

CalWORKs:

A Comprehensive Guide
to Welfare and Related
Medi-Cal Issues for
California Families

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Chapter VII: Child Care For Current And Former CalWORKs Recipients

A. Introduction.

This chapter provides an overview of the CalWORKs child care subsidy system in five sections:

- The three “stages” of CalWORKs child care;
- Eligibility for CalWORKs child care subsidies;
- Procedural issues, including application;
- Child care options and provider payment issues;
- Child care appeals and hearing rights.

In addition to CalWORKs child care, there are other state programs that provide child care subsidies to low-income families with no connection to CalWORKs. For more information on all subsidized child care programs contact the Child Care Law Center.¹

The CalWORKs child care system has been an integral element of the CalWORKs program since it came into effect in January 1998. The law guarantees access to subsidized child care for CalWORKs recipients who need it in order to engage in welfare-to-work activities or work.² CalWORKs child care is also available as a work support to former CalWORKs recipients employed in low-wage jobs to enable them to succeed in becoming self-sufficient.³ CalWORKs recipients may receive subsidized child care if they are working a sufficient number

¹ Child Care Law Center: 221 Pine Street, 3rd Floor, San Francisco, CA 94104; (415) 394-7144; info@childcarelaw.org.

The Child Care Law Center provides technical assistance to legal services advocates as well as direct services to low income parents and providers. The Child Care Law Center also engages in state and local policy advocacy on CalWORKs and non-CalWORKs subsidy issues and welcomes the involvement of legal services advocates in these ongoing efforts.

² WIC § 11323.2(a)(1); Educ. Code §§ 8350(a)-(b), 8350.5, 8354(b); MPP §§ 47-101.2, 47-220.1.

³ Educ. Code § 8350(a).

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of hours, regardless of whether they have an approved welfare-to-work plan.⁴ Parents may choose any type of legal child care, whether licensed or exempt from licensing requirements.⁵

Advocates who are experienced with the CalWORKs child care system know that there continue to be many challenges with the design and administration of these services. These problems are exacerbated by the new Work Participation Rate requirements of the Deficit Reduction Act⁶ which put increased pressure on CalWORKs recipients to immediately engage in welfare-to-work activities and accept any type of child care that may be available.

This chapter contains suggestions for advocacy, including assisting CalWORKs parents in understanding and exercising their appeal and hearing rights. Particularly where a CalWORKs family's care is being terminated due to alleged overpayments or fraud, advocacy is essential.⁷

B. CalWORKs Child Care: Stages 1, 2, and 3.

1. Administration of Stages 1, 2, and 3.

CalWORKs child care subsidies are divided into three stages⁸ administered by two separate state agencies which operate under different rules.

⁴ MPP § 42-711.552(b).

⁵ Educ. Code §§ 8208.1, 8216, 8225, 8352 (a), 8357(a); MPP § 47-260.2 (Stage 1); 5 CCR §18411(a) (Stage 2); 5 CCR §18426(a) (Stage 3).

⁶ Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (Feb. 8, 2006).

⁷ See Section F of this chapter on appeal and hearing rights. Contact the Child Care Law Center at (415) 394-7144; info@childcarelaw.org for additional assistance.

⁸ The concept of stages replaced the old AFDC system in which a family received child care according to the parent's activity or status. The CalWORKs law repealed all former AFDC-linked child care programs, including GAIN child care, NET (Non-GAIN Education and Training) child care, Supplemental Child Care (SCC), the Child Care Disregard, and Transitional Child Care (TCC) *See* former WIC §§ 11310 *et seq.* (1997); MPP §§ 42-700 *et seq.* (GAIN and NET child care); former WIC §§ 11451.7 *et seq.* (1997); MPP §§ 44-500 *et seq.* (Child Care Disregard and SCC); former WIC §§ 11500.15 *et seq.* (1997); MPP §§ 47-100 *et seq.* (TCC).

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The California Department of Social Services (“DSS”) administers Stage 1 pursuant to provisions in both the Welfare and Institutions Code and the Education Code,⁹ regulations located in the Manual of Policies and Procedures,¹⁰ and All County Letters and Information Notices.¹¹

The California Department of Education (“CDE”) administers Stages 2 and 3 under the Education Code,¹² Title 5 of the California Code of Regulations,¹³ and subregulatory materials such as Management Bulletins and Funding Terms and Conditions.¹⁴ While there are many similarities between the governing rules of DSS and CDE, there are also significant differences. For example, there are dramatic differences between the appeal and hearing rights in Stage 1, and those in Stages 2 and 3, as discussed in Section F of this chapter. Also, federal funding for Stage 1 comes from the Temporary Assistance to Needy Families (“TANF”) welfare block grant,¹⁵ while funding for Stage 2 and Stage 3 subsidies comes mainly from the Child Care and Development Block Grant (“CCDBG”).¹⁶ California also allocates state funding to each of the three stages of CalWORKs child care.¹⁷

DSS administers Stage 1 child care through its local agencies, the county welfare departments (“CWD”s). CWDs must help CalWORKs participants find child care by referring

⁹ WIC §§ 11320-11329.4; Educ.Code §§ 8350-8359.1.

¹⁰ MPP §§ 47-101, *et. seq.*

¹¹ Available at: <http://www.dss.cahwnet.gov/lettersnotices/default.htm>.

¹² Educ. Code §§ 8350-8359.1.

¹³ 5 CCR §§ 18400-18434.

¹⁴ Available at: <http://www.cde.ca.gov/sp/cd/ci/allmbs.asp> (Management Bulletins); <http://www.cde.ca.gov/fg/aa/cd/index.asp> (Funding Terms & Conditions). Local Alternative Payment Programs that administer child care subsidies also apply policies contained in each agency's Parent and Provider handbooks.

¹⁵ 42 USC § 604.

¹⁶ 42 USC §§ 618, 9858.

¹⁷ California's FY 2006-07 and 2007-08 budget for Stages 2 and 3 can be found on CDE's website at: <http://www.cde.ca.gov/sp/cd/op/budget0708.asp>.

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them to the local child care Resource & Referral (“R&R”) agency.¹⁸ In thirty-two of California’s 58 counties¹⁹ the CWDs contract with local private, nonprofit agencies called Alternative Payment Programs (“APP”s) to administer Stage 1 child care subsidies and issue payment vouchers to providers.²⁰ CDE is the state agency with legal responsibility to administer the majority of child care subsidy programs in California, including CalWORKs child care Stages 2 and 3. CDE uses contracts with APP agencies (and a few CWDs) to administer child care subsidies on the local level.²¹

PRACTICE TIP

It is very helpful for advocates to determine in advance which local agencies administer the different stages of CalWORKs child care in their counties and, if possible, to establish relationships with child care subsidy administrators in the CWD and APPs serving their counties.

Despite the legislative intent that eligible recipients should have seamless child care as they transition from welfare-to-work,²² it should not be surprising that families often have

¹⁸ Educ. Code § 8352(a). R&R agencies are nonprofit organizations located throughout California that contract with CDE to provide child care information and referrals to the public, not exclusively to CalWORKs or other low income families. For more information on R&R services and choosing a child care provider see Section E.1 in this chapter.

¹⁹ The thirty-two counties include: Alameda, Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Mariposa, Merced, Modoc, Napa, Placer, Plumas, Sacramento, San Francisco, San Joaquin, San Luis Obispo, Shasta, Siskiyou, Solano, Trinity, Tulare, Ventura, Yolo, Yuba.

²⁰ Educ. Code § 8351(e). *See generally* 5 CCR §§ 18013(e) (providing definition of Alternative Payment Programs), 18220 (discussing scope of chapter and applicable regulations). APPs are often one large component of a child care R&R agency, so that child care referrals and subsidy payment administration are managed by one umbrella organization. In a few counties, CWDs or County Offices of Education contract with CDE to act as APPs and provide local administration of all stages of CalWORKs child care.

²¹ Educ. Code §§ 8353(b), 8354(a).

²² Educ. Code § 8350(b); MPP §§ 47-101.3, 47-101.5.

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problems in accessing and maintaining CalWORKs child care. CalWORKs recipients who are initially successful in accessing subsidized child care frequently are confused about which stage of child care they are in, which rules apply, and which agency to contact to ensure continuity of child care.²³

2. Stage 1 Child Care.

Stage 1 child care is an entitlement for all CalWORKs participants, who work or participate in welfare-to-work activities. This includes participants, who volunteer,²⁴ and those who are sanctioned, but continue to work.²⁵ CWD/APPs are supposed to move participants from Stage 1 to Stage 2 “as quickly as possible” when their need for child care is “stable.”²⁶ The emphasis on a quick transition reflects the legislative purpose of treating CalWORKs child care recipients like all other working families who seek child care.²⁷ The CWD/APP administering Stage 1 child care decides whether the family is “stable” for purposes of transitioning to Stage 2.²⁸ Throughout California, CWDs/APPs have developed widely varying policies regarding the timing of the transition from Stage 1 to Stage 2.²⁹

²³ To determine the stage of child care a participant is receiving, advocates may look at the correspondence, including Notices of Action (“NOA”), a participant receives from the county or APP. The NOA should indicate the participant’s stage of child care. If the household still receives cash aid, the participant’s CalWORKs worker should also know the participant’s child care stage.

²⁴ See Chapter VI of this Manual for more information on volunteers.

²⁵ MPP §§ 47-220.31-.32. See Chapter VI of this Manual for information about working while on a sanction.

²⁶ Educ. Code § 8351(b).

²⁷ Educ. Code § 8354(b); MPP § 47-101.2.

²⁸ Educ. Code §§ 8351(b), 8353(a); MPP § 47-101.7. The state regulations do not define “stable” for the purposes of transitioning to Stage 2.

²⁹ In some counties, such as San Joaquin, every participant is automatically transferred after three months no matter what activity they’re engaged in. Other counties, such as San Francisco, continue participants in Stage 1 until they have obtained unsubsidized employment, while Alameda and others undertake an individual review to determine the

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The official time limit on receipt of Stage 1 child care is six months.³⁰ This time period may be extended by the CWD/APP if the participant's situation is considered "too unstable" or there are insufficient child care funds in Stage 2.³¹ Former recipients who are working can receive Stage 1 benefits if they are entitled to Stage 2 child care but no funding is available.³² Some CWDs/APPs will also permit participants and former participants to remain in Stage 1 care if the participant is using a provider allowed under Stage 1 rules but not Stage 2 rules, in order to maintain continuity of care for the child.³³ To help ensure that Stage 1 to Stage 2 transitions are handled properly, CDE has issued a Management Bulletin reiterating transfer requirements and procedures, and detailing each agency's responsibilities.³⁴

3. Stage 2 Child Care.

Stage 2 serves both current participants who are working or engaged in other CalWORKs activities and former CalWORKs recipients who are employed or otherwise eligible.³⁵ Sanctioned CalWORKs recipients who work or are engaged in other approved activities are eligible for Stage 2 benefits as former CalWORKs recipients.³⁶ Like Stage 1, Stage 2 is an entitlement for eligible families.³⁷ Current CalWORKs recipients using Stage 2 child care must

“stability” of the participants’ activities. Contact the Child Care Law Center for more information at (415) 394-7144; info@childcarelaw.org.

³⁰ Educ. Code § 8351(b); MPP § 47-301.51.

³¹ Educ. Code § 8351(b); MPP § 47-301.52.

³² Educ. Code § 8351(b)-(c); MPP § 47-230.11.

³³ MPP §§ 47-301.51 - .52.

³⁴ MB 07-09 (July 2007), available on CDE's website at: <http://www.cde.ca.gov/sp/cd/ci/mb0709.asp>.

³⁵ Educ. Code § 8353(a); 5 CCR § 18405(c); WIC § 11323.2(a)(1); MPP §§ 47-220.2, 47-220.331.

³⁶ MPP § 47-220.32; 5 CCR § 18400(f).

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be working or engaged in a CalWORKs activity that the CWD considers "stable"³⁸ though, as noted above, counties' application of this term varies.

Though most CalWORKs families transition directly from Stage 1 to Stage 2, former recipients need not have received Stage 1 benefits in order to receive Stage 2 subsidies.³⁹ For example, families that received CalWORKs diversion payments are eligible to receive Stage 2 child care subsidies.⁴⁰

Stage 2 child care is available to former CalWORKs recipients for up to two years after they leave CalWORKs cash aid.⁴¹ The two year period after leaving CalWORKs is cumulative, rather than an uninterrupted two-year period.⁴² A former CalWORKs recipient must be working or engaged in other permitted activities, with adjusted monthly income at or below 75% of State Median Income ("SMI"), adjusted for family size, and adjusted annually.⁴³ A person who transitions off cash assistance, receives Stage 2 benefits, and then returns to cash assistance is eligible for another 24 month period of Stage 2 benefits when she again leaves cash assistance.⁴⁴

³⁷ Educ. Code §§ 8351, 8353; MPP § 47-301.5; 5 CCR § 18408(a). Although the entitlement is contingent on the availability of funds, the Legislature has made clear its intention to ensure that funds are sufficient. Educ. Code § 8359.1; WIC § 11322.4.

³⁸ Educ. Code §§ 8351(b), 8353(a).

³⁹ Educ. Code §§ 8350.5, 8353(a).

⁴⁰ 5 CCR §§ 18406(a)(3)(C), 18408(e); MPP § 47-220.34.

⁴¹ Educ. Code § 8353(a); 5 CCR § 18408(d); MPP § 47-230.142. The 24 months of post-cash aid subsidies are available to former CalWORKs participants even if the family received Stage 2 benefits while on cash assistance.

⁴² Educ. Code § 8353; 5 CCR § 18408(d).

⁴³ Educ. Code. § 8263.1; 5 CCR § 18078(p). See footnote 56 for more on SMI.

⁴⁴ 5 CCR § 18408(f).

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PRACTICE TIP

Since CalWORKs child care is defined as a supportive service rather than as “assistance,”⁴⁵ the months in which a former CalWORKs recipient receives only child care benefits are considered exempt months and do not count against the participant’s 60-month lifetime limit on receipt of assistance.⁴⁶

4. Stage 3 Child Care.

Stage 3 is available to former CalWORKs recipients who are employed or otherwise eligible and have timed out of Stages 1 or 2, as well as to families that have received a CalWORKs lump-sum diversion payment.⁴⁷ A former CalWORKs recipient becomes eligible for Stage 3 benefits when the family has received up to 24 months of post-cash aid child care benefits in either Stage 1 or Stage 2, and the family’s adjusted monthly income does not exceed 75% of the SMI.⁴⁸ In order for a family to transition into Stage 3 subsidies, the family must be actually receiving Stages 1 or 2 benefits in the 24th month of the post-cash aid period, and there must be sufficient Stage 3 funding available.⁴⁹ Stage 3 child care does not have a time limit. Rather, a former CalWORKs family can continue to receive Stage 3 benefits until its income reaches 75% of the SMI or the child exceeds the age eligibility limit.⁵⁰

⁴⁵ MPP § 42-302.21(i).

⁴⁶ MPP § 42-302.21(i).

⁴⁷ Educ. Code § 8354(a). Although the statute provides for current CalWORKs participants to be eligible for Stage 3 benefits, in reality, only former participants who are receiving Stage 1 or Stage 2 benefits and families that have received CalWORKs diversion receive Stage 3 benefits. Current participants get Stages 1 and 2 benefits. See Section B.2-3 in this chapter.

⁴⁸ Educ. Code. § 8263.1; 5 CCR § 18078(p).

⁴⁹ Educ. Code §§ 8351(c), 8354(a).

⁵⁰ 5 CCR §§ 18421-18423. Section C.2.a below provides a discussion of age limits.

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So long as funding is adequate, families are admitted to Stage 3 as they time out of their 24 months of eligibility for Stages 1 and 2.⁵¹ If funding is insufficient to provide Stage 3 child care to all eligible families in the future,⁵² new Stage 3 eligible families will be enrolled and current families terminated according to somewhat complicated procedures set forth in the regulations.⁵³

C. Eligibility For CalWORKs Child Care.

Different eligibility rules apply to Stages 1, 2, and 3 of CalWORKs child care, so it is important for families and their advocates to determine which stage of CalWORKs child care the family is applying for or receiving. If it's not possible to determine from a Notice of Action ("NOA") or other paperwork, it is a good idea to call the agency that administers the child care subsidy and confirm whether it is a CalWORKs subsidy, and if so, which stage of CalWORKs child care is involved.

Eligibility for all stages of CalWORKs child care depends on elements relevant to both the parent and the child. Generally, families must meet three basic eligibility requirements: 1) their income must be below a specified level; 2) generally, adults must work or participate in welfare-to-work activities or be exempt; and 3) the children must meet criteria establishing a need for care. Families who meet all the eligibility criteria may receive CalWORKs child care.⁵⁴

⁵¹ 5 CCR § 18424(d)-(e). Although there have been many threats to Stage 3 funding over the years, advocates have been successful in maintaining sufficient funding so that no former CalWORKs participant has been denied child care benefits due to funding restrictions.

⁵² Threats to cut funding for Stage 3 child care caused a crisis in past years, with sufficient funding being provided only at the last minute. See <http://www.dof.ca.gov> (follow California budget hyperlink, then follow historical documents hyperlink).

⁵³ 5 CCR § 18424(f)-(g). Contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org to discuss this process.

⁵⁴ Educ. Code §§ 8263, 8263.1; MPP §§ 47-201, 47-220, 47-230 (Stage 1); 5 CCR §§ 18406-18408 (Stage 2); 5 CCR §§ 18421-18423 (Stage 3).

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1. Income Eligibility.

Income eligibility is not a problem for families receiving CalWORKs cash assistance; they are categorically eligible for a child care subsidy without a separate income eligibility determination.⁵⁵ Families no longer receiving cash assistance must have adjusted monthly incomes at or below 75% of SMI in order to remain eligible for CalWORKs child care.⁵⁶

2. Parent Eligibility For CalWORKs Child Care.

a. Current CalWORKs Recipients Who Work Or Participate In Approved CalWORKs Activities Are Eligible For CalWORKs Child Care.

CalWORKs recipients who receive cash assistance for themselves are eligible for child care benefits.⁵⁷ Some families receive CalWORKs cash assistance only for the children because the adults are non-needy caretaker relatives,⁵⁸ or the adults are restricted from receiving cash assistance due to their status (such as immigration, felony drug conviction, or SSI recipients).⁵⁹ These recipients are *ineligible* for CalWORKs child care benefits. Because CalWORKs child care is a work support for the recipient, the immigration status of the *child* is irrelevant in determining child care eligibility.⁶⁰ For example, a parent with two children receives

⁵⁵ Educ. Code § 8350.5; 5 CCR § 18408(a).

⁵⁶ Educ. Code §§ 8263.1, 8351(c). For 2007, the maximum allowable monthly income for a family of three to receive subsidized child care (75% of SMI) is \$3,769. See <http://www.cde.ca.gov/sp/cd/ci/mb0713.asp>. The Schedule of Income Ceilings for Child Care and Development Programs in Management Bulletin 07-13 may change. Contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org for updated numbers.

⁵⁷ WIC § 11323.2(a)(1); Educ. Code § 8350(a); MPP § 47-220.1.

⁵⁸ Chapter II has more information on non-needy caretakers.

⁵⁹ Chapters II and III have more information on these restrictions.

⁶⁰ WIC § 11323.2(a)(1); Educ. Code § 8350(a); MPP § 47-201.12. Note that these same restrictions do not apply to non-CalWORKs child care, where the immigration status of the child, rather than the parent, is critical to eligibility. Undocumented parents may be eligible for

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CalWORKs for herself and one child. The other child is not eligible for CalWORKs because she is receiving SSI. The parent is eligible to receive CalWORKs child care for both children if she needs child care to work or attend her welfare-to-work activity.

Current CalWORKs recipients are entitled to child care that is necessary to enable them to work or to participate in any approved welfare-to-work activity,⁶¹ whether the participation is required or voluntary.⁶² Exempt CalWORKs participants can volunteer⁶³ to participate and are entitled to supportive services, including child care.⁶⁴

CalWORKs cash assistance recipients are eligible for Stages 1 or 2 child care subsidies⁶⁵ covering hours in which they:

- Participate in approved welfare-to-work activities, including seeking employment;⁶⁶
- Work in unsubsidized employment, regardless of whether they have an approved welfare-to-work plan, so long as the participant is working the requisite minimum number of hours per week;⁶⁷
- Commute between the child care provider and an activity or job.⁶⁸

non-CalWORKs child care since those programs base eligibility on the immigration status of the child rather than the parent. However, these families will be required to go on the Centralized Eligibility List and may never receive subsidized child care unless their low incomes or other factors allow them to have a high priority ranking. Contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org to discuss this issue.

⁶¹ 5 CCR §§ 18406(a)(3)(C), 18408(e); MPP § 47-220.34.

⁶² WIC § 11323.2(a)(1); MPP §§ 47-220.1, 42-750.11.

⁶³ Voluntary participants may choose to participate for fewer hours than mandatory participants. WIC § 11320.3(c); MPP § 42-712.5. See Chapter VI on volunteer participants.

⁶⁴ WIC § 11323.2(a)(1); MPP §§ 47-220.213, 42-750.11.

⁶⁵ MPP §§ 47-101.6-.7, 47-220.

⁶⁶ MPP § 47-220.212 - .213.

⁶⁷ MPP § 42-711.552.

⁶⁸ MPP §§ 47-401.43, 47-110(c)(5).

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In two-parent families, the second parent must either work or participate in welfare-to-work activities, or be otherwise unavailable to care for the children, such as due to an exemption.⁶⁹

Parents who are sanctioned but continue to work are eligible for Stage 1 child care.⁷⁰ Families are sometimes sanctioned for alleged non-participation in welfare-to-work activities. If the reason the parent is not participating is that appropriate child care is unavailable, such a sanction is improper.⁷¹

i. Infant Exemption From Welfare-to-Work Participation.

Parents who have primary responsibility for the care of an infant six months of age or under are exempt from participation in welfare-to-work activities.⁷² Counties have discretion to determine the length of the exemption (starting from the birth or adoption of the child) so long as it is no less than 12 weeks and no more than one year.⁷³ In setting criteria for increasing or decreasing the length of an infant exemption, counties may consider: (1) the availability of child care, (2) local labor market conditions, and (3) any other factors the county determines.⁷⁴ A

⁶⁹ MPP § 47-220.22. California pays for child care with state funds, so the federal requirement of 55 hours of work participation for two-parent families does not apply. MPP § 47-220.4. Chapter VI provides more information on required participation hours.

⁷⁰ MPP § 47-220.32. Chapter VI provides information about working while under sanction.

⁷¹ See Section C.2.a.(2) in this chapter on unavailability of child care as good cause for non-participation in welfare-to-work activities in this chapter.

⁷² WIC § 11320.3(b)(6)(A)(i); MPP § 42-712.47. See Chapter VI of this Manual on CalWORKs exemptions. This exemption applies to *current* CalWORKs participants in Stages 1 or 2. Note that for former CalWORKs recipients on either Stage 2 or Stage 3 child care, there are no welfare-to-work requirements, but these former recipients do have to be engaged in work or meet other eligibility requirements. Educ. Code § 8263(a)(2); 5 CCR § 18421(b)-(c).

⁷³ WIC § 11320.3(b)(6)(A)(i); MPP § 42-712.471(b).

⁷⁴ WIC § 11320.3(b)(6)(A)(iii); MPP § 42-712.471(b)(1)(A). See Chapter VI for information on CalWORKs exemptions.

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parent exempt for infant care can choose to be an exempt volunteer.⁷⁵ As such, she can voluntarily work or do welfare to work activities for less than the required 32 hours and receive child care for the hours she participates and reasonable travel time.⁷⁶ The law does not require parents receiving CalWORKs to stay home with their infants rather than participating; it merely makes doing so an option.⁷⁷ For many parents, returning to work activities quickly is advantageous since every month a participant receives an infant welfare-to-work exemption counts against her 60-month lifetime limit on the receipt of CalWORKs cash assistance.⁷⁸

ii. Unavailability Of Child Care As Good Cause For Non-Participation In Welfare-to-Work Activities.

CalWORKs participants are excused from participation in required activities⁷⁹ when the CWD determines that “good cause” exists.⁸⁰ Good cause for non-participation includes a lack of necessary supportive services.⁸¹ Parents have good cause for non-participation if child care is not reasonably available during their hours of work or training or if their child care arrangements have broken down or have been interrupted.⁸² Child care is “reasonably available” when:

⁷⁵ WIC § 11323.2(a)(1); MPP §§ 47-220.213, 42-750.11.

⁷⁶ WIC § 11323.2(a)(1); MPP §§ 47-220.213, 42-750.11.

⁷⁷ WIC § 11320.3(b)(6)(A)(i); MPP § 42-712.471(b).

⁷⁸ WIC § 11454.5(a); MPP § 42-712.6. See Chapter II for information on the 60-month lifetime limit on aid and Chapter VI for information on CalWORKs exemptions and exempt volunteers.

⁷⁹ This good cause provision applies to *current* CalWORKs participants in Stages 1 or 2. For former CalWORKs recipients in either Stages 2 or 3 child care, there are no welfare-to-work requirements (and thus no good cause), but these former recipients do have to be engaged in work or meet other eligibility requirements. Educ. Code § 8263(a)(2); 5 CCR §§ 18406(c)-(d), 18421(b)-(c).

⁸⁰ WIC § 11320.3(f); MPP § 42-713.1.

⁸¹ WIC § 11320.3(f)(1); MPP § 42-713.21. See Chapter VI for more information on good cause for non-participation in welfare-to-work.

⁸² WIC § 11320.3(f)(3); MPP § 42-713.23.

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- at least one appropriate, suitable, and affordable child care arrangement is commonly available⁸³ to a person in the participant's community who is not receiving aid,
- child care is available during the hours when the parent or guardian is required to participate in county-approved activities or employment, and
- available child care is a reasonable distance from the participant's home or place of work.⁸⁴

Note, however, that months in which the recipient has good cause for non-participation due to lack of reasonably available child care *count against* the 60-month lifetime limit on cash aid.⁸⁵

Good cause for non-participation in welfare-to-work activities also exists if no suitable child care is available for a child with special needs and the CalWORKs recipient must provide care for the child.⁸⁶ However, obtaining good cause on this basis is not necessarily the best solution for families of children with disabilities. Some parents want to work and want their children with disabilities to experience the benefits of participating in child care. State and federal laws require child care providers to make reasonable accommodations in order to make their child care setting accessible for children with disabilities.⁸⁷ Parents of children with

⁸³ Participants and CWDs/APPs have wrestled over the meaning of “commonly available” and whether good cause should be granted when the child care that is “available” in the community is unacceptable to the parent due to language, discipline or religious differences. Contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org to discuss this issue.

⁸⁴ WIC § 11320.3(f)(3); MPP § 42-713.25.

⁸⁵ WIC § 11454.5. See Chapter VI for information on good cause for non-participation in CalWORKs.

⁸⁶ WIC § 11320.3(f)(3); MPP § 42-713.24; 5 CCR § 18089.

⁸⁷ 42 USC § 12203; Cal. Civ. Code § 51(b).

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disabilities should have an opportunity to participate in welfare-to-work activities if they wish to do so, and their children should have an opportunity to participate in child care.⁸⁸

Some considerations in crafting an argument that a CalWORKs recipient has good cause for non-participation in a CalWORKs welfare-to-work activity are:

- Distance from the home or worksite;⁸⁹
- Appropriateness of care, meaning child care that:
 - is available when needed (including when timelines for participation in a welfare-to-work activity are short),
 - meets the child's special needs/disability,
 - meets health and safety requirements,
 - is reliable,
 - is stable,
 - is culturally/linguistically appropriate,
 - is developmentally appropriate (for the age of the child),
 - does not cause the recipient concern regarding the provider's approach to communication, instruction, discipline or other issues;⁹⁰
- Availability of more than one option. Although CalWORKs regulations require that only one appropriate, suitable, and affordable child care arrangement be

⁸⁸ See Section E.4 for information on enhanced subsidy rates for providers caring for children with exceptional needs. Contact the Child Care Law Center for more information on inclusion of children with disabilities in child care settings at (415) 394-7144; info@childcarelaw.org.

⁸⁹ MPP § 47-110(c)(5) (Commute hours includes the time to get from the child care provider to the welfare-to-work activity or job and back). *See generally* WIC §§ 11323.2(a)(2) (transportation is a necessary supportive service and shall be provided), 11320.3(f)(1) (lack of necessary supportive services is good cause).

⁹⁰ Some of these arguments go beyond the regulations, but they are worth considering because they are logical extensions of the regulations. Also, state and federal law

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available in the participant's community, statutes governing R&R agencies require them to provide at least four referrals.⁹¹

Participants are often unaware of the child care good cause provision, and therefore may not realize they should report problems about arranging or maintaining child care to their CWD/APP workers, and to request good cause when appropriate child care is unavailable. Advocates report that some participants are sanctioned for failure to participate without being aware that the lack of child care which is at the root of their failure to begin or maintain a work activity is good cause for non-participation.⁹²

PRACTICE TIP

In every situation in which a participant has been sanctioned, advocates should determine whether a breakdown in child care arrangements may have contributed to the situation that led to a sanction. If so, argue that the parent should have received good cause, and the issue is likely to be resolved in favor of the family.

iii. Disputes Over Welfare-to-Work Participation.

The most common child care eligibility disputes arise not over the child care itself, but when the participant and the CWD/APP disagree about whether the participant is meeting the requirements of her welfare-to-work plan. For example, suppose the work hours of a participant who receives child care for 32 hours per week are reduced by her employer to 20 hours per week. The participant is required to inform both the CWD caseworker and the APP about the

have strong protections for parental choice. 45 CFR §§ 98.16(h), 98.30(e)(1); Educ. Code §§ 8208.1, 8357(a).

⁹¹ MPP § 42-713.25; Educ. Code §§ 8225, 8216.

⁹² For more information and assistance with child care and sanction issues, contact the Child Care Law Center at (415) 394-7144; info@childcarelaw.org.

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change in work hours.⁹³ Because the participant no longer meets the CalWORKs 32-hour welfare-to-work requirement,⁹⁴ the CWD/APP may incorrectly terminate all of the child care, jeopardizing the participant's ability to continue to work at all. Participants are entitled to receive child care for whatever number of hours they work, whether more or less than the 32 hours required.⁹⁵

As discussed in detail in Section F of this chapter on appeals and hearings, whenever a participant's child care subsidy is reduced or terminated, she is entitled to a Notice of the termination,⁹⁶ and to continued child care paid pending a hearing if requested in time.⁹⁷ Advocates should help participants file for an administrative hearing as soon as possible.⁹⁸

b. Families Who Receive Diversion Services are Eligible for CalWORKs Child Care.

Diversion payments, discussed in Chapter IV, are an alternative to CalWORKs cash aid for eligible families. They are lump sum payments made to a CalWORKseligible family in order to prevent the need for the family to receive ongoing monthly cash aid.⁹⁹ Families that receive diversion payments are eligible for Stages 2 or 3 child care¹⁰⁰ during the period of diversion.¹⁰¹ There is a great deal of county discretion in determining eligibility for diversion payments. Given the purpose of diversion payments, a good argument could be made that diversion should

⁹³ 5 CCR §§ 18102, 18410(a) (Stage 2), 18425(a) (Stage 3).

⁹⁴ WIC § 11322.8(a).

⁹⁵ WIC § 11323.2(a); ACIN I-70-99 at 2.

⁹⁶ MPP § 22-001(t)(l).

⁹⁷ MPP § 47-420.32; 5 CCR § 18120(b).

⁹⁸ The timelines for appeals in Stage 1 as compared with Stages 2 and 3 are set forth in Section F of this chapter on appeals and hearing rights.

⁹⁹ WIC § 11266.5; MPP § 81-215.

¹⁰⁰ Educ. Code §§ 8353(a), 8354(a).

¹⁰¹ WIC § 11266.5(i); MPP § 47-220.341.

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be awarded for the payment of an outstanding child care debt so that care can continue and the parent can keep her job.

c. Former CalWORKs Recipients Who Are Working are Eligible for CalWORKs Child Care.

Former CalWORKs recipients who are working are eligible for CalWORKs Stage 1 or Stage 2 child care. For a discussion of Stages 2 and 3 see Sections B.3 and B.4, above.

3. Child Eligibility For CalWORKs Child Care.

Two primary factors determine a child’s eligibility for CalWORKs child care: age and relationship to the Assistance Unit (for current participants) or the family (for former recipients). Because CalWORKs child care is a work support for recipients and former recipients, the immigration status of the child is irrelevant in determining child care eligibility.¹⁰²

a. Age.¹⁰³

The child must be:

- 10 years old or younger (11 or 12 years old to the extent funds are available); or
- 11 years old or older and under court supervision; or
- 11 years old or older (up to age 21) and mentally or physically unable to care for self (i.e., have a disability).

CalWORKs participants and former recipients are entitled to child care benefits for every child 12 years old or younger so long as funding is available.¹⁰⁴ The state’s preferred child care placement for children 11 and 12 years old is in an afterschool program, but alternate care can be

¹⁰² WIC § 11323.2(a)(1); MPP § 47-201.12.

¹⁰³ WIC § 11323.2(a)(1)(A)-(B); MPP §§ 47-201.2, 47-201.31.

¹⁰⁴ WIC § 11323.2(a)(1)(B); MPP § 47-201.3; 5 CCR §§ 18407(b), 18422(b). Since the implementation of CalWORKs in 1998, every county has had sufficient funds to provide Stage 1 child care benefits for 11- and 12- year-old children who are otherwise eligible.

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selected if the afterschool program does not meet the needs of the child or the family.¹⁰⁵ Children who require supervision because they are physically or mentally incapable of caring for themselves due to a disability or who are under court supervision can receive CalWORKs child care past the age of 12, potentially up to age 21.¹⁰⁶

b. Relationship to the Assistance Unit¹⁰⁷ or Family.¹⁰⁸

For a *current* cash aid or diversion recipient, an eligible child:

- Is a member of the Assistance Unit (“AU”); or
- Would be a member of the AU but for the receipt of foster care or SSI/SSP; or
- Is outside the AU, but the parent or guardian is responsible for supporting the child and needs child care in order to work or participate in an approved welfare-to-work activity.

For a *former* cash aid recipient, an eligible child:

- Is a member of the former recipient’s family; or
- Is living in the household and receiving foster care benefits, SSI/SSP; or
- Is the responsibility of the former recipient, for whom lack of child care would result in being unable to work.

A CalWORKs participant is entitled to Stage 1 child care benefits for every child 12 years old and younger in the CalWORKs assistance unit or who is the responsibility of the participant *if* the child care is necessary to allow participation in an approved CalWORKs

¹⁰⁵ Educ. Code § 8263.4; Management Bulletin 06-10.

¹⁰⁶ WIC § 11323.2(a)(1)(A); MPP §§ 47-201.22 - .23; Educ. Code § 8208(l)(2); 5 CCR §§ 18407(b)-(c) (Stage 2), 18422(b)-(c) (Stage 3); 45 CFR § 98.20(a)(1). CWDs/APPs will verify a child as disabled for this purpose if the child receives SSI/SSP or has a written statement from a physician or psychologist.

¹⁰⁷ MPP §§ 47-201.11 - .12.

¹⁰⁸ 5 CCR §§ 18078(f), 18400(e), 18407(a), 18422(a).

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activity.¹⁰⁹ If a child otherwise meets the eligibility requirements but is excluded from the Assistance Unit because she receives foster care or SSI benefits, the CalWORKs recipient is nevertheless entitled to CalWORKs child care¹¹⁰ that is needed to enable the recipient to work or participate in an approved activity.¹¹¹ Similarly, a CalWORKs participant may receive Stage 1 child care benefits for an otherwise eligible child who is not in the assistance unit because of the child’s immigration status or because she is not the child of the CalWORKs participant, so long as the CalWORKs participant is responsible¹¹² for supporting the child, and the lack of child care would result in the recipient not being able to work or participate in approved activities.¹¹³

For former recipients, each child must meet one of three criteria in order for the family to receive Stages 2 or 3 child care benefits. The child must: 1) be a member of the former recipient’s family; or 2) be a child who is living in the household of the eligible family and is receiving foster care benefits, federal Supplemental Security Income (“SSI”), or State Supplemental Program (“SSP”) benefits; or 3) be the responsibility of the former recipient, for whom lack of child care would result in not being able to work or participate in a work activity.¹¹⁴

D. Procedural Issues.

1. Applying For Child Care.

Counties must notify CalWORKs participants of the availability of child care when the parents:

- Apply for CalWORKs cash assistance:

¹⁰⁹ WIC § 11323.2(a); MPP § 47-201.122.

¹¹⁰ WIC § 11323.2(a)(1)(D); MPP § 47-201.11.

¹¹¹ MPP § 47-201.122.

¹¹² MPP § 47-201.123. *See* MPP §§ 47-201.124 - .125 for examples.

¹¹³ MPP § 47-201.122.

¹¹⁴ 5 CCR §§ 18407(a), 18422(a).

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- Participate in an annual redetermination; or
- Sign an original or amended welfare-to-work plan.¹¹⁵

The county must assist every CalWORKs participant in applying for a CalWORKs child care subsidy as soon as the CWD knows the participant is in a welfare-to-work activity (including orientation) or is working, or as soon as the participant requests this help.¹¹⁶ Participants will need to apply at the CWD or APP, depending on the stage of CalWORKs child care for which the participant is applying, which agency administers CalWORKs subsidies, and the particular county's procedures. CDE and DSS developed a single application for child care,¹¹⁷ but the use of this application is not mandatory and every CWD/APP has a somewhat different set of procedures and forms for applying for child care.¹¹⁸

2. Timeliness Of Subsidy Application Approval.

CWD/APPs must approve Stage 1 child care subsidies within ten calendar days of receipt of certain information and documents.¹¹⁹ The CWD/APP must help the parent in obtaining and

¹¹⁵ WIC § 11323.3(b); MPP §§ 47-301.2, 40-107(6)(D), 42-711.522(b), 42-711.642, 47-301.23.

¹¹⁶ Educ. Code § 8352.

¹¹⁷ Educ. Code § 8358(b)(2); <http://www.cde.ca.gov/sp/cd/ci/documents/cd9600.doc> (Form CD 9600). *See also* CDE/DSS Joint Technical Assistance Bulletin, No. 99-03, December 1999, Revised Single Application to Determine Eligibility and Need for Child Care and Development Services. Contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org for a copy of this form.

¹¹⁸ Often, parents will receive a “parent’s handbook” from the CWD/APP when they apply for child care benefits. These booklets incorporate the statutory and regulatory rules as well as the particular agency’s policies regarding application and maintenance of child care benefits. Examples of parent handbooks can be found on various APP websites, *see* <http://www.childaction.org/subsidy/default.asp#> (Child Action, Inc., Sacramento); http://www.crystalstairs.org/pub_pdfs/CCAP_Parent_Handbook_English.pdf (Crystal Stairs, Los Angeles); http://www.childrenscouncil.org/content/files/publications/English_Handbook.pdf (Children’s Council, San Francisco).

¹¹⁹ MPP § 47-120.31.

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submitting the necessary documents.¹²⁰ In Stages 2 and 3, CWD/APPs must issue a NOA approving or denying child care within 30 calendar days after participants apply for child care.¹²¹

It is important for the participant to provide verification of all the required information. This includes the hours of work, training or other activity, and income information for employed CalWORKs families.¹²² The regulations (effective September 15, 2007) contain more explicit definitions, and are more stringent regarding documentation requirements, methods of calculating income, and other elements of eligibility.¹²³ Together with CDE's increased monitoring of APPs, these regulations have increased pressure on CWDs/APPs to obtain verification for every element of eligibility prior to approving a child care subsidy.¹²⁴ The family's selected child care provider must also submit verification of licensing status and other information prior to approval.¹²⁵ Most license-exempt providers must undergo Trustline registration (a criminal background and child abuse check) prior to approval as a subsidized provider.¹²⁶ Advocates can assist participants to receive timely approval of child care benefits

¹²⁰ MPP § 47-120.23.

¹²¹ 5 CCR §§ 18118, 18094.

¹²² 5 CCR §§ 18084(a), 18100, 18409(a) (Stage 2), 18424(a) (Stage 3).

¹²³ 5 CCR §§ 18078, 18084, 18089, 18096, 18100.

¹²⁴ In addition to the new regulations, the emphasis on deterring "fraud" at the federal and state levels has resulted in CDE instituting increased monitoring of its contractor agencies to find eligibility and overpayment errors.

¹²⁵ MPP §§ 47-260.12, 47-260.4; 5 CCR §§ 18221, 18224. See Section E of this chapter.

¹²⁶ See Section E.2.b. of this chapter for details on Trustline registration. Grandparents, aunts and uncles are not required to register with Trustline. Parents, providers and advocates can also call (800) 822-8490 or visit the Trustline website at www.trustline.org to obtain further information or register with Trustline.

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by helping to ensure that both the parent and provider submit all necessary documentation in a timely manner to verify eligibility.¹²⁷

One difficulty participants sometimes face when applying for child care is that their need for child care is immediate – they cannot afford to wait weeks for approval of a subsidy. If participants have a job offer pending, or are expected to begin a welfare-to-work activity with very short notice, they need timely approval for child care assistance. CalWORKs recipients and advocates may need to be extremely persistent to ensure that CWD/APPs act within the legally prescribed timeline. Some legal services advocates have been successful in working with their local CWDs/APPs to improve the efficiency of the application and approval process.¹²⁸

As discussed earlier in this chapter, families have a right to be excused from participation in welfare-to-work activities if child care is not reasonably available.¹²⁹ But obviously it is disadvantageous to a participant who has a job offer or a training/education opportunity to lose that option due to a failure by a CWD/APP to provide timely approval of child care benefits because their 60 month clock continues to tick.

¹²⁷ See Section E discussing requirements that child care providers must meet to be eligible to be paid for their care through CalWORKs subsidies.

¹²⁸ In Los Angeles County, advocates reached an agreement with the county that applications for Stage 1 child care subsidies will be processed within 6 working days. The first step in Los Angeles is the approval or denial of the application itself, which must occur within 4 working days of the application for child care. CalWORKs participants can show their NOA to child care providers, assuring them that the CalWORKs subsidy will be forthcoming. The second step is approval of the child care provider, which must occur within 2 working days of approval of the application. This process may be a useful model for other communities. Based on the experience of Los Angeles advocates, however, enforcing such a procedure may be a challenge. Contact Western Center for more information regarding this issue.

¹²⁹ WIC §§ 11320.3(f)(3) (For all Stages), 11320.3(b)(6)(A)(iii)(I)(Stage 1 only); MPP § 42-713.21. See Sections C.2.a.(1)-(2) for a discussion of the impact on time limits when child care is unavailable.

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3. Retroactive Payments.

Sometimes a child care provider will begin caring for a participant’s child before a child care subsidy has been requested or approved. Retroactive payments, however, are limited to 30 days prior to the date the parent makes a request for child care.¹³⁰ It is crucial for a participant to request a Stage 1 subsidy prior to, or immediately after, starting to receive child care services from a particular provider to ensure that Stage 1 pays for all the child care services a family receives. If the provider begins providing care and then the subsidy is denied or the provider is disapproved for any reason, the provider may have no recourse but to demand payment from the CalWORKs recipient.¹³¹

PRACTICE TIP

This retroactive payment limitation can be applied only to families who have received an “informing notice” (at application) that provides written notification of this time limit. Check for the informing notice if the county denies retroactive child care.

4. Intercounty Transfer Of Stage 1 Child Care Subsidy.

When a CalWORKs family moves from one county to another, the CWD/APP from which the CalWORKs Stage 1 participant is moving must inform the participant in writing of her responsibility to apply for child care in the new county.¹³² The CWD/APP of origin must also provide the participant with information on the counties’ payment responsibilities in order to avoid a break in child care services.¹³³ The CWD/APP in the second county is required to establish a child care case as soon as the participant applies for and meets the child care

¹³⁰ WIC § 11323.3(b)(4).

¹³¹ Under these circumstances, some providers sue parents in small claims court.

¹³² MPP § 47-310.11.

¹³³ MPP § 47-310.11.

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eligibility requirements as either a current or former CalWORKs participant.¹³⁴ If the second CWD/APP determines that the participant is eligible for Stage 2 or Stage 3 child care, that agency is required to refer the child care case to the responsible CWD/APP agency, and provide Stage 1 child care in the interim.¹³⁵ There should be no delay in child care payments so long as the second county receives the necessary provider payment information from the CalWORKs family, regardless of whether the family is maintaining or changing child care providers, and no matter whether the family is on or off cash aid.¹³⁶

E. Child Care Options and Provider Payments.

1. Choosing A Child Care Provider.

CalWORKs families eligible for child care subsidies have a right to choose the type of child care and the particular provider they want.¹³⁷ California law explicitly allows all subsidized parents to select the child care they feel is appropriate for their children.¹³⁸ Subsidized child care may not be provided, however, by the child’s parent or guardian, or by a member of the CalWORKs Assistance Unit.¹³⁹ CalWORKs parents may choose any legal form of child care: center-based, family child care, or license-exempt providers (including those who provide care in the child’s or the provider’s home, and public recreation programs).¹⁴⁰

¹³⁴ MPP § 47-310.21.

¹³⁵ MPP §§ 47-310.22 - .23.

¹³⁶ MPP § 47-310.3.

¹³⁷ 42 USC § 9858c(c)(2)(A); 45 CFR §98.30(e)(1); Educ Code §§ 8208.1, 8216, 8225, 8261, 8357(a); 5 CCR §§ 18411(a) (Stage 2), 18426(a) (Stage 3); MPP § 47-260.3.

¹³⁸ Educ. Code §§ 8208.1, 8216, 8225, 8357(a).

¹³⁹ MPP § 47-260.4.

¹⁴⁰ Educ. Code § 8357(a).

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PRACTICE TIP

Sometimes CalWORKs participants are pressured to find any type of child care in a very short period of time. Advocates should explain to parents that they have a choice of child care, and the importance of choosing child care that is best for their children and family. If a parent cannot find appropriate child care because she is given a very short timeframe, she can ask for a good cause to not participate based on the unavailability of child care (as discussed in Section C.2.a.(2), above), and request a state hearing if the request is denied (discussed in Section F).

CWDs/APPs must quickly refer families needing child care services to R&R programs¹⁴¹ for help in finding child care providers.¹⁴² Some R&Rs co-locate staff in CWDs so that CalWORKs participants can meet with R&R staff to learn more about child care options at the same time.¹⁴³ R&R programs provide a variety of resources to participants and child care providers, including referring participants to child care providers in their communities.¹⁴⁴ These free referrals¹⁴⁵ must be provided via a free telephone number¹⁴⁶ in the languages spoken in the community.¹⁴⁷ While many counties have only one R&R, some larger counties have several.

¹⁴¹ Educ. Code § 8352. R&R agencies are nonprofit organizations located throughout California that contract with CDE to provide child care information and referrals to the public, not exclusively to CalWORKs or other low income families.

¹⁴² WIC §§ 11320.3(b)(6)(iii)(I), 11320.3(f)(3); MPP § 42-713.21 (Stage 1).

¹⁴³ Educ. Code § 8352.

¹⁴⁴ Educ. Code § 8212(b).

¹⁴⁵ CCR § 18242.

¹⁴⁶ Educ. Code § 8212(b)(1)(A).

¹⁴⁷ Educ. Code § 8212(b)(1)(C).

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PRACTICE TIP

Visit the California Resource and Referral Network website for the telephone number of the local resource and referral agency, www.rrnetwork.org, and call to confirm whether the R&R co-locates with the CWD.

2. License-Exempt Child Care.

a. Qualifications For License-Exempt Care.

The only unlicensed child care providers, who may care for subsidized children and be paid for their services, are those providers who are legally exempt from state licensing requirements.¹⁴⁸ The most common types of child care providers who are legally exempt from state licensing are:

- Providers who care only for relatives;
- Providers who care for the children of only one family in addition to the provider's own children, if any. Care may be provided either in the provider's home or in the child's home;
- Before and after school programs operated by a public or private school with teachers employed by the school; and
- Public recreation programs.¹⁴⁹

Many CalWORKs families choose license-exempt child care that is often provided by family members, friends, or neighbors.¹⁵⁰

¹⁴⁸ Educ. Code §§ 8208.1, 8357(a); MPP § 47-260.2.

¹⁴⁹ H&S Code § 1596.792(d), (f)-(h); 22 CCR § 101158.

¹⁵⁰ There are many reasons families select license-exempt care: 1) it can be difficult to find licensed child care when timeframes for participating in a welfare-to-work activity are very short; 2) it can be difficult to find licensed care for the hours needed when parents work low-wage jobs with evening or weekend shifts or rotating schedules; 3) some parents only want to leave their children with someone they know, often relatives or friends who have a trusted

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All license-exempt providers, including relatives, are required to provide certain information to the CWD/APP. The DSS rules for CalWORKs Stage 1 child care differ slightly from the CDE rules for Stages 2 and 3 child care with respect to the information that must be provided.¹⁵¹ The provider must indicate her relationship to the child and also submit a statement with information on health, education, experience or other qualifications, criminal record, and names and ages of other persons in the home or providing child care.¹⁵² All license-exempt providers, except for grandparents, aunts and uncles, must undergo Trustline registration (as discussed in section E.2.b.).¹⁵³

Under CDE rules for Stages 2 and 3, providers must be at least 18 years old, be registered with Trustline (except for grandparents, aunts and uncles), and must provide detailed information to the CWD/APP processing the child care subsidy.¹⁵⁴ Although CDE regulations do not require the provider to submit a Social Security Number, CDE's Funding Terms & Conditions (which are the contracts between CDE and APPs) *do* include this requirement, and so APPs generally require providers to submit one.¹⁵⁵ CDE also requires all license-exempt

relationship with the families, particularly if the children are infants or have disabilities or medical conditions; and 4) some parents place a premium on having their children receive culturally and linguistically appropriate care, which may not exist in licensed settings.

¹⁵¹ MPP § 47-260.5. Stage 1 providers must submit their name, address, telephone number, location of child care, hours of care, rates charged for care, Social Security Number, two character references, and identification establishing that the provider is at least 18 years old.

¹⁵² MPP § 47-260.57 - .58.

¹⁵³ MPP §§ 47-260.14, 47-260.21. See Section E.2.b. in this chapter for an explanation of Trustline registration.

¹⁵⁴ 5 CCR § 18230. Stages 2 and 3 providers must submit identification; a description of the providers' qualifications and work experiences (obtained during a personal interview between the parent and provider); declarations about good health; and signed statements verifying that the parents have interviewed and approved the providers.

¹⁵⁵ CalWORKs Stage 2 (C2AP) Funding Terms and Conditions and Program Requirements at 54, available on CDE's website at: <http://www.cde.ca.gov/fg/aa/cd/documents/c2ap07.doc>; CalWORKs Stage 3 (C3AP) Funding

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providers to meet Health and Safety Self-Certification requirements; only grandparents, aunts, and uncles are exempt from this requirement.¹⁵⁶

b. Trustline Registration Requirement.

All license-exempt child care providers who are paid with CalWORKs and other state child care subsidies must be registered with Trustline, except for grandparents, aunts and uncles.¹⁵⁷ Trustline is the state's criminal background check process.¹⁵⁸ All caregivers who are registered with Trustline have been cleared through a fingerprint check of records at the California Department of Justice and the Federal Bureau of Investigation (FBI) and have been found to have no disqualifying criminal convictions or substantiated child abuse reports in

Terms and Conditions and Program Requirements at 60, available on CDE's website at: <http://www.cde.ca.gov/fg/aa/cd/documents/c3ap07.doc>.

¹⁵⁶ Educ. Code § 8358(a); CDE Management Bulletin 97-33, December 1997. The Self-Certification is a form parents and license-exempt child care providers must fill out certifying that: the premises are safe; the provider is free of communicable disease; and the provider has given the parent two character references whom the parent has contacted. The provider is also required to certify that she will refrain from using corporal punishment, allow parental access to children at all times, protect children from dangerous places and objects such as pools and guns, and must provide names of other adults living in the home. See <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/CCP4.PDF> for Health & Safety Self-Certification Form CCP 4.

¹⁵⁷ H&S Code §§ 1596.66(a), 1596.67(a), 1596.605(a); MPP §§ 47-260.14, 47-260.2, 47-630.1(Stage 1); 5 CCR §§ 18411(c)(2)(C), 18426(c)(2)(C); Management Bulletin 97-33 (Stages 2 and 3). Until October 2007, great grandparents, great aunts, and great uncles were exempt from Trustline registration in Stage 1. This exemption was broader than the enabling statute and was changed in revisions to the regulations. In Stages 2 and 3, the rule has always been that only grandparents, aunts, and uncles are exempt from Trustline registration.

Despite the fact that the law exempts certain relatives from Trustline registration requirements, some APPs in San Diego and other counties have an agency policy requiring every provider, including all relatives, to undergo Trustline registration before paying for subsidized care. While such policies are of questionable validity, CDE has permitted these APP policies to remain in effect. Contact the Child Care Law Center for more information, (415) 394-7144; info@childcarelaw.org.

¹⁵⁸ See <http://www.trustline.org> for more information on Trustline.

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California.¹⁵⁹ If a potential license-exempt child care provider is initially denied registration with Trustline due to relatively minor or very dated criminal history, she has the option to request an exemption.¹⁶⁰ The provider is required to submit a variety of documentation demonstrating the individual's rehabilitation and good moral character, which is then reviewed by the Criminal Background Check Bureau of DSS's Community Care Licensing Division.¹⁶¹ If the exemption is granted, the provider may then complete Trustline registration and receive payment for caring for a subsidized child.¹⁶²

Trustline regulations previously permitted payment to be made to a provider, who was caring for a child while the provider was going through Trustline registration,¹⁶³ a process that can take several months due to administrative and other delays.¹⁶⁴ As of February 1, 2008, a license-exempt provider is not eligible to be paid until the Trustline registration process has been completed, no matter how long the *registration process takes*.¹⁶⁵ Once the provider has

¹⁵⁹ H&S Code §§ 1596.603, 1596.605. The Trustline registration process for license-exempt providers is very similar to the background check process required for licensed child care providers. H&S Code § 1596.871.

¹⁶⁰ H&S Code §§ 1596.607(a), 1596.871(f).

¹⁶¹ H&S Code § 1596.871(f).

¹⁶² H&S Code § 1596.605(b).

¹⁶³ MPP § 47-260.14.

¹⁶⁴ This approach to Trustline registration was crucial in enabling participants to select a trusted provider and quickly engage in work activities. Providers agreed to care for children of CalWORKs participants, knowing they would be paid for the care they were providing while awaiting completion of Trustline registration.

¹⁶⁵ MPP §§ 47-260.14, 47-301.22, 47-601, 47-602.1, 47-620.2j, 47-630; ACL 08-04 at 2. CDE announced that it will issue similar emergency regulations requiring Trustline registration that will go into effect on March 1, 2008, but that the CDE regulations controlling providers serving families receiving CalWORKs Stages 2 and 3 will not authorize retroactive payment for services provided prior to the date the license-exempt provider completes Trustline registration. For more information contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org.

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successfully completed registration, she is eligible for a maximum retroactive payment of up to 120 days for services provided while her Trustline registration was pending. If, however, the provider is not successful in getting registered on Trustline, the county will not pay for any services provided, and the CalWORKs family will be responsible for paying for the child care services. Each time a family changes child care providers, the family's new license-exempt provider will have to undergo Trustline registration (unless the provider has already successfully completed Trustline registration).

PRACTICE TIP

Parents should identify a prospective child care provider as quickly as possible, and have that person begin the Trustline registration process immediately. If possible, the Trustline process should be initiated before care is provided. Parents, providers and advocates can call 1-800-822-8490 or visit the Trustline website at www.trustline.org to obtain further information or register with Trustline. Contact the Child Care Law Center for assistance with legal issues related to Trustline registration.

c. Employment Law Issues For License-Exempt Child Care Providers.

The structure of the subsidy system pits significant policy considerations against one another – respect for parental choice in selecting the type of care best suited to the child and the family's situation versus minimum wage and other employment law protections for license-exempt providers who provide care in the child's home. Advocates should take particular care in advising participants on these issues.¹⁶⁶ Currently, both DSS and CDE regard license-exempt providers, who care for children in the provider's own home as independent contractors so that

The Trustline process can take anywhere from a few weeks (for someone who has no criminal history whatsoever) to many, many months for those who are required to request an exemption in order to complete registration.

¹⁶⁶ This issue is too complex to be covered in detail in this Manual; please contact the Child Care Law Center for assistance, (415) 394-7144, info@childcarelaw.org.

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minimum wage, workers compensation and other labor law protections are not applicable. However, a recent IRS Determination appears to put this interpretation into question.¹⁶⁷

Both DSS and CDE interpret state and federal employment law to hold that license-exempt child care providers who provide care in the *child's* home are considered to be “domestic servants” and thus “employees.”¹⁶⁸ As “employees,” the Fair Labor Standards Act (“FLSA”) and other federal and state labor protections apply to these child care providers. The level of subsidy payments to license-exempt providers generally are below the minimum wage, unless the provider cares for several children. In an apparent attempt to avoid liability, California law allows CWDs/APPs administering the child care subsidies to pay the CalWORKs parents directly in these situations,¹⁶⁹ rather than paying the provider, as is done in all other instances.¹⁷⁰

The CalWORKs family is expected to act as the “employer” and take on all the attendant legal responsibilities.

i. DSS Approach.

For CalWORKs Stage 1 child care, DSS’ position is that a parent may select an in-home license-exempt provider.¹⁷¹ Because FLSA and other labor laws appear to apply to work in this setting, CWDs inform parents of their responsibilities as the provider’s employer to ensure that minimum wage and other labor protections are met.¹⁷² Obviously, most CalWORKs parents, many of whom earn only minimum wage themselves, are without the means to provide these employment benefits and protections to their child care providers. The CWDs do not attempt to

¹⁶⁷ Contact the Child Care Law Center for a copy of the IRS Determination and current information on this issue at (415) 394-7144; info@childcarelaw.org.

¹⁶⁸ MPP § 47-420.2.

¹⁶⁹ Educ. Code § 8357(e); 5 CCR § 18221(h); MPP § 47-420.2; Management Bulletin 99-02.

¹⁷⁰ Educ. Code § 8357(e).

¹⁷¹ MPP § 47-260.12.

¹⁷² MPP § 47-420.2.

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verify that parents fulfill those employer obligations. Advocates have argued that making parents responsible for minimum wage and taxes conflicts with another law which requires the county to provide necessary supportive services.¹⁷³

ii. CDE Approach.

For CalWORKs Stages 2 and 3 child care, CDE has taken a different approach to this issue based on federal regulations governing child care funding. Federal law explicitly allows states to limit parents' ability to choose in-home license-exempt child care if the maximum payment rate to the child care provider would be less than the minimum wage.¹⁷⁴ California law also allows restrictions on the use of license-exempt child care.¹⁷⁵ CDE requires APPs to have policies that prohibit subsidy payments to in-home license-exempt providers unless the provider cares for a minimum of children to ensure that payments to the provider are equivalent to or greater than minimum wage.¹⁷⁶

In response to this mandate from CDE, APPs have established policies requiring in-home providers to care for a minimum number of children, usually ranging from three to five, in order to ensure the provider is earning minimum wage.¹⁷⁷ The result of this approach is to restrict parental choice so that very few families receiving Stage 2 or 3 child care subsidies are able to select in-home child care as an option. This can make child care arrangements especially

¹⁷³ WIC § 11323.2(a)(1). Advocates with license-exempt providers as participants should contact the Child Care Law Center at (415) 394-7144; info@childcarelaw.org to discuss the legal options.

¹⁷⁴ 45 CFR §§ 98.16(g)(2), 98.30(e)(1)(iv) and accompanying commentary.

¹⁷⁵ CCR §§ 18411(d), 18426(d).

¹⁷⁶ 5 CCR §§ 18411(d) (Stage 2), 18426(d) (Stage 3); Management Bulletin 06-16. CDE has been silent regarding responsibility for the other labor protections that may apply to in-home providers.

¹⁷⁷ Management Bulletin 06-16; Alternative Payment Program Funding Terms & Conditions, CAPP at 56. available at <http://www.cde.ca.gov/fg/aa/cd/documents/capp07.doc>.

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difficult for families with very young children, or those who need care for a child with a severe disability or medical condition.

3. Licensed Child Care.

a. Center-Based Care.

CalWORKs families looking for appropriate child care can use their subsidized child care vouchers to access any form of licensed care, including center-based programs.¹⁷⁸ Child care centers (also called “day care centers”) can be public, private nonprofit or for-profit organizations; all are subject to regulations governing health and safety and to inspections by DSS Community Care Licensing.¹⁷⁹ They are subject to limits on the number of children they may serve at one time, the ratio of adults to children and many other aspects of providing child care.¹⁸⁰ CalWORKs recipients should be able to use a child care voucher to pay for care in a center-based program or permitted to access an open “slot” in one of the centers throughout the state that contracts directly with CDE to provide services for subsidized children. These contracted centers (also called “Title 5” centers, based on the governing regulations) are designed to provide what is generally considered to be the highest quality, most developmentally appropriate child care.¹⁸¹

b. Family Child Care Homes.

Licensed family child care (also called “family day care”) is another choice available to CalWORKs families.¹⁸² Licensed family child care must be provided in the provider’s own

¹⁷⁸ MPP § 47-260.1; 5 CCR § 18223.

¹⁷⁹ H&S Code § 1597.55a.

¹⁸⁰ H&S Code § 1596.955 - .956; 22 CCR § 101516.5.

¹⁸¹ 5 CCR §§ 17906 *et seq.*

¹⁸² H&S Code §§ 1597.30 *et seq.*

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home.¹⁸³ The home must meet health and safety requirements and must have been inspected during the initial licensing process by DSS Community Care Licensing.¹⁸⁴ The provider and other adults living and working in the home must have undergone a criminal record background check.¹⁸⁵ Licensed family child care providers are allowed to serve up to eight children (for small family child care homes) or up to fourteen children (for large family child care homes), depending on factors such as the ages of the children, and the ratio of caregivers to children.¹⁸⁶ Other health and safety requirements also apply to family child care homes, though they are not as detailed as those for child care centers.¹⁸⁷

4. Provider Payments.

a. Method of Payment.

Generally, in the CalWORKs program the CWD/APP agency that processes the child care subsidy pays the child care provider directly.¹⁸⁸ As discussed Section E.2.c, above, when parents choose in-home license-exempt providers, the CWD/APP usually provides the payments to the parents, who are expected to pay the child care provider themselves.¹⁸⁹

Providers are not allowed to charge CalWORKs families more than they charge private pay families receiving the same amount of child care.¹⁹⁰ For many CalWORKs families whose need for care differs from traditional work hours, there is often complexity in determining the

¹⁸³ H&S Code § 1597.43(a); 22 CCR § 102352(f)(1).

¹⁸⁴ H&S Code § 1597.55a; 22 CCR § 102391.

¹⁸⁵ H&S Code § 1596.871(a)(1); 22 CCR § 102370(a).

¹⁸⁶ H&S Code §§ 1597.44, 1597.465. Please contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org for further information about licensing regulations governing family child care providers.

¹⁸⁷ H&S Code §§ 1597.30, *et seq.*

¹⁸⁸ Educ. Code § 8357(e).

¹⁸⁹ Educ. Code § 8357(e).

¹⁹⁰ MPP § 47-401.2.

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appropriate reimbursement rate category for the provider’s payment: that is, whether hourly, daily, weekly or monthly, part-time or full-time.¹⁹¹ DSS regulations allow providers to be paid in advance of providing the child care, or afterwards,¹⁹² but the standard practice of CWD/APPs is to pay providers in arrears. Also, at county option, providers may be paid for child care during excused absences of the child or parent.¹⁹³ Excused absences may include family emergencies, the illness of a child, court appearances, or other circumstances.¹⁹⁴ Payment for excused absences may also include payment to a provider who has a policy of payment on a fixed schedule, whether the child attends or not.¹⁹⁵ When there is a dispute between the provider and the CWD/APP regarding payment, there is no formal appeal mechanism available to the provider as a CWD/APP contractor.¹⁹⁶

b. The Regional Market Rate.

Payment levels in the public subsidy system are linked to the private child care “market” through both the regional market rate (“RMR”) survey and the requirement that the providers cannot charge more to families receiving child care subsidies than they charge to private-pay families.¹⁹⁷ The maximum amount the CalWORKs subsidy system will pay child care providers

¹⁹¹ MPP § 47-401.13. Providers shall be paid on a monthly, weekly, daily, or hourly basis according to the participant’s needs and the provider’s usual practice. 5 CCR § 18075.

¹⁹² MPP § 47-420.22.

¹⁹³ MPP § 47-401.45.

¹⁹⁴ MPP § 47-401.451.

¹⁹⁵ MPP § 47-401.452. Contact the Child Care Center for more information on provider payment issues at (415) 394-7144; info@childcarelaw.org.

¹⁹⁶ Child care providers do not have a right to challenge DSS, CDE or APPs’ child care subsidy decisions that affect them, such as a late or incorrect payment amount. The only option available to providers is the APP internal “grievance” process, which all APPs are required to have in place. 5 CCR § 18223(c).

¹⁹⁷ Educ. Code § 8222(a)-(c). The law also places numerous requirements on providers to ensure they are not taking advantage of the subsidy system. Requirements include: submitting rate sheets to both the APP and R&R, posting rates in facilities, and limiting

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for voucher-based care is determined through the RMR survey conducted by CDE.¹⁹⁸ The RMR ceiling is set at the 85th percentile of the rates charged by providers in the county offering the same type of child care for the same age child,¹⁹⁹ and is designed to allow families to access the vast majority of local providers.²⁰⁰ The subsidy reimbursement ceilings are public information, published on CDE's website showing, by zip code, both the average rate and the reimbursement ceilings for a community.²⁰¹

For license-exempt child care, no survey is conducted to establish the regional market rate; instead, the license-exempt rate is based on a different formula based on the family child care home rate.²⁰² As discussed in Section E.2.c of this chapter, the reimbursement rate for license-exempt child care is often lower than the minimum wage.²⁰³

increases in rates for subsidized families to only once per year. Educ. Code § 8222(d)-(g). APPs are responsible for verifying the information submitted by providers. Educ. Code § 8222(h).

¹⁹⁸ Educ. Code §§ 8265, 8265.5; 5 CCR § 18221(e); MPP § 47-401.2. Several factors are used to establish the RMR: geographic location, type of setting (center, family child care or license-exempt), the amount of care provided and payment schedule (full or part-time monthly, weekly, or daily) and the ages of children served.

¹⁹⁹ MPP § 47-401.11; CDE Management Bulletin 99-05.

²⁰⁰ Educ. Code § 8357(a); MPP § 47-401.1. An exception to the payment limit applies if there are two or fewer appropriate providers in the participant's area. MPP § 47-401.21.

²⁰¹ Reimbursement ceilings for subsidized child care are available at: <http://www.cde.ca.gov/fg/aa/cd/ap/index.aspx>.

²⁰² For a copy of the Regional Market Survey of California Child Care Providers, California Child Care Resource and Referral Network contact the Child Care Law Center, at (415) 394-7144; info@childcarelaw.org.

²⁰³ Regional Market Rate Ceiling for California Child Care Providers, California Child Care Resource & Referral Network, Los Angeles County (part-time care for a child six years old or older being cared for by an exempt child care provider is compensated at a rate of \$3.36 per hour. <http://www.cde.ca.gov/fg/aa/cd/ap/index.aspx>.

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Additional factors that can affect the maximum reimbursement rate for voucher-based child care subsidies include rate enhancements for care provided on evenings or weekends and to care for a severely disabled child or a child with exceptional needs.²⁰⁴ The enhanced reimbursement is provided only when there is documentation that the additional services or accommodations being provided for that particular child result in an on-going financial impact on the provider.²⁰⁵ Note that the laws offering protections to people with disabilities generally prohibit providers from charging private-pay families of children with disabilities a higher rate for providing care.²⁰⁶

PRACTICE TIP

If participants need care for nontraditional hours or have disabled children, check to make sure the child care providers have requested to be paid the enhanced subsidy rates available in these situations.

c. Issue Of Late Payment.

An issue that many CalWORKs families and their child care providers face is late payments to providers. CWD/APPs are required to pay providers in the same manner (weekly, monthly, etc.) as providers require payment by their private-pay families²⁰⁷ and, for Stages 2 and 3, APPs are required to have a plan for *timely* payment of child care providers.²⁰⁸ It should be noted, however, that CWDs/APPs almost always pay retroactively for services, even if the

²⁰⁴ 5 CCR §§ 18075.1 - .2.

²⁰⁵ 5 CCR § 18075.2(b).

²⁰⁶ 42 USC § 12203; Cal. Civ. Code § 51(b). See the Child Care Law Center's manual, *Caring for Children with Special Needs*, for more information.

²⁰⁷ Management Bulletin 99-05.

²⁰⁸ 5 CCR § 18226.

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provider requires nonsubsidized families to pay in advance.²⁰⁹ Child care providers do not have a right to challenge DSS, CDE or APPs' child care subsidy decisions that affect them such as late payment, termination of a subsidy, or an incorrect payment amount. The only option available to providers is to use the APP internal "grievance" process which APPs are required to have available for providers.²¹⁰ The other alternative available to providers is to file a small claims court action against the subsidy recipient. A CalWORKs family can also file an appeal when late payment of the provider jeopardizes the family's child care.²¹¹

d. Co-Payments and Family Fees.

Family fees and co-payments are two separate types of payments that CalWORKs parents may have to pay. A co-payment is the difference between the maximum subsidy reimbursement rate ceiling²¹² and the actual cost of care charged by a provider.²¹³ A family choosing child care that is more expensive than the maximum subsidy reimbursement level is responsible for paying the extra amount directly to the provider as a co-payment.²¹⁴ CWDs/APPs are not required to monitor or ensure that parents actually pay co-payments to their selected providers.

A "family fee" is a share of the cost of care that gradually increases as a parent's income increases. CDE has established a fee schedule based on State Median Income ("SMI") for all

²⁰⁹ The regulations allow for advance payment. MPP § 47-420.22.

²¹⁰ 5 CCR § 18223(c).

²¹¹ MPP § 47-420.31; 5 CCR § 18120(a). See Section F of this chapter regarding CalWORKs participants' appeal and hearing rights.

²¹² See <http://www.cde.ca.gov/fg/aa/cd/ap/index.aspx> for rate ceilings.

²¹³ 5 CCR §§ 18414(b) (Stage 2), 18429(b) (Stage 3).

²¹⁴ MPP §§ 47-110(c)(2), 47-110(f)(1) and 47-401.3 provide concise definitions of family fees and co-payments (Stage 1); 5 CCR § 18414(b) (Stage 2), § 18429(b) (Stage 3).

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subsidized child care.²¹⁵ The fee schedule takes into account family income and the number of children in a family to determine whether a family is required to pay a family fee, and if so, the amount of a family fee.

Subsidized families begin to incur family fees when their incomes reach slightly above 40% of the SMI. A family of three with a monthly income of \$1,950 is required to pay a full-time daily fee of \$2.00. The maximum allowable monthly income for a family of three to receive subsidized child care (75% of SMI) is \$3,628, and these families are required to pay a full-time daily fee of \$17.25.²¹⁶ Most families receiving CalWORKs cash aid do not need to pay a family fee because their countable income is too low.

Each CWD/APP must determine the method of fee collection; responsibility for collection of fees can be placed on the child care provider or may be done by the agency itself.²¹⁷ Families should always ask for and keep a receipt when they pay their family fees.²¹⁸

If a CalWORKs family is late in paying a family fee, the family should not be immediately terminated from subsidized child care. Rather, the CWD/APP must inform the family by a NOA about the effect of nonpayment of fees.²¹⁹ The notice must include: the total amount of unpaid fees, the fee rate, the period of delinquency, and that services shall be terminated two weeks from the date of the NOA unless all delinquent fees are paid before the end of the two-week period.²²⁰ The CWD/APP must work with the family and attempt to make a schedule of repayment for the delinquent fees. The agency also is required to accept a

²¹⁵ 5 CCR §§ 18108, 18414(a) (Stage 2), 18429(a) (Stage 3); Management Bulletin 06-19 (CDE's family fee schedule applies equally to families receiving Stage 1 child care); MPP § 47-401.7.

²¹⁶ The numbers used in this example are calculated according to the family fee schedule set forth in Management Bulletin 06-19 (November 2006).

²¹⁷ 5 CCR §§ 18221(h), 18226.

²¹⁸ 5 CCR § 18113(a).

²¹⁹ 5 CCR § 18114(d).

²²⁰ 5 CCR § 18114(d)(1) – (4).

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reasonable plan from the parents for payment of those fees.²²¹ If the family fails to pay the family fee after this reconciliation process, the child care subsidy can be terminated, and the family will be ineligible for a subsidy until all delinquent fees are paid.²²² The few CalWORKs families who may be required to pay family fees while receiving cash assistance may not be terminated from subsidized child care for failure to pay fees, since they are entitled to receipt of child care as a supportive service.²²³

F. Child Care Appeals and Hearing Rights.

There are very significant differences in the appeal process depending on whether the family is receiving CalWORKs Stage 1 benefits and DSS rules apply, or whether the family is receiving Stages 2 or 3 subsidies and CDE rules apply.²²⁴ The most basic due process elements, including the deadlines for filing appeals and the structural elements of the hearings, differ dramatically between Stage 1 and Stages 2 and 3. A summary of these differences is set forth below, followed by a more detailed discussion:

²²¹ 5 CCR § 18115.

²²² 5 CCR §§ 18116, 18414(a) (Stage 2), 18429(a) (Stage 3).

²²³ WIC § 11323.2(a)(1).

²²⁴ DSS administers CalWORKs Stage 1 child care, so the standard hearing procedures that usually apply in CalWORKs (found in MPP Division 22) apply to Stage 1 hearings. CDE administers Stages 2 and 3 child care, so the usual CDE hearing procedures, found in 5 CCR §§ 18118 *et seq.*, apply in Stages 2 and 3 hearings.

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<u>SUMMARY OF DIFFERENCES BETWEEN HEARINGS IN STAGE 1 AND THOSE IN STAGES 2 AND 3</u>	
<u>Stage 1</u> 90 days to appeal	<u>Stages 2 and 3</u> 14 days to appeal
Must appeal before the adverse action takes place for aid paid pending	Must appeal within 14 days for aid paid pending
DSS regulations apply	CDE regulations apply
DSS Administrative Law Judges (“ALJ”s) preside over the hearing; impartial fact finder	An employee of the agency administering the subsidy (designated as the “hearing officer”) conducts the hearing; no requirement of impartiality
Hearings are required to be recorded or transcribed	No requirement for recording hearing
DSS may overturn ALJ’s decision but rarely does so	Second appeal level is a written appeal to CDE
Can request a rehearing within 30 days of decision	

1. Notice of Action (“NOA”).

Whenever there is a denial, termination, reduction, or change of any kind in a CalWORKs participant’s or former participant’s child care subsidy, the CWD/APP must issue a NOA informing the parent of the action taken and of the right to a hearing.²²⁵ The notice

²²⁵ WIC § 10950 (Stage 1); 5 CCR §§ 18118, 18119, 18120, 18418, 18419, 18433, 18434.

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requirement is mandatory, no matter which stage of CalWORKs child care a family is receiving. The NOA must be language-appropriate.²²⁶

Child care NOAs generally have information that reflects the stage of CalWORKs child care the participant is in and the type of appeal available.²²⁷ If the NOA does not provide this information, it may be difficult for advocates to know which stage a CalWORKs participant is in, but it is nevertheless crucial to do so.

PRACTICE TIP

If it is not clear which stage of CalWORKs child care the participant is in, the advocate should contact the CWD/APP immediately for verification. If such verification cannot be obtained quickly, it is safest to file an appeal with *both* the CWD (DSS) and the APP (CDE). Advocates should also contact the Child Care Law Center at (415) 394-7144, info@childcarelaw.org.

CalWORKs child care recipients and their advocates must be very careful to meet the deadlines for filing appeals in response to NOAs, as some of the appeal request timeframes are very short.²²⁸ In addition, advocates should be prepared to help participants who may have filed their appeals with the wrong agency prior to seeking legal assistance to document their efforts and file with the correct agency. CDE has stated publicly that when CalWORKs families send their Stages 2 and 3 hearing requests to CDE's Child Development Division rather than to the local APP administering the subsidy, CDE will not forward the request to the appropriate agency.²²⁹ Given the short timeframe for requesting a hearing for Stages 2 and 3, when the

²²⁶ 42 USC § 2000d; 45 CFR §§ 80.1, 260.35(a)(4); 5 CCR § 18222(b); MPP § 21-115 and 22-001(l) (Stage 1).

²²⁷ Recipients of Stage 1 benefits should receive a DSS form NOA. The NOAs for Stages 2 and 3 are forms prepared by APPs that generally use a code to indicate which stage of CalWORKs child care the family is receiving (C2AP – Stage 2; C3AP – Stage 3).

²²⁸ 5 CCR §§ 18120(a), 18418 (Stage 2), 18433 (Stage 3).

²²⁹ 5 CCR § 18120(a).

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CalWORKs parent appeals to the wrong agency, the recipient will likely miss the deadline and lose the right to pursue the appeal without intervention by an advocate.

PRACTICE TIP

Read Notices of Action carefully to determine the stage of CalWORKs child care the parent has applied for or is receiving. Do not assume that a participant who has been in a welfare-to-work activity for a relatively short time is in Stage 1, or that a family that is no longer receiving CalWORKs cash aid is in Stage 2 or 3. Always confirm both the stage of child care and the agency administering the subsidy.

a. Hearings in Stage 1.

CalWORKs Stage 1 appeals are held under the same rules as CalWORKs cash assistance hearings. They are administered by DSS, and the usual 90-day deadline for appealing, as well as the aid paid pending timeframe, apply.²³⁰ Under DSS rules, families receiving Stage 1 child care have a right to a NOA in advance of a reduction or termination of child care benefits; the NOA must state the regulations that are being applied and must be mailed at least 10 days before the change is supposed to happen.²³¹ Stage 1 child care recipients then have up to 90 days to file an appeal.²³² Appeals may be filed beyond 90 days for good cause.²³³ Administrative law judges (ALJs) preside over Stage 1 hearings, as they do over all hearings involving CalWORKs cash assistance.²³⁴ ALJs have training in both the substance of CalWORKs laws and regulations, as well as in basic due process requirements. There is a requirement that hearings be tape-recorded

²³⁰ WIC § 10951(a). See Chapter XIII for more information on the hearing process.

²³¹ MPP §§ 22-001(t)(1), 47-420.3.

²³² WIC § 10951(a); MPP § 22-009.1. See Chapter XIII for a discussion of timely hearing requests.

²³³ WIC § 10951(b).

²³⁴ MPP § 22-001(a)(2).

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or transcribed.²³⁵ The entire mechanism of fair hearings that has been developed over many years is designed to ensure that individuals have an opportunity to present their cases before an impartial decision maker.²³⁶ DSS may overturn the decision of an ALJ but rarely does so.²³⁷ If the ALJ decision is unfavorable, the family can ask for a rehearing and file a petition for a writ in Superior Court.²³⁸

i. Aid Paid Pending.

Individuals who request a hearing to appeal a denial, suspension, reduction, or termination of CalWORKs Stage 1 child care are entitled to keep their child care in the same amount and form until they receive a hearing decision.²³⁹ This continuation of child care assistance during the appeal is called “aid paid pending.”²⁴⁰ In order to receive aid paid pending, a Stage 1 recipient must file the appeal prior to the effective date of the NOA²⁴¹ and request aid to continue. While CalWORKs parents generally can receive subsidized child care pending the appeal, CWD/APPs will not issue aid paid pending when the basis of the action appealed is the failure of the provider to satisfy health and safety requirements, to obtain Trustline Registry, or when the provider has been convicted of certain serious crimes.²⁴²

²³⁵ MPP § 22-049.4.

²³⁶ MPP § 22-049.2.

²³⁷ MPP § 22-062.1.

²³⁸ See Chapter XIII regarding hearings and Chapter XIV regarding writs.

²³⁹ MPP § 47-420.32.

²⁴⁰ MPP § 22-072.5.

²⁴¹ MPP § 47-420.32. See Chapter XIII for a discussion of aid paid pending a hearing.

²⁴² MPP §§ 47-420.32, 47-420.4.

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ii. Overpayments.

One issue of concern to participants in requesting Stage 1 hearings is whether aid paid pending could be charged as an overpayment against them in the event they lose the hearing. While parents should be counseled about the possibility of repayment, most participants who receive child care pending the appeal and lose the appeal generally will not have to pay back the overpayment. The regulations require that agencies administering Stage 1 child care recoup overpayments only if doing so is cost-effective.²⁴³ In addition, the CWD/APP must defer collection of a child care overpayment if collection and recovery would disrupt child care, preclude participation in welfare-to-work activities, or prevent employment.²⁴⁴ The participant's CalWORKs cash assistance grant can only be reduced to recoup a child care overpayment if the CalWORKs participant agrees.²⁴⁵ Nevertheless, the fact that a family has received an overpayment in the form of aid paid pending can be problematic when the family goes off cash assistance if the CWD/APP is intent on collecting the overpayment, so it is important for advocates to assist the family in making a thoughtful decision about aid paid pending when appealing.

Frequently, the issue in the hearing is whether there has been an overpayment of subsidized child care, and if so, whether it is due to an administrative error or whether the actions of the CalWORKs participant or the participant's child care provider caused the overpayment. If the child care provider is reimbursed for providing care she did not actually provide, then the overpayment is against the provider.²⁴⁶ If, however, a CalWORKs parent, without good cause, fails to participate in a welfare-to-work activity and receives child care assistance, then the overpayment is against the parent.²⁴⁷

²⁴³ MPP § 47-440.11.

²⁴⁴ MPP § 47-440.15.

²⁴⁵ MPP § 47-440.12.

²⁴⁶ MPP § 47-440.14.

²⁴⁷ MPP § 47-440.13.

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Given the complicated work lives of many participants, and the requirement to immediately report changes in income, employment and family circumstances,²⁴⁸ it is not surprising that many parents find themselves charged with an overpayment. Certain types of situations are also more likely to result in alleged overpayments, including self-employed participants, students, parental incapacity, and the use of license-exempt care. Advocates can be extremely effective in providing legal and factual analysis to assist participants in responding to charges of overpayment. In particular, advocates can assist participants in demonstrating their misunderstanding and lack of intent in order to help prevent unnecessary fraud referrals. For Stage 1 child care, fraud referrals for subsidy overpayments are based on the same criteria used in other CalWORKs fraud referrals.²⁴⁹

2. Hearings In Stages 2 and 3.

The hearing procedures for families receiving Stages 2 and 3 child care are the same as hearings for non-CalWORKs child care subsidies administered by CDE. These are much less formal than DSS CalWORKs hearings, and have many fewer procedural protections.²⁵⁰ Parents in Stages 2 and 3 have a right to receive NOAs before their benefits are changed.²⁵¹ CWD/APPs must mail or deliver the NOAs at least fourteen calendar days before the effective date of the action (19 calendar days for NOAs that are mailed).²⁵² CDE does not mandate the use of particular NOA forms. Because APPs have far less experience than CWDs with the need for procedural protections, Stages 2 and 3 NOAs frequently fail to specify the regulation or policy being applied, or provide other essential information. Advocates can play a crucial role in assisting parents in deciphering NOAs and asserting their appeal rights.

²⁴⁸ 5 CCR §§ 18102, 18410(a) (Stage 2), 18425(a) (Stage 3).

²⁴⁹ MPP § 47-440.17; ACL 00-53. See Chapter XII for further information about fraud investigations.

²⁵⁰ 5 CCR §§ 18120, 18121, 18122, 18418 (Stage 2), 18433 (Stage 3).

²⁵¹ 5 CCR §§ 18119(a), 18419 (Stage 2), 18434 (Stage 3).

²⁵² 5 CCR §§ 18119(b), 18419 (Stage 2), 18434 (Stage 3).

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a. First Level of Appeal: Hearing before an APP Program.

Under CDE rules, families receiving Stages 2 or 3 child care have only 14 calendar days from the date of receipt of the NOA to file for a hearing with the APP.²⁵³ If the appeal is timely, the recipient has a right to a hearing and, if requested, is also entitled to continue to get child care benefits (aid paid pending) while waiting for a decision.²⁵⁴ The issue of whether or not aid paid pending can be charged as an overpayment against a recipient who files for a hearing and loses is unresolved in Stages 2 and 3. Arguably, based on the absence of authority in the statute and regulations, aid paid pending cannot be charged as an overpayment.²⁵⁵

Within 10 calendar days after it receives the appeal request, the APP must notify the recipient of the time and place of the hearing.²⁵⁶ The time and place for the hearing must be convenient for the recipient to attend, but is generally held at the APP's office.²⁵⁷ As with DSS hearings, the parent or the parent's authorized representative is required to attend the hearing,²⁵⁸ but CDE rules permit only those directly affected by the hearing to attend.²⁵⁹ The APP must arrange for the presence of an interpreter at the hearing if requested by the parent,²⁶⁰ but parents rarely realize they have a right to ask for an interpreter and some APPs are not aware that they are required to provide an interpreter. The parent must be given the opportunity to explain the

²⁵³ 5 CCR §§ 18120, 18418 (Stage 2), 18433 (Stage 3).

²⁵⁴ 5 CCR § 18120.

²⁵⁵ Contact the Child Care Law Center for help with this issue at (415) 394-7144; info@childcarelaw.org.

²⁵⁶ 5 CCR § 18120(c).

²⁵⁷ 5 CCR § 18120(c).

²⁵⁸ 5 CCR § 18120(e).

²⁵⁹ 5 CCR § 18120(f).

²⁶⁰ 5 CCR § 18120(g).

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reasons she believes the APP’s decision was incorrect.²⁶¹ The regulations require the APP staff to “present any material facts omitted by the parent(s).”²⁶²

Unlike the DSS system which uses an independent ALJ to hear appeals, the CDE system simply requires that the appeal be heard by an APP agency staffperson who did not make the original decision; this person is called a “hearing officer.”²⁶³ The “hearing officer” must be at a staff level higher in authority than the staff person who made the contested decision.²⁶⁴ There is no regulatory requirement that the hearing officer be an impartial fact finder. It is often apparent that the “hearing officer” has discussed the matter with the APP staffmember who made the decision being appealed, or was even consulted by the staffmember in the course of making the original decision to terminate or reduce the subsidy.²⁶⁵ Although the regulations require the hearing officer to explain the legal, regulatory, or policy basis for the intended action,²⁶⁶ this requirement is often minimally adhered to. The regulations do not require hearings to be tape-recorded, and while a few APPs do so as a matter of course, most APPs do not.

The APP hearing officer shall mail or deliver a written decision within ten calendardays following the hearing.²⁶⁷ Legal services advocates have noted that the decision is often in the form of a letter in which the hearing officer upholds the original decision, with minimal recitation of factual information presented by the subsidy recipient and without reference to legal authority that serves as the basis for the decision.²⁶⁸

²⁶¹ 5 CCR § 18120(i).

²⁶² 5 CCR § 18120(i).

²⁶³ 5 CCR § 18120(d).

²⁶⁴ 5 CCR § 18120(d).

²⁶⁵ This may violate basic due process. Advocates with this issue should contact the Child Care Law Center at (415) 394-7144; info@childcarelaw.org.

²⁶⁶ 5 CCR § 18120(h).

²⁶⁷ 5 CCR § 18120(j).

²⁶⁸ This would violate the provisions of *Topanga Assn. for a Scenic Cmty. v. County of Los Angeles*, 11 Cal.3d 506, 514-515 (1974), which requires that administrative decisions

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b. Second Level of Appeal: Written Appeal to CDE.

If a subsidy recipient loses the hearing before the APP, she has 14 calendar days to file a written appeal with the CDE Child Development Division, specifying why the decision of the APP was wrong.²⁶⁹ Appeals should be sent to CDE’s Child Development Division (CDD) at:

California State Department of Education
Child Development Division
1430 N Street, Suite 3410
Sacramento, CA 95814
Attn: Appeals Coordinator

The parent must specify in the appeal request the reason(s) why she believes the APP’s decision was incorrect, and include a copy of the NOA and the written decision.²⁷⁰ The CDD may obtain relevant information from the APP and conduct any investigations, interviews or mediation necessary to resolve the appeal.²⁷¹ The CDD conducts a paper review, and does not hold an in-person hearing for the appeal.

Child care assistance should continue unchanged until a decision is rendered.²⁷² CDD has 30 calendar days to conduct an investigation and render a decision,²⁷³ though it is not uncommon for it to take much longer. The APP must comply with CDD’s decision immediately upon receipt.²⁷⁴ If the original determination by the APP that the subsidy recipient was ineligible is upheld, services to the family will cease upon the APP’s receipt of CDD’s

“bridge the analytical gap” between the facts and the conclusion. Administrative decisions which fail to do so are subject to reversal for being an abuse of discretion. Contact the Child Care Law Center at (415) 394-7144; info@childcarelaw.org.

²⁶⁹ 5 CCR § 18121(a).

²⁷⁰ 5 CCR § 18121(c)-(d).

²⁷¹ 5 CCR § 18121(e).

²⁷² 5 CCR § 18120(b).

²⁷³ 5 CCR § 18121(f).

²⁷⁴ 5 CCR § 18122(a).

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decision.²⁷⁵ Whether the decision is favorable to the APP or to the subsidy recipient, the APP will be reimbursed by CDE for subsidy benefits given to the family during the appeal process.²⁷⁶ If the decision from CDD is unfavorable, the family can file a petition for writ in Superior Court.²⁷⁷

3. Provider Hearing Rights.

Child care providers do not have a right to challenge DSS, CDE or APPs' child care subsidy decisions that affect them, such as late payment, termination of a child care subsidy, or an incorrect payment amount.²⁷⁸ The only option available to providers who have a complaint about APP payment policies is to use the APP internal "grievance" process. All APPs are required to have such a process available for providers.²⁷⁹

²⁷⁵ 5 CCR § 18122(c).

²⁷⁶ 5 CCR § 18122(b).

²⁷⁷ See Chapter XIV for information regarding writs.

²⁷⁸ This is because the child care subsidy is for the parent and the parent has the appeal rights. See Chapter XIII for more information about appeals and state hearings.

²⁷⁹ 5 CCR § 18223(c). Some providers choose to file a small claims court action against the participant.

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Most teenage parents and pregnant teens under 19 years of age are not subject to the CalWORKs work requirements discussed in Chapter VI or the school attendance rules covered in Chapter II. Instead, teen parents under 19 who do not have a high school diploma or its equivalent (usually a General Equivalency Diploma or GED) must participate in a special program called Cal-Learn.¹ Nineteen year olds cannot enter Cal-Learn for the first time, but can continue in Cal-Learn until age 20 if they have ever been in the program before turning 19.²

Cal-Learn is meant to address the unique educational, health and social service needs of dependant pregnant teens and teenage parents, and to help them achieve self-sufficiency.³ The major elements of the Cal-Learn program are mandatory high school or GED participation for teens, intensive case management, child care and other supportive services, and a system of financial bonuses and sanctions based on the teen's grades.⁴

The intensive case management required in Cal-Learn is designed to be provided by Adolescent Family Life Program (AFLP) providers.⁵ AFLPs are agencies with specific expertise in programs for teen parents, and often run alternative education or services agencies.⁶

¹ WIC §§ 11331 *et seq.*; MPP §§ 42-762 *et seq.* Note that teens are also subject to other special rules on living arrangements (see Chapter II) and budgeting (see Chapter V).

² WIC §§ 11331.5(d)(2), 11332.7(b); MPP § 42-762.211. See Section B.2 in this chapter for more detail on nineteen-year-olds.

³ WIC § 11331(b); MPP § 42-762.1.

⁴ WIC § 11331(b); MPP §§ 42-762.1 – .2.

⁵ WIC § 11333(a); MPP § 42-766.13. Counties may only forego use of AFLP providers where AFLP services are not available or cost-effective, or where the county had an existing teen parent program at the time it implemented Cal-Learn, but only if the state Director of Health Services certifies that the services conform to the AFLP standards and scope and the county meets certain other criteria spelled out in the statute. See WIC § 11333(b); MPP § 42-766.132.

⁶ See H&S Code §§ 124175 *et seq.* for more information on AFLP programs. When counties contract with AFLP programs for Cal-Learn case management, the ultimate

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A. Elements of the Cal-Learn Program.

1. Mandatory High School or GED Program for Teenage Parents Without Diplomas.⁷

Cal-Learn is designed to ensure that teenage parents on welfare obtain a high school diploma or its equivalent.⁸ The only Cal-Learn activity is high school or an equivalency program such as a GED program or preparation for the California high school certificate of proficiency.⁹ Vocational or technical schools programs which are not part of a high school or GED curriculum do not meet the Cal-Learn requirements and thus cannot be a teen’s Cal-Learn activity.¹⁰

The CalWORKs participation requirements do not apply to teen parents in the Cal-Learn program.¹¹ Instead, Cal-Learn participants must attend high school or a GED program full-time.¹² Full-time is defined by the school.¹³ If the teen parent is enrolled in a program which has no definition of “full-time,” she must participate in a minimum of 10 hours of school activity

decision on sanctions, bonuses, good cause, exemptions and deferrals remains with the county worker, based on recommendations by the AFLP provider. MPP § 42-766.27. Counties may not contract out these duties. MPP § 42-762.6.

⁷ In some cases eligible pregnant or parenting teens are not enrolled in Cal-Learn due to county error. When this discovery is made, counties should immediately refer the teen to the Cal-Learn program and correct any bonuses or supportive service underpayments. ACIN I-10-02.

⁸ WIC § 11331(c)(1); MPP § 42-762.21.

⁹ WIC § 11331.5(a)(1); MPP § 42-763.711. This manual uses “diploma” and “GED” interchangeably to refer to all high school and equivalency programs.

¹⁰ MPP § 42-763.712.

¹¹ WIC § 11331.5; MPP § 42-762.2.

¹² WIC § 11331.5(a)(2); MPP § 42-763.71.

¹³ WIC § 11331.5(a)(2); MPP § 42-763.71.

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per week.¹⁴ There is no limit on the amount of time a teen parent under 19 can take to earn her diploma or GED.¹⁵

If a teen turns 19 before earning her diploma or GED, she may voluntarily continue in Cal-Learn until graduation or reaching age 20, as long as she began Cal-Learn participation before turning 19.¹⁶

Cal-Learn begins when the welfare worker sends a teen parent a notice with an orientation appointment date.¹⁷ The notice is also sent to the head of the Assistance Unit (AU).¹⁸ At orientation, teen parents receive written and oral information regarding program requirements, exemption and deferral criteria, bonuses and sanctions, the consequences of failing to make adequate progress, the right to show good cause for failing to demonstrate adequate progress, and the consequences of a break-in-aid.¹⁹ The same information will be sent to the head of the AU within 30 days after the orientation.²⁰

¹⁴ MPP § 42-763.713. If the school program cannot provide ten hours of school activity per week, the family must provide written verification to that effect from the school. MPP § 42-763.714.

¹⁵ WIC § 11332.7(a).

¹⁶ WIC § 11332.7(b); MPP § 42-763.12. The handbook section following MPP § 42-763.125 gives two helpful examples. One illustrates that a 19-year-old teen parent can enter or stay in the program even if her earlier participation was several years ago.

¹⁷ MPP § 42-764.1. In addition to the date of the orientation, the notice must also include a general description of Cal-Learn, a description of the supportive services and case management services provided to teen parents, and a statement that program requirements shall be provided during orientation. MPP § 42-764.11.

¹⁸ MPP § 42-764.1. Many teen parents are not the head of their AUs because of the requirement that teenage parents live at home or in an adult-supervised setting. See Chapter II.

¹⁹ MPP § 42-764.21.

²⁰ MPP § 42-764.22.

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Teens who do not attend the orientation cannot be sanctioned for failure to attend it, but will be sent a notice containing the program requirements and the schedule for submitting report cards.²¹ If they fail to submit report cards without good cause, they will be sanctioned.²²

2. Mandatory Submission of Report Cards to Caseworkers.

Because Cal-Learn is a system of rewards and penalties based on grades, teenagers are required to submit report cards to their case managers.²³ Report cards must be submitted within 10 working days of receipt of the report card.²⁴ Participants can be sanctioned or lose bonuses for failing to submit report cards within 10 days, unless they have good cause for not doing so.²⁵

Note that even if the report card shows adequate or satisfactory progress which would preclude a sanction or entitle the teen to a bonus, she will not get the bonus and can be sanctioned if the report card is not turned in or not turned in on time (unless she has good cause).²⁶

When a report card contains incomplete grades which could affect the teen's eligibility for a bonus or sanction, counties may choose to wait to determine the bonus or sanction until the time period established by the school for completing grades or may make the determination (based on the grades received) at the end of 45 days from submission of the incomplete report

²¹ MPP § 42-764.23. This starts the 90 day waiting period for sanctions and bonuses discussed in Section C of this chapter. MPP § 42-766.334.

²² MPP § 42-764.231.

²³ WIC § 11333.7(a), (b)(1) and (d); MPP §§ 42-763.74, 42-766.33.

²⁴ WIC § 11333.7(d). Note that the regulation seems to shrink this time period slightly in cases where report cards are mailed to students, since it calls for submission 10 days after the report card is *issued*. MPP § 42-763.741. Call Western Center to discuss this issue.

²⁵ MPP § 42-766.633.

²⁶ WIC § 11333.7(b); MPP § 42-766.64. See Section C in this chapter for more detail.

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card.²⁷ In either case, the report card shall be treated as having been timely submitted even if not all grades are reported.²⁸

3. Financial Bonuses and Sanctions Based on Grades and Report Cards.

As discussed in detail in Section C below, Cal-Learn is a system of rewards and penalties based on grades and on complying with the requirement to submit report cards. Participants can earn up to four \$100 bonuses or sanctions each calendar year.²⁹ Those who graduate from high school get a \$500 bonus.³⁰

4. Intensive Case Management.

Cal-Learn case managers are supposed to have a much closer relationship with their clients than other welfare workers do. They must possess expertise in the “education, training and other social and health service needs of teenage parents, as well as the local programs that provide these services.”³¹ They must assist the teen to obtain social and health services, including parenting skills services and maternal and child health services.³² They should “be prepared to provide intensive counseling during all phases” of the teen’s Cal-Learn participation.³³ They must be provided sufficient time to provide the needed case management services, and their caseloads must be consistent with the (relatively low) levels established in the

²⁷ MPP § 42-766.65. Whichever procedure the county chooses must be implemented countywide. MPP § 42-766.65.

²⁸ MPP §§ 42-766.651(c) - .652(a).

²⁹ WIC § 11333.7(a); MPP §§ 42-762.22, 42-762.24.

³⁰ WIC § 11333.7(c); MPP §§ 42-762.23, 42-766.8.

³¹ WIC § 11332.5(c)(1); MPP § 42-766.12.

³² MPP § 42-766.111(b).

³³ WIC § 11332.5(a)(4)(B).

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AFLP programs, even if the county does not contract with an AFLP provider for Cal-Learn case management.³⁴

Following the orientation discussed above, case managers must develop a case plan for each Cal-Learn participant. The plan must include:

- A schedule of contacts and visits between the case manager and the teen parent, and the head of the AU, as appropriate, which must include at least monthly contact and quarterly case plan reviews with the teen;³⁵
- A description of the teen's school program or the date the teen must enroll if she is not already in school;³⁶
- A report card submittal schedule with a maximum of four dates to submit report cards;³⁷
- The supportive services the teen will receive;³⁸
- Documentation of other services the teen will be provided or referred to, including social services, parenting skill counseling or classes, etc.³⁹

Case plans must be reviewed and updated as necessary, at least every three months.⁴⁰

In addition to developing the case plan, Cal-Learn case managers are supposed to:

³⁴ WIC § 11332.5(b); MPP § 42-766.122.

³⁵ MPP § 42-766.31.

³⁶ MPP § 42-766.32.

³⁷ MPP § 42-766.33. If the teen's school regularly issues fewer than four report cards per year, the teen must submit whatever number the school issues. MPP § 42-766.331. The first report card must be submitted after the teen has participated in Cal-Learn for 90 days. MPP § 42-766.334.

³⁸ MPP § 42-766.34.

³⁹ MPP § 42-766.35.

⁴⁰ MPP § 42-766.43.

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- Provide referrals to appropriate community services the teen needs to return to school or continue in school;⁴¹
- Monitor each teen’s progress through monthly contacts with the teen, her service providers and other “collateral contacts” to determine the effectiveness of the services being provided; assess her progress and make any necessary changes;⁴²
- Act as a “counselor, colleague and role model” for teens to turn to for advice, guidance, and ideas;⁴³
- Ensure that each teen understands the program requirements and consequences;⁴⁴
- Identify the need for and method of providing supportive services;⁴⁵
- Provide program exemption, program deferral, good cause, bonus and sanction determinations or recommendations;⁴⁶
- Make reasonable efforts to reach teens who are not making adequate progress.⁴⁷

Note that where case management is done by AFLP providers or other non-county employees, county workers must make the final bonus or sanction determination based on the provider’s recommendation.⁴⁸

⁴¹ WIC § 11332.5(a)(2); MPP § 42-766.21.

⁴² WIC § 11332.5(a)(3); MPP § 42-766.22.

⁴³ WIC § 11332.5(a)(4)(A); MPP § 42-766.23.

⁴⁴ WIC § 11332.5(a)(5); MPP § 42-766.24.

⁴⁵ MPP § 42-766.25.

⁴⁶ MPP § 42-766.27.

⁴⁷ MPP § 42-766.28. See Section D.1 in this chapter for a discussion of this “reasonable effort” requirement.

⁴⁸ MPP §§ 42-766.271- .272.

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5. Supportive Services.

Cal-Learn participants are entitled to necessary education and supportive services to complete their studies.⁴⁹ Supportive services include payment for child care and transportation and ancillary expenses⁵⁰ necessary for the teen parent to successfully participate in the Cal-Learn program that may include the cost of books, GED testing fees, laboratory fees, etc.⁵¹ The CalWORKs supportive services procedures apply to Cal-Learn.⁵² Teenagers who work in addition to going to school can also get CalWORKs supportive services necessary for the job, such as child care and transportation.⁵³

B. Who Must Participate in Cal-Learn?

1. Pregnant or Parenting Teens Under 19 Without a High School Diploma or GED Must Participate.

Cal-Learn participation is mandatory for teenagers who meet all of the following criteria (*unless* they are exempt or deferred as discussed below):

- they receive CalWORKs cash aid;
- they are pregnant or have a child of their own living with them;
- they do not have a high school diploma or GED; *and*
- they are under 19 years of age.⁵⁴

⁴⁹ WIC § 11331.7; MPP § 42-765.1.

⁵⁰ WIC § 11331.7(a) (referencing the CalWORKs supportive service section, WIC § 11323.2); MPP § 42-765.1.

⁵¹ WIC § 11331.7; MPP §§ 42-762.3(a)(2), 42-765.11.

⁵² MPP § 42-765.1. Thus, for example, Cal-Learn child care providers are paid directly, just as CalWORKs providers are; the same transportation cost rules apply, etc. See Chapter VII (Child Care) and Chapter VI for more information on supportive services.

⁵³ ACL 98-36, #12.

⁵⁴ WIC § 11331.5, MPP § 42-763.11.

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Note that because the teen herself must receive cash aid to participate, not all teen parents of CalWORKs children are eligible. For example, an undocumented teen with a citizen baby is not eligible for Cal-Learn.⁵⁵ Likewise, a teen who lives at home with her own parents and is ineligible for aid because of their income⁵⁶ cannot participate in Cal-Learn even though her baby receives CalWORKs.

2. Nineteen-Year-Olds May Choose to Continue in Cal-Learn.

Pregnant teens and teen parents must participate in Cal-Learn until they earn a high school diploma or a GED or until the end of the month in which they turn 19.⁵⁷ While teenagers may not *enter* the Cal-Learn program unless they are under 19, a teen who was already in the Cal-Learn program before age 19 may continue in the program after she turns 19 if she wants to and has not already earned a diploma or GED.⁵⁸ These 19-year-olds are entitled to the same benefits (including bonuses, supportive services, and intensive case management) as other Cal-Learn participants and are subject to the same sanctions.⁵⁹

⁵⁵ See Chapter II for more on disqualification from receipt of CalWORKs benefits due to immigration status.

⁵⁶ See Chapter II for information on the requirement that teens live at home, and Chapter V for how to determine CalWORKs eligibility and grant amount where a teen lives with parents who have income. Note that some teenagers bounce on and off cash aid if they live with parents whose income fluctuates. Often these constantly changing circumstances mean they can never meet the 90-day rule for CalWORKs bonuses and sanctions discussed in Section C of this chapter, or that she cannot maintain consistent child care arrangements or school attendance. Advocates are encouraging DSS to consider measures to ensure more consistent availability of services to these teens. Contact Western Center for more information.

⁵⁷ MPP §§ 42-762.21, 42-763.72.

⁵⁸ WIC § 11332.7(b); MPP §§ 42-762.211, 42-762.23, 42-763.122. Note that if the teen was in Cal-Learn before turning 19, she need not have been continuously in it. She can return to the program after a break in aid and still continue until age 20 or until she earns a diploma. ACL 98-36, #3. MPP § 42-763.125(a) and (b) contain examples.

⁵⁹ WIC § 11332.7(b); MPP § 42-763.13. Note that a 19-year-old enrolled in Cal-Learn who stops attending school cannot be sanctioned for quitting or for failing to do

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It is probably beneficial for most 19-year-olds to continue participating in Cal-Learn, since those who do not must participate in welfare-to-work activities and be assigned to a high school or GED program unless they are exempt under the CalWORKs exemption rules.⁶⁰ Since a teen without a diploma who doesn't participate in Cal-Learn will be subject to the more severe CalWORKs sanction (removal from the grant until she complies instead of \$100 per report card),⁶¹ it is probably advisable to stay in Cal-Learn. Also, time in Cal-Learn does not count against the 60-month lifetime limit on receipt of aid.⁶²

3. Cal-Learn Exemptions and Deferrals.⁶³

Grounds for exemption or deferral from Cal-Learn are significantly narrower than CalWORKs exemption grounds.⁶⁴ Both exemptions and deferrals must be documented and

CalWORKs activities, although she will continue to incur the Cal-Learn sanctions for failing to turn in report cards. ACIN I-33-99, #2. DSS also takes the position that a 19-year-old cannot avoid a Cal-Learn sanction by quitting Cal-Learn if she was in Cal-Learn during the period covered by the report card for which she is sanctioned. ACL 98-36, #8. This is probably illegal. Request a state hearing (see Chapter XIII) and contact Western Center to discuss this issue.

⁶⁰ MPP §§ 42-763.14, 42-711.3. A teen already enrolled in a SIP or who is assessed as being unable to complete a GED or high school program because of a learning disability or medical problem will not be assigned to high school or GED as a CalWORKs activity. MPP § 42-711.311(a).

⁶¹ See Chapter VI for more on sanctions.

⁶² MPP § 42-302.21(d). See Chapter II for more information on the CalWORKs time limits.

⁶³ WIC §§ 11331.5(c), 11332; MPP §§ 42-763.2 – .3.

⁶⁴ The CalWORKs exemptions for those who are under the age of 16 years (WIC § 11320.3(b)(1); MPP § 42-712.411), or 16, 17, or 18 years of age and a full-time student (WIC § 11320.3(b)(2)(C); MPP § 42-712.42), or nonparent caretakers of certain children (WIC § 11320.3(b)(4); MPP § 42-712.45), or caring for ill or injured household members (WIC § 11320.3(b)(5); MPP § 42-712.461), or caring for a child under 6 months (WIC § 11320.3(b)(6); MPP § 42-712.471), or pregnant (WIC § 11320.3(b)(7); MPP § 42-712.481) are *not* grounds for exemption for Cal-Learn participants. Instead, the Cal-Learn exemptions (discussed in the next section of this chapter), are set forth in WIC § 11331.5(c).

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reviewed periodically, at least every 6 months for exemptions and every 3 months for deferrals.⁶⁵

The principal differences between exemptions and deferrals are: (1) that exemptions are generally expected to last longer, and (2) that exempt teens are completely out of the Cal-Learn program, while deferred teens get case management services only.⁶⁶ A teen parent who is exempt from Cal-Learn will be subject to CalWORKs work requirements for the purpose of earning a diploma or GED if she does not meet a CalWORKs exemption.⁶⁷ Also, teens under age 18 who are exempt or deferred from Cal-Learn are still subject to California's compulsory education law.⁶⁸

a. Exemptions.

A pregnant or parenting teenager under age 18 without a diploma or GED is *exempt* from Cal-Learn if she:

- Has a serious illness, injury, or incapacity that prevents her for more than three months from enrolling in school or attending full-time and there is no alternate education program available;⁶⁹ or

⁶⁵ MPP §§ 42-763.52 – .53. Both deferrals and exemptions must also be reviewed on request by the teen or head of the AU, as well as at the end of the projected length of the condition requiring the exemption or deferral. MPP §§ 42-763.52 – .53.

⁶⁶ MPP §§ 42-763.61 – .62.

⁶⁷ See Chapter VI of this manual, WIC § 11320.3(b), and MPP § 42-712.4 for the CalWORKs exemptions. MPP §§ 42-763.14 and 42-711.31 specify that a 19-year-old teen without a diploma who doesn't volunteer for Cal-Learn must participate in CalWORKs and will be assigned to a GED or high school activity unless she is in a SIP or has a disability which prevents participation in a diploma program.

⁶⁸ Educ. Code § 48200; MPP § 42-763.4. California law specifies that persons between 6 and 18, if not exempt under chapters 2 or 3 of the Education Code, are subject to compulsory education. Educ. Code § 48200.

⁶⁹ WIC § 11331.5(c)(6); MPP § 42-763.21. The condition must be supported by a written statement from a doctor or licensed or certified psychologist which includes a description of the condition, an explanation of why the condition prevents the teen from meeting Cal-Learn

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- Is expelled from school, no other school in the district will accept her, and no enrollment in an alternative school can be arranged;⁷⁰ or
- Needs paid child care and/or transportation, but these services are not available for three or more months;⁷¹ or
- Cannot receive child care or transportation payment because of lack of Cal-Learn program funding;⁷² or
- Is a foster child for whom someone else is receiving foster care payments;⁷³ or
- Is a victim of domestic abuse which interferes with her participation in Cal-Learn.⁷⁴

b. Deferrals.

A pregnant or parenting teen is *deferred* from Cal-Learn if she:

requirements, the expected duration of the condition, the date of the next scheduled appointment or examination, and the doctor's name, address and telephone number. MPP § 42-763.211. If a written statement cannot be obtained timely for reasons beyond the individual's control, an oral statement from the physician or psychologist shall be accepted pending verification for a maximum of 60 days. MPP § 42-763.212. The date, names of the persons supplying and obtaining the statement, and a description of the statement must be documented in the case file. MPP § 42-763.212(a).

⁷⁰ WIC § 11331.5(c)(1); MPP § 42-763.22.

⁷¹ WIC § 11331.5(c)(3) and (4); MPP § 42-763.23. Note that the statute simply says an exemption exists if these services are unavailable; the regulation adds the 3-month language, indicating that if the services are unavailable for a short time, the person will be deferred under MPP § 42-763.31 rather than exempted.

⁷² WIC § 11331.5(c)(2); MPP § 42-763.24.

⁷³ WIC § 11331.5(c)(5); MPP § 42-763.25.

⁷⁴ While domestic abuse is not specifically listed in the Cal-Learn statute and regulations as a ground for exemption or deferral, the general domestic abuse regulations at MPP § 42-715.512(c) specifically reference Cal-Learn education requirements among those that can be waived. A teen who feels participation in Cal-Learn is dangerous to her or her baby can invoke this regulation to waive participation.

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- Needs supportive services which are temporarily not available;⁷⁵ or
- Cannot be provided case management services;⁷⁶ or
- Has a special need that directly affects her ability to attend school or earn a diploma or GED, and the special need cannot be addressed;⁷⁷ or
- Is in a period of postpartum recovery prescribed by a doctor; or⁷⁸
- Is a victim of domestic abuse which interferes with her participation⁷⁹

C. Cal-Learn Bonuses and Sanctions.

Cal-Learn bonuses and sanctions are based on grades, submission of report cards to the caseworker, and graduation from high school. Teens can incur a maximum of four \$100 sanctions or bonuses in 12-month period.⁸⁰ When a teen earns a graduation bonus of \$500, a

⁷⁵ WIC § 11332(a); MPP § 42-763.31.

⁷⁶ WIC § 11332(a); MPP § 42-763.32.

⁷⁷ WIC § 11332(b); MPP § 42-763.33. The regulation specifies that the teen parent must be “severely restricted by factors beyond [her] control to attend school” and no home study or other arrangements can be made. The regulation also notes that “beyond her control” includes but is not limited to acts of nature, death of a child or parent, hospitalization of a child, or serious illness or injury to the teen parent or child. MPP § 42-763.331. If the reason for a deferral is an illness, injury or incapacity, then documentation from a doctor, licensed or certified psychologist, licensed Marriage, Family and Child Counselor, or a Licensed Clinical Social Worker is required. MPP § 42-763.332(a).

⁷⁸ WIC § 11332(c); MPP § 42-763.34. A doctor’s note is required. MPP §§ 42-763.211, 42-763.212, 42-763.332, 42-763.341.

⁷⁹ While domestic abuse is not specifically listed in the Cal-Learn statute and regulations as a ground for exemption or deferral, the general domestic abuse regulations at MPP § 42-715.512(c) specifically reference Cal-Learn education requirements among those that can be waived. A teen who feels participation in Cal-Learn is dangerous to her or her baby can invoke this regulation to waive participation.

⁸⁰ WIC § 11333.7(a), (b)(1); MPP §§ 42-762.22, 42-762.24.

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\$100 bonus will not be paid for the same period.⁸¹ The Cal-Learn regulations specify that no teen can earn a bonus or be sanctioned until she has participated in Cal-Learn for 90 calendar days.⁸² If the teen is temporarily exempted or has a break-in-aid of at least 90 days, she must be in Cal-Learn for another 90 days before she will qualify for bonuses or sanctions.⁸³ If the teen remains on aid but is exempt from Cal-Learn for a period of less than 90 days, the days of the break do not count as part of the 90-day waiting period for bonuses or sanctions.⁸⁴

1. \$ 100 Bonus for “C” Average or Better.

Cal-Learn participants who make “satisfactory progress” toward their diploma or GED are entitled to financial bonuses of \$100 per report card up to a maximum of four report cards per year.⁸⁵ The bonus is paid to the head of the assistance unit.⁸⁶ If the county receives the report card before the 11th of the month, the \$100 is due the next month.⁸⁷ Otherwise, the \$100 will be paid two months after the report card is submitted.⁸⁸ The bonus does not reduce the aid

⁸¹ WIC § 11333.7(c); MPP § 42-769.124(a).

⁸² MPP § 42-766.334. The 90-day period begins the first of the month after the teen attends orientation or is sent a notice after failing to attend orientation. MPP § 42-766.334(a). Thus a teen who attends orientation on January 5 would only be eligible for a bonus or sanction beginning in May. If the teen has a break-in-aid while participating in Cal-Learn, she must again participate for 90 days before she is eligible for a bonus or sanction. MPP § 42-763.82. The statute does not require this 90-day waiting period, but instead says that sanctions and bonuses shall be applied “in the first quarter following participant notification of program requirements.” WIC § 11334.2. Arguably, this means a bonus would be due if a participant is notified of requirements in March (in the first quarter of the year), and then turns in a satisfactory report card in April or May. (Of course, it also means sanctions could occur earlier.)

⁸³ MPP § 42-763.82.

⁸⁴ MPP § 42-766.334(d).

⁸⁵ WIC § 11333.7(a); MPP § 42-762.22.

⁸⁶ WIC § 11333.7(a); MPP § 42-769.123.

⁸⁷ WIC § 11333.7(a); MPP § 42-769.121.

⁸⁸ WIC § 11333.7(a); MPP § 42-769.122.

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payable to the family because it is a supplement.⁸⁹ Because the bonus is a supplement to the aid payment for the last month of the period covered by the report card,⁹⁰ it is payable even if the teen is no longer on welfare in the month the report card is issued or the month the bonus check is due.⁹¹ The bonus is due even if the family has an overpayment and it cannot be used to offset the overpayment.⁹²

“Satisfactory progress” is defined as a “C” average or better.⁹³ Note that because the bonus is based on the average of the teen’s grades for a particular quarter, she could fail a subject and still receive a bonus if her other grades are high enough to compensate. If the teen attends a school which does not use grades, she must show satisfactory progress based on the school’s normal assessment system.⁹⁴ Only grades on each report card, not cumulative grade point averages, are used to calculate bonuses and sanctions.⁹⁵

2. \$ 500 Bonus for High School Graduation or GED.

Cal-Learn participants who graduate from high school or earn a GED are entitled to a \$500 bonus.⁹⁶ Unlike the \$100 bonus for satisfactory grades, the graduation bonus is paid to the teen parent.⁹⁷ Other payment rules and procedures are the same as for the \$100 bonus: the payment is a supplement to the grant for the month the teen graduated, and is thus payable even

⁸⁹ MPP § 42-769.1.

⁹⁰ WIC § 11333.7(a), (c); MPP § 42-769.11.

⁹¹ MPP §§ 42-769.11 – .111.

⁹² MPP § 42-769.125. The bonus payment is not included in the calculation of any overpayment or homeless assistance payment. MPP § 42-769.4(QR).

⁹³ A “C” average is a 2.0 grade point average on a 4.0 scale. WIC § 11333.7(e)(1); MPP §§ 42-762.3(s)(2), 42-766.621.

⁹⁴ WIC § 11333.7(e)(2); MPP § 42-766.622.

⁹⁵ MPP § 42-766.623.

⁹⁶ WIC § 11333.7(c); MPP §§ 42-762.23, 42-766.81.

⁹⁷ WIC § 11333.7(c); MPP § 42-769.124.

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if she is off aid at the time the bonus check is due,⁹⁸ and it is not offset by any overpayments the family may have or counted in the determination of eligibility for homeless assistance.⁹⁹ The worker must initiate payment within 5 working days of receiving the graduation documentation,¹⁰⁰ and the bonus must be issued no later than the following month if the documentation was received by the 11th of the month, or the second month if documentation is submitted later.¹⁰¹

3. \$ 100 Sanction for Average Below “D” or For Failure to Submit Report Card.

When a teen fails to submit her report card or when the report card does not show adequate progress of a “D” average or better,¹⁰² the teen’s assistance unit is subject to a \$100 sanction, spread over 2 months (\$50 each month).¹⁰³ If the family’s welfare grant is less than \$50, the grant amount is reduced to zero but the balance of the current month’s \$50 sanction does not carry over to future months.¹⁰⁴ If the grant is less than \$10, no sanction is applied.¹⁰⁵

If there is an underpayment or overpayment on the family’s case, grant adjustment for that is done before the sanction is applied.¹⁰⁶ If there is more than one teen parent in the

⁹⁸ MPP §§ 42-769.11 – .111.

⁹⁹ MPP §§ 42-769.125, 42-769.4(QR).

¹⁰⁰ MPP § 42-766.811.

¹⁰¹ MPP § 42-769.12.

¹⁰² A “D” average is a 1.0 grade point average on a 4.0 scale. WIC § 11333.7(e)(1); MPP § 42-762.3(a)(1). The Cal-Learn regulations specify how grades not on a 4.0 scale are to be evaluated. MPP § 42-766.622.

¹⁰³ WIC § 11333.7(b)(1); MPP §§ 42-766.643, 42-769.22.

¹⁰⁴ MPP § 42-769.23. However, if the family has a grant of \$50 or more in the following month, the second \$50 increment will be applied. MPP § 42-769.231.

¹⁰⁵ MPP § 42-769.22.

¹⁰⁶ MPP § 42-769.24. In other words, the sanction is *in addition to* any overpayment collection for that month. See Chapter XI for information on overpayments.

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household and each is subject to a sanction, only one \$50 sanction per teen parent can be applied in each month.¹⁰⁷ In a family with 2 sanctioned teens, the family would lose \$100 per month for 2 months.¹⁰⁸ However, if a teen has two overlapping sanctions (because for example the worker did not discover one in time, sanctions of \$50 per month would be imposed for four months.¹⁰⁹ The sanction follows the teen parent if she changes assistance units (AUs) and is applied to the new AU's grant.¹¹⁰ Sanctions are not counted in calculating overpayment adjustments or eligibility for homeless assistance.¹¹¹

4. No Bonus or Sanction for “Adequate” Progress Between C and D.

Teens whose progress is “adequate” (grade point average 1.0 or above but below 2.0)¹¹² do not receive a bonus and will not be sanctioned if their report cards are turned in on time.¹¹³

D. Cal-Learn Sanctions Process.

The Cal-Learn sanctions process is significantly different from the former GAIN process or the current CalWORKs process. There is no conciliation period or compliance plan and no automatic determination of whether there was good cause. Unlike the CalWORKs welfare-to-work program (in which a person who has failed to comply can avoid a sanction by fulfilling the terms of a compliance plan even if she did not have good cause for the failure to comply)¹¹⁴ a

¹⁰⁷ MPP § 42-762.25.

¹⁰⁸ MPP § 42-769.251.

¹⁰⁹ MPP § 42-769.26.

¹¹⁰ MPP § 42-769.3.

¹¹¹ MPP § 42-769.4(QR).

¹¹² WIC § 11333.7(e)(1); MPP § 42-762.3(a)(1).

¹¹³ MPP § 42-766.632.

¹¹⁴ See Chapter VI and WIC § 11327.4(e) for the CalWORKs compliance plan requirements.

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teen who has failed to submit a report card or make adequate progress in school without good cause cannot escape a sanction unless she prevails at a state hearing.¹¹⁵

1. Notice and 10-Day “Reasonable Effort” Period.

When a teen fails to submit a report card or the report card does not show adequate progress (“D” average or better), the case manager must send a notice within ten working days of the failure advising the teen of the consequences of failing to make adequate progress.¹¹⁶ The case manager must also make “reasonable efforts” to reach the teen parent and secure a face-to-face meeting.¹¹⁷ If the teen parent does not request a good cause determination or turn in her report card by the end of the ten-day “reasonable efforts” period (within 10 days after the report card was due), a sanction will be initiated.¹¹⁸ Note that the Cal-Learn caseworker is *not* required to make a good cause determination unless the teen parent requests it.¹¹⁹ Also, there is no conciliation plan in Cal-Learn.¹²⁰

If no good cause determination is requested or no good cause is found, the welfare worker shall initiate a sanction of \$100, to be imposed over two months.¹²¹ If the sanction is for

¹¹⁵ WIC § 11333.7(b); MPP §§ 42-766.633, 42-766.642. See Chapter XIII for information on state hearings.

¹¹⁶ MPP §§ 42-766.7 - .71.

¹¹⁷ MPP §§ 42-766.72 - .73. “Reasonable efforts” means a telephone call to the teen, personal contact with the teen, or written notification of an appointment date. MPP § 42-766.74.

¹¹⁸ MPP § 42-766.643.

¹¹⁹ WIC § 11333.7(b)(2)(A) says participants “may seek to demonstrate good cause . . .” DSS has interpreted this to mean that cause determinations will be made *only* on request. MPP §§ 42-766.633(a), 42-768.2.

¹²⁰ WIC § 11333.7(b)(2)(A). As noted above, this means that a teen who fails to submit a report card or to make adequate progress will be sanctioned unless she has good cause.

¹²¹ WIC § 11333.7(b)(1); MPP § 42-769.22. If the AU receives a grant of less than the sanction, the grant amount shall be reduced to zero, but the balance of the current month’s \$50 will not be carried over to future months. MPP § 42-769.23. If the grant is \$10, then no sanction is applied. MPP § 42-769.22.

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not submitting the report card on time, it will not be imposed if the teen submits the report card within the ten-day reasonable effort period *and* has good cause for failing to submit it on time.¹²²

If there is no good cause for failing to submit it on time, but it is submitted during the ten-day reasonable effort period, then the sanction will be reduced to \$50 *if* the report card shows a “D” average or better.¹²³ Note that this means that even a teen with a straight A average can get sanctioned instead of receiving her bonus if she fails to turn in the report card on time.¹²⁴

When a teen is sanctioned, the worker shall also refer the teen to case management to determine the causes of the poor performance and how it can be improved.¹²⁵

As with any other change to welfare grant levels, the family must be given ten days notice before the check is reduced,¹²⁶ and is entitled to request an administrative hearing and aid paid pending until the matter is resolved.¹²⁷

2. Good Cause.

As noted above, a determination of whether the teen had good cause for failing to submit a report card or make a “D” average will be made only if the teen requests it by the close of the ten-day “reasonable effort” period.¹²⁸ If there was a break-in-aid during the report card period, the caseworker must consider the impact a break-in-aid had on the teen’s ability to make

¹²² MPP § 42-766.641.

¹²³ Or if the teen shows good cause for failing to make adequate progress. MPP § 42-766.642.

¹²⁴ See the example at MPP § 42-766.642(b)(1).

¹²⁵ WIC § 11333.7(b)(2)(A).

¹²⁶ MPP §§ 42-766.7, 42-769.21. The notice must include the telephone number or address of the local legal aid or welfare rights office. MPP § 42-766.66.

¹²⁷ See Chapter XIII for details on fair hearings.

¹²⁸ WIC § 11333.7(b)(2)(A); MPP § 42-768.1. Teens can also request a good cause determination before turning in a report card. MPP § 42-768.11.

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adequate progress.¹²⁹ The case manager must send a notice containing the good cause determination to the teen parent and the head of the AU no later than 15 working days after the good cause determination was requested.¹³⁰ A finding of no good cause can be appealed through the state fair hearing system.¹³¹

Following is a list of good cause criteria for Cal-Learn participants. The regulations specify that these constitute good cause only when “the event is beyond the teen parent’s control and substantially deprived the teen parent of the ability to make adequate progress in school and no home study or other special arrangements could be made with the school.”¹³²

¹²⁹ MPP § 42-768.21. As discussed above, a break-in-aid of 90 days or more means no bonus or sanction can be assessed until the teen returns to aid and again participates in Cal-Learn for at least 90 days. MPP § 42-763.82.

¹³⁰ MPP § 42-768.22. When the case manager is not a county employee, the case manager makes a recommendation regarding good cause to the county welfare worker, who makes the good cause determination. MPP § 42-768.23.

¹³¹ See Chapter XIII for details on fair hearings.

¹³² MPP § 42-768.3.

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CAL-LEARN GOOD CAUSE CRITERIA (MPP § 42-768.3)

- The teen parent is temporarily ill or incapacitated;
- The teen parent is required to appear in court or is incarcerated;
- Inclement weather or other act of nature precludes the teen parent and others similarly situated from traveling to an activity;
- There is a breakdown in transportation arrangements with no ready alternative;
- The teen parent needs but refuses major medical services;
- Child care is not reasonably available¹³³ during school hours, or child care is needed for a child who is not eligible for Cal-Learn paid child care;
- A breakdown or interruption of child care arrangements occurs;
- Special needs child care is not reasonably available for children with disabilities, chronic illness, or other special needs;
- The teen meets any of the Cal-Learn exemption or deferral criteria;
- There is a family crisis or change in circumstances, such as the death of a spouse, parent, or child, or illness of a spouse or child which requires the teen parent's immediate attention;
- The teen is a victim of domestic abuse;¹³⁴ or
- Any other "substantial and compelling" reason in the county's discretion.

¹³³ "Reasonably available" means the teen has two choices of child care which do not add more than a half-hour each way to her school commute or do not require the child to transfer to a different school. MPP § 42-768.3(f)(1).

¹³⁴ While the Cal-Learn good cause statute and regulations do not specifically mention domestic abuse, the general domestic abuse regulations applicable to all aspects of

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E. After Cal-Learn.

As noted above, mandatory Cal-Learn participation ends when the teen parent turns 19 or earns a high school diploma or GED.¹³⁵ When the teen gets a diploma or turns 19 and does not choose to voluntarily continue in Cal-Learn,¹³⁶ she must begin participating in CalWORKs work activities unless she is exempt under the CalWORKs rules.¹³⁷ State regulations allow counties to begin “transitioning” Cal-Learn participants to independent living or participation in welfare-to-work activities when it is known to the case manager that the teen parent is approaching the end of Cal-Learn.¹³⁸ Unfortunately, this often means that the teen who graduates from high school or turns 19 is not encouraged to stay in school or go to college, but is “transitioned” into job club and other CalWORKs activities. However, if the teen enrolls in college before her CalWORKs appraisal and meets the other self-initiated program (SIP) requirements (discussed in Chapter VI of this manual), she can stay in school.¹³⁹ Cal-Learn case managers and other advocates should urge teen parents to plan early for their post-Cal-Learn activities so as not to lose this limited chance to stay in school.¹⁴⁰

CalWORKs specifically note that the Cal-Learn sanctions specified in MPP § 42-769 can be waived. MPP § 42-715.512(c).

¹³⁵ WIC § 11331.5, MPP §§ 42-763.1, 42-763.72.

¹³⁶ See Section B.2 in this chapter.

¹³⁷ MPP §§ 42-763.14, 42-766.672. The CalWORKs exemptions are discussed in Chapter VI of this manual.

¹³⁸ MPP § 42-766.672, ACIN I-33-99, question #6.

¹³⁹ ACL 99-32, #10.

¹⁴⁰ For more information on educational opportunities for CalWORKs recipients see Western Center’s *Students and CalWORKs: A Guide to Educational Opportunities in the CalWORKs Program*.

Chapter IX: How Does a Family Apply For And Keep Getting CalWORKs?

A. The Application Process.

Applications for CalWORKs must be filed with the local county welfare department.¹ Every person has the right to apply for aid, even if the county believes she is ineligible.² The application must be made in writing on a one-page state form (SAWS-1).³ Usually the applicant caretaker relative completes the application, although other people may complete the application for the applicant.⁴ The application must be made to the county in which the applicant lives.⁵ The county must provide the applicant with a copy of the SAWS-1 form at the time of application.⁶

The application process requires the county to secure extensive information from the applicant about her income, resources, and family composition.⁷ This information is provided on the Statement of Facts (SAWS-2), which is signed by the applicant under penalty of perjury.⁸ The statement of facts must include certain mandatory family members living in the home: the

¹ MPP §§ 40-125.11, 40-119.1. Appendix B includes a flyer with a list of what documents to take to the welfare office when applying for CalWORKs, and a copy of the application form.

² 45 CFR §§ 206.10(a)(1), 233.10(a)(1)(vi); MPP § 40-109.1. Many welfare offices routinely tell clients, particularly teens, that they cannot apply, or pressure applicants into withdrawing their applications. State regulations are very clear that everyone has a right to apply. Clients should be encouraged to insist on filling out an application and turning it in. Applications can only be withdrawn upon the voluntary initiative of the applicant.

³ MPP § 40-103.4.

⁴ MPP §§ 40-103.4, 40-109.2, 40-117.2; *see also* 45 CFR § 206.10(a)(1)(ii) (allowing a representative to apply on behalf of applicant).

⁵ WIC §§ 11050, 11102(a); MPP § 40-119.1.

⁶ MPP § 40-121.3.

⁷ MPP § 40-107(c).

⁸ 45 CFR § 206.10(a)(1)(ii); WIC § 11054; MPP §§ 40-115.22, 40-128.1. A copy of the SAWS-2 is in Appendix B.

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applicant child, all siblings and half-siblings, parents of any of these children, the parents of an SSI/SSP child, an alien sponsor, and the spouse of any of these individuals.⁹ The county will deny the application if these persons are not included on the statement of facts. The county must also identify any other persons living in the home, who may be included in the application at the applicant's option, and the effect and maximum aid that will result. These optional persons include a non-parent caretaker relative, other eligible children such as a niece or nephew, a senior parent (who, in a three-generation household, is the parent of a pregnant or parenting minor), or a stepparent.¹⁰

While an applicant may be required to indicate on the SAWS-2 whether or not she is a “citizen/national” or a “non-citizen,” the welfare department may not inquire whether the applicant or other members of the family are undocumented.¹¹

A face-to-face interview is required,¹² unless the applicant is unable to participate because of a physical or mental condition.¹³ A home visit is only made if eligibility cannot be determined without one.¹⁴ Counties cannot require applicants and recipients to bring their children to the interview.¹⁵

⁹ MPP §§ 40-118.1, 82-820.3.

¹⁰ MPP §§ 82-828.2; 89-201.51.

¹¹ *Tovar v. Anderson*, Civ. No. 98-10335 WDK (C.D. Cal. Oct. 22, 1999); ACIN I-47-99. For more information on *Tovar*, contact Western Center.

¹² WIC § 11052.5; MPP § 40-131. At the interview, an applicant must receive information on a variety of topics, including her duty to report all facts affecting eligibility to the county (MPP § 40-131.3(b)); her right to fair hearings (MPP § 40-131.3(j)); her child support rights and responsibilities (MPP § 40-131.3(l)); and her responsibility for identifying third parties, who may be liable for medical care (MPP § 40-131.3(w)).

¹³ MPP § 40-131.2. The county cannot approve the application without a face-to-face interview unless it has determined through a personal contact with the applicant that the applicant is unable to participate in the interview. MPP § 40-131.2.

¹⁴ MPP § 40-161. Some counties have initiated mandatory home visit programs that go beyond what the state regulations describe. Sacramento County’s home visit policy was initially enjoined by the court, and then abandoned as part of a settlement agreement. *Poladyan v. Davis*, No. 98CS02862 (Super. Ct. 1998). For more information about *Poladyan*, contact

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- **Fingerprint & Photo Imaging.**

Since February 2000, the Statewide Fingerprint Imaging System (“SFIS”) have been installed throughout the counties.¹⁶ Providing two fingerprint images and a photo image (computer photographs) is a condition of eligibility for most adult CalWORKs applicants and recipients.¹⁷ The following individuals are included in the SFIS: 1) all aided or applicant caretaker relatives, 2) non-needy caretaker relatives of an aided or applicant child, 3) aided or applicant pregnant women in an assistance unit consisting of the woman only.¹⁸ Individuals missing all ten fingers are permanently excused from fingerprint imaging, but a photo image will be taken as part of the normal SFIS procedure.¹⁹ Counties must excuse individuals with damage to both hands that precludes fingerprint imaging for a period of not more than 60 days, although a photo image will be taken as part of the normal SFIS procedure.²⁰ Persons with other medically verified physical conditions that preclude them from coming into the office can be excused from both fingerprint and photo imaging for a period of not more than 60 days.²¹

Legal Services of Northern California at (916) 551-2150. The challenges to the Los Angeles County program and the San Diego County programs have been unsuccessful. *See Smith v. Los Angeles County Board of Supervisors*, 104 Cal.App.4th 1104 (2002); *Sanchez v. County of San Diego*, 464 F.3d 916 (9th Cir. 2006). For more information about the *Smith* and *Sanchez* lawsuits or county-specific home visit policies, contact Bob Newman at Western Center, rbnewman@wclp.org.

¹⁵ ACIN I-15-03, #3.

¹⁶ WIC § 10830; MPP §§ 40-026, 40-105.3; ACL 99-79.

¹⁷ WIC § 10830(b)(1); MPP §§ 40-026.3, 40-105.31; ACL 99-79, Attach 1 at 1.

¹⁸ WIC § 10830(b); MPP § 40-105.32; ACL 99-79. All adults, whether or not they are part of the assistance unit (including those who are ineligible for aid based on their receipt of SSI benefits or immigration status) must submit to the SFIS. *Sheyko v. Saenz*, 112 Cal. App. 4th 675 (2003).

¹⁹ MPP § 40-105.332; ACL 99-79, Attach. 1 at 1.

²⁰ MPP § 40-105.331(a); ACL 99-79, Attach. 1 at 1.

²¹ MPP § 40-105.331(b); ACL 99-79, Attach. 1 at 1.

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All records in the SFIS database must be kept confidential, and counties must inform every person providing images that the images will not be disclosed for any purpose other than prevention or prosecution of welfare fraud.²² If a person required to provide fingerprint and photo images refuses or fails to do so, the county will deny aid to the entire assistance unit.²³

- **Special Note About Welfare Offices Hours.**

Many counties close their welfare offices one day a week, or for extended periods over holidays. Under *Blanco v. Anderson*,²⁴ counties must accept applications for Food Stamps, CalWORKs, homeless assistance, and Medi-Cal every weekday except legal holidays. Generally, counties that regularly close on (for example) Fridays meet this requirement by using a drop box for applications and maintaining a telephone number for information and assistance. Counties must also provide notice of their hours of operation and of the procedures during closed hours for applying for and receiving benefits, including emergency benefits.²⁵ Counties must meet the expedited processing deadlines for emergency benefit programs such as expedited Food Stamps, homeless aid, and immediate need regardless of their closed days (except holidays).²⁶

- 1. Forty-Five Day Processing Deadline.**

Counties must determine eligibility within 45 days of the date of application.²⁷ The date of application is the day that the county receives the "SAWS 1" application form.²⁸ Families facing eviction or utility shut off can get an advance payment of \$200 and have their applications expedited and processed within 15 days.²⁹

²² WIC § 10830(d); MPP §§ 40-026.3, 40-105.34; ACL 99-79 at 2.

²³ MPP § 40-171.221(k).

²⁴ 39 F.3d 969 (9th Cir. 1994); MPP §§ 11-601.1 *et seq.*, § 63-300.38.

²⁵ MPP § 11-601.1; ACIN I-17-08.

²⁶ MPP §§ 11-601 *et seq.* (all programs), 63-300 (food stamps).

²⁷ 45 CFR § 206.10(a)(3)(i); MPP § 40-126.1.

²⁸ MPP § 40-121.1.

²⁹ See Chapter IV for a discussion of CalWORKs Immediate Need.

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CalWORKs?**

The county is required to give the family written notice stating the amount of aid granted and the beginning date of aid when it approves an application.³⁰ The county also must provide written notice when it denies an application.³¹ Verbal denials are not allowed.³² The denial notice must include the reason for the denial, the regulation under which the application was denied, and the right to appeal the denial by requesting a hearing.³³ When the county denies a CalWORKs application, the county is required to review the case for eligibility for Medi-Cal under the "medically needy" program.³⁴ A family may withdraw an application, but the withdrawal must be in writing and the county must send a notice confirming the withdrawal.³⁵

If a family is not eligible at the time of application, but it appears that it will be eligible within 60 days, the county must hold the application until this later date.³⁶ The county must send the family a notice that contains the date the county plans to determine eligibility.³⁷

2. Beginning Date of Aid.

An applicant family is entitled to a CalWORKs payment as of the beginning date of aid, which is the date of application, or the date on which the applicant meets all eligibility conditions, whichever is later.³⁸ An applicant may have met all eligibility conditions for purposes of the beginning date of aid, even though verification or documentation of eligibility is

³⁰ 45 CFR § 206.10(a)(4); MPP § 40-173.1.

³¹ MPP § 40-173.3.

³² 45 CFR § 206.10(a)(4); MPP § 40-173.3.

³³ 45 CFR § 206.10(a)(4); MPP § 40-107(e).

³⁴ MPP § 40-115.232.

³⁵ MPP §§ 40-171.231, 40-171.233, 40-173.4.

³⁶ WIC § 11052; MPP § 40-171.11.

³⁷ MPP § 40-171.11.

³⁸ MPP § 44-317.11.

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received at a later date.³⁹ The beginning date of aid for a pregnant woman is the date of application, providing she is eligible on that date.⁴⁰ If the beginning date of aid is after the first day of the month, the CalWORKs grant for that month is pro-rated.⁴¹

B. Verifications.

The application process involves gathering and submitting independent documents to back up the applicant's sworn statement regarding each eligibility requirement. For example, a child's age must be verified by a birth certificate, school records, etc.⁴² The value of a car can be verified by a DMV registration card, the "Blue Book," a bill of sale, newspaper ads for similar cars, written statements from automobile dealers or testimony concerning the value of a vehicle.⁴³ If somebody eligible to be in the AU lacks a Social Security number, the county will require proof that an application for a number has been made.⁴⁴ If someone loans the family money, the loan is exempt only if the family can produce a written agreement specifying the obligation to repay and a repayment plan.⁴⁵

When the county requests documents, if the applicant hand-delivers these to the county and someone other than the regular case worker accepts the documents, the county must provide

³⁹ MPP § 44-317.112. For example, a family applies for aid on the third of October and submits verification on the fifteenth. The verification shows their eligibility on October 3rd. Their beginning date of aid, therefore, is October 3rd.

⁴⁰ MPP § 44-317.21.

⁴¹ 45 CFR § 206.10(a)(6)(i)(D); MPP § 44-315.72.

⁴² MPP § 42-111.1.

⁴³ MPP § 42-215.413. Determining the fair market value of a car is not an exact science, and the regulations give applicants an opportunity to show that the car is worth less than the Blue Book value. MPP § 42-215.4. The value for which the car could be sold, not the value of the car when purchased. For more on cars, see Chapter III.

⁴⁴ MPP § 40-105.22.

⁴⁵ MPP § 44-111.437. Note that the agreement need not have been signed at the time the loan was made. See Chapter III for more on loans and other excluded income.

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a receipt if the applicant requests one.⁴⁶ Even if no receipt is required or requested, the county must have a system for logging hand-delivered documents. *Applicants should always keep copies of any documents they submit to the county, and get receipts for hand-delivered documents.*

1. Gathering Verification.

The county may require only evidence and verification related to eligibility requirements and cannot require unnecessary verification.⁴⁷ Within 10 calendar days after application, the county must provide written notice to the applicant of the required verification and examples of alternative evidence that would be acceptable.⁴⁸

In some situations, the county may not require applicants to provide documentation that is already in the county's files, including files from previous applications and Medi-Cal files.⁴⁹ When it is not possible for the applicant to get the requested documentation, the county has a duty to assist the applicant by obtaining the evidence itself or by paying any costs to get the verification.⁵⁰ If no verification exists, the county must accept a sworn statement from the applicant, except for immigration status verification and medical verification of pregnancy.⁵¹

⁴⁶ WIC § 11023.5(a); MPP § 40-125.12.

⁴⁷ WIC § 11275(a); MPP § 40-126.31.

⁴⁸ WIC § 11275(b); MPP § 40-126.32.

⁴⁹ WIC § 11275.05(c); MPP § 40-125.93 (county must use information in files where person reapplies within one calendar month of termination); MPP § 40-126.35 (county must use information in its files where person reapplies within one year and cannot obtain information without a delay or where there is a cost to obtain it); MPP § 40-159.2 (county must use eligibility determination already made for other social services programs).

⁵⁰ WIC § 11275.10(a), (b); MPP §§ 40-126.33, 40-157.213.

⁵¹ MPP § 40-115.22.

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2. Evaluating Verifications.

The county evaluates all evidence for internal consistency, and the personal knowledge and motives of the person making any statements.⁵² Conflicting evidence is to be investigated until a *preponderance of evidence* supports a finding of eligibility or no eligibility.⁵³

3. Ability to Cooperate.

The CalWORKs family is required to cooperate *within its capabilities*.⁵⁴ Capabilities are sometimes limited by emotional problems, illiteracy, inability to speak, read or write English, mobility problems, developmental disabilities, etc. Among the things the CalWORKs family is expected to do are: complete forms; provide documents; report certain changes such as changes in living situations, conditions affecting eligibility, etc. within five days of the change for applicants and within ten days or within the payment quarter for recipients (depending on the type of changes); and cooperate with quality control reviews.⁵⁵

A family that fails to cooperate can be denied CalWORKs.⁵⁶ When a county denies an application based on failure to cooperate, the notice of action must advise the applicant that she may submit the required evidence within 30 calendar days of the denial date for the denial to be rescinded.⁵⁷ If the applicant provides the needed evidence within 30 calendar days, and the applicant is otherwise eligible, the county must grant aid based on the original application with

⁵² MPP § 40-157.11 - .12.

⁵³ MPP § 40-157.14. “Preponderance of evidence” is a legal term of art. It simply means evidence that is slightly more convincing than not.

⁵⁴ MPP § 40-105.1.

⁵⁵ WIC § 11265.3(a); MPP §§ 40-105.14(QR) - .15. Quality control reviews are part of a state-mandated system for documenting the extent of and the reasons for errors in eligibility determination and payment. Cooperation with the quality control review includes, but is not limited to, attending a face-to-face interview, answering questions and providing information. MPP §§ 40-105.15, 40-200.

⁵⁶ MPP §§ 40-126.341, 40-157.3.

⁵⁷ MPP § 40-126.343.

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its earlier beginning date of aid.⁵⁸ These provisions do not apply if the applicant makes oral or written statements demonstrating a refusal to cooperate.⁵⁹

If the county requires evidence of eligibility from a third party and the applicant has made a good faith effort to obtain it and is unsuccessful, the county has a duty to assist the applicant in obtaining this third party evidence.⁶⁰ For example, if the applicant needs a bank statement and has no money to pay the fee charged by the bank, the county must assist by paying the fee. Whenever the county requires third party evidence, it must notify the applicant in writing of these procedures and of the availability of county assistance.⁶¹

4. Income and Eligibility Verification System (IEVS).

IEVS is a computer information system that contains benefit information and other data from the Social Security Administration, Employment Development Department, Internal Revenue Service, State Franchise Tax Board, and other county welfare departments.⁶² The purpose of the system is to verify both earned and unearned income received, and possibly not reported, by CalWORKs families.⁶³ Counties cannot deny or delay applications pending IEVS processing.⁶⁴

The county does not need independent verification for IEVS information on Social Security benefits, SSI benefits, Unemployment Insurance Benefits, State Disability Insurance benefits, and CalWORKs benefits; this information is considered verified upon receipt from the IEVS computer.⁶⁵ Information from secondary sources such as unearned income reported by the

⁵⁸ MPP § 40-126.342.

⁵⁹ MPP § 40-126.344.

⁶⁰ MPP § 40-126.331.

⁶¹ MPP § 40-126.333.

⁶² 45 CFR § 205.51; WIC § 11025(a); MPP § 20-006.12.

⁶³ 45 CFR § 205.56(a)(1)(iii); MPP § 40-115.225.

⁶⁴ 45 CFR § 206.10(a)(5)(ii); MPP § 40-115.225.

⁶⁵ MPP § 20-006.53.

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IRS must be independently verified before the county relies on it to terminate, deny or reduce benefits.⁶⁶

PRACTICE TIP

Information obtained through IEVS is often out of date. If denied based on inaccurate IEVS information, clients should submit verification that bank accounts have been closed, benefits have been stopped, etc., and request a fair hearing if the county refuses to rely on this more current information.

5. Mandatory Verifications.

Applicants and recipients are required to verify income and property, Social Security numbers, citizenship or immigration status, and pregnancy.

a. Social Security Number.

Each member of the assistance unit must provide a Social Security Number (SSN) or apply for one as a condition of eligibility.⁶⁷ An SSN can be verified with: 1) a Social Security card; 2) a Medicare card; 3) a check or award letter from the Social Security Administration (SSA); or 4) other documentation from SSA.⁶⁸ If no other evidence is available, the county must accept the SSN pending verification through IEVS.⁶⁹

If someone in the family does not have an SSN, the county cannot delay, deny, or discontinue the family's CalWORKs benefits as long as the family applies for an SSN, and gives the county verification of the SSN application, and the SSN once it is obtained.⁷⁰ Families must

⁶⁶ MPP § 20-006.54.

⁶⁷ 45 CFR § 205.52; WIC § 11268(a); MPP § 40-105.21.

⁶⁸ MPP § 40-107(g)(1).

⁶⁹ MPP § 40-107(g)(1)(C).

⁷⁰ 45 CFR § 205.52(a)(2); WIC § 11268; MPP §§ 40-105.212, 40-107(g)(2); *see also* ACIN I-54-01 (how county can assist non-citizen applicants in getting non-work SSN).

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apply for SSNs for newborn babies before the end of the month following the month of the mother's release from the hospital after giving birth.⁷¹

b. Citizenship or Immigration Status.

All applicants for CalWORKs and all members of the CalWORKs assistance unit must establish "satisfactory immigration status"⁷² and provide information on their citizenship status on the SAWS-2 statement of facts.⁷³ Citizens must provide evidence of their status, such as a birth certificate, U.S. passport, or one of the other acceptable documents listed in state regulations.⁷⁴ A citizen who is attempting to obtain acceptable documentation may still receive CalWORKs for up to 90 days, with the possibility of extensions of time up to the family's next redetermination date.⁷⁵

The rule for non-citizens is different. Acceptable documentation must be provided within the 45-day processing deadline or else the individual's CalWORKs application will be denied.⁷⁶ In addition, pending documentation of an immigrant member of the assistance unit, the county may not delay approval of the remaining members of the assistance unit if they are otherwise eligible before the 45th day.⁷⁷ CalWORKs Immediate Need benefits will also be denied in the absence of acceptable documentation (although expedited Food Stamps *will* be provided).⁷⁸

⁷¹ MPP § 40-105.22.

⁷² 42 USC § 1320b-7(d).

⁷³ MPP § 42-433.22; ACL 88-131, Attach. 1 at 1 (CA 2 has been replaced by SAWS 2). A copy of SAWS-2 is in Appendix B.

⁷⁴ MPP § 42-433.21.

⁷⁵ MPP § 42-433.22.

⁷⁶ Some acceptable documents are listed in MPP § 42-433.3. ACIN I-09-89 at 4 and ACIN I-08-92 at 2 list other acceptable documents that are *not* listed in the regulations.

⁷⁷ ACL 88-131, Attach. 2 at 3.

⁷⁸ ACL 88-131, Attach. 2 at 4.

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The county must verify the immigration status of non-citizens through the "SAVE" program (Systematic Alien Verification for Entitlements) operated by the Bureau of Citizen and Immigration Services (BCIS).⁷⁹ Verification is done through a BCIS computer check of the applicant's immigrant's registration number or through BCIS review of the individual's documentation. The county must use SAVE to verify immigration status at each redetermination, as well as at application, and even for applicants who have already submitted acceptable documents. However, if the applicant or recipient has provided documentation, the county may not delay application processing while SAVE verification is pending, and can approve benefits before this verification is received.⁸⁰

c. Medical Verification of Pregnancy.

As discussed in Chapter II pregnant women with no other children may be eligible for CalWORKs. However, the county cannot approve aid for the pregnant woman with no other eligible child until she has provided medical verification of her pregnancy.⁸¹ This verification must be from a health care provider or a provider's office, and it must include the estimated date of delivery.⁸²

⁷⁹ 42 USC § 1320b-7(d)(3); ACL 88-131 at 1. BCIS was formerly known as the Immigrant and Naturalization Service (INS). Primary SAVE verification is by computer check. The response to this primary check may be that secondary verification is necessary, which means that the state will submit to BCIS copies of the applicant's documentation with the BCIS form G-845. The "CA-6 procedure" discussed in MPP § 42-433.33 is no longer in effect. ACL 88-131 at 2. If a non-citizen applicant lacks acceptable documentation but has a receipt from BCIS reflecting payment of an application fee, this receipt may be submitted for secondary SAVE verification. ACIN I-09-89 at 5. If the response from SAVE indicates satisfactory immigration status, this in combination with the receipt is sufficient documentation to approve CalWORKs benefits. ACIN I-09-89 at 5.

⁸⁰ ACL 88-131, Attach. 1 at 4; 42 USC § 1320b-7(d)(4)(B)(ii).

⁸¹ MPP §§ 44-211.62 (special needs), 82-836.11 (grant).

⁸² MPP § 80-301(m)(3).

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C. Quarterly Reporting System.

By July 1, 2004, all counties switched from monthly reporting and retrospective budgeting system to quarterly reporting and prospective budgeting system for most CalWORKs recipients.⁸³ In a quarterly reporting system, CalWORKs recipients report their eligibility information once every three months.⁸⁴ This information is used to determine the recipients' eligibility and to calculate their grant amount for the following QR payment quarter (the next three months), using prospective budgeting and reasonably anticipated income averaging rules.⁸⁵ A recipient's grant level is "frozen," remaining the same during a QR payment quarter, and is adjusted mid-quarter in only limited circumstances.⁸⁶ See Section C. 9 below for a discussion on these circumstances.

Every three months, CalWORKs recipients are required to fill out and return quarterly reporting forms (QR 7) stating the amount of their income, family composition, other relevant information, and any changes to those circumstances that the recipients expect will occur in the current or next quarter.⁸⁷ Recipients, who are sponsored immigrants or subject to senior parent deeming, must also submit a reporting form on the sponsor's or the senior parent's income and resources each quarter.⁸⁸ Failure to turn in a complete quarterly reporting form will result in aid

⁸³ WIC § 11265.1(a); ACL 03-18 at 2. In monthly reporting, CalWORKs recipients reported income and other information monthly, and their grant was calculated using retrospective budgeting. Retrospective budgeting meant that income was counted against the grant two months after it was actually received. In other words, income received in August was reported to the county in September and was used to calculate the October grant.

⁸⁴ WIC § 11265.1(b); MPP § 44-313.1; ACL 03-18 at 2, 9.

⁸⁵ WIC §§ 11265.1(a), 11265.2(c); MPP §§ 44-313.1, 44-315.316; ACL 03-18 at 2, 9.

⁸⁶ WIC § 11265.2(d); MPP §§ 44-207.23(QR), 44-316.3(QR); ACL 03-18 at 2.

⁸⁷ WIC §§ 11265.1(d), 11265.2(d); MPP §§ 40-181.22(QR), 44-316.2(QR); ACL 03-18 at 9-11. See WIC § 11004(b) (applicant or recipient responsible for accurately reporting required facts and any changes in those facts); see also 45 CFR § 233.36 (monthly reporting). See Appendix B for a copy of a QR 7 form.

⁸⁸ MPP § 40-181.25(QR); ACIN I-54-03, #15.

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being discontinued.⁸⁹ Families in CalWORKs reunification program are not subject to quarterly reporting and have their eligibility redetermined annually, unless they are receiving Food Stamp benefits.⁹⁰

Recipients are also required to make mid-quarter reports of certain changes affecting eligibility within ten calendar days of the changes, and applicants are required to report these changes within five calendar days.⁹¹

1. Calculating Grants for Applicants.

When a county receives and approves an application for aid, the county will document the applicant's reasonably anticipated income information for the initial quarter in the case file.⁹² The county will then use this information and the information on the application to prospectively calculate the grant until it receives the first QR 7 form.⁹³

2. Quarterly Reporting Cycle.

A "QR payment quarter" has three consecutive calendar months.⁹⁴ The first month is when the "QR payment quarter" begins.⁹⁵ The second month, the "QR data month," is the month for which the recipient reports all information necessary to determine eligibility.⁹⁶ The third month, the "QR submit month," is the month in which the recipient turns in the QR 7 report

⁸⁹ WIC § 11265.1(f); MPP § 44-181.221(a)(QR).

⁹⁰ MPP § 40-181.223(QR); ACL 03-18 at 85.

⁹¹ WIC § 11265.3(a); MPP §§ 40-105.14(QR), 44-316.32(QR); ACL 03-18 at 9.

⁹² ACIN I-10-04, #27.

⁹³ ACL 03-18 at 66; ACIN I-10-04, #27.

⁹⁴ WIC § 11265.1(b).

⁹⁵ MPP § 40-103.51(QR).

⁹⁶ MPP § 40-103.53(QR); ACL 03-18 at 10.

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to the county.⁹⁷ Once the benefits for the QR payment quarter are determined, the amounts are “frozen” and adjusted only in limited circumstances.⁹⁸

<u>EXAMPLE 1 OF A QUARTERLY REPORTING CYCLE</u>					
First QR Payment Quarter			Second QR Payment Quarter		
January	February	March	April	May	June
Payment quarter begins	Data month	Submit month	Payment quarter begins	Data month	Submit month

<u>EXAMPLE 2 OF A QUARTERLY REPORTING CYCLE</u>					
First QR Payment Quarter			Second QR Payment Quarter		
February	March	April	May	June	July
Payment quarter begins	Data month	Submit month	Payment quarter begins	Data month	Submit month

Counties will use the application date, the terminal digit of the case number, or other method they choose to assign families to a specific quarterly reporting cycle.⁹⁹ The CalWORKs annual redetermination of eligibility should be aligned with the month the QR 7 is due and with the Food Stamp certification period.¹⁰⁰

⁹⁷ MPP § 40-103.54(QR); ACL 03-18 at 10.

⁹⁸ WIC § 11265.2(d) ; MPP §§ 44-207.23(QR), 44-316.3(QR); ACL 03-18 at 2, 9-10.

⁹⁹ WIC § 11265.1(c); MPP § 40-107 (j)(QR); ACL 03-18 at 77.

¹⁰⁰ MPP § 40-107(j)(QR); ACL 03-18 at 67 - 68, 77.

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Counties must provide families with a written notice informing them of their QR reporting cycle, which months their QR 7 reports are due, which months are the data months for which they must report income and other eligibility information.¹⁰¹

3. Timely Reporting.

Quarterly reports are due on or before the 5th calendar day of each QR submit month, but not before the first calendar day of that month.¹⁰² QR 7s not received by the 11th of the QR submit month will be considered late.¹⁰³ If the county does not receive a complete QR 7 by the 11th calendar day of the month, the county will send a discontinuance notice.¹⁰⁴

In addition, the county must personally attempt to contact the recipient either by phone or in a face-to-face meeting.¹⁰⁵ If the recipient cannot be reached by phone, a written reminder notice must be mailed at least 5 days before the end of the submit month. This reminder must be mailed separately from the notice of discontinuance.¹⁰⁶

If the recipient responds and files a completed quarterly reporting form after the 11th but on or *before the first working day of the next QR payment quarter*, the discontinuance action is rescinded, and aid is paid.¹⁰⁷ The family's QR payment cycle remains unchanged.¹⁰⁸ When the QR 7 is turned in late, the county has until the 10th of the first month of the next QR payment

¹⁰¹ MPP § 40-107(j)(1)-(3)(QR); ACL 03-18 at 77.

¹⁰² MPP § 40-181.22(QR); ACL 03-18 at 12.

¹⁰³ WIC § 11265.1(b), (f); MPP § 40-181.22(QR); ACL 03-18 at 12.

¹⁰⁴ 45 CFR § 233.37(b); MPP § 40-181.221(a)(QR); ACL 03-18 at 12. The following procedures and protections before discontinuance for late or incomplete reports are commonly known as the *Balderas* requirements in reference to *Balderas v. Woods*.

¹⁰⁵ WIC § 11265.1(f); MPP § 40-181.221(b)(QR); ACL 03-18 at 12.

¹⁰⁶ WIC § 11265.1(f); MPP § 40-181.221(b)(1)(QR); ACL 03-18 at 12. The eligibility worker is required to make a notation in the case file regarding any attempted personal contacts. MPP § 40-181.221(c).

¹⁰⁷ WIC § 11265.1(f); MPP § 40-181.222(a)(QR); ACL 03-18 at 12.

¹⁰⁸ ACL 03-18 at 12.

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quarter to issue the cash aid.¹⁰⁹ If the information on the late QR 7 results in decreased benefits but the county cannot provide the required 10-day notice of action, the county will decrease benefits in the second month of the QR payment quarter.¹¹⁰ The county will assess an overpayment for the benefits that the family is not entitled to receive in the first month of the payment quarter.¹¹¹ If the information on the late QR 7 results in increased benefits, and the county cannot increase benefits by the first day of the next QR payment quarter, the county will issue a supplement for that month and increase benefits for the remainder of the quarter.¹¹² The 10-day notice requirement does not apply to increases in benefits.¹¹³

Upon request, counties are required to give recipients receipts when recipients hand-deliver quarterly reporting forms, or other documents, to someone other than their regular worker.¹¹⁴ It is quite common for the county to lose a QR 7 or claim it was never received. As with all documents, clients should be sure to keep a copy, and take care to get a receipt or a date stamp when they turn in the quarterly QR 7.

4. Complete Report.

If a QR 7 is not complete, the county will discontinue aid.¹¹⁵ To be considered complete, a quarterly report must be signed by the caretaker relative no earlier than the first of the QR submit month.¹¹⁶ In addition, it must contain the following information: 1) all income (earned, unearned, exempt, and nonexempt), verification and source of the income (usually a pay stub)

¹⁰⁹ MPP § 44-304.52(QR).

¹¹⁰ ACL 03-18 at 12-13; ACIN I-29-04, #34.

¹¹¹ MPP §§ 44-350.5(QR), 44-352.12(QR); ACL 03-18 at 12; ACIN I-29-04, #34.

¹¹² MPP § 44-340.133(QR); ACL 03-18 at 13; ACIN I-29-04, #34.

¹¹³ ACL 03-18 at 13; ACIN I-29-04, #34.

¹¹⁴ WIC § 11023.5(a); MPP § 40-125.12.

¹¹⁵ WIC § 11265.1(f); MPP § 40-181.221 (a)(QR).

¹¹⁶ WIC § 11265.1(e)(1); MPP § 40-181.241 (a)(QR), (c)(QR); ACL 03-18 at 11, 16.

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received in the QR data month,¹¹⁷ 2) income “reasonably anticipated” to be received during the next QR payment quarter,¹¹⁸ 3) any change in income, resources, or personal circumstances (such as marriage, immigration status, pregnancy, work hours, etc.) since the last quarterly report,¹¹⁹ and 4) names of anyone who has moved in or out of the home since the last quarterly report.¹²⁰

If a recipient voluntarily reports a change mid quarter but does not report it on the next QR 7, the county must contact the recipient to resolve the discrepancy.¹²¹ If the county cannot reach the recipient or cannot resolve the discrepancy, the QR 7 is considered incomplete.¹²²

5. Penalties for Late Reporting.

State law no longer authorizes the loss of income disregards as a penalty for late reporting of income. Those penalties have been eliminated.¹²³

6. Good Cause for Late Reporting.

There are good cause reasons for the failure to meet the reporting requirements. Good cause includes situations in which: 1) the recipient suffers from a mental or physical condition that prevents timely and complete reporting; 2) the failure is attributable to county error; or 3)

¹¹⁷ WIC § 11265.1(d)(1), (e)(2), (e)(3), (d)(1); MPP § 40-181.241 (e)(QR), (f)(QR); ACL 03-18 at 11, 16.

¹¹⁸ WIC § 11265.1(d)(2); MPP § 40-181.241 (e)(QR); ACL 03-18 at 11. Earned and unearned income is “reasonably anticipated” when the recipient is reasonably certain that she will receive it during any month of the next QR payment quarter and when the amount of the income is known. MPP §§ 44-101(c)(QR), 44-315.31(QR).

¹¹⁹ WIC § 11265.1(d)(3); MPP § 40-181.241 (e)(QR); ACL 03-18 at 11, 16.

¹²⁰ WIC § 11265.1(d)(3); ACL 03-18 at 11, 16.

¹²¹ MPP §§ 40-181.1(a)(1)(QR), 44-316.23(QR); ACL 03-18 at 16; ACIN I-29-04, #24.

¹²² MPP § 44-316.23(QR); ACL 03-18 at 16; ACIN I-29-04, #24.

¹²³ ACL 97-67.

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the county finds other extenuating circumstances.¹²⁴ Counties should also take into account the recipients' ability to understand the complex quarterly reporting rules.¹²⁵ If a recipient has good cause for late filing of the QR 7, the county will rescind the discontinuance of aid.¹²⁶

If a family is discontinued for not submitting a QR 7 and it reapplies during the next calendar month following the discontinuance, the county is required to determine whether the family had good cause for not turning in the QR 7.¹²⁷ If good cause is found, aid is restored.¹²⁸ If there is no good cause or if a full calendar month has passed since the discontinuance date, the case is treated as a new application, and the family must turn in a current QR 7.¹²⁹

7. Reasonably Anticipated Income.

The QR 7 form asks recipients to report "reasonably anticipated income" in the upcoming QR payment quarter. This estimate is used to calculate the grant for that quarter.¹³⁰ Earned and unearned income is "reasonably anticipated" if 1) the income has been or will be authorized within the upcoming QR payment quarter, or the recipient is reasonably certain that she will receive the income in the upcoming QR payment quarter, *and* 2) the amount of the income is known.¹³¹

If the county does not accept the recipient's estimate of reasonably anticipated income, the county must document 1) its reasons for not accepting the recipient's estimate, and 2) other

¹²⁴ 45 CFR § 233.37(c); WIC § 11265.1(g); MPP § 40-181.233.

¹²⁵ ACL 03-18 at 14.

¹²⁶ WIC § 11265.1(g); MPP § 40-181.234; ACL 03-18 at 14.

¹²⁷ WIC § 11265.1(g); MPP § 40-125.941(QR); ACL 03-18 at 14.

¹²⁸ WIC § 11265.1(g); MPP § 40-125.942(QR); ACL 03-18 at 14.

¹²⁹ WIC § 11265.1(g); MPP §§ 40-125.92(QR), 40-125.943(QR); ACL 03-18 at 13-15.

¹³⁰ WIC § 11265.2(a); MPP § 44-315.31(QR). Quarterly reporting system uses prospective budgeting and income averaging rules. WIC § 11265.2(a); MPP §§ 44-313.11(QR), 44-315.316(QR); ACL 03-18 at 2, 9. See Chapter V for more on prospective budgeting.

¹³¹ WIC § 11265(b); MPP § 44-315.311(b)(QR); ACL 03-18 at 21.

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information used to determine what income will be used in benefit calculation if the recipient's estimate is not used (i.e. verification, employer's statements, case history).¹³² When income is new and the amount, payment date, or hours of work cannot be estimated with reasonable certainty, the income is not reasonably anticipated.¹³³

Examples of income that cannot be reasonably anticipated include:

- if the recipient has applied but has not been approved for unemployment insurance benefits (UIB) or State Disability Insurance (SDI)
- if the UIB or SDI has been approved, but the amount of benefit is unknown
- if the recipient has accepted a job offer but does not know the wage rate, weekly hours, payment date, or start date.¹³⁴

The county cannot use any portion of the income that cannot be reasonably anticipated to determine the grant levels for the upcoming quarter.¹³⁵ No overpayment will be assessed if the family later receives income that has not been reasonably anticipated or if the actual income received is more than reasonably anticipated so long as the actual income received does not exceed the income reporting threshold (IRT).¹³⁶ See Section C. 8. a. for more on IRT.

8. Income Averaging of Reasonably Anticipated Income That Varies During the QR Payment Quarter.

If the reasonably anticipated income varies from month to month, counties must average the income for the QR payment quarter and use this monthly average to determine benefits for

¹³² MPP § 44-313.111(c)(QR); ACL 03-18 at 21, 23.

¹³³ WIC § 11265(b); MPP § 44-315.311(QR); ACL 03-18 at 22.

¹³⁴ ACL 03-18 at 21, 23.

¹³⁵ MPP § 44-315.313(QR); ACL 03-18 at 21-23.

¹³⁶ MPP § 44-350.18(QR); ACL 03-18 at 74.

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each month of the quarter.¹³⁷ If the income is weekly or bi-weekly, counties must compute the income into a monthly total by using 4.33 for weekly and 2.167 for bi-weekly.¹³⁸

To determine the average monthly income, the county must:¹³⁹

- add the reasonably anticipated gross earned income for each month of the quarter and divide by three,
- add the reasonably anticipated disability-based unearned income for each month of the quarter and divide by three,
- add the reasonably anticipated gross unearned income for each month and divide by three,
- apply all applicable disregards for each income type to the averaged income amounts to get an average net nonexempt income (NNI),¹⁴⁰
- add the NNI of each income type together to determine the average monthly NNI.

This average monthly NNI is subtracted from the family MAP to determine the monthly benefits for the quarter.¹⁴¹

If the family has stable income that is not expected to change in the next quarter and no other reasonably anticipated income, the income for the QR data month reported on the QR 7 will be used to calculate benefits for the upcoming quarter.¹⁴²

¹³⁷ WIC § 11265.2(a); MPP § 44-315.316(QR); ACL 03-18 at 24.

¹³⁸ MPP § 44-315.315(a)(QR); ACL 03-18 at 24, ACL 04-19 at 2.

¹³⁹ MPP § 44-315.316(QR); ACL 03-18 at 25.

¹⁴⁰ See Chapter V for more on income disregards and net nonexempt income.

¹⁴¹ MPP § 44-315.3(QR).

¹⁴² ACL 03-18 at 25.

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EXAMPLE

Susan is in a July/August/September payment quarter. She reports on her QR 7 that her income for the QR data month (August) was \$300 but that her reasonably anticipated income for the upcoming QR payment quarter will vary. She anticipates that she will receive \$300 in October, \$290 in November, and \$400 in December. The county will use the average of \$330 ($\$300 + \$290 + \$400 = 990$; $990 \div 3 = \$330$) to calculate Susan's grant amount for the October/November/December payment quarter. See Chapter V on how to calculate grant amount.

If the family's income fluctuates during the quarter, the county must use the family's estimate to calculate the average income and monthly benefits.¹⁴³ If the family's estimates are questionable or if the family cannot estimate future income, the county may 1) contact the recipient for additional information, 2) with the recipient's written permission, contact the recipient's employer, and 3) use the information from the previous quarter to help determine a pattern of pay or work hours.¹⁴⁴ Counties should not use past income to estimate future income if the recipient indicates that there will be changes in the upcoming quarter.¹⁴⁵ If the recipient fails to cooperate (e.g. refusal to sign a release to contact an employer when necessary), the benefits will be discontinued after a 10-day notice is provided.¹⁴⁶

9. Eligibility Determination And Grant Calculation Once Per Quarter.

In a quarterly reporting system, counties determine a CalWORKs family's eligibility regarding deprivation, family/AU composition, and resources once per quarter, using the

¹⁴³ MPP § 44-315.316(QR); ACL 03-18 at 27.

¹⁴⁴ MPP § 40-315.312(QR); ACL 03-18 at 22, 27. But counties can look at income previously received as far back as in the last 12 months for Food Stamps. MPP § 63-503.242(a).

¹⁴⁵ For example, if a recipient cannot estimate income for the upcoming quarter but knows that her hours will be reduced, the county cannot use the previous quarter's income. The county should instead request permission from the recipient to contact her employer about her work hours in the upcoming quarter.

¹⁴⁶ ACL 03-18 at 28.

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information and anticipated changes reported on the QR 7 form.¹⁴⁷ Once a family is determined to be eligible for the QR payment quarter, it is eligible for the entire quarter.¹⁴⁸ If the basis for deprivation ceases mid-quarter, the county cannot take action to reduce or terminate aid to the family until the first day of the next QR payment quarter.¹⁴⁹ No overpayment will be assessed against this family.¹⁵⁰

EXAMPLE

Based on the QR 7 submitted in December, Susan and her two children are determined to be eligible for the January/February/March QR payment quarter. On January 5th, the children's father moves in and is working full time. Even though the children no longer meet the deprivation criteria, the family will continue to receive cash aid until the end of the January/February/March quarter. (But if the family's income after the father moves in exceeds the income reporting threshold (IRT), the family will be discontinued at the end of January. See Section 8.a.i. for more on IRT.)

As with the deprivation criteria, if the family's resources exceed the resource limit during the QR payment quarter, the family will remain eligible until the end of the quarter.¹⁵¹ Families are not required to report changes in their resources or property mid-quarter but must report them on the next QR 7.¹⁵² If the QR-7 shows that the family's resources exceed the \$2000 (or \$3000

¹⁴⁷ WIC § 11265.1(a); MPP § 40-181.1(a)(1)(QR); ACL 03-18 at 18. See Chapters II and III for more on deprivation and other eligibility criteria.

¹⁴⁸ WIC §§ 11265.1(a), 11265.2(d); ACL 03-18 at 16-18. See Section C. 9 for mid-quarter changes to grant levels and Section C. 10 for county-initiated actions.

¹⁴⁹ MPP § 41-405.12(QR); ACL 03-18 at 18, 75.

¹⁵⁰ ACL 03-18 at 75.

¹⁵¹ WIC §§ 11265.1(a), 11265.2(d); MPP § 40-181.1(a)(1)(QR); ACL 03-18 at 16-17.

¹⁵² MPP § 40-181.241(e)(QR); ACL 03-18 at 11; *see also* WIC § 11265.3(a) (mid-quarter reporting requirement).

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for families with an elderly or disabled member) limit in the QR data month, the date of discontinuance will be the last day of the current QR payment quarter.¹⁵³ If the family reports and verifies to the county that it has spent down the resources to an amount below the limit before the date of discontinuance, the county will rescind the notice of discontinuance.¹⁵⁴

No overpayment will be assessed for any months the family is over the resource limit but not required to report the resources.¹⁵⁵ If the family acquires resources in excess of the resource limit in the third month of the current quarterly or the first month of the upcoming quarter, the family remains eligible for the entire upcoming QR payment quarter.¹⁵⁶ In quarterly reporting, lump sum payments are treated as a resource in the month received and in subsequent months and are not as income to calculate CalWORKs benefit.¹⁵⁷ However recipients must report and spend down lump sums as described above to remain eligible for CalWORKs benefits.¹⁵⁸

10. Mid-Quarter Reporting.

There are two types of mid-quarter reporting of changes: mandatory and voluntary.¹⁵⁹ Counties can act on mandatory reports to increase or decrease the CalWORKs grant mid-quarter but can only act on voluntary reports that increase the grant.¹⁶⁰ Voluntary mid-quarter reports that would decrease the grant are “held,” and the county will not act upon these reports until the next payment quarter. When assisting clients whose grants have been reduced due to mid-quarter reports, advocates should determine whether the mid-quarter change is a voluntary or

¹⁵³ MPP § 63-508.66; ACL 03-18 at 17, 72.

¹⁵⁴ MPP § 63-508.66; ACL 03-18 at 17. All other rules on CalWORKs resources and transfer of assets remain unchanged from the monthly reporting system. ACL 03-18 at 19.

¹⁵⁵ ACL 03-18 at 75.

¹⁵⁶ ACL 03-18 at 17.

¹⁵⁷ MPP §§ 42-209.2(QR), 44-101 (l)(QR); ACL 03-18 at 16, 19.

¹⁵⁸ See Chapter III for more on CalWORKs resources.

¹⁵⁹ WIC § 11265.3(a), (d); MPP § 44-316.3(QR); ACL 03-18 at 32, 41.

¹⁶⁰ WIC § 11265.3(a), (d)(2), (d)(4); MPP §§ 44-316.31(QR) - .32(QR); ACL 03-18 at 2, 41.

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mandatory reporting item and whether the counties have properly acted upon the reports. Families can report changes mid-quarter verbally or in writing, using a QR 3 form.¹⁶¹ In addition to making a mid-quarter report on a QR 3, the family must also report the changes on the next QR 7.¹⁶²

Counties must act on mid-quarter changes separately and sequentially in the order that they occur and provide separate notices of action for each of the reported changes.¹⁶³ If the mandatory mid-quarter report results in a decrease or a discontinuance of cash aid, the change in benefits will take effect at the end of the month in which the county can provide a timely and adequate notice of action.¹⁶⁴ A timely notice is one that is mailed ten days before the effective date of reduction or discontinuance.¹⁶⁵ If the county cannot or does not provide a timely notice, the reduction or discontinuance will take effect the following month, but there will be an overpayment.¹⁶⁶ If a mid-quarter report results in no change, the county must send a notice of action informing the family that its benefits will remain the same and reminding the family to report the change *again* on the next QR 7 form.¹⁶⁷

a. Mandatory Mid-Quarter Reports.

Recipients are required to report verbally or in writing the following changes within ten days: 1) drug felony convictions, 2) fleeing felon status, 3) violation of conditions of probation

¹⁶¹ WIC § 11265.3(d); MPP §§ 44-316.31(QR), 44-316.32(QR); ACL 03-18 at 31. Counties may develop its own mid-quarter reporting form. A copy of the QR 3 is in Appendix B.

¹⁶² MPP § 44-316.23(QR).

¹⁶³ MPP §§ 40-173.1(QR), 44-316.3(QR); ACIN I-29-04, #3, #16, ACIN I-10-04, # 37.

¹⁶⁴ MPP §§ 44-316.322(QR), 44-316.324 (c)(1)(QR).

¹⁶⁵ MPP § 22-001t(1). See Chapter XIII for more on notices.

¹⁶⁶ ACL 03-18 at 35. See Chapter XI for more on overpayments.

¹⁶⁷ MPP §§ 40-173.1(QR), 44-316.311(QR); ACL 03-18 at 42, 47, 53.

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or parole, 4) address changes, and 5) income exceeding the Income Reporting Threshold (IRT).¹⁶⁸

i. Income Reporting Threshold (IRT).

The income reporting threshold (IRT) is the level of income that triggers the requirement for a CalWORKs family to report a mid-quarter change in income. The IRT is the greater of 130% of the Federal Poverty Level or the family's maximum aid payment (MAP), a level at which the family becomes financially ineligible.¹⁶⁹ A family is only required to make a mid-quarter report of income exceeding the IRT if the family has earned or both earned and unearned income.¹⁷⁰ If the family has only unearned income, it is not required to submit a mid-quarter report even if the unearned income exceeds the IRT.¹⁷¹

A family is not required to report a nonrecurring lump sum mid quarter but is required to report it on a QR 7 due in the QR submit month of the payment quarter.¹⁷² If the family reports a nonrecurring lump sum exceeding the IRT mid quarter, it will not be used to determine income eligibility since it is treated as property in the month received.¹⁷³ Even if the lump sum causes the family's resources to exceed the resource limit, the family remains eligible because in quarterly reporting, resource eligibility is determined once per quarter.¹⁷⁴

Counties must tell each family in writing of their individual IRT at least once per quarter, at redetermination, when the family MAP or family MAP size changes, when there is a change of individuals who are required to report income, when the IRT chart is updated, and upon

¹⁶⁸ WIC § 11265.3(a); MPP § 44-316.32(QR); ACL 03-18 at 9, 32.

¹⁶⁹ MPP § 44-316.324(a)(QR); ACL 03-18 at 32. The state updates the IRT charts annually. ACL 03-18 at 34.

¹⁷⁰ MPP § 44-316.324(b)(QR); ACL 03-18 at 33.

¹⁷¹ MPP § 44-316.324(b)(QR); ACL 03-18 at 33.

¹⁷² ACL 03-18 at 33.

¹⁷³ MPP §§ 42-209.2(QR), 44-101(l)(QR); ACL 03-18 at 33.

¹⁷⁴ MPP § 40-181.1(a)(l)(QR); ACL 03-18 at 16-17.

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recipient request.¹⁷⁵ The informing notice must include: 1) the instructions that the family must report receipt of gross monthly income that exceeds the IRT, 2) the dollar amount of gross monthly income for the family MAP that exceeds the IRT, and 3) the consequences of failing to report (i.e. an overpayment, a discontinuance, and a potential for a fraud referral).¹⁷⁶

When a family reports income in excess of the IRT mid-quarter, the county must redetermine the family's income eligibility for the QR payment quarter.¹⁷⁷ If the income exceeds the IRT in either the first or second month of the payment quarter, the county must determine whether the income is reasonably anticipated to continue for the remainder of the QR payment quarter.¹⁷⁸ If the income is reasonably anticipated to continue, the county then must determine whether the monthly average of the net nonexempt income for the remainder of the QR payment quarter exceeds the family's MAP.¹⁷⁹ If the averaged income is reasonably expected to continue to exceed the family's MAP for the remainder of the current quarter, the county will discontinue the family at the end of the month in which the family's income first

¹⁷⁵ WIC § 11265.3(b); MPP § 40-173.8(QR); ACL 03-18 at 33, ACL 04-39 at 2. Counties can tell recipients about the IRT requirements on 1) the QR 7 form, 2) the notice of action used to add or remove an AU member, or 3) a separate informing notice. ACL 04-39 at 2.

¹⁷⁶ WIC § 11265.3(b); MPP § 40-173.8(QR); ACL 03-18, p. 33.

¹⁷⁷ WIC § 11265.3(c); MPP § 44-316.324 (c)(QR); ACL 03-18 at 38. The county will also redetermine the family's Food Stamp benefits. ACL 03-18 at 38, 41. If the income exceeding the IRT results in decreased Food Stamps, the county will not reduce Food Stamp until the first day of the upcoming quarter. ACL 03-18 at 41. If the income exceeding the IRT results in Food Stamp ineligibility, the county will discontinue the family's Food Stamps after a 10-day notice. ACL 03-18 at 41, ACL 04-56.

¹⁷⁸ WIC § 11265.3(c)(1); MPP § 44-316.324(c)(1)(QR); ACL 03-18 at 39. If the income exceeds the IRT in the third month of the payment quarter, the county will discontinue the family at the end of the quarter if the income is reasonably expected to continue in the next payment quarter. WIC § 11265.3(c)(2); MPP § 44-316.324(c)(1)(QR); ACL 03-18 at 39. The county must provide adequate and timely notice. MPP § 44-316.324(c)(1)(QR); ACL 03-18 at 39-40.

¹⁷⁹ MPP § 44-316.324 (c)(2)(QR); ACL 03-18 at 39. See Chapter V for a discussion on net nonexempt income.

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exceeds the family's MAP.¹⁸⁰ The county must provide a timely and adequate notice of action ten days before the effective date of the discontinuance.¹⁸¹ When the county cannot provide a 10-day notice, benefits will not be reduced or discontinued until the first of the following month, but an overpayment will be established.¹⁸² DSS has directed the county to take action, including terminating aid if the county determines that the recipient is ineligible, on a mid-quarter report of income exceeding the IRT even before it receives verification.¹⁸³

If before the effective date of the discontinuance, the family reports that the income will no longer exceed the IRT and the county determines that this reduced income is reasonably anticipated, the county will rescind the discontinuance.¹⁸⁴

If the family's income is only expected to exceed the IRT for only one month and will not continue, the county will not discontinue the cash aid, and the income will not affect the current quarter.¹⁸⁵ The family, however, is still required to report this income mid-quarter.¹⁸⁶

b. Voluntary Mid-Quarter Reports.

In addition to the mandatory mid-quarter reporting changes, CalWORKs families can also voluntarily report, verbally or in writing, other changes during the QR payment quarter.¹⁸⁷ These changes include 1) a decrease in reasonably anticipated income (which was reported on

¹⁸⁰ WIC § 11265.3(c)(1); MPP § 44-316.324(c)(1)(QR); ACL 03-18 at 39.

¹⁸¹ WIC § 11265.3(c)(1); MPP § 44-316.324(c)(1)(QR); ACL 03-18 at 39-40.

¹⁸² MPP §§ 44-350.5(QR), 44-352.12(QR); ACL 03-18 at 40.

¹⁸³ ACL 03-18 at 39; ACIN I-54-03, #4. This directly conflicts with Welfare and Institutions Code section 11265.3(c)(1), which requires the county to "verify the [IRT] report and determine if the recipient is financially ineligible," and if the recipient is ineligible, the county is to discontinue aid with timely and adequate notice. Contact Western Center if the county terminates aid before the county verifies the IRT report.

¹⁸⁴ MPP § 44-316.324(c)(1)(A)(QR); ACL 03-18 at 39.

¹⁸⁵ MPP § 44-316.324(d)(QR); ACL 03-18 at 39.

¹⁸⁶ MPP § 44-316.324(b)(QR); ACL 03-18 at 39.

¹⁸⁷ WIC § 11265.3(d); MPP § 44-316.31(QR); ACL 03-18 at 41.

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the QR 7 submitted in the third month of the previous quarter), 2) addition or loss of a family member, and 3) a request for recurring special needs.¹⁸⁸ The county can only act upon these voluntary mid-quarter reports to increase the family's grant level.¹⁸⁹ Verification of the changes must be given to the county within 10 days of the report in order for the increase to take effect.¹⁹⁰ If the voluntary mid-quarter report would result in a decrease of benefits, the decrease will not take effect until the first day of the next QR payment quarter.¹⁹¹

The only voluntary mid-quarter report that can result in a decrease in cash aid is a voluntary request to discontinue cash aid to an individual family member or the entire family.¹⁹² If the family requests a discontinuance verbally, the county must provide an adequate 10-day notice before any reduction or discontinuance takes effect at the end of the month.¹⁹³ If the request is in writing, only an adequate notice is required.¹⁹⁴

No underpayment will be established if the family does not voluntarily report the mid-quarter changes that can result in an increase in benefits.¹⁹⁵ Advocates, therefore, should advise

¹⁸⁸ WIC § 11265.3(d)(2), (3); MPP § 44-316.312(QR); ACL 03-18 at 41-42. A change in a family's exempt/nonexempt MAP status is also a voluntary mid-quarter report. ACIN I-29-04, #19.

¹⁸⁹ WIC §§ 11265.2(d), 11265.3(d)(2) and (4); MPP § 44-316.31(QR); ACL 03-18 at 41-42. When a voluntary mid-quarter report results in increased CalWORKs benefits, and thus results in decreased Food Stamp benefits, the county will not decrease Food Stamps until the next QR payment quarter. ACL 03-18 at 42.

¹⁹⁰ WIC § 11265.3(d)(2); MPP § 44-316.31(a)(QR); ACL 03-18 at 43, 49-50; ACIN I-54-03, #4. If the family submits verification after the 10-day period, the date of verification will be considered the date of the mid-quarter report. MPP § 44-316.311 (c)(QR); ACIN I-10-04, #17, #28.

¹⁹¹ WIC § 11265.2(d); MPP § 44-316.312(b)(5)(QR); ACL 03-18 at 42. *See also* WIC § 11265.2(d)(county action only to increase benefits after mid-quarter voluntary reports).

¹⁹² WIC § 11265.3(e), MPP § 44-316.312(c)(QR); ACL 03-18 at 57-58.

¹⁹³ WIC § 11265.3(e); MPP § 44-316.312(c)(1)(QR).

¹⁹⁴ MPP § 44-316.312(c)(2)(QR); ACL 03-18 at 57.

¹⁹⁵ MPP § 44-340.33(QR).

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their clients to report all changes as soon as possible. A delay in reporting these changes will likely result in the delay of the increase and potentially the loss of the increase for the current QR payment quarter. There is no harm in reporting since any decrease resulting from voluntary reports, except for a request to discontinue aid, will not take effect until the next QR payment quarter.¹⁹⁶

i. Decreases In Reasonably Anticipated Income.

When a family reports a decrease in reasonably anticipated income, the county must determine whether and how much the family's cash aid will increase.¹⁹⁷ The increase will take effect either in the month the change is reported and verification is provided, or the month in which the decrease occurs, whichever is later.¹⁹⁸ Because the increase will not take effect until the decrease in income is reported, CalWORKs families should report the change as soon as possible.

The county will issue a supplement within ten days of receiving verification for the decrease in income.¹⁹⁹ The amount of the supplement is the difference between the recalculated cash aid based on reported change in income and the cash aid that was paid for the month the decrease in income is reported or the month the change actually occurs, whichever is later.²⁰⁰ The county will also increase the grant amount for the remainder of the QR payment quarter.²⁰¹

If the county determines that the decrease in reasonably anticipated income resulted from a loss or reduction in work hours of a mandatory welfare-to-work participant (see Chapter VI for

¹⁹⁶ MPP §§ 44-316.31, 44-316.31 (b)(5)(QR); ACL 03-18 at 42.

¹⁹⁷ WIC § 11265.3(d)(1) and (2); MPP § 44-316.312(a)(1)(QR) and (2)(QR); ACL 03-18 at 43-44.

¹⁹⁸ WIC § 11265.3(d)(2); MPP § 44-316.312(a)(3)(QR).

¹⁹⁹ WIC § 11265.3(d)(2); MPP § 44-316.312(a)(4)(QR); ACL 03-18 at 44. The county cannot use the aid supplement to offset an existing overpayment. MPP § 44-340.14(QR); ACIN I-29-04, #7.

²⁰⁰ MPP § 44-316.312(a)(4)(QR); ACL 03-18 at 44.

²⁰¹ WIC § 11265.3(d)(3); MPP § 44-316.312(a)(5)(QR); ACL 03-18 at 44.

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more on welfare-to-work requirements), the county must determine whether good cause exists for the loss or reduction in hours of employment.²⁰² If no good cause exists, the county will impose a sanction.²⁰³ The county must not wait to increase the family's cash aid while determining whether good cause exists.²⁰⁴

If the family does not voluntarily report a decrease in reasonably anticipated income mid-quarter, but the QR 7 submitted in the third month of the current quarter shows the decrease, the county will treat this information on the QR 7 as a mid-quarter report and will issue a supplement for the third month of the quarter.²⁰⁵

ii. Addition Or Removal of an AU Member.

If a family reports that someone moves into the home during a QR payment quarter, the county will determine whether 1) this person is CalWORKs eligible, 2) the family still meets all eligibility conditions if this person is added into the AU (i.e. whether deprivation still exists), and 3) the family's grant amount will increase or decrease if this person is added.²⁰⁶ If the addition of the new person, including a newborn, results in an increase in cash aid and verification is provided within 10 days of the report, the increase will take effect on the first of the month following the report.²⁰⁷ The new person is not subject to welfare-to-work requirements and her 60-month time clock does not begin ticking until she is added to the cash grant.²⁰⁸

²⁰² MPP § 44-316.312(a)(6)(QR); ACL 03-18 at 43.

²⁰³ MPP § 44-316.312(a)(6)(QR); ACL 03-18 at 43.

²⁰⁴ MPP § 44-316.312(a)(6)(QR); ACL 03-18 at 43.

²⁰⁵ MPP § 44-316.31(QR); ACL 03-18 at 47.

²⁰⁶ WIC § 11265.3(d)(4); MPP § 44-316.312 (b)(1)(QR); ACL 03-18 at 50-51.

²⁰⁷ WIC § 11265.3(d)(4); MPP §§ 44-316.312 (b)(3)(QR), 44-318.11(QR); ACL 03-18 at 50, 52. Cash-linked MediCal for the new person is effective for the month in which the person moves into the home. ACL 03-18 at 52; ACIN I-44-04, #2. If the family provides verification more than 10 days after the report, the date of verification will be considered the date of the report. MPP §§ 44-316.311(c)(QR), 44-316.312(b)(3)(QR); ACIN I-10-04, #17, 28.

²⁰⁸ ACL 03-18 at 52. See Chapter II for more on the 60-month time limit.

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If the change results in a decrease in cash aid, the county will not add the new person until the first day of the next QR payment quarter; the decrease, therefore, will not take effect until the first day of the upcoming quarter.²⁰⁹ If adding the new person results in a discontinuance of cash aid to the family, the county will discontinue the family, with timely and adequate notice, at the end of the current QR payment quarter.²¹⁰ Counties must treat the addition and removal of optional AU members and their income the same way they treat mandatory AU members.²¹¹

The county must not presume that a mid-quarter report of a removal of a family member is a request for discontinuance.²¹² No decrease in benefits will take effect mid-quarter unless the family or the individual, who has moved out, requests a discontinuance.²¹³ If the county is notified mid-quarter that a family member is deceased, the report will be treated as a request for discontinuance.²¹⁴ But no overpayment will be assessed if the family does not report this mid-quarter.²¹⁵ This same rule applies to both optional and mandatory assistance unit (AU) members.²¹⁶

iii. Request for Recurring Special Needs And Pregnancy Special Needs.

During a QR payment quarter, CalWORKs families can request an allowance for recurring special needs (such as therapeutic diets or transportation for unusually long distance to

²⁰⁹ WIC § 11265.3(d)(4); MPP §§ 44-316.312(c)(5)(QR), 44-318.12(QR); ACL 03-18 at 50, 53, 55-56.

²¹⁰ WIC § 11265.3(d)(4); MPP § 44-316.312(c)(6)(QR); ACL 03-18 at 55.

²¹¹ MPP § 44-316.312(b)(3); ACIN I-54-03 at 7-8, ACIN I-84-03, #3.

²¹² ACL 03-18 at 58.

²¹³ ACL 03-18 at 58.

²¹⁴ ACIN I-84-03, #6, ACIN I-09-04, #3.

²¹⁵ ACIN I-09-04, #3.

²¹⁶ ACIN I-54-03, #6, ACIN I-84-03, #3. See Chapter II for more on optional and mandatory AU members.

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a medical provider).²¹⁷ The increase will take effect in the month the need is reported or the verification substantiates that the need exists, whichever is later.²¹⁸ The family will receive this recurring special needs allowance until the end of the quarter in which the special need is expected to end.²¹⁹

A pregnancy special needs payment will take effect in the month in which the request for the payment is made and will continue until the end of the QR payment quarter in which the child is expected to be born.²²⁰ If the family voluntarily reports the birth of the child mid-quarter, the pregnancy special needs payment will end at the end of the month before the month in which the newborn is added to the AU.²²¹ If adding the newborn results in an increase in cash aid, the newborn is added on the first of the month following the report.²²² If the addition results in a decrease, the newborn is added on the first of the following QR payment quarter, and the pregnancy special need payment continues through the end of the quarter.²²³ If the newborn is subject to the maximum family grant (MFG) rule, pregnancy special need payments will continue through the end of the quarter in which the birth was expected since adding the child will not increase benefits.²²⁴

²¹⁷ MPP § 44-316.312(d)(1)(QR); ACL 03-18 at 49. Quarterly reporting/prospective budgeting rules do not change the rules for nonrecurring special need payments. ACL 03-18 at 50. See Chapter IV for a discussion on recurring special needs payments.

²¹⁸ MPP § 44-316.312(d)(1)(QR); ACL 03-18 at 49.

²¹⁹ MPP § 44-316.312(d)(1)(QR); ACL 03-18 at 49-50.

²²⁰ MPP §§ 44-316.312(d)(2)(QR), 44-211.63-.64(QR); ACL 03-18 at 49.

²²¹ MPP §§ 44-316.312(d)(2)(QR), 44-221.632-.633, 44-221.64; ACL 03-18 at 49; ACIN I-29-04, #20.

²²² MPP § 44-318.151(a)(QR); ACL 03-18 at 56.

²²³ MPP §§ 44-316.312(d)(2)(QR), 44-318.151(b)(QR); ACL 03-18 at 56.

²²⁴ MPP § 44-318.152(b); ACL 03-18 at 49, 56. See Chapter IV for a discussion on the MFG rule.

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iv. Verification of Mid-Quarter Changes.

When a family makes a voluntary mid-quarter report, the county must request verification in writing.²²⁵ The county will not act on the changes until verification is provided. An increase due to pregnancy or other recurring special needs is effective in the month of the report or when verification substantiates the need, whenever is later.²²⁶ If within ten days of the report, the family provides verification of the new person in the family, the increase takes effect on the first of the month following the report.²²⁷ Within ten days of receiving verification for a decrease in reasonably anticipated income mid-quarter, the county must issue a supplement for the difference between the recalculated amount based on the mid-quarter report and the cash aid that has been paid for the month in which the report is made or in which the decrease occurs, whichever is later.²²⁸

If the family does not submit the necessary verification, the county will not act on the voluntary mid-quarter report and will send a no-change notice of action.²²⁹ If the family provides verification more than ten days after the voluntary mid-quarter report, the date of verification is submitted will be considered the date of the report.²³⁰ This means that the increase resulting from the report will take effect later than if the family timely provides verification within 10 days of the report.

²²⁵ MPP § 44-316.311(QR).

²²⁶ MPP § 44-316.312(d)(1)(QR); ACL 03-18 at 49.

²²⁷ MPP §§ 44-316(b)(3)(QR), 44-316.311 (a)(QR); ACL 03-18 at 50, 52.

²²⁸ MPP § 44-316.316(a)(4)(QR); ACL 03-18 at 44.

²²⁹ MPP § 44-316.311(b)(QR); ACIN I-84-03, #4.

²³⁰ MPP § 44-316.311(c)(QR); ACIN I-10-04, #17, 28.

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EXAMPLE

Jane is in a June/July/August payment quarter. She reports a decrease in income on July 1st but does not provide verification until August 5th. August 5th is considered the date of her mid-quarter report, and the increase in her CalWORKs grant takes effect on August 1st (since a decrease in income resulting in an increased grant takes effect on the first of the month of the report.) Jane will not get a supplement for July because she did not provide verification within 10 days of her initial July 1st report.

11. Mid-Quarter Decrease In Benefits Due to County-Initiated Action.

Counties must act mid-quarter on certain events known to them.²³¹ These are called “county-initiated actions.” Counties must act on the following changes at the end of the month in which the change occurred even if it results in a decrease in cash aid:

- An adult in the family reaches the 60-month time limit;²³²
- The county imposes a sanction or financial penalty under MPP § 82-832.2 on an individual family member;²³³
- The county removes the sanction of an individual who cures the sanction;²³⁴
- The county removes the penalty for a family member that complies with the CalWORKs program requirement;²³⁵
- A Cal-Learn participant earns a Cal-Learn bonus or sanction;²³⁶
- A child in the AU reaches the age limit (age 19 if the child is expected to complete school by age 19, or otherwise age 18);²³⁷

²³¹ WIC § 11265.2(e) - (h); MPP § 44-316.33(QR); ACL 03-18 at 58.

²³² WIC § 11265.2(e)(1); MPP § 44-316.331(a)(QR).

²³³ WIC § 11265.2(e)(3); MPP § 44-316.331(b)(QR). ACIN I-10-04, #26 lists the different sanctions and penalties that will prompt counties to initiate mid-quarter changes.

²³⁴ WIC § 11265.2(e)(3); MPP § 44-316.331(c)(QR).

²³⁵ WIC § 11265.2(e)(3); MPP § 44-316.331(d)(QR).

²³⁶ WIC § 11265.2(e)(3); MPP § 44-316.331(e)(QR).

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- A child in the family is placed in foster care;²³⁸
- A former family member is being aided in another family;²³⁹
- Late QR 7 adjustment;²⁴⁰
- State hearing decision resulting in mandatory changes mid-quarter;²⁴¹
- When a family becomes a family reunification case;²⁴²
- A family member is no longer a California resident;²⁴³
- The county acts on annual redetermination information that results in a reduction or discontinuance of aid;²⁴⁴
- Adjustments to correct county error or household error overpayments;²⁴⁵
- When the county knows that a family member is deceased;²⁴⁶
- A family is transferred to a Tribal TANF program;²⁴⁷
- Cost-of-living adjustments for MBSAC, MAP, and Social Security;²⁴⁸

-
- #11.
- ²³⁷ WIC § 11265.2(e)(2); MPP § 44-316.331(f)(QR).
 - ²³⁸ WIC § 11265.2(g); MPP § 44-316.331(g)(QR).
 - ²³⁹ WIC § 11265.2(f); MPP § 44-316.331(i)(QR); ACIN I-10-04, #4, ACIN I-84-03,
 - ²⁴⁰ MPP § 44-316.331(j)(QR).
 - ²⁴¹ MPP § 44-316.331(k)(QR).
 - ²⁴² MPP § 44-316.331(l)(QR).
 - ²⁴³ WIC § 11265.2(h); MPP § 44-316.331(m)(QR).
 - ²⁴⁴ MPP § 44-316.331(n)(QR).
 - ²⁴⁵ MPP § 44-316.331(o)(QR); ACIN I-84-03, #2.
 - ²⁴⁶ MPP § 44-316.331(p)(QR); ACIN I-84-03, #6.
 - ²⁴⁷ MPP § 44-316.331(q)(QR).
 - ²⁴⁸ MPP § 44-316.331(r)(QR).

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- When the county knows that a family member is in a correctional facility on the first of a month and is expected to remain there for a full calendar month or more.²⁴⁹

No other county-initiated actions may be taken. For example, the county cannot act mid quarter to discontinue a family member, who begins receiving SSI benefits mid-quarter²⁵⁰ or discontinue a recipient who loses her job but refuses to apply for unemployment insurance benefits.²⁵¹ The discontinuance in these situations will occur with timely and adequate notice at the end of the current QR payment quarter.²⁵² Counties can begin benefit reductions and adjustments to recoup overpayments only at the beginning of a QR payment quarter.²⁵³

D. Annual Redetermination.

Every twelve months each CalWORKs family must have its CalWORKs eligibility redetermined.²⁵⁴ The recipient will have to complete a Statement of Facts (SAWS-2).²⁵⁵ The determination will be considered completed as soon as the eligibility worker has reviewed the Statement of Facts, and the eligibility worker makes and records a decision as to whether the recipient is still eligible.²⁵⁶ Annual redetermination also includes an interview with the parent or person responsible for the child in the assistance unit.²⁵⁷ The interview does not have to take place in person.²⁵⁸ In the event the Statement of Facts is not completed and returned within 10

²⁴⁹ MPP § 44-316.331(s)(QR).

²⁵⁰ ACIN I-09-04, #1.

²⁵¹ ACIN I-84-03, #10, I-10-04, #29.

²⁵² ACIN I-84-03, #10, ACIN I-09-04, #1, ACIN I-10-04, #29.

²⁵³ MPP § 44-352.41(QR); ACL 03-18 at 59, 76.

²⁵⁴ 45 CFR § 206.10(a)(9)(iii); WIC § 11265(a); MPP § 40-181.21.

²⁵⁵ WIC § 11265(a); MPP § 40-181.21.

²⁵⁶ MPP § 40-181.213.

²⁵⁷ MPP § 40-181.311.

²⁵⁸ ACIN I-15-03, #1.

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days after it is mailed or given to the family, the county may conduct a home visit or other personal meeting with the family in order to complete the redetermination form.²⁵⁹ The family's CalWORKs will continue through the redetermination process even if the county fails to complete the redetermination promptly.²⁶⁰

The county will discontinue aid for a family that does not complete redetermination, unless the family has good cause.²⁶¹

E. Intercounty Transfers and Interstate Transfers.

1. Intercounty Transfers.

CalWORKs families that move to another county within the state are entitled to continued CalWORKs without a break in aid.²⁶² The family must notify the county currently paying aid (the first county) that the family is leaving.²⁶³ The family must also notify the county welfare department in the county of its new residence (the second county) that it wants a "redetermination of eligibility."²⁶⁴ The family will not have to submit an application to reapply for aid,²⁶⁵ although the second county must redetermine the family's eligibility and amount of aid based on current circumstances.²⁶⁶ The first county will pay the CalWORKs grant during the 30-day transfer period, which begins when the first county notifies the second county of the inter-

²⁵⁹ WIC § 11265(c); MPP § 40-161.

²⁶⁰ MPP § 40-181.1(g)(QR).

²⁶¹ MPP § 40-181.1(g)(QR).

²⁶² WIC § 11053; MPP § 40-190.2.

²⁶³ WIC § 11053; MPP § 42-405.21.

²⁶⁴ WIC § 11053; MPP § 40-188.12.

²⁶⁵ MPP § 40-121.33.

²⁶⁶ MPP § 40-188.22.

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county transfer.²⁶⁷ The family must continue to send to the first county quarterly reporting forms that are due and meet all conditions of eligibility during the transfer period.²⁶⁸

If a family starts a CalWORKs application in one county and then moves before the application is processed, the first county is supposed to finish processing the application and start an intercounty transfer.²⁶⁹ However, any requests for Homeless Assistance must be handled immediately by the county in which the family is physically present.²⁷⁰ Often when a family moves from one county to another, problems occur, despite the fact that the regulations are clear that there should not be a break in aid.

PRACTICE TIP

Counties are required to designate someone to handle recipient complaints about intercounty transfers.²⁷¹ Contact this person to straighten out problems. If that does not work, call DSS.

2. Interstate Transfers.

California regulations specify a procedure for interstate transfers for CalWORKs recipients moving in or out of the state.²⁷² Under these regulations, DSS is required to work out a cooperative arrangement with other states to preclude a break in aid or duplication of payment

²⁶⁷ MPP §§ 40-190.22, 40-187.11, 40-187.12, 40-187.16; ACIN I-29-04, #6.

²⁶⁸ MPP § 40-188.14(QR).

²⁶⁹ MPP § 40-125.5.

²⁷⁰ MPP § 44-211.515.

²⁷¹ Periodically, the names of these county personnel are published by DSS. The most current list is attached to ACIN I-34-08 Errata II.

²⁷² MPP §§ 42-421 *et seq.*

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when recipients move from one state to another. Counties must send notices telling recipients moving out of California to apply in their new states.²⁷³

The federal TANF time limit rules and the new state's rules apply, and a family that is eligible for CalWORKs in California may not be eligible in the new state. Advocates should assist clients who intend to move out of state in finding the new state's rules concerning eligibility and time limits.

F. Eligibility Continues Until a Finding of Ineligibility.

Once a family is found eligible for CalWORKs, it is entitled to payments until there is a finding of ineligibility and proper notice of discontinuance is given to the family.²⁷⁴ If the basis of deprivation changes, but the family is still eligible, then aid should continue without interruption.²⁷⁵ No new application is required in such cases.²⁷⁶

EXAMPLE

Ms. Jones gets CalWORKs for herself and two children based on the absence of the children's father. If the unemployed father returns to the home, the county should evaluate the family's eligibility for benefits based on unemployment and, if the family is eligible, continue aid with the new basis of deprivation.

Note: in the quarterly reporting system, deprivation is determined only once per quarter, so even if the father is employed and no basis of deprivation exists after the father returns home, the family remains eligible until the end of the current quarter.²⁷⁷

²⁷³ MPP §§ 42-423, 42-424; *see also* WIC §§ 11100 (aid should be terminated immediately when a recipient is no longer a state resident), 11105 (prohibiting aid to people who are not state residents).

²⁷⁴ MPP § 40-181.1(f).

²⁷⁵ WIC § 11057; MPP § 41-405.1.

²⁷⁶ MPP § 40-121.3.

²⁷⁷ MPP § 41-405.2.

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G. Payment/Check Procedures.

1. The Money Payment Principle - Recipients Get Cash.

Generally, eligible families receive cash or electronic benefits, rather than vouchers or in-kind benefits.²⁷⁸ Payment is in the form of direct deposit (or electronic benefit transfer, “EBT” if the county has opted to use the system²⁷⁹) or checks made out to the caretaker relative. Families have the right to manage their own money.²⁸⁰ Exceptions arise when the money has been mismanaged or someone is being sanctioned for not cooperating with the program in some way.²⁸¹

2. Delivery of Checks or Direct Deposits - Once or Twice A Month.

Historically, counties delivered checks by mail or made direct deposits on the 1st and 15th of each month.²⁸² However, beginning in 1993, counties can elect to issue benefits once a month.²⁸³ If the county has gone to once a month, the county, at its option, may give recipients the right to ask for two payments.²⁸⁴ Counties that pay twice monthly need not pay in equal installments,²⁸⁵ so a family that needs more money at the beginning of the month may request a larger initial payment. If the family turns in the quarterly reporting form late, the county has

²⁷⁸ 45 CFR § 234.11; WIC § 10501 (county may not dictate how family will spend grant); MPP §§ 44-302, 44-303.1.

²⁷⁹ MPP § 16-001.3. See Section G. 4. of this chapter for more on EBT.

²⁸⁰ WIC § 10501; MPP § 44-301.

²⁸¹ See Section G.5 below.

²⁸² MPP §§ 44-304.511(QR) - .512(QR). Counties may also have staggered delivery, if DSS approves it. MPP § 44-305.2.

²⁸³ MPP § 44-304.2.

²⁸⁴ MPP § 44-304.4.

²⁸⁵ MPP § 44-315.6.

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until the 10th of the month to issue the check ordinarily due on the 1st.²⁸⁶ Checks are mailed to recipients' homes. Checks are not forwarded to new addresses by the Post Office.²⁸⁷

3. Lost Check Replacement.

If a check is lost in the mail, stolen or otherwise not received by the family, the county must replace the check within five working days of the recipient signing an affidavit of a missing check.²⁸⁸ If the check is stolen or destroyed, the recipient may sign the affidavit immediately.²⁸⁹ However, if the check is lost in the mail, the recipient must wait at least 5 mail delivery days (to ensure it indeed is lost) before signing the affidavit.²⁹⁰ If a person has moved to a new county, she can apply for the replacement in the new county. The old county must issue a replacement within five days of receiving the affidavit.²⁹¹ Counties are not allowed to delay issuing the replacement check pending investigation.²⁹²

If a recipient receives a replacement check and then later finds the original check, she is required to return the original check.²⁹³ When the replacement check is issued, the county may place a stop payment on the original check.²⁹⁴ If the county fails to do that and later determines

²⁸⁶ MPP § 44-304.52(QR). For "staggered" counties, *see* MPP § 44-305.231(QR).

²⁸⁷ WIC § 11006.4; MPP § 44-304.1.

²⁸⁸ Gov't Code § 29853.5(b). In *Beverly v. Anderson*, 76 Cal.App.4th 480 (1999), the Court of Appeal rejected DSS's argument that the five day language of Gov't Code § 29853.5(b) only required that the county must investigate within five days. Lost checks must be replaced within the five-day period, regardless of any investigation undertaken during those five days.

²⁸⁹ Gov't Code § 29853.5(a)(2). The county can require the person to file a police report if the check is stolen.

²⁹⁰ Gov't Code § 29853.5(a)(1). The county can shorten this period. Gov't Code § 29853.5(a)(1).

²⁹¹ Gov't Code § 29853.5(c).

²⁹² Gov't Code § 29853.5(b); *Beverly v. Anderson*, 76 Cal.App.4th 480 (1999).

²⁹³ Gov't Code § 29853.5(d).

²⁹⁴ Gov't Code § 29853.5(d).

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that the recipient cashed both the original check and the replacement check, it may assess the amount of the second check as an overpayment.²⁹⁵ If the recipient either disagrees that she cashed both checks, she must file a hearing request immediately.²⁹⁶

PRACTICE TIP

Some counties try to deny second replacements or make people wait for replacements until completion of a fraud investigation. These are clear violations of the statute.²⁹⁷

4. Electronic Benefits Transfers and Direct Deposit.

Federal law requires California to implement a statewide Electronic Benefits Transfers (EBT) system for the distribution of Food Stamps.²⁹⁸ In response to that mandate, the Legislature enacted the Electronic Benefits Transfer Act,²⁹⁹ which sets out guidelines for an EBT system that will apply to all state financial and food assistance programs, including CalWORKs.³⁰⁰ Among the required features of the system are access to benefits in any part of the state where an EBT system is in place;³⁰¹ access to benefits for recipients unable to use an EBT card;³⁰² ability of recipients to choose a personal identification or "PIN" number;³⁰³ and

²⁹⁵ See Chapter XI for a discussion of overpayments.

²⁹⁶ See Chapter XIII for a discussion of fair hearing rights.

²⁹⁷ Gov't Code § 29853.5(a); *see also Beverly v. Anderson*, 76 Cal.App.4th 480 (1999) (lost checks must be replaced within the five-day period specified in the statute).

²⁹⁸ 7 USC § 2016(i)(1).

²⁹⁹ WIC §§ 10065-10077.

³⁰⁰ WIC § 10066(b); *see also* 7 CFR § 274.12 (federal rules applicable to Food Stamp recipients).

³⁰¹ WIC § 10072(a).

³⁰² WIC § 10072(c).

³⁰³ WIC § 10072(e).

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protections for recipients whose cards are lost or stolen.³⁰⁴ For more information about EBT, see *An Advocate's Guide to Electronic Benefit Transfer (EBT) In California*, available at Consumers Union's website, <http://www.consumersunion.org/pdf/EBT-report-1102.pdf>.³⁰⁵

Counties also have the option to implement a system of direct deposit of CalWORKs benefits to recipient bank accounts.³⁰⁶ In counties that provide this option, the decision to use direct deposit is voluntary for the recipient. Counties may not require recipients to obtain a bank account or participate in the Direct Deposit System, and direct deposit must be discontinued upon the recipient's request.³⁰⁷

5. Protective, Restrictive, and Voucher/Vendor Payments.

There are limited exceptions to the rule that families receive cash payment of CalWORKs benefits. When a parent is sanctioned for not assigning support rights,³⁰⁸ the entire CalWORKs check is paid to another person called a protective payee.³⁰⁹ The recipient has the right to choose who will be the protective payee.³¹⁰ The performance of the protective payee is reviewed every three months.³¹¹ If no protective payee is located after reasonable efforts, direct payments to the family will continue.³¹²

³⁰⁴ WIC §§ 10072(f), 10072(g).

³⁰⁵ See MPP §§ 16-000 *et seq.* for the state implementing regulations of the EBT system.

³⁰⁶ WIC § 11006.2(c); MPP § 44-302; ACIN I-25-99.

³⁰⁷ ACIN I-25-99.

³⁰⁸ MPP § 82-832.21.

³⁰⁹ MPP § 44-309.1. In a different section of the regulations, the person is called a substitute payee. MPP § 40-107(b).

³¹⁰ MPP § 40-107(b).

³¹¹ MPP § 44-309.14.

³¹² MPP § 44-310.1.

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In addition, restricted payments may be used in place of cash both when the recipient has mismanaged the family grant and in certain other situations.³¹³ Restricted payments for mismanagement may take the form of a vendor payment or voucher payable to the provider of shelter or utilities, or a check drawn jointly to the recipient and the service provider.³¹⁴

A county may (but is not required to) provide voucher/vendor payments for shelter and utilities if the county determines that the recipient is unable to manage funds in the best interests of the child.³¹⁵ A recipient is presumed to have mismanaged funds when he or she has failed to pay rent within the past 12 months, unless the failure was due to a significant rent increase, or a reasonable exercise of a tenant's rights to repair and deduct, or domestic abuse.³¹⁶ Restricted payments shall expire after 12 months, unless the recipient asks for a continuation or the county finds that money management problems continue and provides 30-day notification to the recipient.³¹⁷

While the restricted payments are in effect, the recipient maintains significant rights as a tenant. She may, on two weeks notice, require the county to deduct rent money because of untenable conditions,³¹⁸ or to deduct money so that the tenant may make repairs pursuant to

³¹³ WIC § 11274(b); MPP § 44-307.2.

³¹⁴ WIC § 11274(a)(3); MPP § 44-307.2.

³¹⁵ WIC § 11274(b).

³¹⁶ WIC § 11274(b). Restrictive payments are not permitted when the failure to pay rent is due to a rent increase resulting in the recipient's share of the rent exceeding 80% of the grant; domestic abuse; or a reasonable exercise of tenant rights. WIC § 11273(a)(1); MPP § 44-211.517(a)(4).

³¹⁷ WIC § 11274(e).

³¹⁸ WIC § 11274(c)(3); MPP § 44-307.3. A tenant's right to withhold rent because of uninhabitable conditions was first recognized by *Green v. Superior Court*, 10 Cal.3d 616, 629-630 (1974), and partially codified by Civil Code § 1942.3. Counties are required to adopt procedures for rent withholding. MPP § 44-307.3. In addition, if a recipient notifies her county that she intends to move, the county shall send the rent check to the new landlord. WIC § 11274(c)(5); MPP § 44-307.4.

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Civil Code § 1942.³¹⁹ Moreover, a landlord may not evict a tenant for failure to pay rent when the failure was because of county error,³²⁰ and may not charge a restricted payment tenant more than a cleaning or damage deposit equal to one month's rent.³²¹

Homeless assistance recipients may also be subjected to restricted payments for mismanagement of funds when the recipient cannot verify that homeless assistance payments were used for shelter.³²² In such circumstances, the county may give the payment to the recipient to pay the landlord or may make the payment directly to the landlord.³²³

Restrictive payments in the form of vouchers are also authorized in certain other situations. When an adult exceeds her 60-month lifetime limit on aid and is removed from the assistance unit,³²⁴ the county may provide aid to the family in the form of cash or vouchers, at the county's option.³²⁵ When a parent has been subjected to a sanction of at least three months, the county *must* issue vouchers or vendor payments to pay rent and utilities until the parent is no longer subject to the sanction.³²⁶ Similarly, a county must pay the family with vouchers when an adult is denied aid because she was convicted of a drug felony.³²⁷

³¹⁹ WIC § 11274(c)(4).

³²⁰ WIC § 11274(d)(4).

³²¹ WIC §§ 11274(1)(1).

³²² WIC §§ 11273(a)(2), 11273(a)(3); MPP § 44-517(a)(1)-(3).

³²³ MPP § 44-211.517(b).

³²⁴ WIC § 11320.15; MPP § 44-307.52.

³²⁵ WIC § 11450.13; MPP § 44-307.52.

³²⁶ WIC § 11453.2; MPP §§ 44-303.34, 44-307.12. If the resulting reduced grant does not cover rent and utilities, the county can decide how to allocate the vendor payments. For example, if the rent is \$400, the utilities \$100 and the reduced grant \$400, the county may decide to send a \$100 voucher to the utility and a \$300 voucher to the landlord. MPP § 44-307.2. Counties may also issue additional vouchers “if they deem it in the best interest of the recipient child(ren)” MPP § 44-307.51.

³²⁷ WIC § 11251.3; MPP §§ 44-303.33, 44-307.11.

Chapter X:	<i>Child Support Rights and Responsibilities Under CalWORK¹</i>
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A. Introduction.

1. The Child Support Program.

In 1975 Congress established the national child support program as Part D of Title IV of the Social Security Act (IV-D Program) to provide funds to states to establish paternity and child support orders and collect and distribute child support obligations.² A state's TANF plan must contain an assurance that the state will operate a child support enforcement program pursuant to an approved IV-D plan.³ Basic responsibility for administering the program is left to the state but the federal government plays a major role in dictating the major design features, funding, and evaluation of state programs.

2. Organization of the Child Support Program.

a. Federal.

At the national level, the child support program is administered by the Office of Child Support Enforcement (OCSE) under the Administration of Children and Families within the U.S. Department of Health and Human Services.⁴ OCSE can be contacted at:

¹ This chapter mainly concerns the rights of parents who are current or former AFDC/CalWORKs recipients. For a discussion of the basic child support rights of custodial and noncustodial parents alike, see *Child Support: The Basics of California's System*, available from the National Center for Youth Law, 405 14th Street, 15th Floor, Oakland, CA 94612, (510) 835-8098.

² Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975).

³ 42 USC § 602(a)(2).

⁴ 42 USC § 652(a).

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Office of Child Support Enforcement
Administration for Children and Families
370 L'Enfant Promenade, SW
Washington, DC 20447
202.401.9373
<http://www.acf.dhhs.gov/programs/cse/>

b. California.

The California child support program is administered by the Department of Child Support Services (DCSS) within the California Health and Human Services Agency.⁵ The department is required to “administer all services and perform all functions necessary to establish, collect, and distribute child support.”⁶ The Director of DCSS has the “direct oversight and supervision of the Title IV-D operations of the local child support agency, and no other local or state agency shall have any authority over the local child support agency as to any function relating to its Title IV-D operations.”⁷ DCSS must annually develop and enter into a plan of cooperation with each local child support agency (LCSA).⁸ DCSS is required to hire regional state administrators to oversee the local child support agencies to ensure compliance with state

⁵ Fam. Code § 17200.

⁶ Fam. Code § 17200. DCSS was created effective January 1, 2000 as part of a major overhaul of the child support program that mandates a state-administered, locally delivered child support program and places responsibility to meet all state and federal requirements, including implementation of a single, statewide automated system with DCSS. Fam. Code §§ 17200, 17202, 17303, 17304. The legislation transferred the local child support responsibility from the district attorney to new local child support agencies; established a uniform complaint resolution and fair hearing processes for both custodial and noncustodial parents; and required DCSS to adopt uniform forms and procedures, establish caseworker and attorney staffing ratios, evaluate best practices, set caseload priorities, and establish a statewide policy for case closure. Fam. Code §§ 17200-804.

⁷ Fam. Code § 17304(b).

⁸ 22 CCR § 111110(a).

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and federal laws.⁹ DCSS must adopt regulations pursuant to the APA before January 1, 2008.¹⁰

DCSS can be contacted at:

Department of Child Support Services
P.O. Box 419064
Rancho Cordova, CA 95741-9064
(916) 464-5000
<http://www.childsup.cahwnet.gov/>

c. Counties.

Each county is required to establish a county department of child support services referred to as a “local child support agency” (LCSA). The LCSA must be separate and independent from any other agency.¹¹ The DCSS director has the authority to consolidate LCSAs into a single LCSA if the consolidation will increase the efficiency of the state program and each county has at least one office accessible to the public.¹² Each LCSA is responsible for establishing, modifying and enforcing child support obligations and determining the paternity of children born to unwed parents for both recipients and non-recipients of public assistance.¹³ The contact information for each LCSA is located at: http://www.childsup.cahwnet.gov/county_locations.asp.

⁹ Fam. Code § 17314. Currently there are six regional administrators to oversee six state regions. Advocates can call DCSS to find out the name for the Regional Administrator for their county at (916) 464-3500; this information is not posted on the department’s website.

¹⁰ Fam. Code § 17306(e)(1).

¹¹ Fam. Code § 17304.

¹² Fam. Code § 17304(a). Thus far, five regionalized LCSAs have been created: Amador/Alpine/Calaveras; Inyo/Mono; Santa Cruz/San Benito; Sierra/Nevada; and Siskiyou/Modoc.

¹³ Fam. Code § 17400(a).

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3. Child Support Library.

As in the CalWORKs program, child support law is scattered through federal and state statutes, regulations, and policy transmittals.

a. Federal.

Part D of the Social Security Act is found at 42 USC §§ 651-69b. The federal regulations are found at 45 CFR § 301-10. OCSE also issues Action Transmittals, Dear Colleague Letters, Information Memoranda, Policy Interpretation Questions and technical correspondence. These policy documents are found at: <http://www.acf.dhhs.gov/programs/cse/pol/>.

b. State.

The California child support statutes are found at Family Code §§ 3500-93, 7500-58, 10000-15, and 17000-804. The state regulations are currently spread between the California Department of Social Services Manual of Program and Procedures, at Division 12 which can be accessed at:

<http://www.childsup.cahwnet.gov/Resources/ChildSupportRegulations/ManualofPoliciesandProcedures/tabid/151/Default.aspx>.

and Division 82-500 which can be accessed at:

<http://www.dss.cahwnet.gov/ord/PG302.htm>.

and California Code of Regulations, Title 22, Division 13, Chapters 1-13, §§ 110000 *et seq.* which can be accessed at:

<http://www.childsup.cahwnet.gov/Resources/ChildSupportRegulations/tabid/144/Default.aspx>.

DCSS also issues Child Support Services Letters (CSS), Child Support Services Information Notices (CSSIN); Local Child Support Agency Letters (LCSA), email blast documents and various other policy directives. These policy documents are found at:

<http://www.childsup.cahwnet.gov/ChildSupportProfessionals/Policies/tabid/92/Default.aspx>.

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DCSS is also mandated to publish a booklet describing the proper procedures and processes for the collection and payment of child support.¹⁴ The booklet can be accessed at: <http://www.childsup.cahwnet.gov/pub/brochures/pub160.pdf>.

c. LCSAs.

All LCSAs maintain program websites. None, however, post internal policy documents on their sites. Inquiries can be made of the LCSA to request internal policies. Contact information for all LCSAs is at: <http://www.childsup.cahwnet.gov/countylocations.asp>.

d. Getting Help.

The National Center for Youth Law will answer questions and provide advice on child support issues. NCYL can be contacted at (510) 835-8098 and its website is www.youthlaw.org. Also, the website for Center for Law and Social Policy, which provides technical assistance and advice on child support issues, is: www.clasp.org.

B. The Child Support Process.

1. Responsibility for Child Support and Assignment of Support Collected.

Parents are responsible for the financial support of their children, regardless of the parents' marital status or age.¹⁵ The county collects child support from noncustodial parents of children receiving CalWORKs and from both parents of children in foster care.¹⁶ All CalWORKs recipients must assign child and spousal support rights to the county.¹⁷ This means

¹⁴ Fam. Code § 17434.

¹⁵ Fam. Code §§ 3900 - 4076; MPP § 43-105.1. Grandparents are not responsible for the support of their grandchildren, even when the parent is a minor. Fam. Code § 3930; MPP § 43-105.21. Stepparents are responsible for their own children, but not for the separate children of their spouses. MPP § 43-105.5.

¹⁶ MPP 43-105.1.

¹⁷ 42 USC § 608(a)(3)(A); WIC § 11477(a)(1); MPP § 82-506.1. Support that was assigned before October 1, 1998 or that accrues while the family is receiving aid under an

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that when child support is collected, the county, rather than the family, may receive some or all of the money¹⁸ until the entire amount of aid received by the family – both the parent's and the children's share – has been repaid.¹⁹ The assignment is automatic by law.²⁰ Recipients who want to refuse assignment must do so in writing, but the refusal will render them ineligible for CalWORKs.²¹ Recipients are also required to turn over to the county any child support received directly from the noncustodial parent.²² If a recipient fails to do so, the county will disregard the first \$50 received and then treat the remaining amount as unearned income for the custodial parent.²³

2. The CalWORKs Child Support Cooperation Requirement and Good Cause For Non-Cooperation.

All recipients are required to cooperate with the county and the local child support agency to establish paternity, locate the noncustodial parent and obtain support from the

assignment that was dated before October 1, 1998 is permanently assigned to the county. WIC § 11477(a)(4)(A); MPP §§ 12-410.121, 12-410.122. Support that accrues on or after October 1, 1998 is only temporarily assigned while the family is receiving aid. WIC § 11477(a)(4)(B); MPP § 12-410.123. A parent cannot be required to assign rights to support that accrue after the parent no longer is receiving aid. 42 USC § 608(a)(3)(B); MPP § 12-410.124. In addition, any support received for a child whose family's CalWORKs grant did not increase when he was born because he was conceived while the parent was receiving aid (WIC § 11450.04) goes entirely to the family. WIC § 11450.04(e); MPP § 44-314.62.

Counties must refer to LCSA all CalWORKs cases in which a child is aided based on deprivation, unless an exemption based on MPP § 82-512 applies. ACL 07-51 at 1; ACIN I-39-06, ACIN I-63-07.

¹⁸ See Section E. below for a discussion of how child support collected is distributed.

¹⁹ WIC § 11477(a)(1) - (2).

²⁰ WIC § 11477(a)(1).

²¹ WIC § 11477(a); MPP § 82-506.4. Their children will still receive aid if otherwise eligible. MPP § 82-506.4.

²² MPP § 82-510.16.

²³ MPP § 82-518.22-.23.

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noncustodial parent, unless there is good cause for failure to cooperate.²⁴ Cooperation includes providing known information about the noncustodial parent, appearing at interviews when requested, and submitting to genetic testing, if necessary.²⁵

If a parent is found to have failed to cooperate without good cause, the parent's family grant will be reduced by 25% "for such time as the failure to cooperate lasts."²⁶ Two questions must be answered: (1) whether the recipient has cooperated; and (2) if not, whether there was good cause for the failure to cooperate.

The CalWORKs statute mandates that an initial good cause determination be made *before* the cooperation determination.²⁷ A good cause exception can be claimed at any time.²⁸ Nonetheless, for purposes of convenience we will discuss cooperation first, then good cause for non-cooperation.

a. The Cooperation Determination.

The local child support agency, which must have staff available either in county welfare offices or reachable by phone to interview CalWORKs applicants at the time of their initial application for aid, makes the determination of cooperation.²⁹ The cooperation requirement continues throughout the duration of the child support case and applies to all required activities

²⁴ 42 USC § 608(a)(2); WIC §§ 11477(b), 11477.02; MPP § 82-510; 22 CCR § 112200.

²⁵ WIC § 11477(b)(2); 22 CCR § 112200; MPP §§ 12-110.3, 82-510.

²⁶ WIC § 11477.02; MPP § 82-510.41. The 25% penalty is the minimum mandated by federal law, which would permit a state to deny the family aid altogether. 42 USC § 608(a)(2). The penalty is removed in the first month that cooperation occurs. MPP § 82-510.42.

²⁷ WIC § 11477.02 ("Prior to referral of any individual . . . to the local child support agency for child support services . . . , the county welfare department shall determine if an applicant or recipient has good cause for noncooperation . . .").

²⁸ MPP § 82-512.5.

²⁹ WIC § 11477(b)(1); 22 CCR § 112200(a). ACL 07-51 at 3.

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to establish paternity and establish, modify, or enforce an order.³⁰ The applicant or recipient is required to provide *known* information, including the name of the noncustodial parent and any location information.³¹ If the applicant or recipient swears under penalty of perjury that she has no further information about the noncustodial parent and the information already provided is complete and accurate to the best of her knowledge and belief, the local child support agency must make a finding regarding whether the individual could reasonably be expected to provide the information.³² The local child support agency must consider “[t]he age of the child for whom support is sought,” the circumstances surrounding the child's conception, the age or mental capacity of the parent and the time that has elapsed since the custodial parent last had contact with the noncustodial parent.³³

b. The Good Cause Determination.

The county welfare office makes the determination whether a parent has good cause for non-cooperation.³⁴ There are several exceptions for good cause.

First, a parent need not cooperate if doing so would risk harm to the child or the parent herself.³⁵ A sworn statement by the “victim shall be sufficient to establish abuse unless the agency documents in writing an independent, reasonable basis to find the recipient not credible.”³⁶ Abuse may also be proved by other documentation, including police, court, or

³⁰ 22 CCR § 112200(a).

³¹ WIC § 11477(b)(2); 22 CCR § 112200(a).

³² WIC § 11477(b)(1); 22 CCR § 112200(d).

³³ WIC § 11477(b)(1); 22 CCR § 112200(d).

³⁴ WIC § 11477.04(a); MPP § 82-512.1.

³⁵ WIC §§ 11477.04(b)(1)-(2); MPP § 82-512.11.

³⁶ WIC § 11477.04(d); MPP § 82-514.13. The regulation arguably conflicts with the statute by providing that the “meare belief of the applicant/recipient that cooperation would increase the risk of harm is not a sufficient basis for granting the claim.” MPP § 82-512.3.

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medical records.³⁷ Applicants who claim abuse are to be given referrals for appropriate services, but are not required to follow up on those referrals.³⁸

Second, a parent has good cause not to cooperate with the local child support agency if the child for whom support is sought was conceived as a result of incest or rape.³⁹ The parent does not have to show that there was a criminal conviction, but can rely on birth certificates or records from the police, a doctor, or a rape crisis center.⁴⁰ The filing of a police report is not a formal requirement under the statute and regulations.

Third, good cause exists if the parent is considering putting the child up for adoption.⁴¹ Court records or a written statement from an adoption agency is sufficient to establish these grounds.⁴²

Fourth, a parent has good cause if he or she is cooperating in good faith but is unable to name or locate the noncustodial parent.⁴³ Thus, if the local child support agency, in making the cooperation determination or the county welfare office in making the good cause determination, finds that the parent is not reasonably able to identify or locate the noncustodial parent, no penalties should be assessed.

Last, but not least, good cause may be found if there is any other reason that would make efforts to establish paternity "contrary to the best interests of the child."⁴⁴ This "catch-all"

³⁷ WIC § 11477.04(c)(1); MPP § 82-512.524. Other acceptable evidence includes documents from mental health, rape crisis and domestic abuse programs. WIC § 11477.04(c)(1); MPP § 82-512.524.

³⁸ WIC § 11477.04(e); MPP §§ 82-512.2, 82-512.21.

³⁹ WIC § 11477.04(b)(3); MPP § 82-512.21.

⁴⁰ WIC §§ 11477.04(b)(3), 11477.04(c)(3); MPP § 82-512.521.

⁴¹ WIC § 11477.04(b)(4)-(5); MPP § 82-512.14.

⁴² WIC § 11477.04(c)(4)-(5); MPP §§ 82-512.522 - .523.

⁴³ WIC § 11477.04(b)(6).

⁴⁴ WIC § 11477.04(b)(7); MPP § 82-512.15.

provision appears to make it much easier than it was under prior law for a parent to show that she had good cause to refuse to cooperate.

c. The Procedure for Making the Good Cause Claim.

Applicants are informed in writing of both the cooperation requirements and the right to claim good cause.⁴⁵ A good cause claim may be made at any time.⁴⁶ Once the claim is made, the applicant or recipient must provide corroborating evidence within 20 days, unless the county grants an extension.⁴⁷ The county must make its good cause determination within 25 days of receiving the evidence.⁴⁸ While the determination is pending, aid may not be denied, discontinued, or delayed if the applicant has furnished supporting evidence.⁴⁹

Once a good cause claim is made, the local child support agency must suspend all child support enforcement activities.⁵⁰ If good cause exists, the child support agency can only resume child support activities on the request of the parent.⁵¹

d. Note on domestic abuse.

If a good cause claim has been approved or is pending, a protective order has been issued by a court or administrative agency, or the LCSA believes that the release of information about the whereabouts of one party or the child will result in physical or emotional harm to the party or child, the information shall not be released.⁵² When the LCSA is prohibited from releasing the

⁴⁵ WIC § 11327(b)(3)(B); MPP § 40-107(a)(1).

⁴⁶ WIC § 11477.02; MPP § 82-512.5.

⁴⁷ MPP § 82-512.513.

⁴⁸ MPP § 82-514.5.

⁴⁹ MPP § 82-514.51.

⁵⁰ WIC § 11477.02; 22 CCR § 112210(a); MPP § 82-508.351.

⁵¹ WIC § 11477.02; 22 CCR § 112210(b); MPP § 82-508.352.

⁵² Fam. Code § 17212(b)(2).

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information, it must delete the information from any pleading or document submitted to the court.⁵³

Additionally, the LCSA must screen all custodial parties and noncustodial parents for family violence.⁵⁴ The screening shall consist of mailing a form to the parties and requiring the completion and submission of the form within 30 days.⁵⁵ The LCSA must consider several factors in determining whether there is or has been family violence based on the submission of the form.⁵⁶ If the LCSA receives a completed form where 1) family violence is claimed and a request for good cause has been granted, 2) a protective order has been obtained, 3) a party has indicated there is an increased risk of harm to the party or the child if information is released, or 4) the LCSA believes that disclosure of information may result in physical or emotional harm, the LCSA must place an indicator in its automated system within 30 days of the determination of the existence of family violence.⁵⁷ Thus, advocates should ensure that anytime domestic abuse is being alleged as a basis for a good cause exemption from cooperation, there is a family violence indicator placed in the system so that the custodial parent's and the child's whereabouts information is not released in pleadings, court records or otherwise. The LCSA must open a child support case within 20 days of receiving the referral from the welfare department or filing of an application for services.⁵⁸

⁵³ Fam. Code § 17212(b)(2); CSS Letter 00-09.

⁵⁴ 42 USC § 602(a)(7); 45 CFR § 260.52; 22 CCR § 112300(a).

⁵⁵ 42 USC § 602(a)(7); 45 CFR § 260.52; 22 CCR § 112300(b).

⁵⁶ 42 USC § 602(a)(7); 45 CFR § 260.52; 22 CCR § 112301(a).

⁵⁷ 42 USC § 602(a)(7); 45 CFR § 260.52; 22 CCR § 112302(a) – (c).

⁵⁸ 5 CFR § 303.2(b); 22 CCR § 112130(a).

3. Order Establishment.

a. Guideline.

Federal law requires that all states use a guideline to compute the amount of child support that must be ordered to be paid.⁵⁹ Courts are required, when implementing the guideline, to consider that a parent's principal obligations is to support his or her children "according to the parent's circumstances and station in life."⁶⁰ California's guideline depends on a complicated formula that considers, among other factors, both parents' net income and the time they spend with their children.⁶¹ Income derived from any public assistance program that is based on need is not considered income for purposes of the child support guideline.⁶² Child care costs and uninsured health care costs are add ons to the guideline.⁶³

b. Hardship Deduction.

In determining the amount of child support to be paid under California's child support guideline, both custodial and noncustodial parents may qualify for a hardship deduction from their income for other children who live with them and whom they are obligated to support.⁶⁴ In the past, the hardship deduction was not available if any of the parent's children received CalWORKs, even if the other parent was receiving the benefits.⁶⁵ However, this limitation has now been eliminated, so that all parents may be entitled to hardship deductions for any of their

⁵⁹ 42 USC § 667(a).

⁶⁰ Fam. Code § 4053(a).

⁶¹ Fam. Code § 4055.

⁶² Fam. Code § 4058(c).

⁶³ Fam. Code § 4062.

⁶⁴ Fam. Code §§ 4070, 4071.

⁶⁵ Fam. Code § 4071.5 (repealed 1999).

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children the parents live with support, regardless of the whether any of their children receive CalWORKs benefits.⁶⁶

c. Date of Filing.

Prior to the restructuring of the child support program in 1999, the county could seek to recoup from a noncustodial parent child support payments to recover welfare costs for up to three years before the petition was filed.⁶⁷ As part of the reform legislation, recoupment of CalWORKs benefits was limited to one year prior to the filing of the petition for child support.⁶⁸ This provision was amended once again in 2004 to allow retroactivity of a child support orders only to the date of filing the petition as is in nonwelfare cases.⁶⁹ This helps noncustodial parents of children receiving CalWORKs, so that they do not begin with a large arrearage, particularly since interest accrues at the rate of 10% a year on the entire child support debt.⁷⁰

d. Low-Income Adjustment.

Before 2003, the low-income adjustment to the child support amount guideline was discretionary with the court.⁷¹ Currently there is a rebuttable presumption that a child support obligor is entitled to a low-income adjustment to the guideline when the obligor's net disposable income is less than \$1000 per month.⁷² The adjustment is automatic, and the LCSAs must apply the maximum amount of adjustment available to the low-income obligor unless evidence shows

⁶⁶ Fam. Code §§ 4070-71.

⁶⁷ Fam. Code § 17402(a)(2), as in effect December 31, 1998.

⁶⁸ Fam. Code § 17402(a)(2), as in effect December 31, 1999.

⁶⁹ Fam. Code § 17402(a), *amended* by 2004 Cal.Stat. 94, ch. 305, §5.

⁷⁰ Code Civ. Proc. §§ 685.010, 685.020.

⁷¹ CSS Letter 03-18.

⁷² Fam. Code § 4055(b), *amended* by 2003 Cal.Stat. 93, ch 305, §1.

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the application of the adjustment is unjust and inappropriate.⁷³ The presumption applies in all cases, including those decided by default.⁷⁴

e. Presumed Income and Set Asides.

If a support obligor's income or income history is unknown when establishing a child support order, the order is based on presumed income.⁷⁵ Before 2003, the presumed income amount was based on the CalWORKs' minimum basic standard of adequate care (MBSAC) for Region I.⁷⁶ Currently the presumed income is based on income from 40 hours per week of minimum wage as established by the Industrial Welfare Commission pursuant to Labor Code § 1181.11.⁷⁷ This provision should reduce the accumulation of large arrears when an order is set by default.

A set aside of judgments or orders for support that are based on presumed income can be sought up to one year after the date of first collection.⁷⁸ Before 2003, a court could set aside child support orders based on presumed income if a reevaluation resulted in a change in the order amount of 20 percent or more. Currently the presumed orders may be set aside when there is a 10 percent or more difference between the obligor's actual income and the presumed income.⁷⁹ Additionally, within three months from the date the LCSA receives the first collection for any order established using presumed income, the LCSA must check all appropriate sources for

⁷³ Fam. Code § 4055(b)(7); CSS Letter 03-18.

⁷⁴ Fam. Code § 4055(b)(6); CSS Letter 03-18.

⁷⁵ CSS Letter 03-18.

⁷⁶ Fam. Code § 17400(d)(2), as in effect December 31, 2002.

⁷⁷ Fam. Code § 17400(d)(2); CSS Letter 03-18.

⁷⁸ Fam. Code § 17432(f).

⁷⁹ Fam. Code § 17432(c); CSS Letter 03-18.

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income information, and if income information exists, must make a determination whether the order qualifies for set aside.⁸⁰

4. Child Support Distribution Rules.⁸¹

As noted in Section B above, when families apply for CalWORKs they are required to assign their rights to child support owed before and during the assistance period and to cooperate in enforcement efforts. Under federal law, states withhold the child support payments for these families to reimburse the state and federal governments for the assistance costs.⁸² There are complex distribution rules for determining how child support collections are allocated between families and the government. As a general rule, child support paid while a family receives CalWORKs is retained by the state and shared with the federal government. When families leave CalWORKs they receive most of the child support paid, but not all of it. Specifically, child support in California is distributed as follows.

⁸⁰ Fam. Code § 17432(g). If the order qualifies for set aside, the LCSA must bring a motion for relief under this section. Fam. Code § 17432(g).

⁸¹ The Deficit Reduction Act of 2005 (“DRA”) signed by the President on February 8, 2006 (Pub. L. No. 109-171, Stat. 4 (2006) (codified in scattered sections of 42 USC) provides states new flexibility to pass through more child support dollars to children who receive or formerly received TANF benefits. These provisions include prohibiting states from requiring families to assign past due child support that accrued before they applied for TANF assistance (effective October 1, 2009 with a state option to implement one year earlier) (42 USC § 657 (a)(3)); permitting a state to “pass through” and “disregard” child support payments received by a TANF family and waives the federal share of the “pass through” up to \$100 per month for one child and \$200 per month for two or more children (effective October 1, 2008) (42 USC § 657 (a)(7)); and, permitting a state to direct all child support collected through the federal tax offset procedure directly to families for former TANF recipients (effective October 1, 2008) (42 USC § 657 (a)(2)(B)). There are several other child support provisions in the DRA to improve enforcement and alter the federal-state funding structure. Implementing these DRA child support provisions will require legislative enactment.

⁸² 42 USC § 657(a)(1)-(2).

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a. Distribution of Child Support Collected for Families Currently Receiving CalWORKs Benefits.

Under the federal welfare law, states have an option to "retain, or distribute to the family, the State share" of the amount collected for current recipients.⁸³ A state is free to pass through and disregard any amount of child support collections.⁸⁴ Before the Personal Responsibility and Work Opportunity Act of 1996⁸⁵ (PRWORA), states were required to "pass through" and "disregard" as countable income for AFDC grant amount calculations the first \$50 of current child support payments to the family.⁸⁶ This provision was repealed as a requirement of PRWORA,⁸⁷ but California retained a "pass through" and "disregard" of the first \$50 of any current child support paid on behalf of the family.⁸⁸

Thus, for current recipients of CalWORKs, collected child support is paid out in the following order:

⁸³ 42 USC § 657(a)(1)(B).

⁸⁴ The "pass through" must be paid out of the state share of collections, not out of the "Federal share." 42 USC § 657(a)(1), (a)(2)(B)(iv) (noting that the "Federal share" must be paid to the federal government). However, the DRA made several changes to the federal child support program. These changes include new options for states to increase the amount of child support paid to families who receive, or formerly received, TANF-funded cash assistance such as CalWORKs. Starting October 1, 2008, the federal government will waive its share of *all* (both current and arrears) child support collections that are passed through to CalWORKs families up to \$100 per month for families with one child and up to \$200 per month for families with two or more children. There are several other options available to states for passing through more child support to families that is retained under existing law. A bill was introduced in the 2007-08 session that would have authorized increasing the pass through and disregard to the \$100/\$200 allowed by federal law. AB 176, 2007-2008 Sess. (Cal. 2007).

⁸⁵ Pub. L. No. 104-193, 110 Stat. 2105.

⁸⁶ Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (codified in scattered sections of 42 USC).

⁸⁷ § 302, 110 Stat. 2105.

⁸⁸ WIC § 11475.3; Fam. Code § 17504.

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(1) The first \$50 of current support received from the noncustodial parent in the month due is “passed through” to the CalWORKs family and “disregarded” as income or resources.⁸⁹ The LCSA must give the family this \$50 pass through within two business days⁹⁰ of receipt by the LCSA.⁹¹ No payment is made to the family for a month in which there is no support collected or if the payment is not made timely.⁹² Thus, if a noncustodial parent pays both the January and February child support in February, the CalWORKs family will receive only one \$50 payment. Likewise, if two or more noncustodial parents make support payments in a month, the custodial parent still is only entitled to \$50.⁹³

(2) After the \$50 disregard is paid, the state is reimbursed for CalWORKs aid provided in the month the child support is collected.⁹⁴

(3) Any amount left over after the state is reimbursed and the family is paid the disregard then goes to reimburse the state for past unreimbursed assistance payments to the family.⁹⁵ This is known as the Unreimbursed Assistance Pool.⁹⁶ The state may only keep up to the total amount of aid paid out to the family.⁹⁷

⁸⁹ WIC § 11475.3; MPP §§ 12-425(c), 44-111.47.

⁹⁰ Business day is defined as any day the local child support agency is open for business. MPP § 12-101.3(b).

⁹¹ 42 USC § 654b(c); MPP § 12-108.511.

⁹² MPP § 12-425(c)(1)(H).

⁹³ MPP § 12-425(c)(1)(D).

⁹⁴ MPP § 12-425(d).

⁹⁵ MPP § 12-425(h).

⁹⁶ MPP § 12-405.2(u)(3). The Unreimbursed Assistance Pool is reduced by any disregard and pass-on payments made to the family. MPP § 12-425(c)(1)(B), (g)(1).

⁹⁷ 42 USC § 657(a); MPP § 12-425(j)(1).

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Since any month for which child support reimburses the state for CalWORKs assistance does not count against a family's 60-month time limit,⁹⁸ even if the child support is collected much later, the custodial parent may want to get an accurate accounting from the county to determine how child support payments were distributed.⁹⁹

(4) Any remaining money is paid to the family¹⁰⁰ and will be considered available income in the month received,¹⁰¹ which may make the family ineligible for CalWORKs.¹⁰² This excess must be paid to the family within 15 calendar days from the end of the month in which it was collected.¹⁰³ Support received in any month in which aid has been discontinued should be forwarded directly to the family.¹⁰⁴

b. Distribution of Child Support to Former CalWORKs Families.

The LCSA must continue to collect child support on behalf of a family that has left CalWORKs unless the family notifies the LCSA in writing that it no longer desires child support services.¹⁰⁵ All support collected for and to be paid to the family must be paid out to the family

⁹⁸ See Chapter II on months on aid that do not count toward the 60-month time limit.

⁹⁹ WIC § 11478.1(c)(3). Counties are required to provide custodial parents with monthly statements of support payments collected. 45 CFR § 302.54(a)(1); 22 CCR § 119184. In addition, WIC § 11478.1(c)(3) permits the custodial parent to obtain the payment history of the noncustodial parent.

¹⁰⁰ MPP § 12-425(i)(1).

¹⁰¹ MPP § 82-518.14.

¹⁰² MPP § 82-518.11.

¹⁰³ MPP § 12-108.6.

¹⁰⁴ MPP § 82-518.11. If the family can afford to do so, it might be advantageous to go off aid in any month where the child support received is substantial, but still less than the grant amount, so as to avoid the 60-month limit on CalWORKs benefits.

¹⁰⁵ 45 CFR § 302.33(a)(1)(iii), (a)(2); Fam. Code § 17415(e); MPP § 12-302.5.

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within two business days of receipt by the LCSA.¹⁰⁶ If money is collected through the federal tax intercept program – under which the federal government intercepts federal tax refunds due noncustodial parents whose child support is past due¹⁰⁷ – the money shall be paid first to the state to reimburse past public assistance.¹⁰⁸

If the federal tax intercept program is not involved, child support is paid out in the following order:¹⁰⁹

1. The first amount collected, up to the current support amount owed under the court order, is paid to the family.¹¹⁰
2. The family is next paid support arrearages that accrued after the family stopped receiving public assistance (post-assistance arrears).¹¹¹
 - a. Support collected on or after October 1, 1998, but under an assignment in effect prior to October 1, 1998, is next paid to the state up to the amount

¹⁰⁶ 42 USC § 654B(c); MPP § 12-108.8. Business day is defined as any day the local child support agency is open for business. MPP § 12-101.3(b).

¹⁰⁷ 42 USC § 664.

¹⁰⁸ 42 USC § 657(a)(2)(B)(iv); Code Civ. Proc. § 695.221(e); MPP §§ 12-405.2(c)(1), 12-420(d).

¹⁰⁹ The following discussion applies to amounts collected after September of 1998. 42 USC § 657 (a)(2)(B)(i)(II). Amounts collected before October of 1998 are governed by former federal law since California elected to change the order of distribution in 1998 and not in 1997 and 2000. 42 USC § 657(a)(2)(B)(i)(I), (a)(6). Under former federal law, the family received its current support first, but did not receive any arrears until after *all* AFDC has been reimbursed. [Former] 45 CFR § 302.51(f)(3).

¹¹⁰ 42 USC § 657(a)(2)(A); Code Civ. Proc. § 695.221(a), (g)(1); MPP § 12-420(c)(1)(A)-(C).

¹¹¹ 42 USC § 657(a)(2)(B)(i)(II)(aa); Code Civ. Proc. § 695.221(g)(2); MPP §§ 12-405.2(n)(1), 420(c)(1)(D)-(I).

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of the Unreimbursed Assistance Pool.¹¹² Any remaining support is paid to the family.¹¹³

- b. Child support collected and assigned after October 1, 1998 is only "temporarily assigned,"¹¹⁴ which means that collections credited to pre-assistance arrears will be distributed first to the family to pay off all the arrears owed the family, then to the state for reimbursement for assistance up to the Unreimbursed Assistance Pool, and then any excess to the family.¹¹⁵

¹¹² WIC § 11477(a)(2), (a)(4)(A); MPP §§ 12-405.2(p)(2), 12-420(c)(1)(V)-(AA).

¹¹³ Code Civ. Proc. § 695.221(g)(3); MPP §§ 12-405.2(u)(1)-(2), 12-420(c)(1)(J)-(U), 12-420(c)(1)(BB)-(GG). The statute provides that this order of crediting support collected--first current support, then post-assistance arrears, then pre-assistance arrears, and then arrears that accrued while the family was receiving assistance--shall apply if the federal government permits states to distribute pre-assistance arrears in the same way as post-assistance arrears. Code Civ. Proc. § 695.221(g). Federal law has since been amended to grant that permission. Pub. L. No. 105-33 § 5332(b), 111 Stat. 626 (codified as amended at 42 USC § 657(a)(6)).

¹¹⁴ WIC § 11477(a)(4)(B); MPP § 12-405.2(t).

¹¹⁵ MPP § 12-420(c)(1)(J)-(GG). Federal law mandates this order of distribution beginning October 1, 2000. 42 USC § 657(a)(2)(B)(ii)(II). California adopted the same order of distribution beginning October 1, 1998, if "the federal government permits states to adopt the same order of distribution for preassistance and postassistance child support arrears" WIC § 11477(a)(1)(4); Code Civ. Proc. § 695.221(g). Federal law has since been amended to grant that permission. Pub. L. No. 105-33 § 5332(b), 111 Stat. 626 (codified as amended at 42 USC § 657(a)(6)).

1998 ASSIGNMENT EXAMPLE¹¹⁶

- Jan. 1, 1997: Mr. Roe is ordered to pay Mrs. Roe and their children \$300 per month in child support.
- Jan. 1, 1998: Mrs. Roe and children begin receiving CalWORKs in the amount of \$500 per month.
- Jan. 1, 1999: The Roe family stops receiving CalWORKs benefits.
- Jan. 1, 2000: The county's collection efforts finally achieve success, and Mr. Roe makes his first child support payment in the amount of \$15,000.

The \$15,000 will be distributed as follows:

- (1) \$300 will be credited to current support and paid to the family, leaving \$14,700.
- (2) \$3,600 (\$300 x 12 months in 1999) will be credited to post-assistance arrears and paid to the family, leaving \$11,100.
- (3) \$3,600 will be credited to pre-assistance arrears (\$300 x 12 months in 1997). Because the assignment of these arrears occurred before October 1, 1998 (the Roes began receiving aid January 1, 1998), the \$3,600 will be paid to the county, leaving \$7,500.
- (4) since the total debt to the county is \$6,000 (the amount of CalWORKs aid paid in 1998) and the county has been paid \$3,600, the county will be paid the remainder of the money owed: \$2,400, leaving \$5,100.
- (5) the remaining \$5,100 will be paid to the family.

1999 ASSIGNMENT EXAMPLE

- Jan. 1, 1998: Mr. Roe is ordered to pay Mrs. Roe and their children \$300 per month in child support.
- Jan. 1, 1999: Mrs. Roe and children begin receiving CalWORKs in the amount of \$500 per month.
- Jan. 1, 2000: The Roe family stops receiving CalWORKs benefits.
- Jan. 1, 2001: The county's collection efforts finally achieve success, and Mr. Roe makes his first child support payment in the amount of \$15,000.

¹¹⁶ None of these examples take California's 10% interest rate into consideration. Code Civ. Proc. §§ 685.010, 685.020.

The \$15,000 will be distributed as follows:

- (1) \$300 will be credited to current support and paid to the family, leaving \$14,700.
- (2) \$3,600 (\$300 x 12 months in 2000) will be credited to post-assistance arrears and paid to the family, leaving \$11,100.
- (3) \$3,600 will be credited to pre-assistance arrears (\$300 x 12 months in 1998). Because the assignment of these arrears occurred after October 1, 1998 (the Roes began receiving aid January 1, 1999), the \$3,600 will be paid to the family, leaving \$7,500.
- (4) \$6,000 (\$500 x 12 months in 1999) will be paid to the county for reimbursement for the CalWORKs the family received in 1999, leaving \$1,500.
- (5) the remaining \$1,500 will be paid to the family.¹¹⁷

5. Importance of Child Support Collection in CalWORKs Program: Exemption from 60-Month Time Limit and Overpayments.

a. Time Limit Exemption.

No month may be counted toward a CalWORKs recipient’s 60-month time limit if “[t]he cost of the cash aid provided to the recipient for the month is fully reimbursed by child support, whether collected in that month or in any subsequent month.”¹¹⁸ Thus, the collection of child support can forestall for many families the imposition of the 60-month limit.

In exempting months on aid from the 60-month time limit, DSS considers all child support collected in January 1998 and after, including collections for a current month, arrearages, and lump sum payments.¹¹⁹ The cumulative child support recoupment, including the

¹¹⁷ These examples are somewhat over-simplified because state law requires that whenever either the family or the county is reimbursed for arrearages, interest on the arrearages must be paid first. Code Civ. Proc. § 695.221(g)(2)-(4). However, the total amount reimbursed to the county, including interest, may not exceed the amount of aid the family received. 42 USC § 657(a)(1); WIC § 11477(a)(1); MPP §§ 12-405.2(u)(3), 12-425(j)(1)(B).

¹¹⁸ WIC § 11454.5(b)(3). MPP § 42-302.21(g); ACL 02-74 at 1.

¹¹⁹ MPP § 42-302.21(g)(1); ACL 02-74 at 1.

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\$50 pass through to the family, is then applied to each month of aid beginning with the earliest unreimbursed month of aid from January 1998 and moving forward as each month of aid is fully reimbursed.¹²⁰ Then, each month of aid that is fully reimbursed by child support is exempt and not counted toward the 60-month time limit.¹²¹

EXAMPLE

A recipient who received monthly aid in the amount of \$600 from January 2001 through December 2002 and received a total of \$3000 of child support for the same period would have 5 months of her 60-month time limit exempted.

In order to ensure that both current and future child support collections are applied to reimburse and exempt months on aid from time limits, counties are required to track the recoupment of aid through child support collections.¹²² Recipients can request an accounting of child support collected from the LCSAs.¹²³ Counties are responsible for providing applicants and recipients notice of the time limits, including the exemptions from the time limits.¹²⁴

¹²⁰ MPP § 42-302.21(g)(1)(A); ACL 02-74 at 12. Months in which the adult recipient is sanctioned also get reimbursed even though sanctioned months are exempt. ACL 02-74 at 2.

¹²¹ MPP § 42-302.21(g)(1)(C). Any child support that remains after a month has been fully exempted but is insufficient to reimburse a monthly grant must be carried forward and used for any subsequent unreimbursed months of aid. MPP § 42-302.21(g)(1)(E).

¹²² ACL 02-74 at 1.

¹²³ MPP § 40-107(a)(4)(H).

¹²⁴ MPP § 40-107(a)(4)(A) - (I). See Chapter II for more on time limits.

b. Overpayments.

Under currently regulations, child support collected is not credited toward repayment of CalWORKs overpayments.¹²⁵ The only credit received by custodial parents for child support collected is unticking of months on the 60-month time limit.

6. Limits on Child Support Recovery in CalWORKs and Foster Care Cases.

a. Reunification and Compromise of Arrears in Foster Care Cases.

Large child support arrears have often stood in the way of successful efforts to reunify families when children have been placed in foster care. In order to regain custody of children removed by the state, parents must convince the court that they have made a home that is safe for their children. Since the parents are responsible for the costs of the foster care, they are often pursued for the child support arrears while they are at the same time trying to maintain a home for the child or children. In the long run the state has a greater interest in reunifying the family than recovering the costs of foster care from the parents who are part of the reunification plan.¹²⁶

A parent may qualify to have up to 100% of the child support arrears forgiven if he owes child support for a child while not living with the parent and who received CalWORKs, AFDC-FC, KinGAP; the child support debt and interest were accrued while the child was not living in the home; the child is currently in the home; and the parent's net income is less than 250% of the federal poverty level.¹²⁷ It is presumed that a compromise is necessary for a child's support if the above criteria are met but may be rebutted if the parent has assets in excess of \$10,000 that

¹²⁵ MPP § 44-352.123, ACL 02-74 at p.3.

¹²⁶ One court has held that welfare costs may not be recouped from parents who have children in residential placements subject to individual educational plans under the Individuals with Disabilities Education Act. *County of Los Angeles v. Smith*, 74 Cal.App.4th 500 (1999).

¹²⁷ 22 CCR § 119191(e). A parent qualifies for a temporary suspension of enforcement and collection actions, pending a final determination of eligibility for compromise if the requirements of subsection (e) are met and the applicant has a gross income less than 300% of the federal poverty level. 22 CCR § 119191(d).

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could be applied to satisfy the arrearages being considered for the compromise.¹²⁸ DCSS must confer with the county welfare worker to determine compliance with the reunification plan before making a final determination.¹²⁹ Within 10 days of a finding that a parent qualifies for the compromise, DCSS must provide a stipulation for the parent to sign and to be filed with the court.¹³⁰ An obligor parent is not eligible for a compromise more than three times in 36 consecutive months except where the child is adjudged a dependent of the court under WIC § 300.¹³¹ An application can be requested from an LCSA.¹³²

At least one court addressed the problem that arrears pose in reunifying families. In *City and County of San Francisco v. Funches*,¹³³ the Court of Appeal upheld a decision to limit the amount of welfare that could be recouped from a parent who was trying to reunify with his child living in a group home. The county had sought current support of \$361 from the parent plus almost \$13,000 in back support. The trial court reduced the back support to \$5,000 because the county had delayed in seeking recoupment and it would be a hardship to the defendant who was trying to reunify with his teenage daughter. The appellate court upheld the trial court's discretion to "find special circumstances based upon the facts before it which make application of the [child support] guideline formula unjust" and found that the total award – which totaled at least one-third of the parent's net income – was "consistent with a concern for the defendant's actual financial situation and its impact upon his ongoing ability to care for" his daughter.¹³⁴ The continued viability of this case may be questionable after the Legislature specified the boundaries for the compromising of arrears in section 17552 of the Family Code.

¹²⁸ 22 CCR § 119191(e)(4).

¹²⁹ 22 CCR § 119191(e)(5).

¹³⁰ 22 CCR § 119191(f)-(g).

¹³¹ 22 CCR § 119191(h).

¹³² For further guidance on making an application and eligibility issues, see LCSA Letter 02-05; CSS Letter 03-15, and CSS Letter 03-19.

¹³³ 75 Cal.App.4th 243 (1999).

¹³⁴ *City and County of San Francisco v. Funches*, 75 Cal.App.4th 243, 244 (1999).

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The other key component of AB 1449 is the authority for a county social worker to make a determination whether it is in the child’s best interests for a child support referral to be made to an LCSA.¹³⁵ In making that determination, the social worker must consider whether the payment of support will pose a barrier to a proposed reunification, the parents ability to meet the reunification plan if a child support referral is made, and the parent’s ability to meet the current and future financial needs of the child or other children in the home who may be at risk of removal.¹³⁶ The basis for the determination must be documented in the file.¹³⁷ If the social worker finds that the referral is not contrary to the best interests of the child, the parent shall be given notice of the grievance procedures under MPP § 31-020 and has five working days from the receipt of the notice to file a grievance.¹³⁸

b. Estoppel.

In *County of Orange v. Carl D.*,¹³⁹ the Court of Appeal estopped Orange County from recouping welfare from a father who had been searching for his children for eleven years. During this absence, the mother was arrested for burglary and the children were removed to foster care in California. The county district attorney's office opened up a child support case against the father for foster care costs and learned of the father’s address, but failed to file the support action for several years. In the meantime, another arm of the same county--the welfare department--informed the dependency court that it could not locate the father and that it would be impossible to do so. In estopping the county from recouping the foster care benefits paid out for the children, the court found that “[t]he county’s failure to provide the father with his due notice resulted in the prolongation of foster care and the ensuing welfare payments.”¹⁴⁰

¹³⁵ ACL 05-37.

¹³⁶ MPP § 31-503.1; ACL 05-37.

¹³⁷ MPP § 31-503.3.

¹³⁸ MPP § 31-503.4.

¹³⁹ 76 Cal.App.4th 429 (1999).

¹⁴⁰ *County of Orange v. Carl D.*, 76 Cal.App.4th 429, 449 (1999).

c. Compromise of Arrears.

In 2003, the Legislature adopted legislation to permit the compromise of child support arrears and interest owed to the state.¹⁴¹ In any given case, DCSS must determine that acceptance of an offer in compromise is in the best interests of the state and that the compromise amount equals or exceeds what the state can otherwise expect to collect in the absence of the compromise and the obligor's ability to pay.¹⁴² If the obligor also owes current support, the obligor must remain in compliance with the current support obligation for a set period of time.¹⁴³ To implement this legislation, DCSS has adopted the Compromise of Arrears Program (COAP).¹⁴⁴

However, COAP has been one of the best kept secrets in the child support program. There have been several false starts in getting the program implemented and there has been no outreach or public education about the project. DCSS has not adopted regulations to implement the program nor has it made available any public documents that establish program eligibility. There is also very little information on the department's web site or on nearly every LCSAs' web sites.¹⁴⁵

The only known document prepared by the department that outlines the COAP program is the "Compromise of Arrears Program Desk Reference," Fourth Edition, March 2006. The Desk reference does not clearly articulate eligibility criteria but rather specifies that LCSAs should process applications through a web-based automation system in which the eligibility criteria is apparently imbedded. The Desk Reference is available on the Western Center's web site at: www.wclp.org.

¹⁴¹ Fam. Code § 17560 (a).

¹⁴² Fam. Code § 17560 (f)(1)(A).

¹⁴³ Fam. Code § 17560 (b).

¹⁴⁴ CSS Letter 05-18, 06-20.

¹⁴⁵ See Cal. Dep't of Child Support Servs, Compromise of Arrears Program (COAP), <http://www.childsup.ca.gov/Payments/CompromiseofArrearsProgram/tabid/131/Default.aspx>.

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1. Eligibility Criteria.

To qualify for COAP, an obligor must meet the following ten criteria:

- a. The amount of permanently assigned arrears (any aid type) owed by the applicant to the government is in excess of \$5,000.00.
- b. There has not been a previous application to participate in COAP within one year before the date of application.
- c. There has not been a rescission of a previous COAP agreement within two years before the date of application.
- d. The applicant has not been found guilty of contempt for failure to pay child support within 6 months of the application.
- e. There has not been an intentional failure to pay child support in anticipation of making a COAP application.
- f. The applicant has only one child support case in California's child support program.
- g. The child support case cannot be a two state, interstate case.
- h. The applicant has no ability or reasonable expectation of ability to pay all child support arrears and interest owed within three years. (This is a calculation that the program's computer makes based on applicants' income, debt and assets.)
- i. The applicant has an ability to pay current support, arrears owed to the parent, and an arrears repayment amount provided in the compromise agreement within a three year period from the date of the agreement from any source (e.g. gift, loan, income).
- j. The applicant has not concealed his income or assets and has not intentionally withheld or falsified his financial information.

2. The COAP Application Process.

The COAP application consists of: Information Letter DCSS Form 0025; a Child Support Compromise of Arrears Information Sheet DCSS Form 0019; and Income and Expense

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Declaration, FL-150. COAP applications should be sent to the applicant upon request. The application can be requested by contacting the LCSA.

- a. The following supporting documentation must be included with the completed application:
 - i. Three most recent pay-stubs,
 - ii. Most recent tax return,
 - iii. If self employed, a profit and loss statement for the last 12 months,
 - iv. The last 12 months of statements for all bank accounts in the applicants name including jointly held accounts,
 - v. A mortgage statement showing amount owed on all real property owned in whole or in part by the applicant,
 - vi. Evidence of the approximate fair market value of all real property owned in whole or in part by the applicant,
 - vii. Rent receipts showing amount of monthly rent expense,
 - viii. Recent utilities receipts,
 - ix. Proof of vehicles owned or leased, amount owed on vehicles, and current fair market value of the vehicles, and
 - x. Proof of other assets owned and the assets value including stocks, bonds, mutual funds, etc.
- b. The application and supporting documents will be reviewed by the LCSA staff to ensure all information needed for the determination has been received. Incomplete applications will be returned to the applicant with further instructions.
- c. Once a complete application is received, the LCSA staff will enter the information into the State COAP Computer Program. This information includes the obligor's income, assets, expenses, current child support owed, arrears owed to the custodial parent, arrears owed to the

- government, total amount of aid expended and the amount obligor offered to pay in compromise.
- d. The computer program determines the amount the obligor will be required to repay the government and the amount of the government arrearages that will be compromised. It will also calculate a repayment schedule with the monthly payment required. The monthly payment required will be sufficient to ensure all arrears owed to the custodial parent (including interest) and the repayment amount owed to the government required for the compromise can be satisfied within a 36 month period.
 - e. There is a 10% reduction in the repayment amount if the obligor is able to pay the custodial parent arrearages and the calculated repayment amount in a lump sum.
 - f. The LCSA staff will contact the obligor to determine if the repayment schedule is feasible for him.
 - g. If the amount calculated to be compromised is less than \$5,000.00, the director of the LCSA has the ability to approve the repayment schedule and compromise.
 - h. If the amount calculated to be compromised is more than \$5,000.00, the application and proposed compromise and repayment schedule is transmitted to the State Department of Child Support Services for approval.
 - i. If the compromise and repayment schedule is approved by the LCSA director or the state, the LCSA is notified and the LCSA staff will execute the agreement with the obligor. The agreement is then filed with the Superior Court.

- j. Note: If the repayment amount is paid over a period of time (not to exceed 36 months), the compromised arrears are removed from the arrearage total incrementally as each scheduled payment occurs.

3. **Repayment Amount Calculation.**

The repayment amount calculated by the COAP program is the highest of three calculations:

- a. Income minus deductions projected out three years plus net assets. This amount is increased by 10% if the obligor had the historical ability to pay and substantially failed to do so.
- b. 10% of the assigned arrears owed to the government. This amount is increased by 10% if the obligor had the historical ability to pay and substantially failed to do so.
- c. The offered amount made by the obligor.

4. **Failure to Comply With the Agreement.**

- a. **Within the first six months**, if there is one missed or short payment on the repayment agreement or a missed current support payment, the compromise agreement will be rescinded. The initial payment and all other payments will be retained and credited to the arrears owed. The arrears compromised under the agreement are reinstated.
- b. **After the first six months**, if there is a missed or short payment on the repayment amount or a missed child support payment and the obligor fails to make up the missed or short payment within 3 months, the agreement will be partially rescinded. All arrears compromised up to the point of the missed payments will remain compromised, and the obligor will owe the remaining arrears in full. All payments made by the obligor will remain credited to the obligor's account.

5. **Arrears Owed to the Custodial Parent.**

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If in addition to the government arrears, the LCSA determines that there are arrears owed to the custodial parent, the LCSA will contact the custodial parent to determine if the custodial parent wishes to compromise part or all of the arrears owed. The custodial parent is given 20 days to respond to the LCSA's inquiry.

If the custodial parent elects to participate in COAP and chooses to compromise a portion of the arrears, the obligor will be required to pay the remainder of the arrears owed to the custodial parent in a lump sum, as part of the initial payment when the COAP agreement is executed. If the custodial parent chooses to waive part or all compromise the arrears owed, the Stipulation and Order Waiving Unassigned Arrears (Judicial Council form FL626) must be completed and approved by the Court before the LCSA executes the Compromise Agreement.

If the custodial parent chooses not to compromise his or her arrears, these arrears will be included in the repayment schedule and will be paid to the custodial parent prior to any government owed arrears within a maximum 36-month period.

6. Administrative Review of Decisions.

A determination by DCSS that it would not be in the best interests of the state to accept an offer in compromise in satisfaction of child support arrears is final and not subject to complaint resolution, hearing, or judicial review.¹⁴⁶

7. Review and Adjustment.

a. Review and Adjustment of Child Support Orders.

Each LCSA must provide written notice, at least once every three years, of the right to request an upward or downward modification of a child support order.¹⁴⁷ The notice must also advise parents that the LCSA will assist in the modification and that the modification will be initiated where there has been a change of circumstances that would result in a change of the

¹⁴⁶ Fam. Code § 17560 (g).

¹⁴⁷ 22 CCR § 115500(a).

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child support order, either upward or downward, by at least 20% or \$50, whichever is less.¹⁴⁸ If the parent's request for the LCSA to seek a modification is denied, the parent may file a motion for a modification on his own and consult the Family Law Facilitator for assistance.¹⁴⁹ The parent also has the right to complaint resolution and state hearing processes.¹⁵⁰ See Section H below. Additionally, if the LCSA becomes aware of any changed circumstances that may result in a 20% or \$50 change in the child support order, it must conduct a review of the case.¹⁵¹ If it determines that a change of circumstances exists, and the change is expected to last for more than three months, the LCSA must file for a modification or enter into a stipulation for the modification.¹⁵² Circumstances that would support a review for a modification include the obligor or obligee 1) becoming incarcerated or released from incarceration; 2) beginning or ceasing to receive SSI, CalWORKs, or other public assistance; 3) becoming disabled or institutionalized; or 4) enlistment in, or discharge from, the military.¹⁵³

Within 15 business days of receipt of a request for a review of the order, the LCSA must request from the requesting parent and the nonrequesting parent income and expense information.¹⁵⁴ Within 15 days of receiving the information, the LCSA must make a determination whether a change in the amount of the support order would result in a 20% or \$50 change, upward or downward, whichever is less, based on the child support guidelines.¹⁵⁵ If the LCSA determines that a change of circumstances exists it must file the motion for modification

¹⁴⁸ 22 CCR §§ 115500(c), 115510(c), 11535(a).

¹⁴⁹ 22 CCR §§ 115500(c)(6); Fam. Code §§ 10000-15.

¹⁵⁰ 22 CCR § 115500(c)(7).

¹⁵¹ 22 CCR §§ 115510(a)-(c), 11535(a).

¹⁵² 22 CCR §§ 115510(e), (h). The LCSA may also move to set aside the child support order if the order meets the criteria set forth in section 17432 of the Family Code for setting aside presumed income judgments. 22 CCR § 115545(a)(2).

¹⁵³ 22 CCR §§ 115520, 115530.

¹⁵⁴ 22 CCR §§ 115510(e), 115520.

¹⁵⁵ 22 CCR §§ 115520(a)-(c), 115535(a).

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within 15 business days of the determination.¹⁵⁶ If the LCSA determines that a change of circumstances does not exist, it must send notice, within 14 days, to the requesting party stating the reasons and inform the party of the right to complaint resolution and a state hearing.¹⁵⁷

PRACTICE TIP

A CalWORKs parent who believes that there has been a change in circumstances that would support an upward modification of a child support order, should request a modification even though she may only be getting the \$50 disregard because any additional child support paid will exempt more time from the CalWORKs time limits, and, if high enough, may assist her in leaving CalWORKs. A CalWORKs parent, who will be leaving CalWORKs shortly and who believes an upward modification of the order is likely, may also want to request a modification review.

b. Recently Activated Military Personnel.

Urgency legislation signed by the Governor on August 30, 2005, and effective that date, established a review and adjustment process for individuals activated to United States military duty or National Guard service out of state.¹⁵⁸ If a service member is activated and deployed out of state he may file and serve a notice of activation of military service and request to modify a support order instead of filing a motion or order to show cause.¹⁵⁹ The service member must

¹⁵⁶ 22 CCR § 115545(a).

¹⁵⁷ 22 CCR § 115545(c).

¹⁵⁸ 2005 Cal. Stat. 93, ch. 154, § 2. Prior to this legislation, Congress amended The Soldiers' and Sailors' Civil Relief Act of 1940 with the Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 283 (2003) (codified at 50 USC app. §§ 501-96). Those amendments required several changes in the practices of the child support program such as allowing review and adjustments and reducing interest from the California statutory amount of 10% to 6%. 50 USC app. § 527. DCSS informed the LCSAs of these changes and directed them to implement the changes. CSS Letter 04-24. For a description of the major provisions in the Servicemembers Civil Relief Act that impact child support, see Appendix B to the letter.

¹⁵⁹ Fam. Code § 3651(c)(7).

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indicate the date of deployment, and the court is required to set a hearing before that date.¹⁶⁰ If the hearing cannot be held by that date and the service member complies with the conditions in the Servicemembers Civil Relief Act, the court shall grant the mandatory stay of the proceedings based on the 90-day timeline set forth in the Act.¹⁶¹ If the court refuses to grant a subsequent discretionary stay, the court must appoint counsel and may not proceed until the service member is represented. If the court stays the proceeding until the return of the service member, the service member must ask the court to set the matter for hearing within 90 days of return from deployment.¹⁶² Service members who do not file a request for modification before deployment are nonetheless not subject to penalties or interest on any amount of child support that would have accrued prior to deployment unless after a finding, on the record, that good cause did not exist for the service member's failure to request a modification.¹⁶³

If an order modifying or terminating a support order is entered, the order is retroactive to when the notice of activation or motion is served on the opposing party or the date of activation, whichever is later.¹⁶⁴ The court may find, on the record, good cause not to make the order retroactive.¹⁶⁵ Good cause includes the reasonableness of the delay under the circumstances faced by the service member.¹⁶⁶

¹⁶⁰ Fam. Code § 3651(c)(2).

¹⁶¹ Fam. Code § 3651(c)(2). The conditions for the application of the stay in the Servicemembers Civil Relief Act are: "(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear. (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter." 50 USC app. § 522 (b)(2)(A)-(B).

¹⁶² Fam. Code § 3651(c)(2).

¹⁶³ Fam. Code § 3651(c)(3); CSS Letter 06-15.

¹⁶⁴ Fam. Code §§ 3651(c)(2), 3653(c).

¹⁶⁵ Fam. Code §§ 3652(c)(2), 3653(c).

¹⁶⁶ Fam. Code § 3653(c).

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Additionally, DCSS is required to work with all branches of the military and the National Guard to ensure that information is made available to activated service members to have their support orders modified based on a change of income resulting from their activation.¹⁶⁷ The form for service members to request a deployment-based modification of a support order that DCSS enforces is “Notice of Deployment – Request for Review of Child Support Order” (DCSS 0585). The form for cases not being enforced by DCSS is “Notice of Activation of Military Service and Deployment and Request to Modify a Support Order” (Judicial Council Form No. FL-398). The forms and application package, including a notice to custodial and noncustodial parents deploying out of state, are available at: <http://www.childsup.cahwnet.gov/pub/forms/military06-15.pdf>.¹⁶⁸ See also: <http://www.childsup.cahwnet.gov/activated.asp> for Resources for Recently Activated Military Personnel on the DCSS website.

Finally, if an activated obligor was a reservist or member of the National Guard and was activated to military service but failed to modify a child support order to reflect a reduction of income, it shall be presumed that an offer in compromise in the COAP program would be deemed in the best interest of the state as to any arrears that accrued during activation.¹⁶⁹ DCSS must have developed rules by November 30, 2005 that would “compromise [child support arrears] that would not have accrued had the order been modified to reflect the reduced income earned during the period of active military service.”¹⁷⁰

¹⁶⁷ Fam. Code § 17440(a).

¹⁶⁸ CSS Letter: 06-15 (April 28, 2006).

¹⁶⁹ Fam. Code § 17560(f)(1)(B).

¹⁷⁰ Fam. Code § 17560(f)(1)(B). However, for the same reason explained above about the secrecy in which the COAP program is being administered, these rules are not publicly available.

8. Family Law Facilitator.

Family Law Facilitators are available in all counties to assist parents in establishing or challenging paternity and support orders, and in enforcing or challenging those orders.¹⁷¹ They provide parents with educational materials, help complete forms, assist with guideline calculations, and provide referrals, as appropriate.¹⁷² They may also be able to mediate issues of support and draft stipulations.¹⁷³ If separate funding is available, Facilitators may also be able to assist with dissolution and child custody and visitation issues.¹⁷⁴ The services of the Family Law Facilitator are free.¹⁷⁵ A list of Facilitators and their locations and hours is available on the court's website.¹⁷⁶

C. Ombudsperson, Complaint Resolution and State Hearings Challenging Adverse Child Support Decisions.

Before the child support reform legislation in 1999, customer service and the ability to challenge actions or inactions of the district attorneys was nearly nonexistent. Parents whose cases had languished in the system had no recourse to challenge the agency action.¹⁷⁷ As part of the child support reforms, a comprehensive administrative review process was established.¹⁷⁸

¹⁷¹ Fam. Code §§ 10002, 10004.

¹⁷² Fam. Code § 10004.

¹⁷³ Fam. Code § 10005(a).

¹⁷⁴ Fam. Code § 10005(a).

¹⁷⁵ Fam. Code § 10007.

¹⁷⁶ California Courts Self-Help Center, <http://www.courtinfo.ca.gov/selfhelp/lowcost/flf.htm>.

¹⁷⁷ Courts refused to require an administrative review process in child support cases. *Campos v. Anderson* (1997) 57 Cal.App.4th 784; *Pereira-Goodman v. Anderson* (1997) 54 Cal.App.4th 864.

¹⁷⁸ 1999 Cal. Stat. 89, ch. 479.

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Additionally, each LCSA must implement an Ombudsperson Program to assist parents in navigating through the local complaint resolution and state hearing process.¹⁷⁹

1. Ombudsperson.

Each LCSA must adopt and maintain an ombudsperson program that is sufficiently staffed and has access to LCSA records.¹⁸⁰ The ombudsperson provides assistance to custodial and noncustodial parents, employers, and the public on inquiries that include the local complaint resolution process and state hearings and actions taken by the LCSA or FTB.¹⁸¹ Specifically, ombudspersons are charged with “assisting custodial parties and noncustodial parents in navigating the local complaint resolution and state hearing processes.”¹⁸² They are also responsible for “referring customers to the Family Law Facilitator or local legal aid office as appropriate or upon request” and are the liaison with the state hearing office.¹⁸³ Finally, the ombudspersons are responsible for data collection and reporting on customer service and satisfaction.¹⁸⁴ The ombudspersons must report to DCSS within 15 days of the end of each quarter on the type of inquiries, issues, disputes and/or complaints received by the ombudsperson.¹⁸⁵

Contact information for the ombudsperson in each county is located at: <http://www.childsup.cahwnet.gov/program/ombudsperson/contact.asp>.

¹⁷⁹ 22 CCR § 111540-43; CSSIN Letter 01-18; CSS Letter 00-07.

¹⁸⁰ 22 CCR § 111540.

¹⁸¹ 22 CCR § 111542.

¹⁸² 22 CCR § 111542(a)(4).

¹⁸³ 22 CCR § 111542(a)(6) and (b).

¹⁸⁴ 22 CCR § 111543.

¹⁸⁵ 22 CCR § 111543(a)-(d).

2. Complaint Resolution.

a. Issues Subject to Complaint.

Each LCSA must maintain a complaint resolution process, assist complainants in the process, and track and report on complaints.¹⁸⁶ A complaint can be filed on any child support action or inaction of a local child support agency or Franchise Tax Board child support, except (1) complaints arising from a child support matter which must, by law, be addressed in a court of law; (2) a review of any of the following: (A) a court order for child support or child support arrears, (B) a court order or equivalent determination of paternity, or (C) a court order for spousal support; (3) child custody determinations; and (4) child visitation determinations.¹⁸⁷

b. Timely Complaint Requests.

The request must be made within 90 days after the complainant knew, or should have known of the challenged action.¹⁸⁸ The request need not be in writing, but a complainant should make the request on the “Request for Complaint Resolution” LCR001.¹⁸⁹ As with all verbal communications, there are problems with verification so complainants should be advised to make their requests in writing. If an oral request is made, the LCSA must send the LCR001 for the complainant to complete and return with the requested information.¹⁹⁰ A request is not invalid if it does not include the requested information.¹⁹¹

¹⁸⁶ 22 CCR § 120100(a); Fam. Code § 17800. The complaint regulations must be interpreted in manner that protects a complainant’s right to complaint resolution. 22 CCR § 120100(b)(2).

¹⁸⁷ 22 CCR § 120101(a).

¹⁸⁸ 22 CCR § 120101(b)(1). A complainant is presumed to have known about the action five business days after the post mark of a written notice or the date the complainant alleges knowledge for the basis of the complaint. 22 CCR § 120101(b)(1).

¹⁸⁹ 22 CCR § 120101(b)(2)(A).

¹⁹⁰ 22 CCR § 120101(b)(2).

¹⁹¹ 22 CCR § 120101(c).

c. Investigating Complaints.

Once a complaint is received, the LCSA must assign a complaint investigator, who is not the subject of the complaint or the ombudsperson.¹⁹² The investigator has five days to determine whether there is jurisdiction of the issue and must provide notice in 30 days if the investigator finds the issue is outside the jurisdiction of the complaint resolution process.¹⁹³ If the jurisdiction is in another county, the LCSA must forward the complaint to that county and notify the complainant of that transfer within five business days of the transfer.¹⁹⁴ On issues where the complaint is within the LCSA’s jurisdiction, the “complaint investigator shall attempt to resolve the complaint to the satisfaction of the complainant.”¹⁹⁵

d. Closing a Complaint.

A “Notice of Complaint Resolution” LCR006 must be mailed no later than 30 days after the complaint is received.¹⁹⁶ The notice must state the action taken or that will be taken to resolve the complaint or, if the LCSA believes the complaint is not eligible for complaint resolution, the reasons why.¹⁹⁷ The notice shall also advise the complainant of the right to file a request for a state hearing and the process and time frames for filing the request, if the complainant is dissatisfied with the resolution.¹⁹⁸ Each LCSA must provide a written report to

¹⁹² 22 CCR § 120103(a).

¹⁹³ 22 CCR § 120101(b).

¹⁹⁴ 22 CCR § 120103(b)(2).

¹⁹⁵ 22 CCR § 120103(c).

¹⁹⁶ 22 CCR § 120105(a).

¹⁹⁷ 22 CCR § 120105(a).

¹⁹⁸ 22 CCR § 120105(a). The LCSA, in the director’s discretion, may grant a one-time extension of the complaint resolution process up to 30 days if the director determines that more time is needed to resolve the complaint. The extension may only be taken “under extraordinary circumstances.” 22 CCR § 120105(b).

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DCSS within 15 business days of the end of each quarter on the number of complaints received, open, closed, transferred, and the percentage closed within the 30-day time period.¹⁹⁹

3. State Hearings.

a. Issues Subject to State Hearing.

A parent can request a hearing to challenge a LCSA's resolution of a complaint when:

1. an application has been denied or not acted upon in a timely manner;
2. action in the child support case, including establishment, modification, and enforcement of the child support order and child support accountings, has been acted upon in violation of federal or state law or regulation or policy letter, or has not been acted upon within the required time frames;
3. child support collections have not been distributed or have been distributed incorrectly, or the amounts are inaccurate; or
4. the LCSA has incorrectly closed a case.²⁰⁰

Most issues would likely fit within these four bases for requesting a hearing, except to the extent the court may have jurisdiction of the issue. However, complaints of discourteous treatment by LCSA employees are not subject to state hearings unless they resulted in one of the enumerated actions noted above or a decision not to accept a COAP compromise offer.²⁰¹ Thus, advocates should request hearings on any issue that is not otherwise clearly within the jurisdiction of the court.²⁰²

¹⁹⁹ 22 CCR § 120108.

²⁰⁰ Fam. Code § 17801(a); 22 CCR § 120201(a). State hearing jurisdiction does not extend to arrears issues if there is no dispute as to the accounting of the amount owed or if the other party has filed a request in court for a determination of arrears. 22 CCR § 120201(a)(3)(A)-(B).

²⁰¹ 22 CCR § 120201(b)(5); Fam. Code § 17560(g).

²⁰² The regulations call for a liberal interpretation of the regulations in a manner to protect the complainant's right to a state hearing. 22 CCR § 120200(c)(2).

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A complainant must exhaust the local complaint resolution process unless the LCSA has not acted within the required time frames.²⁰³ Only issues that are raised in the local complaint resolution process can be raised at the state hearing.²⁰⁴

A request for a state hearing may be made orally or in writing, but for the same reasons stated above, complainants should be encouraged to make their requests in writing on the “Request for State Hearing” SH001 form.²⁰⁵ The complainants must request hearings within 90 days from any of the following:

- the date of receipt of the LCSA “Notice of Complaint Resolution” LCR006;
- the date the complainant made the complaint with the LCSA, if the LCSA failed to issue the “Notice of Complaint Resolution”;
- the date the complainant received the notice of transfer of the complaint to another LCSA if the LCSA fails to issue the “Notice of Complaint Resolution”;
- or
- the date the complainant receives the “Notice of Complaint Resolution Extension” LCR005 if the LCSA fails to issue the “Notice of Complaint Resolution” within 60 days from the complaint receipt date.²⁰⁶

b. Conduct of the State Hearing.

DCSS contracts with DSS to conduct its hearings and the hearings are, by and large, conducted in the same manner as DSS CalWORKs hearings. DCSS hearings are required to be provided in the same manner in which hearings are provided in WIC §§ 10959 and 10967 to the extent those sections do not conflict with Fam. Code § 17801.²⁰⁷ Thus, the guidance in the

²⁰³ 22 CCR § 120201(c).

²⁰⁴ 22 CCR § 120201(c).

²⁰⁵ 22 CCR § 120201(d)(1).

²⁰⁶ 22 CCR § 120201(d)(2).

²⁰⁷ Fam. Code § 17801(e).

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conduct of hearings in Chapter XIII, herein, applies to child support cases unless otherwise noted. The DCSS hearing regulations are very similar to the DSS hearing regulations, but when representing or advising clients on DCSS state hearings the DCSS hearing regulations at 22 C.C. R. §§ 120200-22 should be consulted.

c. Writs of Unfavorable Hearing Decisions.

Just as in a CalWORKs hearing, a custodial or noncustodial parent may "within one year after receiving notice of the director's final decision" file a petition with the superior court pursuant to Code of Civil Procedure § 1094.5.²⁰⁸ The review pursuant to Fam. Code § 17803 is the exclusive remedy available to the custodial and noncustodial parent for a review of the director's decision.²⁰⁹ No filing fee or bond is required for the filing of the petition and the petition is entitled to priority setting.²¹⁰ The custodial or noncustodial parent is entitled to reasonable attorneys fees and costs if he or she obtains a decision in his or her favor.²¹¹

The guidance on writ procedures as outlined in Chapter XIV applies to writs filed pursuant to Fam. Code § 17803.

²⁰⁸ Fam. Code § 17803.

²⁰⁹ Fam. Code § 17803.

²¹⁰ Fam. Code § 17803.

²¹¹ Fam. Code § 17803.