

**MANUAL OF POLICIES AND PROCEDURES****DIVISION 19 CONFIDENTIALITY OF INFORMATION  
CHAPTER 19-000 CONFIDENTIALITY OF RECORDS****19-001 CONFIDENTIALITY OF RECORDS - OBJECTIVE AND SCOPE**

In accordance with Welfare and Institutions Code (W&IC) Section 10850 and 45 CFR Section 205.50(a), these regulations were created to protect the applicants and recipients against identification, exploitation or embarrassment that could result from the release of information identifying them as having applied for or having received public assistance. They also outline under what circumstances and to whom such information may be released. These regulations pertain to all records, papers, files and communications pertaining to the following public social service programs, both aid and services, administered or supervised by the State Department of Social Services (SDSS), AFDC (including WIN, and Child Welfare Services), APSB, SSP (all segments), and Title XX, unless otherwise indicated. These regulations bind public and private agencies with whom the county contracts to perform any part of the covered public social service programs. The SDSS programs not covered by these regulations have their own rules regarding records and confidentiality which are to be referred to when dealing with such records, e.g., food stamps in Section 63-201.3 and Adoptions in Title 22 of the California Administrative Code. The term public social services programs is defined as both assistance and social service programs administered or supervised by SDSS or the State Department of Health Services.

**19-002 INFORMATION THAT IS CONFIDENTIAL****.1 General**

Names, addresses and all other information concerning the circumstances of any individual for whom or about whom information is obtained is confidential and shall be safeguarded. This is true of all information whether written or oral.

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No disclosure of any information, obtained by a representative, agent or employee of the county, in the course of discharging his or her duties, shall be made, directly or indirectly other than in the administration of public social service programs. (This includes acknowledgement by a welfare department receptionist or telephone operator that a person is receiving assistance.)

Disclosure of information which identifies by name or address any applicant or recipient of public social services to federal, state or local legislative bodies and their committees without such applicant or recipient's consent is prohibited. Such bodies include the United States Congress, the California State Senate and Assembly, city councils and county boards of supervisors. Exceptions to this rule are found in Section 19-004.3 of this division regarding audits and MPP Section 25-480, concerning discharge of accounts.

Both the release and possession of confidential information in violation of the rules of this division are misdemeanors.

.2 Federal Tax Information

.21 Definition

For the purposes of this section, the term "tax information" means any information supplied by the Internal Revenue Service (IRS), concerning a taxpayer's identity, the nature, source, or amount of his/her earned income, unearned income (including interest or dividends), payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments.

.22 Confidentiality and Disclosure

No employee or former employee of the county who has or had access to tax information in any manner connected with his/her service shall disclose any tax information obtained by him/her except for the purposes provided in Section 20-006.

.23 Safeguards

Counties shall establish the following safeguards in order to protect the confidentiality of, and to prevent the unauthorized disclosure of, tax information received from IRS:

.231 Establish and maintain a secure area or place in which IRS tax information shall be stored;

.232 Restrict access to the tax information only to persons whose duties or responsibilities require access to this information;

- .233 Provide other such safeguards or controls as prescribed by IRS guidelines and necessary or appropriate to protect the confidentiality of tax information;
- .234 Report annually in a format prescribed by SDSS the safeguard procedures utilized by the counties for ensuring that the confidentiality of tax information is being maintained; and
- .235 The county shall destroy IRS source material upon the independent verification of IRS tax information or upon completion of appropriate case action, whichever is earlier. Methods of destruction shall be those used for confidential material.

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Penalties for Unauthorized Disclosure of Tax Information

State Tax Information (Franchise Tax Board)

"Except as otherwise provided in this article, it is a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required under this part, to disclose or make known in any manner information as to the amount of income or any particulars set forth or disclosed therein."

Federal Tax Information (Internal Revenue Service)

a) Criminal Penalties

"It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or, return information (as defined in Section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (l)(6), (7), (8), (9), (10), or (11), or (m)(2) or (4) of Section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution."

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## b) Civil Damage

"If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of Section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States."

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**19-003 NONCONFIDENTIAL INFORMATION**

Statistical information and social data, that is not identified with a particular individual may be released.

Examples of information that may be released would include, but are not limited to such information as statements of the number of recipients, total expenditures per program or administration, average grant figures, and other general information concerning the case load as a whole.

**19-004 RELEASE OF CONFIDENTIAL INFORMATION**

## .1 General Rule

- .11 Confidential information may be released without the consent of the applicant/recipient, only for purposes directly connected with the administration of public social services except as specified in Section 19-004.4. Public social services are defined as aid or services administered or supervised by SDSS or the State Department of Health Services.

## .2 Contractors

Whenever a contract is entered into with a public or private agency which involves the release of confidential information, the contract shall contain a provision insuring that such information will be used in accordance with the restrictions found in W&IC Section 10850 and this division.

## .3 Public Officials

- .31 Certain public officials, and their duly appointed agents, and deputies, are entitled to examine confidential information. The right of public officials, including law enforcement personnel, to examine public assistance records does not exist if the request is for a purpose not connected with the administration of the public social service programs. Examples of situations under which information may not be given out include but are not limited to such things as traffic violations, tax fraud investigation, or criminal investigations not related to welfare except pursuant to Section 19-004.4. Both the release and possession of confidential information in violation of these regulations is a misdemeanor. The officials who are entitled to examine confidential information include but are not limited to:
- .311 District Attorney or County Counsel
    - (a) In the administration of aid, it is necessary to disclose information to these offices when they are conducting investigations, prosecutions, criminal or civil proceedings directly connected to public social services including child support services and the location of families in which the caretaker has abducted or kidnapped the aided child(ren).
  - .312 State Department of Social Services, State Department of Health Services, and Department of Health, Education, and Welfare (HEW), and county welfare departments within the State of California.
    - (a) These agencies, their representatives and employees shall have access to public social services records as needed in the administration of public social services.
  - .313 County Auditor
    - (a) In addition to the authority to examine claims and other financial transactions in the routine line of duty, the auditor may examine records as necessary to satisfy himself/herself that fiscal accountability is being maintained and that progress relating to payment, claiming and repayment of aid are proper and effective.
  - .314 Audits
    - (a) Federal, State and County auditors having direct or delegated authority are authorized to examine records as necessary to perform fiscal audits and/or procedure reviews. Legislative bodies and their committees authorized by law to conduct audits or similar activities in connection with the administration of public social services shall be permitted to examine records.

- (b) Such committees include, but are not limited to, the California Joint Legislative Audit Committee, the California Auditor General and their staff, and the United States General Accounting Office.

.315 Legislatures and their Committees

- (a) Refer to Section 19-002 for the prohibition against release of confidential information to legislatures without applicant/recipient consent. Any releases made to legislatures or their committees should be accompanied by the warning that Welfare and Institutions Code Section 10850 makes the use or release of the information for a purpose not directly connected with the administration of public social services a misdemeanor.

.4 Exception to General Rule - Law Enforcement Officials

- .41 Pursuant to the procedures and restrictions in Welfare and Institutions Code Sections 10850.3 and 10850.7, law enforcement officials may be given otherwise confidential information when:

- .411 The applicant/recipient is deceased, Welfare and Institutions Code Section 10850.7.

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- (a) Welfare and Institutions Code Section 10850.7 provides:

Notwithstanding the provisions of Section 10850, an authorized employee of a county welfare department may disclose confidential information concerning a public social services applicant or recipient to any law enforcement agency where the applicant or recipient is deceased. Information that may be released pursuant to this section shall be limited to the name, address, telephone number, birthdate, social security number, and physical description of the applicant for, or recipient of, public social services. A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the head of the agency specifying that the applicant or recipient is deceased and that the agency is otherwise unable to adequately identify the deceased. The information specified may alternately be released by telephone, whereupon the head of the law enforcement agency shall submit the request in writing within five days of the release.

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This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving public social services.

The provisions of this section shall be operative only to the extent permitted by federal law. The section shall not apply to, but shall exclude the Medi-Cal program established pursuant to Chapter 7 (commencing with Section 14000) and following.

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- .412 A felony arrest warrant has been issued for the applicant/recipient, Welfare and Institutions Code Section 10850.3.

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Welfare and Institutions Code Section 10850.3(b) provides in part:

A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the agency specifying that a warrant of arrest for the commission of a felony has been issued as to the applicant or recipient. This request may be made only by the head of the law enforcement agency, or by an employee of the agency so authorized and identified by name and title by the head of the agency in writing to the county welfare department.

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- (a) Information releaseable pursuant to a felony arrest warrant shall be further limited to data contained within disbursement records for AFDC, Special Circumstances, and social service cases other than Child Welfare Service records. Release shall be limited to name, address, telephone number, birthdate, and social security account number (where such items are present) from the record of disbursement.
- (1) No data shall be released from the case record.
  - (2) No data shall be released from SSI/SSP records except for Special Circumstances.
  - (3) This section shall not be construed to limit releases pursuant to Penal Code Section 11166.



- (b) Food Stamp and Adoption records, including AAP, are not within the scope of this Division.

.5 Release of Confidential Information in Conjunction With a Lawsuit

If an applicant/recipient or caretaker relative becomes a party or plaintiff in any suit against the State of California, any political subdivision of the state, or any agency administering the laws governing the administration of public social services and such suit challenges the validity of the laws governing the administration of public social services or the manner in which the laws have been applied, the attorney representing the state, political subdivision, or agency shall be given access to all files and records relating to the plaintiff. Such files and records may be disclosed to the court having jurisdiction of the lawsuit insofar as they are relevant to the determination of any factual or legal issue in the case. In such cases, it should be brought to the court's attention, when presented with the requested information, of the state law and policy against further disclosure of the information.

On notice of court action ordering records to be produced, where the action is not connected with the administration of public social services, (see 19-002), the county shall notify the appropriate legal officer (county counsel). Such legal officer shall be requested to take immediate action to safeguard the confidential nature of the records.

.6 Release to Schools

- .61 Confidential case information may be released to county superintendents of school and superintendents of school districts, and their representatives, as necessary for the administration of federally-assisted programs which provide assistance in cash, in-kind, or services directly to individuals on the basis of need. If such confidential information is released, the superintendent shall be informed of the criminal prohibition against the use or disclosure of such information for any purpose other than that for which it was obtained.
- .62 Information concerning the number of AFDC families living within a particular school district requested to support entitlement to funds under the Elementary and Secondary Education Act (ESEA) may be released to authorized representatives of the school district. A signed agreement with the school district stating that the confidential information obtained will only be used for purposes of fund claiming under the ESEA and that the district understands that there is a criminal penalty for release or use by the school district for any other purpose shall be obtained. This prohibition includes the use of the confidential records to identify applicants or recipients to school teachers and administrators.

.7 Disclosure to Parents Who Wish to be Reunited With Their Family

- .71 Where a person claims to be an absent parent, her/his identification should be verified.
- .72 No acknowledgement to the requesting parent that the child(ren) or other parent are receiving aid may be made.
- .73 If the family is aided, the aided caretaker shall be contacted for permission to release information. If permission is granted, the information shall be released.
- .74 If the absent parent alleges that the aided parent has kidnapped, abused or neglected the child(ren), the case should be referred to the child protective services for appropriate action. The name and address of the applicant or recipient may be released to law enforcement officials for the purpose of locating abducting parents and the abducted child(ren).

.8 Release to Research Organizations

Information requested by research organizations may be released without authorization of the applicant/recipient. Research organizations requesting information must guarantee in writing that they will meet the conditions and protections of this division and Welfare and Institutions Code Section 10850.

**19-005 RELEASE TO APPLICANT/RECIPIENT OR AUTHORIZED REPRESENTATIVE**

.1 Information Supplied By the Applicant/Recipient

Information relating to eligibility that was provided solely by the applicant/recipient contained in applications and other records made or kept by the county welfare department in connection with the administration of the public assistance program shall be open to inspection by the applicant/recipient or his/her authorized representative.

.2 Authorizations

For purposes of this section, an authorized representative is a person or group who has authorization from the applicant/recipient to act for him/her.

.21 Written Authorizations

Except, as otherwise provided, all authorizations are to be written.

Written authorizations shall be dated and shall expire one year from the date on which they are given unless they are expressly limited to a shorter period or revoked. In cases involving pending appeals or state hearings, the time period, unless the authorization is expressly limited or revoked, shall extend to the final disposition of the issue involved in the fair hearing or, where applicable, by the courts.

When the authorized representative and the applicant/recipient, or responsible relative caring for the AFDC child are both present, no written authorization is required for that particular occasion.

.22 Telephone Authorizations

Telephone authorizations may be accepted in lieu of a written authorization where the circumstances insure that the applicant or recipient has adequately identified himself or herself to the county. A telephone authorization is temporary and should be followed up by a written authorization.

Acceptable items of identification are to be determined by the county but may include such items as case numbers, driver's license numbers, social security account numbers or the mother's maiden name. The procedure for telephone authorizations will usually involve the applicant or recipient first calling their eligibility worker and notifying the worker of whom will be calling on their behalf. This call will authorize the release of confidential information. Examples of typical circumstances for releasing confidential information by telephone authorization include inquiries from medical offices, welfare rights organizations or legislators calling on behalf of the recipient.

.3 Applicant/Recipient Written Requests for Assistance to Legislators

Written inquiries to members of legislative bodies signed by applicants or recipients of public social services concerning the receipt of public social services may serve as authorization for release of information sufficient to answer such an inquiry.

.4 Release of Information in Conjunction With a State Hearing

The applicant/recipient or his/her attorney or authorized representative may inspect the case records including the entire case narrative relating to the applicant or recipient which are held by DSS, DHS, or any agency supervised by DSS with the following exceptions listed below in Section 19-006.

**19-006 INFORMATION WHICH MAY NOT BE RELEASED TO THE  
APPLICANT/RECIPIENT**

## Privileged Communications

Portions of the applicant/recipient's record which would qualify as privileged communications as defined by the Evidence Code. This would include Sections 954 (lawyer-client), and 1041 (identity of informer).

NOTE: The physician-patient privilege in Evidence Code Section 990, et seq., belongs to the patient and may be waived by him/her. The right of the patient to inspect his/her records is confined to record maintained by the CWD and does not extend to the records kept by the physician.

**19-007 ELIGIBILITY DETERMINATIONS****.1 Collateral Contacts in AFDC and APSB**

Pursuant to EAS Sections 40-157.22 and 40-181.31 individual consent forms, signed by the applicant or recipient are required for each contact made during the evidence gathering process. An exception to this rule is found in MPP Section 20-007.36 which exempts SIUs from the requirement of permission to contact collateral sources.

**.11 Permission**

If the applicant or recipient does not wish the county to contact a private or public source in order to determine eligibility, the applicant or recipient shall have the opportunity to obtain the desired information or verification himself or herself.

**.12 Acceptability and Discontinuances**

If the information or verification is unacceptable to the county and the applicant refuses to grant the county permission to collect the information, the applicant will be given the opportunity to withdraw his or her application or the application shall be denied for noncooperation pursuant to EAS Section 40-105.11. Recipients who refuse to give consent for a collateral contact for which no acceptable evidence or verification has been obtained by the recipient, shall be given the opportunity to withdraw from the program or shall be terminated pursuant to EAS Section 40-105.11.

**.13 Nothing in .11 or .12 shall prevent an investigation for fraud by the SIU.****.2 Title XX Services -- Outside Contacts by Agencies Other Than The County Welfare Department**

- .21 When the provider agency determines eligibility, it shall inform the applicant or recipient that, if it is necessary to contact outside sources (including employers) and the applicant or recipient wishes to keep the service confidential, he/she is entitled to request that such contacts be made by the county, and
- .22 The county, upon notification of the individual's request, shall make the outside contacts and relay the information to the provider.

While a client may not object to such contacts, he or she may object to a contact's learning of the particular kind of service sought. To the maximum extent possible, such inquiries should not reveal the specific nature of the service sought by the client. (45 CFR Section 228.6(f)(1) and (2).)

**19-008 RECORD KEEPING**

The purpose of public assistance and social service records is to evidence eligibility and delivery of public social services. The applicant's or recipient's record should only contain facts relevant to his or her case.

**CHAPTER 21-100 NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS**

**21-101 PURPOSE**

The purpose of Division 21 is to effectuate the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, the Food Stamp Act of 1977 and other applicable federal and state laws to ensure that employment practices and the administration of public assistance and social services programs are nondiscriminatory, and that no person shall, because of race, color, national origin, political affiliation, religion, marital status, sex, age or handicap be excluded from participation in or be denied the benefits of any program receiving federal or state assistance. Administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of these regulations are prohibited.

**21-103 SCOPE OF DIVISION**

These requirements shall apply to the State Department of Social Services (SDSS), all county welfare departments and all other agencies receiving federal or state assistance through the Department of Social Services for the administration of Public Assistance, Food Stamps, Child Support Enforcement and Social Services.

- .1 Civil Rights requirements addressing the Child Support Program in the county District Attorney's offices are covered in separate plans of cooperation (see MPP Chapter 11-600).

- .2 The State Department of Social Services reserves the right to review, copy or otherwise obtain all data, records, reports, case files and other materials determined necessary in the conduct of complaint investigations and/or compliance reviews involving all agencies subject to the requirements of this division.

## **21-104 DEFINITIONS**

The following definitions shall apply to the terms used in this Division:

- (a) Accessibility - The accommodation of public facilities for use by handicapped persons.
- (b) Agency - County welfare departments, other governmental entities, private parties or individuals receiving state or federal assistance through SDSS for the provision of services.
- (c) Authorized representative - An individual or group that has written authorization from the applicant/recipient to act in his/her behalf (see MPP, Division 19, Section 19-005.2).
- (d) "Culturally aware persons" are those who possess knowledge and understanding of cultural environments, religious beliefs, life styles, self-concepts and language characteristics of the populations they serve. Such knowledge is necessary to effectively communicate and provide the same level of service being provided to the welfare population at large.
- (e) "Handicapped person" is any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment.
  - (1) "Physical or mental impairment" means:
    - (A) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or
    - (B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.
  - (2) "Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

- (3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) "Is regarded as having an impairment" means:
  - (A) Has a physical or mental impairment that does not substantially limit major life activities, but that is treated by the agency as constituting such a limitation;
  - (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
    - 1. Has none of the impairments defined in this section but is treated by an agency as having such an impairment.
- (f) International Symbol of Accessibility - The symbol specified in the State Building Code, Title 24, Part 2, Section 2-1720 used to identify facilities accessible to handicapped persons.
- (g) Major Occupational Group - Groups shall include, but are not limited to, the following general positions/classifications: Social Service Supervisors, Eligibility Supervisors, Social Workers, Eligibility Workers, Welfare Aids, Receptionists, Clerical Employees. Agency personnel whose position/classification is not included, but whose primary duties/responsibilities correspond to any one of the above shall be included in that major occupational group.
- (h) "Non-English-speaking" persons are defined as those whose primary language is other than English and which language must be used to effectively communicate program information and requirements. Sign language is subject to this definition.
- (i) "Public contact positions" include, but are not limited to, the following positions and activities, regardless of particular job classification or title: agency employees assigned to the front desk or registration counter, telephone operators, eligibility workers/supervisors, social service workers/supervisors, welfare service aides, vocational counselors, homemakers, investigators, and any employee providing interpretive service on a continuing or as needed basis.
- (j) "Qualified bilingual employee" is defined as an employee who, in addition to possessing the necessary qualifications for the particular classification, is certified through an SDSS approved or administered process to be proficient in and will use oral and/or written communication in the non-English language of the persons to be served. This definition shall also apply to an employee who is certified in the use of sign language to communicate with hearing-impaired persons.

- (k) Sign Language - the use of fingers and hands by deaf and hearing impaired persons to communicate.
- (l) "Substantial Number". For the purposes of this Division, "substantial number" is defined as five percent or more non-English-speaking or hearing-impaired persons (see 21-115.12).

## **21-107 DISSEMINATION OF INFORMATION**

### **.1 General Requirements**

Each agency shall take appropriate steps to inform all applicants, recipients and other persons, including those whose primary language is other than English, and those with impaired hearing or vision or other disabling conditions, of the provisions of this division and its applicability to the programs for which the agency receives federal or state assistance. Such notification shall also identify the employee responsible for the agency's compliance with this division. If not immediately available this information must be provided within ten days of the date requested.

### **.2 Specific Methods to be Utilized**

#### **.21 Posters**

- .211 Posters on nondiscrimination provided by the Department of Social Services shall be prominently displayed in all waiting rooms and reception areas. The county welfare department shall place on the posters the telephone number of the person in the agency who is responsible for processing discrimination complaints.
- .212 All instructional and directional signs posted in waiting areas and other places frequented by a substantial number of non-English-speaking applicants/recipients shall be translated into appropriate languages. Such signs, or an additional sign, shall state that applicants/recipients may request aid or services in their primary language.

#### **.22 Pamphlets**

- .221 Pamphlets supplied by SDSS entitled "Your Rights Under California Welfare Programs" shall be made available in all CWD waiting rooms and reception areas and shall be distributed and explained to each applicant/recipient at intake and redetermination of eligibility. The pamphlets, as available from SDSS, shall be in the primary languages of the CWD's applicant/recipient population.



.23 Notice

The agency shall implement procedures to ensure that interested persons, including persons with impaired vision or hearing or other disabling conditions, can obtain information which includes, but is not limited to the following:

- .231 Existence and location of services
- .232 Activities and services accessible to handicapped persons
- .233 Basic eligibility requirements for public assistance
- .234 Prohibited acts of discrimination
- .235 Procedures for filing discrimination complaints

**21-109 DISCRIMINATORY PRACTICES PROHIBITED**

- .1 In administering programs to which this division applies, agencies may not, on the basis of race, color, national origin, religion, political affiliation, marital status, sex, age or handicap, directly or through contractual, licensing, or other arrangements:
  - .11 Provide aid, benefits, or services to an individual or group which is different than that provided to others unless such action is necessary to provide qualified individuals or groups with aid, benefits, or services that are as effective as those provided to others. The exclusion of an individual or group from the benefits of a program limited by federal statute or executive order to a specific class of individual or group is not prohibited.
  - .12 Deny an individual the opportunity to be a member of an advisory board which is an integral part of any program.
- .2 Location of Facilities

In determining the location of a facility, agencies shall not make selections which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies.

- .21 When units of the total available services are relocated to a new facility beyond the present facility's program area, the agency shall ensure that services are provided in a manner equally as effective as were provided in the central facility.

- .22 Prior to relocating a facility or units of a facility, a determination shall be made of other alternative services that will remain in the area, and the effect of the proposed relocation on the community.
  - .23 When selecting the location for a facility, the agency shall consider the availability of transportation (public and private) used by the recipient population.
  - .24 When selecting the location for a public facility, the agency shall select a building accessible to handicapped and aged persons.
- .3 Employment Practices

To ensure equal opportunity to, and nondiscriminatory treatment of, present and potential employees, discrimination on the grounds of race, color, national origin, religion, political affiliation, sex, marital status, age or handicap is prohibited. Discriminatory practices in the hiring, compensation, benefits and firing practices are among the employment practices subject to this requirement, to the extent that such practices tend to exclude individuals from participation in a program or deny them the receipt of benefits.

**21-111 ACCESSIBILITY OF FACILITIES**

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- .1 The State Building Code, Title 24, Parts 2, 3, and 5, of the California Administrative Code, contains the regulations governing structural accommodations for handicapped persons in public facilities.

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- .2 When public areas (reception, waiting room, interview booth) public restrooms, employee restrooms, and public drinking fountains are provided, they shall be accessible to handicapped persons and identified by the international symbol of accessibility in compliance with the State Building Code. When parking is provided to the general public, it shall be accessible to handicapped persons pursuant to local ordinance and/or the State Building Code.

**21-115 PROVISION FOR SERVICES TO NON-ENGLISH-SPEAKING AND HANDICAPPED APPLICANTS AND RECIPIENTS**

Agencies shall ensure that effective bilingual services are provided to serve the needs of the non-English-speaking population. This need shall be met as indicated below.

- .1 A sufficient number of qualified bilingual employees shall be assigned to public contact positions in each program and/or location serving a substantial number of non-English-speaking persons. These employees shall have the language skills and cultural awareness necessary to communicate fully and effectively and provide the same level of service to non-English-speaking applicants/recipients as is provided to the client population at large.
  
- .11 The number of public contact positions in each major occupational group shall be determined for each program and/or location whose non-English language cases equal or exceed five percent of the total cases for each program or location.
  
- .12 In determining this percentage, primary language groups shall be considered individually, rather than cumulatively.
  
- .13 To determine the percentage of non-English-language cases in any program and/or location, divide the number of ongoing (continuing) non-English-language cases for each primary language group by the total ongoing (continuing) cases in that program and/or location.
  
- .14 To determine the required number of biingual employees in a program and/or location, multiply the percentage of non-English-language cases by the number of public contact positions in each major occupational group in that program and/or location.

If application of the formula results in a whole number plus a fraction of less than one-half, it shall be rounded to the next lower number, e.g., 1.49 = 1.0. If the resultant fraction is one-half or greater, it shall be rounded to the next higher number, e.g., 1.50 = 2.0.

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EXAMPLE     AFDC Program - Main Office

20	EWs
<u>x.08</u>	Spanish Language Case Percentage
1.60	Equals Two Qualified Spanish Speaking EW Contact Positions

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- .141 When the computation (to determine required bilingual staffing) results in a need for less than one full-time position for a major occupational group in a program and/or location, the agency may provide services through the use of a qualified bilingual employee from another program within the same location.

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EXAMPLE:

District Office

AFDC	NAFS	SOCIAL SERVICES
Spanish Language Cases	Spanish Language Cases	Spanish Language Cases
20%	25%	10%
Total EWs	Total Ews	Total Ews
<u>x1</u>	<u>x2</u>	<u>x1</u>
Required	Required	Required
.2	.50	.1

In the example above, one full time Spanish-speaking worker in any program would satisfy the requirements for all programs, provided that the worker would be available to interpret for the other two programs.

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- .15 When the percentage of non-English cases in a program and/or location is less than five percent, the agency shall ensure that effective bilingual services are provided. This requirement may be met through utilization of paid interpreters, qualified bilingual employees, qualified employees of other agencies or community resources.
- .16 Applicants/recipients may provide their own interpreter; however, the agency shall not require them to do so. Only under extenuating circumstances or at the specific request of the applicant/recipient shall an agency allow a minor (under the age of 18 years) to at as an interpreter.
- .2 Forms and other written material required for the provision of aid or services shall be available and offered to the applicant/recipient in the individual's primary language when such forms and other written material are provided by SDSS. When such forms and other written material contain spaces (other than "for agency use only") in which the agency is to insert information, this inserted information shall also be in the individual's primary language.
- .3 Each agency shall ensure that administrative practices do not have the effect of denying non-English-speaking and handicapped persons equal access to and participation in the available programs.

**.4 Auxiliary Aids**

An agency shall provide auxiliary aids to persons with impaired hearing, speech, vision or manual skills where necessary to afford such persons an equal opportunity to benefit from aids or services. Auxiliary aids may include brailled and taped material, interpreters, teletypewriting machines and other effective aids for persons with impaired hearing, speech, vision or manual skills. Compliance with this section can be accomplished through use of volunteer services from community organizations and individuals.

**.5 Program Accessibility**

- .51 Each agency, with instructions and assistance provided by the Department of Social Services, shall evaluate its practices and policies to ensure they do not discriminate on the basis of handicap.
- .52 The agency shall ensure that each program is readily accessible to handicapped persons.
- .53 In choosing available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.
- .54 In the event that structural modifications are required to provide program accessibility, they shall conform to accessibility standards approved by the Office of the State Architect, pursuant to Title XXIV of the California Administrative Code.
- .55 Where structural modifications are not practical, the agency shall provide services at an alternate accessible site.

**21-116 DOCUMENTATION OF APPLICANT/RECIPIENT CASE RECORDS**

- .1 Each agency shall maintain case record documentation in sufficient detail to permit a reviewer to determine the agency's compliance with the requirements of Division 21.
- .2 Each agency shall ensure that case record documentation identifies the applicant's/recipient's ethnic origin and primary language in accordance with Section 21-201.21. In those cases where the applicant/recipient is non-English speaking, the agency shall:
  - .21 Document the individual's acceptance or refusal of forms or other written material offered in the individual's primary language (HANDBOOK: see Section 21-115.2)].
  - .22 Document the method used to provide bilingual services, e.g., assigned worker is bilingual, other bilingual employee acted as interpreter, volunteer interpreter, client provided interpreter.

**21-117 STAFF DEVELOPMENT AND TRAINING**

- .1 Each public contact employee shall receive training in the requirements of Division XXI. These requirements of Division XXI shall be incorporated into the content of the agency's orientation and continuing training programs. This shall include familiarization with the discrimination complaint process. The Department of Social Services will provide program guidelines and technical assistance upon request.
- .2 Each agency shall develop and conduct cultural awareness training programs for all public contact employees. Cultural awareness training shall pertain to specific cultural characteristics in order to ensure equal delivery of services, and when possible shall involve community groups and/or representatives in the cultural awareness training presentations.
- .3 Appropriate agency staff shall be instructed in the investigation of discrimination complaints.

**21-201 COMPLIANCE PROCEDURES AND REPORTING****.1 Assignment of Resources to Implement Requirements of This Division**

Responsibility for the implementation of nondiscrimination requirements shall be centralized within each agency. Each agency shall designate an employee as the Civil Rights Coordinator, and shall allocate adequate personnel and resources to implement the provisions of this division and ensure nondiscrimination in the delivery of services. Methods and staff used to meet Division 21 requirements may vary from county to county. To determine agency compliance, the following factors will be considered:

- .11 Level and quantity of personnel assigned to activities related to this division.
  - .12 Comparison of the civil rights unit's workload, actual or anticipated, to the workload of other administrative units.
  - .13 Extent to which the existence and responsibilities of the civil rights unit has been publicized within the agency and to the public.
  - .14 Comparison of physical space and equipment assigned to civil rights personnel with that assigned to other offices of similar level in the agency.
- .2 Compliance Reports**

Each agency shall keep timely and accurate compliance records. This information shall be submitted to the Department of Social Services whenever and in such form as the Department may determine necessary.

- .21 Each agency shall collect primary language and ethnic origin data by district offices in all AFDC, nonassistance food stamps and social services cases. This data shall be collected for each head of household or, in social services cases, each primary recipient.
- .211 Ethnic origin and primary language shall be determined by the applicant/recipient completing the appropriate section of the application forms. Should he/she decline to make a self-declaration, the worker will make a visual determination and record the information in the appropriate place on the form.
- .212 Each agency shall submit this information by countywide total to SDSS annually. Source data substantiating the compliance report is to be maintained by district office.

.22 County Civil Rights Plans

All county welfare departments shall submit to the Department of Social Services an initial Civil Rights Plan and subsequent annual updates. Each plan shall function as a guide in developing the agency's policy of providing equal delivery of services. The Civil Rights Plan and updates will be in such format and will contain such information as the Department of Social Services may determine necessary.

.3 Contractor and Vendor Compliance

Contractors, vendors, consultants and other providers of service who receive federal or state assistance through the Department of Social Services or through agencies covered by these regulations shall comply with nondiscrimination requirements of this division.

In addition, written assurances of nondiscrimination in employment practices shall be required. Discriminatory employment practices prohibited in Section 21-109.3 are fully applicable to all vendors, contractors, consultants and other providers of service.

**21-203 APPLICANT/RECIPIENT COMPLAINTS OF DISCRIMINATORY TREATMENT**

Agencies are responsible for investigating discrimination complaints made by applicants/recipients or by their authorized representatives, and for investigating complaints remanded by the State Department of Social Services, U.S. Health and Human Services (HHS) or the U.S. Department of Agriculture (USDA).

An applicant/recipient or his/her authorized representative may file a complaint of discrimination with the state or local agency involved or directly with the appropriate agency of the federal government. Information concerning the complaint process shall be available and shall include procedures for filing complaints or appeals with the State Department of Social Services, U.S. Health and Human Services or the U.S. Department of Agriculture. The complaint must be received not later than 180 days from the date of the alleged discriminatory act unless the filing date is extended by the Department of Social Services or the responsible federal agency.

.1 Complainant's Right to a State Hearing (Fair Hearing)

This regulation does not limit or restrict a complainant's right to request a state hearing in accordance with Division 22. Should the complaint involve, in addition to allegations of discriminatory treatment, program issues may be the subject of a state hearing, it will be the agency's responsibility to advise the complainant of his/her right to a state hearing and the necessity to request such a hearing within 90 days as prescribed in Section 22-009, in addition to the filing of a complaint of discriminatory treatment. The complainant shall also be advised of the 10-day limitation for filing to receive aid paid pending.

.11 Should a complaint of discrimination arise during a state hearing, the Hearing Office shall remand the complaint to the SDSS Civil Rights Bureau to be handled in accordance with these regulations.

.12 The right to a state hearing on an issue of discrimination is reserved pending completion of the county investigation and report and any independent investigation by the Department of Social Services.

.2 Procedures for Processing Complaints

All complaints of discrimination will be addressed in accordance with the following procedures:

.21 The CWD shall maintain a control log in which all complaints of discrimination are entered in alphabetical order by the complainant's last name. At a minimum the log shall provide:

.211 Complainant's name.

.212 Date complaint was received.

.213 SDSS/CRB case number, if any.

.214 Program(s) involved.

.215 Basis of discrimination: age, race, sex, etc.

.216 Resolution: early resolution, CWD investigation, withdrawn.



- .217 Decision: discrimination, no discrimination.
- .22 A complaint of discrimination shall be filed either verbally or in writing.
  - .221 The CWD shall be permitted to ask the complainant to fill out a complaint form but shall not make it a condition of filing a complaint.
  - .222 The CWD shall accept complaints of discrimination filed anonymously.
- .23 The CWD/SDSS will first attempt an early resolution by conferring with the parties involved.
- .24 If a resolution cannot be reached, an investigation will be conducted (see 21-203.31).
- .25 Within ten days of receipt of the complaint, the CWD/SDSS must inform the complainant in writing that an investigation will be conducted.
- .26 For those complaints requiring investigation by the CWD, the investigation, including any attempted early resolution, must be completed within 30 calendar days following the acknowledgement of the complaint. Within ten working days following the completion of the investigation, the CWD shall:
  - .261 inform the complainant in writing of the results of the investigation, clearly stating the basis for the decision, and
  - .262 forward a complete copy of the investigation report to SDSS.
- .27 The CWD shall inform the complainant of the right to appeal a CWD decision to SDSS or the appropriate federal agency within 30 calendar days of the date on which the CWD mails, or otherwise provides the complainant with the results of the investigation. SDSS shall inform the complainant of the right to similarly appeal an SDSS decision to the appropriate agency.
  - .271 A CWD/SDSS decision resulting from a complaint based on race, color, national origin, political affiliation, religion, sex, age or handicap may be appealed to the United States Department of Agriculture (USDA) if the complaint involves the Food Stamp Program.
  - .272 A CWD/SDSS decision resulting from a complaint based on race, color, national origin, age or handicap may be appealed to the United States Department of Health and Human Services (HHS) for all other federally assisted programs.

.28 Nothing in these regulations shall preclude a complainant's pursuing remedies through civil proceedings.

.3 Procedures for Investigation Complaints

In order to maintain consistency in the conduct of investigations, the following procedures shall apply.

.31 The CWD/SDSS shall designate an employee to conduct investigations. In no case shall an employee be assigned to investigate a complaint involving actions taken by him/her or by an employee under his/her immediate supervision, or where that designated employee's responsibilities in another program or capacity within CWD/SDSS may result in a conflict of interest.

.32 Interview with Complainant

When scheduling an interview with the complainant, the complainant shall be advised that a representative or counsel may be present at the interview.

.321 Prior to beginning the interview, the person assigned to investigate the case shall explain confidentiality requirements, and make reasonable efforts to ensure that the complainant is able to communicate effectively, using interpreters, readers, etc., if necessary. The following information shall be obtained during the interview:

- (a) Complainant's name, case number, address and telephone.
- (b) Names of individuals responsible for the action, decision or condition alleged to be discriminatory.
- (c) Date and place of alleged discriminatory treatment.
- (d) Discriminatory criterion (race, sex, handicap, etc.).
- (e) Nature of the action, decision, or conditions of the alleged discrimination.
- (f) Information known to the complainant in support of his/her allegation.
- (g) Possible witnesses whom the complainant wishes to have interviewed.
- (h) Other information specific to the complaint.

- (i) Any indications of reprisal, intimidation or harassment as a result of the complaint.
- (j) Relief sought by the complainant.

.33 Interview with the employee alleged to have acted in a discriminatory manner.

When scheduling an interview with the employee, the employee shall be advised of the right to have a representative or counsel present.

.331 The investigator should identify the complainant and describe the nature of the complaint. The employee's statement should be taken concerning the complaint issues. The employee should be advised that such statements will be available to the complainant as part of the investigation.

.34 Review of Issues Specific to the Complaint

In reviewing the issues involved in the applicant/recipient complaint, the investigator shall:

- a. Review Division 21 regulations affecting the issues in the complaint and, if necessary, obtain clarification from the Department of Social Services.
- b. Review complaint documents concerning the discrimination issues.
- c. Interview witnesses as indicated by circumstances or the nature of the allegation.

.35 Investigation of the General Environment

In evaluating the general environment in which the alleged discriminatory action occurred, the investigator may:

- a. Select and review cases to compare the treatment of members of the same race, handicap or ethnic group, etc., with cases selected from the general welfare population.
- b. Compare the treatment of recipients by the individual who allegedly discriminated with the treatment provided by other employees for a similar group.
- c. Interview the employee alleged to have discriminated.
- d. Interview the supervisor of the employee named in the complaint and survey the general environment in which the complaint arose. Record details which may indicate needed corrective action or exonerate the employees alleged to have discriminated.

e. Review other supporting documents as appropriate.

.4 Report of Investigation

The investigation report shall address all issues raised by the complainant. Where there is conflicting evidence, further investigations should be conducted. If the conflict cannot be resolved, the investigator shall ensure that such issues are fairly represented in the report.

.5 Retaliatory Acts Prohibited

No official or employee shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by these regulations or because he or she has made a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing.

.6 Confidentiality of Information

The identity of any complainant and the employee or official alleged to have discriminated must be confidential, except to the extent necessary to carry out the complaint process including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. (See Division 19.)

.7 Retention

The agency shall retain the written complaint, a record of its disposition and the investigation report required by Section 21-203.24 for a minimum of three (3) years from final disposition. All such records shall be maintained in a secure location with access limited to personnel assigned to the Civil Rights Program.

## **21-205 CORRECTIVE ACTION**

.1 Corrective action may be required as a result of an investigation, compliance review, or other determination by SDSS that an agency is not in compliance with the requirements of Division 21.

Such corrective action shall accomplish the following:

- .11 Resolution of the problem which initiated, or was discovered as a result of an investigation or compliance review.
- .12 Development of a policy or plan to ensure that problems of a similar nature will not recur.

.2 An agency shall implement corrective action determined necessary as a result of an investigation, compliance review, or other determination within a reasonable time, as determined by SDSS after conferring with the agency. In no event shall initial implementation be extended beyond 60 days.

.3 Sanctions for Noncompliance

Should an agency fail to comply with the requirements imposed by Division 21 or with applicable sections of state or federal law, fiscal sanctions or other legal remedies may be invoked in accordance with Welfare and Institutions Code Section 10605, or Government Code Section 11135-39, or the issue may be referred to the appropriate federal agency for further compliance action.

The Department of Social Services may also initiate procedures which include, but are not limited to:

.31 Action to suspend or terminate agencies from further program participation.

.32 Recommending appropriate sanctions to other state or local agencies whose jurisdiction is involved.

**23-353 RETENTION PERIODS**

The general statute in California (Welfare and Institutions Code Section 10851) requires that public social service records (aid and services) be maintained for three years from the last date of aid or services. It also provides that certain records in active cases may be destroyed after three years. Federal law (45 CFR 74.20) requires that case records which provide the basis for fiscal claims are to be retained for three years, starting on the day the state submits the last expenditure report to HHS for the period. In the case of supplemental expenditure reports this might require retention for a much longer period than three years.

Under these requirements, counties shall insure that records needed to prove eligibility may not be destroyed unless three years have passed from the date the last state expenditure report was made to HHS for the period in which such records were last used to document eligibility.

.1 Case Narratives

The Board of Supervisors may authorize destruction within the rules stated above.

.2 Other Case Documents

The Board of Supervisors may authorize destruction within the rules stated above. However, documents which were not necessary to show eligibility may, with board authorization, be destroyed when they are over three years old.

.3 Permanent records, as specified in Section 23-351.13, shall be retained until all records for that particular case are destroyed.

.4 Warrant registers must be retained for fifteen years. County welfare warrants must be retained for five years.

.5 Certain Special Circumstances records shall be retained as outlined in Sections 23-356.2 and .3.

.6 Alternate Retention Period

Unless a county has made or intends to make a supplemental expenditure report concerning specific cases which it wishes to purge or destroy, it may consider the retention period to be 3-1/2 years from the date a document was last needed to document eligibility or 3-1/2 years from the date the case was closed. Using this retention period will insure that the records are retained at least 3 years beyond the filing of the final state expenditure report.

.7 Duplicates

Copies of records need not be retained unless the originals are not available.

.8 Records Related to Civil or Criminal Actions

Notwithstanding the above, if a civil or criminal action is commenced before the expiration of the retention period, no portion of the case record of such person shall be destroyed until such action is terminated.

.9 Potential Future Collection of IV-A Cases

The county shall retain Form ABCD 278L or its equivalent for a period of ten years following case closure in all cases where notification to do so by the child support agency has been received.

#### **40-107 COUNTY RESPONSIBILITY (Continued)**

.6 Provision of Informational Materials

.61 Informational materials required by SDSS shall either be given to applicants during the application interview or mailed with Notice of Action forms approving or restoring AFDC grants or Certifications for Medical Assistance (see 40-171.21).

- .611 For AFDC-FG/U, brochures describing benefits available under the Child Health and Disability Prevention (CHDP) program and how and where these benefits are provided within the county shall be given to the applicant during the application interview. Provision of CHDP informational materials shall be documented by notation upon the CA 2 form.
- .612 For AFDC-FC, the placement worker shall assess the applicant child's need for CHDP services, and shall provide information to the foster care provider and/or, as appropriate, to the child. Provision of CHDP informational material shall be documented in the service case record, as specified in Section 30-209.66.
- .62 The CWD shall inform all AFDC applicants/recipients of the availability of family planning services. For those AFDC applicants/recipients who voluntarily request such services, the CWD shall provide information and referral for family planning services. (See Section 40-131.3(h).)
- .621 The CWD shall designate personnel who shall:
- (a) Be generally knowledgeable in the area of family planning.
  - (b) Be responsible for the coordination of family planning services activities within the CWD and with family planning resources outside of the CWD.
- .622 The CWD shall display in waiting rooms and make available to AFDC applicants/recipients, copies of notices, pamphlets and other written materials which contain information concerning the availability of family planning services.
- .623 The CWD shall ensure that written notice of the availability of family planning services is sent to: (1) applicants for AFDC upon denial of AFDC benefits; or (2) all AFDC recipients upon termination of AFDC benefits.

**45-203 STATE AFDC-FC PROGRAM (Continued)****.6 Special Provisions****.61 Children with Nonrelated Legal Guardians**

- .611 A child living with a nonrelated legal guardian shall be eligible for AFDC-FC provided:
- (a) All general AFDC-FC requirements specified in 45-201.1 through 45-201.3 are met.

- (b) The state requirements specified in .1 and .4 above are met.
  - (c) The legal guardian cooperates with the county welfare department in its provision of the social services specified in Section 45-201.4. When the legal guardian is not cooperating, the provisions of Section 45-302.241 shall apply.
- .612 The county welfare department shall provide the social services specified in Section 45-201.4.
- .62 (Repealed by Manual Letter No. 84-65.)
- .63 Children in Voluntary Placement
- .631 After January 1, 1983, the decision regarding the need for a child's voluntary placement shall be made by the county welfare department, a licensed public or private adoption agency, or the department and shall not be delegated to any other individual or agency.
- .632 Time Limitations
- Except as provided in (a), (b), and (c) below, AFDC-FC funding for voluntarily placed children shall be available for a maximum of six months for each child provided all other eligibility requirements continue to be met. The six months need not be one continuous voluntary placement. If more than one placement occurs, the aggregate AFDC-FC payments for all the voluntary placements of the same child shall not exceed a total of six months.
- (a) If placed voluntarily prior to January 1, 1981, the child shall be eligible for AFDC-FC payments provided all other eligibility requirements continue to be met.
  - (b) If placed voluntarily on or after January 1, 1981 and before January 1, 1982, the child may continue to receive AFDC-FC payments until January 1, 1982, provided all other eligibility requirements continue to be met. After January 1, 1982, the provisions of .632 above shall apply.
  - (c) If the authority for placement changes from a voluntary placement to another authority for placement specified in Sections 45-202.4 or 45-203.31, the six-month time limitation no longer applies.



**42 UNITED STATES CODE (USC)****675. Definitions**

As used in this part or part B of this subchapter:

- (1) The term "case plan" means a written document which includes at least the following:
  - (A) A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.
  - (B) A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.
  - (C) To the extent available and accessible, the health and education records of the child, including--
    - (i) the names and addresses of the child's health and educational providers;
    - (ii) the child's grade level performance;
    - (iii) the child's school record;
    - (iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
    - (v) a record of the child's immunizations;
    - (vi) the child's known medical problems;
    - (vii) the child's medications; and
    - (viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

- Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.
- (2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.
- (3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.
- (4) (A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.
- (B) In cases where--
- (i) a child placed in a foster family home or childcare institution is the parent of a son or daughter who is in the same home or institution, and
- (ii) payments described in subparagraph (A) are being made under this part with respect to such child,
- the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.
- (5) The term "case review system" means a procedure for assuring that--
- (A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

- (B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship,
  - (C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and
  - (D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.
- (6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

**677. Independent living initiatives**

- (a) Payments for fiscal years 1987 through 1992; purpose; entitlement of States
- (1) Payments shall be made in accordance with this section for the purpose of assisting States and localities in establishing and carrying out programs designed to assist children described in paragraph (2) who have attained age 16 in making the transition from foster care to independent living. Any State which provides for the establishment and carrying out of one or more such programs in accordance with this section for a fiscal year shall be entitled to receive payments under this section for such fiscal year, in an amount determined under subsection (e) of this section. Such payments shall be made only for the fiscal years 1987 through 1992.
- (2) A program established and carried out under paragraph (1)--
- (A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part,
- (B) may at the option of the State also include any or all other children in foster care under the responsibility of the State, and
- (C) may at the option of the State also include any child who has not attained age 21 to whom foster care maintenance payments were previously made by a State under this part and whose payments were discontinued on or after the date such child attained age 16, and any child who previously was in foster care described in subparagraph (B) and for whom such care was discontinued on or after the date such child attained age 16; and a written transitional independent living plan of the type described in subsection (d)(6) of this section shall be developed for such child as a part of such program.
- (b) Administration or supervision of programs by State agency; payments to State to conduct and provide activities and services

The State agency administering or supervising the administration of the State's programs under this part shall be responsible for administering or supervising the administration of the State's programs described in subsection (a) of this section. Payment under this section shall be made to the State, and shall be used for the purpose of conducting and providing in accordance with this section (directly or under contracts with local governmental entities or private non-profit organizations) the activities and services required to carry out the program or programs involved.

- (c) Description of program; assurances of effective and efficient operation of program and of compliance; time for submission to Secretary

In order for a State to receive payments under this section for any fiscal year, the State agency must submit to the Secretary, in such manner and form as the Secretary may prescribe, a description of the program together with satisfactory assurances that the program will be operated in an effective and efficient manner and will otherwise meet the requirements of this section. In the case of payments for fiscal year 1987, such description and assurances must be submitted within 90 days after the Secretary promulgates regulations as required under subsection (i) of this section, and in the case of payments for any of the fiscal years 1988 through 1992, such description and assurances must be submitted prior to February 1 of such fiscal year.

- (d) Objective of programs; programs to help participating individuals live independently upon leaving foster care; types of programs

In carrying out the purpose described in subsection (a) of this section, it shall be the objective of each program established under this section to help the individuals participating in such program to prepare to live independently upon leaving foster care. Such programs may include (subject to the availability of funds) programs to--

- (1) enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training;
  - (2) provide training in daily living skills, budgeting, locating and maintaining housing, and career planning;
  - (3) provide for individual and group counseling;
  - (4) integrate and coordinate services otherwise available to participants;
  - (5) provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the program;
  - (6) provide each participant a written transitional independent living plan which shall be based on an assessment of his needs, and which shall be incorporated into his case plan, as described in section 675(1) of this title; and
  - (7) provide participants with other services and assistance designed to improve their transition to independent living.
- (e) Formula for determination of State entitlement for fiscal years 1987 through 1992 for transitional independent living programs; reallocation of amounts to other States; amounts in addition to amounts under other law

- (1) (A) The basic amount to which a State shall be entitled under section 674(a)(4) of this title for each of the fiscal years 1987 through 1992 shall be an amount which bears the same ratio to the basic ceiling for such fiscal year as such State's average number of children receiving foster care maintenance payments under this part in fiscal year 1984 bears to the total of the average number of children receiving such payments under this part for all States for fiscal year 1984.
  - (B) The maximum additional amount to which a State shall be entitled under section 674(a)(4) of this title for fiscal years 1991 and 1992 shall be an amount which bears the same ratio to the additional ceiling for such fiscal year as the basic amount of such State bears to \$45,000,000.
  - (C) As used in this section:
    - (i) The term "basic ceiling" means--
      - (I) For fiscal year 1990, \$50,000,000; and
      - (II) for each fiscal year other than fiscal year 1990, \$45,000,000.
    - (ii) The term "additional ceiling" means--
      - (I) for fiscal year 1991, \$15,000,000; and
      - (II) for fiscal year 1992, \$25,000,000.
  - (2) If any State does not apply for funds under this section for any fiscal year within the time provided in subsection (c) of this section, the funds to which such State would have been entitled for such fiscal year shall be reallocated to one or more other States on the basis of their relative need for additional payments under this section (as determined by the Secretary).
  - (3) Any amounts payable to States under this section shall be in addition to amounts payable to States under subsections (a)(1), (a)(2), and (a)(3) of section 674 of this title, and shall supplement and not replace any other funds which may be available for the same general purposes in the localities involved. Amounts payable under this section may not be used for the provision of room or board.
- (f) Payments; restrictions; estimation and adjustment; time of expenditure
- Payments made to a State under this section for any fiscal year--
- (1) shall be used only for the specific purposes described in this section;

- (2) may be made on an estimated basis in advance of the determination of the exact amount, with appropriate subsequent adjustments to take account of any error in the estimates; and
- (3) shall be expended by such State in such fiscal year or in the succeeding fiscal year.

Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989.

(g) Report by States to Secretary; evaluation by Secretary and report to Congress

- (1) Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year with the amounts received under this section. Such report--
  - (A) shall be in such form and contain such information as may be necessary to provide an accurate description of such activities, to provide a complete record of the purposes for which the funds were spent, and to indicate the extent to which the expenditure of such funds succeeded in accomplishing the purpose described in subsection (a) of this section; and
  - (B) shall specifically contain such information as the Secretary may require in order to carry out the evaluation under paragraph (2).
- (2) (A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.
  - (B) Not later than March 1, 1989, the Secretary, on the basis of the reports submitted by States under paragraph (1) for the fiscal years 1987 and 1988, and on the basis of such additional information as the Secretary may obtain or develop, shall evaluate the use by States of the payments made available under this section for such fiscal year with respect to the purpose of this section, with the objective of appraising the achievements of the programs for which such payments were made available, and developing comprehensive information and data on the basis of which decisions can be made with respect to the improvement of such programs and the necessity for providing further payments in subsequent years. The Secretary shall report such evaluation to the Congress. As a part of such evaluation, the Secretary shall include, at a minimum, a detailed overall description of the number and characteristics of the individuals served by the programs, the various kinds of activities conducted and services provided and the results achieved, and shall set forth in detail findings and comments with respect to the various State programs and a statement of plans and recommendations for the future.

- (h) Payments and services not considered income or resources in determining eligibility for aid and services to needy families with children or for foster care and adoption assistance

Notwithstanding any other provision of this subchapter, payments made and services provided to participants in a program under this section, as a direct consequence of their participation in such program, shall not be considered as income or resources for purposes of determining eligibility (or the eligibility of any other persons) for aid under the State's plan approved under section 602 or 671 of this title, or for purposes of determining the level of such aid.



## 45 CODE OF FEDERAL REGULATIONS

**233.120 Emergency assistance to needy families with children.**

- (a) Requirements for State plans. A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:
- (1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b)(1) of this section for scope of Federal financial participation.)
  - (2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.
  - (3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.
  - (4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.
  - (5) Provide that emergency assistance will be given forthwith.
- (b) Federal financial participation. Beginning with the effective date of approval of the amendment to the State plan for AFDC which provides for emergency assistance to needy families with children pursuant to section 406(e) of the Act:
- (1) Federal financial participation is available for emergency assistance to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living if:
    - (i) Such child is (or, within 6 months prior to the month in which such assistance is requested, has been) living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home,
    - (ii) Such child is without resources immediately accessible to meet his needs,

- (iii) The emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home, and
  - (iv) His destitution or need for living arrangements did not arise because he or such relative refused without good cause to accept employment or training for employment.
- (2) The rate of Federal financial participation in expenditures during a quarter as emergency assistance in accordance with the provisions of an approved State plan is 50 percent of the total amount of such expenditures which are (i) in the form of money payments, payments in kind, or such other payments as the State agency specifies, including loans and vendor payments, or medical or remedial care recognized under State law, with respect to or on behalf of individuals described in paragraph (b)(1) of this section; (ii) for the following services provided to individuals described in paragraph (b)(1) of this section, directly by staff of the agency, or by purchase from other sources: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.
- (3) Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before such 30-day period or are for such needs as rent which extend beyond the 30-day period. Another condition for Federal participation is that the State has a reasonable method of determining the value of goods in kind or services provided for emergency assistance.

**1340.15 Services and treatment for disabled infants.**

- (a) Purpose. The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants with life-threatening conditions.
- (b) Definitions.
  - (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 3 of the Act and Section 1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

- (2) The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgement, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:
- (i) The infant is chronically and irreversibly comatose:
  - (ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

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- (iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.
- (3) Following are definitions of terms used in paragraph (b)(2) of this section:
- (i) The term "infant" means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in paragraph (b)(2) of this section would be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.
  - (ii) The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- (c) Eligibility Requirements.
- (1) In addition to the other eligibility requirements set forth in this Part, to qualify for a grant under this section, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.
  - (2) These programs and/or procedures must provide for:
    - (i) Coordination and consultation with individuals designated by and within appropriate health care facilities:
    - (ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

- (iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.
  - (3) The programs and/or procedures must specify that the child protective service system will promptly contact each health care facility to obtain the name, title, and telephone number of the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually recontact each health care facility to obtain any changes in the designations.
  - (4) These programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and Section 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 4(b)(2) of the Act and Section 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:
    - (i) Access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions); and
    - (ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions).
  - (5) The eligibility requirements contained in this section shall be effective October 9, 1985.
- (d) Documenting eligibility.
- (1) In addition to the information and documentation required by and pursuant to Sections 1340.12(b) and (c), each State must submit with its application for a grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

- (2) This information and documentation shall include:
- (i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions;
  - (ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. This documentation shall consist of:
    - (A) A copy of the applicable provisions of State statute(s); or
    - (B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or
    - (C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and
  - (iii) Such other information and documentation as the Commissioner may require.
- (e) Regulatory construction.
- (1) No provision of this section or part shall be construed to affect any right, protection, procedures, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
  - (2) No provision of this section or part may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws or regulations.

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