarters in the same house or in separate living quarters as "over the garage" or in similar situations and has access to the cooking and food storage facilities in the main residence for preparation of any of his/her meals.
- (C) The recipient lives in a room and board living arrangement in which the recipient contracts with the facility to have meals prepared and provided as part of the room and board living arrangement.

This regulation is intended to encompass conventional room and board situations in which the recipient purchases his/her meals through the facility on a periodic basis (generally monthly), or on a per meal basis. This regulation would apply whether or not the agreement between the recipient and the facility is separate from the agreement for rental or private living quarters. The regulation is also applicable where the facility contracts with a food preparation service which is separate from the facility to provide the meals.

- (2) Cooking and/or food storage facilities are inadequate for the preparation of the recipient's meals in the living arrangement. For purposes of determining whether cooking and food storage facilities are adequate, the following items are to be considered to be basic requirements:

(A) Adequate Food Storage Facilities

An icebox or refrigerator to which the recipient has access. Capacity of the refrigerator or icebox is not a factor of consideration. An ice chest is not considered adequate storage.

(B) Adequate Cooking Facilities

1. A stove without a working oven but which has at least two working burners, or
2. A hot place with at least two burners with separate temperature controls, or two one-burner hot plates with temperature controls, or

46-160 ALLOWANCE FOR RESTAURANT MEALS (Continued) 46-160

3. A stove with a working oven or a functioning micro-wave oven in combination with at least one working burner on a stove or a one-burner hot plate with a temperature control. Hot plates without temperature controls which are used for warming food are not considered adequate cooking facilities.

(3) Eligibility for the Restaurant Meals Allowance exists even if meals which are not prepared as part of a recipient's living arrangement are brought into the recipient's living arrangement (i.e., "Meals on Wheels" Program) or are able to be obtained at a discount.

(i) Minimum Period of Eligibility

Recipients who must purchase restaurant meals because of the lack, loss or nonfunctioning of their cooking or food storage facilities shall qualify for the Restaurant Meals Allowance if the temporary condition is expected to last one full calendar month or more. The applicant shall report to SSA immediately when he/she knows the condition will cease to exist.

(j) Determination of Eligibility

The recipient's statement of fact on the application form shall be acceptable proof of eligibility unless the facts as presented are incomplete, unclear, inconsistent or in conflict with other evidence. If the facts so presented are incomplete, unclear, inconsistent, or in conflict with other evidence, SSA will so indicate in the comments section on the final decision on the eligibility of the recipient. In such cases, SSA will not process payment for the Restaurant Meals Allowance before receiving a decision from the state.

(k) Beginning Date of Allowance

The beginning date of the Restaurant Meals Allowance shall be the first of the month in which the recipient files an application for this allowance with SSA provided that the recipient is or expects to be without cooking and/or food storage facilities for a calendar month.

(l) Redetermination of Eligibility

The recipient's statement of fact on the application form shall be completed at the time of redetermination of eligibility for SSI/SSP or when a living arrangement change is reported, whichever is earlier.

The recipient has a continuing responsibility to report changes in circumstances which would make him/her ineligible for the Restaurant Meals Allowance.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 12100(d), 12200(e), 12201, and 12303.7, Welfare and Institutions Code; 20 CFR 416.310, .501, and .2015; Committee of the Rights of the Disabled v. Swoap, 48 CA 3d 505; and Section 1611(c), Social Security Act, Title XVI.

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.1 General Statement

Public Law 93-368 provides for reimbursement to the state (or a political subdivision thereof) for interim assistance payments made to SSI/SSP applicants whose applications are subsequently approved for SSI/SSP benefits. Individual authorizations must be signed by the applicants or their representatives and forwarded either manually or electronically to SSA. Reimbursement will be effected by means of an agreement between the Department of Health and Human Services and the State of California Department of Social Services and sub-agreements between SDSS and participating agencies.

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.2 Definitions

For the purposes of these regulations

- .21 Agreement means the contract between DHHS and the State Department of Social Services which outlines the terms under which reimbursement may be made.
- .22 Applicant means an individual or the representative of such individual who has applied for SSI/SSP benefits and who cannot meet his/her basic needs in the period between the application and receipt of his/her benefits upon determination of eligibility.
- .23 Individual Authorization is the form which authorizes payment of an individual's initial SSI/SSP check to the county or state participating agency which has paid interim assistance. The form must be signed by the applicant or his/her designated representative.
- .24 Interim Assistance means any assistance from state or county funds furnished to meet basic needs during the period for which such individual was eligible for SSI/SSP benefits, beginning with the month of application and ending with the receipt of the initial payment.
- .25 Initial Payment means the amount of SSI/SSP benefits, including retroactive amounts, determined to be payable to an individual at the time such an individual is first determined to be eligible, but does not include any advance emergency payment or payment based upon presumptive disability or presumptive blindness made by SSA.

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- .3 Responsibility of State Department of Social Services (SDSS)
- .31 Conduct all negotiations with DHHS.
 - .32 Prepare and enter into a contract with state agencies and County Boards of Supervisors which elect to implement the Interim Assistance Program.
 - .33 Take appropriate administrative actions to ensure that participating state and county agencies carry out the provisions in the contracts.

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.4 Responsibilities of Participating Agencies

Participation in the program to receive reimbursement for interim assistance shall be the option of the agency. All agencies which elect to participate shall:

- .41 Implement the interim assistance program in compliance with the terms of the contract with SDSS.
- .42 Draft and implement procedures for carrying out the provisions of these regulations. In no event are procedures to be implemented prior to signing of the contract between SDSS and the state agency or the county board of supervisors.
- .43 Obtain individual authorizations as described in Section 46-337.23 from applicants for SSI/SSP to whom interim assistance is paid from participating agency funds. Agencies which use the manual IAR process shall forward the authorization to the local SSA office which accepts or accepted the applicant's SSI/SSP application. Agencies which use the automated IAR process shall notify SSA pursuant to the approved contract between the agency and SDSS. An individual authorization remains in effect until SSA has made a final determination on an individual case. If an application for SSI/SSP benefits is denied, the denial is the final determination unless he/she files a timely appeal with SSA. If this is done a new authorization is not needed. If the applicant files a new application rather than an appeal, a new authorization is required if the agency is to be reimbursed for interim assistance monies advanced.

46-337 INTERIM ASSISTANCE REIMBURSEMENT
(Continued)**46-337**

- .44 Upon receipt of an initial SSI/SSP payment, deduct the amount of interim assistance and send the remainder to the recipient or his/her representative payee as expeditiously as possible but in any event no later than ten (10) working days from receipt of the initial payment by the participating agency.

Example: If the initial payment is received on Wednesday, October 14, the tenth day would be Tuesday, October 27.

Under current SSA policy, initial SSI/SSP entitlements which exceed \$9,999.99 will be issued in multiple checks. SSA considers the sum of these multiple payments as the actual initial payment.

In such cases, monies from the subsequent SSI/SSP checks received by the participating agency may be withheld if the county participating agency was unable to recover all interim assistance amounts, to which it is entitled, from the first initial payment. Participating agencies shall process such multiple payments in the same manner as they would initial SSI/SSP entitlements that SSA disburses in one check.

- .441 If, by the tenth working day from the day of receipt of an initial payment the participating agency has failed to forward the remittance (if any) to the recipient or his/her representative payee, the participating agency which received the initial payment shall send to the recipient the full amount of the initial payment. When the participating agency has forwarded the remittance within the 10-day requirement, occurrences such as mail delays or discovery of remittance calculation errors shall not constitute the basis for the recipient's entitlement to the full amount of the initial payment.

If, in each of three consecutive months, an agency fails in more than five percent (5%) of its interim assistance cases to comply with the ten-day processing requirement of Section 46-337.44, such failure shall cause the cancellation of the IAR agreement between the SDSS and the participating agency.

- .442 A notice of action (form SSP-17) shall be sent to the recipient or his/her representative payee showing the amount received by the participating agency, the amount deducted as reimbursement for interim assistance and the amount being sent to the recipient or his/her representative payee, if any. The notice of action shall also include the right of the recipient to request a state hearing.

46-337 INTERIM ASSISTANCE REIMBURSEMENT (Continued)

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- .443 When an individual dies after completing an individual authorization form but before receiving the explanation and remittance referred to above, the agency shall within prescribed time limit, provide such explanation and pay the balance due the recipient to the local SSA field office rather than to the recipient or anyone else on his behalf. Such payment shall be sent by registered mail and a return receipt requested.
- .444 If, after offsetting the interim assistance paid to the individual, the agency is unable to locate the individual and deliver the remaining SSI/SSP grant within 60 days, the agency shall forward the remainder to SSA for disbursements.
- .45 Maintain adequate records of all transactions relating to interim assistance made and the apportionment of the individual's initial payment.
- .46 Report to SDSS each month, the total amount of interim assistance paid, and the processing time for forwarding the remittance to the recipients. The report shall be made on the form prescribed by SDSS.

Interim Assistance Reimbursement (IAR) reports are to be received in Sacramento on or before the 8th working day of the month following the report month. One copy shall be sent to:

State Department of Social Services
Statistical Services Branch
744 "P" Street, MS 19-81
Sacramento, CA 95814

When all data is not available, a report shall be transmitted by the due date containing all information that is available at that time. An explanation should be attached for any delay indicating when the Department will receive the completed report. The missing data shall be transmitted as soon as it is available.

In addition to reporting to the state, each participating agency shall account for all interim assistance initial payment dispositions on an individual case basis by way of federal form SSA-8125 (Supplemental Security Income Notice of Interim Assistance Reimbursement Eligibility and Accountability Report) which is to be received with the individual initial payment. The disposition of the initial payment check received is to be reported via the federal form SSA-8125 within thirty (30) working days from the date of receipt of the check or the SSA-8125, whichever is later, by the agency. The completed SSA-8125 is to be sent to the attention of:

Social Security Administration
Assistance Programs Section
IAR Coordinator
100 Van Ness Avenue, 26th Floor
San Francisco, CA 94102

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- .47 Referrals may be made by the SSA field office to the participating agency, or from the participating agency to the SSA District Office.

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- .48 Failure to follow the provisions of Sections 46-337.41 through .46 shall cause the cancellation of the IAR agreement between the SDSS and the participating agency.

.5 Eligibility Requirements for Reimbursement

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- .51 Reimbursement will be made only for state and county funds paid to applicants. Interim Assistance does not include assistance payments financed wholly or partly with federal funds.

- .52 The period for which reimbursement will be made extends from the first of the month in which the SSI/SSP application is made if the applicant was eligible in that month, through and including the month when SSI/SSP payments begin, providing an individual authorization was signed before the initial payment was issued.

If the agency has already prepared, and cannot stop delivery of the next assistance payment when it receives the initial payment from SSA, the amount of the next payment is also reimbursable interim assistance.

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- .53 Monies paid from state or county funds will not be reimbursed if:

.531 The applicant is determined to be ineligible for SSI/SSP benefits by SSA.

.532 The authorization was received by the SSA office after eligibility has been approved and action taken by SSA to issue the initial payment to the applicant.

.6 State Hearing

State hearings requested by the recipient shall follow the procedures as set forth in Division 22 of the Manual of Policies and Procedures.

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- .61 State hearings shall be conducted by SDSS only when the issue is (a) the apportionment of the initial payment received by the state or county or (b) that the participating agency has failed to comply with the requirements of Section 46-337.44. An appeal based on the amount of initial payment shall be directed to SSA.

- .7 Confidentiality
 - .71 Procedures for maintaining confidentiality of interim assistance payments shall comply with the regulations of the participating agencies.
 - .72 All information concerning SSI/SSP applicants'/recipients/ identity and the amount of grant shall be confidential.
 - .721 Confidentiality shall be maintained unless the written consent of the applicant/recipient has been obtained, except
 - .722 The information may be shared with government agencies concerned with the administration of the Title XVI program when it is necessary for such administration.

- .8 No administrative costs incurred by the county in implementing this program will be reimbursed by the state or the federal government.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code; Section 1631(g) of Title XVI of the Social Security Act, and 20 CFR 416.1901 et seq.