

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Social Services**

**NOTICE OF FILING OF EMERGENCY  
REGULATORY ACTION**

**Regulatory Action:**

**Title MPP, California Code of Regulations**

**Government Code Sections 11346.1 and  
11349.6**

**Adopt sections:**  
**Amend sections: 11-403**  
**Repeal sections:**

**OAL File No. 2014-0620-02 EF**

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The Legislature enacted Senate Bill (SB) 1013 (Chapter 35, Statutes of 2012) on June 27, 2012. Section 92 of SB 1013 repealed Welfare and Institutions Code (WIC) section 11463 which governs Foster Family Agency (FFA) rates. Section 93 of SB 1013 added back WIC section 11463 to reflect increases in the basic care and supervision rates. The Department of Social Services (Department) proposed to amend section 11-403 of the Department's Manual of Policies and Procedures to implement changes made by Section 93 of SB 1013. This regulatory filing is deemed an emergency and exempt from review by the Office of Administrative Law pursuant to subdivision (p) of WIC section 11463.

OAL has filed this emergency regulatory action with the Secretary of State.

This emergency regulatory action is effective on 7/1/2014 and will expire on 12/30/2014. The Certificate of Compliance for this action is due no later than 12/29/2014.

Date: 6/26/2014

**CRIG TARPENNING**

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Craig S. Tarpenning  
Assistant Chief Counsel

For: DEBRA M. CORNEZ  
Director

Original: Will Lightbourne  
Copy: Zaid Dominguez

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

See instructions on reverse FILE

For use by Secretary of State only

STD. 400 (REV. 01-2011)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2014-06-20-OREF</b>
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ENDORSED FILED IN THE OFFICE OF

2014 JUN 26 PM 2:05

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only

2014 JUN 20 AM 11:30

OFFICE OF ADMINISTRATIVE LAW

NOTICE REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
California Department of Social Services

AGENCY FILE NUMBER (if any)  
ORD #0414-04

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
<b>OAL USE ONLY</b>		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Foster Family Agency Rates	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND Section 11-403
	REPEAL
TITLE(S) MPP	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>File</u>	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>July 1, 2014</u>
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Zaid Dominguez, Manager, Office of Regulations	TELEPHONE NUMBER (916) 651-8267	FAX NUMBER (Optional) (916) 654-3286	E-MAIL ADDRESS (Optional) zaid.dominguez@dss.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE <u>6/16/2014</u>
TYPED NAME AND TITLE OF SIGNATORY Pete Cervinka, Program Deputy Director for Benefits and Services	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 26 2014

Office of Administrative Law

Amend Section 11-403 to read:

11-403 FOSTER FAMILY AGENCY RATES

11-403

(a) Rate Determination Process

(1) The Department shall set rates for each foster family agency utilized by counties which place AFDC-FC children.

(A) Treatment: The rate for a foster family agency program which provides treatment services for children who have treatment needs shall be set in accordance with Sections 11-403(a)(2) and 11-403(b)-(kj). (Continued)

2. The payment to foster parents of a foster family agency shall be at least as great as the Department's schedule of foster family agency basic rates ~~plus the amount added~~ pursuant to Welfare and Institutions Code section 11463(m)(1) plus an additional increment established by the Department pursuant to Section 11-403(c)(1)(B) below in recognition of the specialized nature of the children placed in such homes.

HANDBOOK BEGINS HERE

Welfare and Institutions Code section 11463(m)(1) provides:

On and after July 1, 2012, the basic rate payment that shall be made to the certified parent pursuant to this section for care and supervision of a child who is living in a certified home of a foster family agency, as defined in Section 11400, shall equal the basic rate for children based in a licensed or approved home, as specified in paragraph (1) of subdivision (g) of Section 11461.

HANDBOOK ENDS HERE

(B) Non-Treatment: The rate for a foster family agency program which does not provide treatment services shall be the ~~foster family agency~~ basic rates as specified in ~~Section 11-403(d)(1)(B)~~ Welfare and Institutions Code section 11461(g)(1) for foster family homes.

HANDBOOK BEGINS HERE

Welfare and Institutions Code section 11461(g)(1) provides:

Notwithstanding subdivisions (a) to (d), inclusive, for a child, or on and after January 1, 2012, a nonminor dependent, placed in a licensed or approved family home with a capacity of six or less, or placed in an approved home of a

relative or the approved home of a nonrelative extended family member as described in Section 362.7, or placed on and after January 1, 2012, in a supervised independent living placement, as defined in subdivision (w) of Section 11400, the per child per month basic rate in the following schedule shall be in effect for the period commencing July 1, 2011, or the date specified in the final order, for which the time to appeal has passed, issued by a court of competent jurisdiction in California State Foster Parent Association v. William Lightbourne, et al. (U.S. Dist. Ct. C 07-08056 WHA), whichever is earlier, through June 30, 2012.

HANDBOOK ENDS HERE

1. A specialized care rate as defined in Section 11-400s.(7) may be paid for a child placed in a certified family home of a foster family agency program as described in (B) above when the following conditions are met:

- (i) ~~¶~~The placing agency has determined that the child has care needs greater than those of a normal foster child; and
- (ii) ~~¶~~The placing county has a specialized care system as specified in Section 11 401.3.

~~(See Section 11 401.4 for out of county placement requirements for specialized care.)~~

2. When a child is placed in a certified home in a county that is different from the county with payment responsibility, the county with payment responsibility shall pay the specialized care rate as specified in Section 11-401.42.

(2) (Continued)

~~(b) Rate Ceilings — Rate ceilings are pursuant to Welfare and Institutions Code Sections 11461(a) and 11463.~~

~~(e)~~ Allowable Costs

(1) Reported costs shall be actual allowable and reasonable as defined in federal statutes and regulations including 2 CFR Part 230, 45 CFR Part 74, 45 CFR Part 1356, and Sections 11-402.8 and 11-404. (Continued)

~~(d)~~ Rate Calculation

(1) The foster family agency rate per month per child shall consist of the sum of ~~the following amounts per month per child~~ (A) through (E) below:

(A) ~~The foster family agency child basic rate shall be the rate, which varies according to the age of the child, as specified in Section 11-403(d)(1)(B), plus an additional increment for the child of \$210; Welfare and Institutions Code section 11461(g)(1).~~

(B) ~~The following FFA Basic Rates are effective July 1, 2001.~~

Age	0-4	5-8	9-11	12-14	15-19
FFA Basic Rate	414	450	479	533	580

An additional standard increment, as established by the Department, for each child in recognition of the specialized nature of the children.

(C) ~~The amount of \$329~~ An additional standard amount, as established by the Department, for social work services, or the actual allowable amount for the most recent program fiscal year reported by the provider, whichever is less;

(D) ~~An additional standard amount equal to two thirds of the sum of (A), (B) and (C) above for recruitment, training, and administration as established by the Department. Effective January 1, 2000, two thirds shall equal .667.~~

(E) An annual cost of living adjustment shall be applied to the child basic rate component of the foster family agency rate identified in (A) in accordance with Welfare and Institutions Code section 11463(m)(2).

### HANDBOOK BEGINS HERE

~~EXAMPLE: The total rate for a 12 year old child for FY 01-02 would be computed as follows:~~

Basic rate	\$ 533
Increment for child	210
Social work services	<u>329</u>
	\$1,072

~~Take two thirds (.667) times the subtotal:~~

$$.667 \times 1,072 = 715$$

~~The recruitment, training, and administration amount would be \$715; the total rate would be \$1,787 (\$1,072 + \$715).~~

Welfare and Institutions Code section 11463(m)(2) provides:

"The basic rate payment to the certified parent made pursuant to paragraph (1) shall be adjusted annually on July 1, by the annual percentage change in the California Necessities Index, in accordance with paragraph (2) of subdivision (g) of Section 11461. The adjustment in this paragraph shall be in lieu of any adjustment pursuant to subdivision (e)."

HANDBOOK ENDS HERE

- (F) The department shall publish the Foster Family Agency Rates and identify the applicable annual cost of living adjustment to the child basic rate component of the foster family agency rate on the Department's website.

HANDBOOK BEGINS HERE

The department's website may be accessed at:  
[http://www.childsworld.ca.gov/res/pdf/FFA\\_RatesSchedule.pdf](http://www.childsworld.ca.gov/res/pdf/FFA_RatesSchedule.pdf)

HANDBOOK ENDS HERE

(ed) Rate Adjustments for Existing Foster Family Agency Rates

~~(1) When, based on rate calculation provisions specified in Section 11-403(d), the newly calculated rate is lower than the existing rate, no increase in state participation in the existing rate shall occur until any cost of living increases provided in accordance with Welfare and Institutions Code Section 11463 eliminate the difference between the existing rate and the newly calculated rate.~~

(21) When, based on rate calculation provisions specified in Section 11-403(d), the newly calculated rate is higher than the existing rate, any cost-of-living increases provided in accordance with Welfare and Institutions Code Section 11463 shall be applied until the difference between the existing rate and the newly calculated rate is eliminated.

(fe) On-going Foster Family Agency Rate Request ~~Process~~ Submission

(1) Rate Request Submission (Continued)

(B) A rate request shall be considered complete when all required forms, program statement, and other supporting documentation have been completed and submitted to the Department.

1. ~~If all the required forms necessary to the actual setting of rates have been submitted, but additional documentation is needed, the rate request shall be considered complete if the foster family agency submits the remaining documentation within 30 days after notification by the Department.~~

A complete rate request shall include: (Continued)

- e. Documentation of non-profit status, e.g., The organization's tax exempt status letter from either the Internal Revenue Service (IRS) or the California Franchise Tax Board designating the provider as tax exempt; if any changes have occurred since submission of the last tax exempt status letter. (Continued)
  - g. A declaration signed by the non-profit ~~corporations'~~ Board of Directors that the non-profit ~~corporation~~ will operate during the rate period in the public interest for scientific, education, service or charitable purposes; is not organized for profit making purposes; and uses its net proceeds to maintain, improve or expand its operations.
    - (i) The provider shall immediately notify the Department if the non-profit ~~corporation~~ ceases to operate on a non-profit basis.
    - (ii) The provider shall immediately notify the Department whenever the non-profit ~~corporation~~ becomes inactive, suspended, or otherwise is not in good standing.
  - h. A copy of the credentials ~~demonstrating that~~ submitted to Community Care Licensing for each social worker providing services for the program meets the requirement specified in the Health and Safety Code Section 1506, if not submitted with a previous rate request.
- (C) A complete rate request shall be due according to a the biennial schedule determined by the Department. The Department shall provide reasonable written notice of the scheduled biennial due date. (Continued)
- (D) Exceptions to these due dates ~~shall be as~~ are specified in Section 11-403(gf).
- (2) Effective Date of Rates (Continued)
- (B) Exceptions to the effective dates of rates ~~shall be as~~ are specified in Section 11-403(gf).

~~(3) Penalty Procedures~~

~~The Department's penalty procedures for late or incomplete rate requests shall be as follows:~~

- ~~(A) Rate requests not submitted on or before the due date and rate requests that are incomplete are considered late rate requests.~~
- ~~(B) The rates for late requests are subject to a monetary penalty equal to three (3) percent applied to the agency's administrative rate component of the rate per child.~~
- ~~(C) The rates are subject to the penalty for the number of months the rate request was late beginning on either the rate effective date or the date the rate is reinstated if the rate expired or is terminated.~~
- ~~(D) The foster family agency program shall be subject to expiration of the rate in accordance with Section 11-403(f)(1)(C)1. for failure to submit a complete rate request prior to the rate effective date.~~

**HANDBOOK BEGINS HERE**

~~Example: Rate request is due January 1 and rate is effective March 1; if the rate request is late but completed in January, the administrative component of the rate per child is penalized for one month in the month of March.~~

~~Rate request is due January 1 and rate is effective March 1; if the rate request is late but completed in February, the administrative component of the rate per child is penalized for two months in the months of March and April~~

~~Rate request is due January 1 and rate is effective march 1; if teh rate request is not completed by March 1, the foster family agency program shall be subject to the rate termination process as specified in Section 11-402.393 for failure to submit a complete rate application prior to the rate effective date. Once reinstated, the administrative component of the rate is penalized per child for the number of months late beginning in the month reinstated.~~

~~The total rate for a 12-year old child would be computed as follows:~~



Basic rate	\$ 533
Increment for child	210
Social Work services	<u>329</u>
Total	\$1,072

Take two thirds (.667) times the subtotal:  $.667 \times \$1,072 = \$715$   
 $\$1,072 + \$715 = \$1,787$

~~PENALTY APPLIED:~~

~~Take three (3) percent of \$715 ( $\$715 \times .03 = \$21.45$ )  
 $\$715 - \$21.45 = \$693.55$~~

~~The amount for the administrative component is reduced \$21.45 per child per month. The total rate is \$1,765.55 ( $\$1,072 + \$693.55$ ). This reduced amount will be paid for the number of months late. For the remaining ongoing rate period, the full rate will be paid for each child.~~

**HANDBOOK ENDS HERE**

**(43) Rate Reestablishment**

(A) A rate reestablishment is a process to reestablish a foster family agency program rate for the remainder of the scheduled rate period that could not be established in accordance with Section 11-403(fe)(1)(C)1. or was terminated for failure to submit a financial audit report as specified in Section 11-405.219. A program rate shall be reestablished when the Department determines that all applicable rate request requirements have been met.

1. The effective date of the rate for a complete rate request shall be no earlier than the first day of the second month following the rate request due date.
2. The rate shall be set, based on the lesser of:
  - (i) ~~the provider's most recent rate minus three (3) percent of the administrative rate component per child per month for the number of months a rate request is incomplete or late; or~~
  - (ii) ~~the current Foster Family Agency Schedule of Rates minus three (3) percent of the administrative rate component per child per month for the number of months a rate request is incomplete or late.~~

32. A foster family agency rate that is terminated pursuant to Section 11-405.219, shall not be reestablished until the non-profit corporation submits a financial audit report in accordance with Section 11-405.21. (Continued)

(gf) Deviations from the Ongoing Foster Family Agency Rate Request Process

(1) New Foster Family Agency Providers

(A) A new foster family agency provider shall be one who: (Continued)

3. ~~Has not merely added a new program; increased the level of services provided; changed incorporation; reorganized; or changed name, location, ownership, or license.~~ Has a program that has changed its corporate identification

(B) The rate for new foster family agency providers shall be determined in accordance with Section 11-403(a)(1).

1. The rate effective date for a new provider or a new program shall be the later of the:

a. date the Department received a complete rate request as specified in Section 11-403(~~fe~~)(1)(B); or (Continued)

(C) In order to establish a rate, new foster family agency providers shall submit to the Department a complete rate request in accordance with Section 11-403(~~fe~~)(1)(B).

(2) New Foster Family Agency Programs

(A) A new foster family agency program ~~shall be one which~~ is one that

1. ~~Serves an entirely~~ different population at an ~~entirely~~ different level of service than that currently served by the foster family agency's existing program(s); and with a rate

2. ~~Is either based in different certified family home(s) than the current program(s) operated by the foster family agency, or the current program(s) operated by the foster family agency is replaced by an entirely new program.~~

(~~B~~) Rates for new programs shall be set in accordance with Section 11-403(a)(1).

(~~B~~) Foster family agencies requesting a new program rate shall obtain and submit to the Department ~~verification from the host county that:~~

1. Verification that ~~The~~ provisions of Section 11-403(~~gf~~)(2)(A) are met; ~~and~~
2. Verification that ~~The~~ need for the new program(s) is justified and
3. A letter of recommendation from the host county, the primary placing county, or a regional consortium of counties that the foster family agency is needed and is able to provide services at the level of care represented.

~~(3)~~ Program Expansions

~~(A) All other changes which do not meet the requirements of 11-403(g)(1)(A) and 11-403(g)(2)(A) above shall be designated program expansions.~~

- ~~1. Costs associated with these changes shall be incorporated into the rate request for the following year's rate setting process.~~

~~(hg)~~ Administrative Review Procedure

~~(1)~~ The administrative review procedure for foster family agencies ~~shall be as is~~ specified in Section 11-430.

~~(ih)~~ State Audit Requirements: ~~(1)~~ Audit requirements for foster family agencies ~~shall be as are~~ specified in Section 11-405.1.

~~(ji)~~ Overpayments: ~~(1)~~ Overpayment requirements for foster family agencies ~~shall be as are~~ specified in Section 11-402.6. An overpayment shall be caused by, but is not limited to, the expenditure of AFDC-FC program funds on items not ~~permissible~~ allowable as specified in ~~Section 11-404 paragraph (b) above.~~

~~(kj)~~ Accounting Requirements: ~~(1)~~ Accounting requirements for foster family agencies ~~shall be as are~~ specified in Section 11-402.84.

~~(hk)~~ Good Cause for Late Foster Family Agency Rate Request (Continued)

(2) Within 15 calendar days of the postmarked date of a provider's request for a 30-day good cause extension, the Department shall either approve or deny the request and shall notify the provider in writing of the determination. (Continued)

(B) Rate requests which are not submitted in accordance with Subsection (A) shall be subject to the appropriate penalty contained in Section 11-403(~~fe~~)(3).

(C) When the Department denies a good cause request, the provider shall submit a complete rate request prior to the first of the next calendar month and shall be subject to the applicable penalty provisions as specified in Section

11-403(~~fe~~)(3). The effective date of the rate shall be set in accordance with Section 11-403(~~fe~~)(1)(B).

Authority cited: Sections 10553, 10554, ~~11460(b)~~, ~~11462(a)(3)~~, 11463, 11463(l)(2) and 11466.21(c), Welfare and Institutions Code.

Reference: Sections 11461(a), 11461(g)(1), ~~11462(a)(3)~~, 11463, 11463(b), (i), (l) and (m), 11466.21, 11466.22, 11466.24, 11468, and 11468.2, Welfare and Institutions Code; Public Laws 98-502 and 104-156; Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; Government Auditing Standards of the Comptroller General of the United States (Yellow Book); Department of Health and Human Services, Administration for Children and Families letters dated April 19, 2001, February 22, 2002 and May 7, 2002; 2 CFR Part 230; 45 CFR Part 74; 45 CFR Part 1356 and Internal Revenue Code Section 4958.