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October 29, 2009

**FOSTER CARE AUDITS AND RATES LETTER (FCARL) NO. 2009-01**

TO: ALL GROUP HOME PROVIDERS  
ALL COMMUNITY TREATMENT FACILITY PROVIDERS  
ALL FOSTER FAMILY AGENCIES  
ALL REGIONAL CENTER GROUP HOMES  
ALL REGIONAL CENTER FOSTER FAMILY AGENCIES  
ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY CHIEF PROBATION OFFICERS  
ALL COUNTY MENTAL HEALTH DIRECTORS

**SUBJECT: ASSEMBLY BILL X4 4 (CHAPTER 4, STATUTES OF 2009); FCARL 2009-01**

This letter is to advise group home providers and foster family agencies (FFAs) of the legislative changes and the impact of the 2009-10 Budget Act, Assembly Bill (AB)X4 4 (Chapter 4, Statutes of 2009) regarding the operation of group home and FFA programs for fiscal year (FY) 2009-10. The changes are: 1) the reduction in group home and FFA program rates; 2) the extension of the adjusted point ranges under the Standardized Schedule of Rates for group home programs; 3) a shortened audit period for performing non-provisional program audits of group home programs; and 4) the clarification of the administrative review procedures for non-provisional program audits. In addition, this FCARL provides valuable information and reminders regarding timely submission of Financial Audit Reports (FARs) and penalties for late submission of biennial rate applications for group home and FFA programs.

**REDUCTION IN GROUP HOME AND FFA PROGRAM RATES**

Welfare and Institutions Code (W&IC) Section 11462 was amended by adding Sections (g)(5) and (6) to reduce group home rates by 10 percent, under both the Standardized Schedule of Rates and those group home rates not established under the standardized schedule of rates. The W&IC Section 11463(j) reduced the FFA rates by 10 percent, under the Standardized Schedule of Rates. These rate reductions were effective October 1, 2009. Information about the revised schedule of rates is provided in a recently issued All County Letter (ACL) No. 09-45, dated September 30, 2009.

**ADJUSTED POINT RANGES FOR GROUP HOME PROGRAMS**

The W&IC Section 11462(f)(2)(A) and (B) was amended to temporarily lower the points group home programs are required to maintain under the Rate Classification Level (RCL) system by adjusting the point ranges under the Standardized Schedule of Rates. That is, the California Department of Social Services (CDSS) is required to use the adjusted point range schedule for establishing the biennial rates for existing group home programs that receive payments for services under the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, in

performing program audits, and in determining any resulting rate reduction, overpayment assessments, or other rate actions for FY 2009-10. The adjusted point ranges allow group home providers the flexibility necessary to maintain their paid RCLs and continue to operate their programs during the challenging fiscal situation in California.

The temporary RCL point range reduction: 1) applies only to group home programs that receive AFDC-FC payments for services performed during FYs 2002-03 through FY 2009-10, unless the Legislature extends it in the future; 2) the adjusted schedule does not apply to the establishment of provisional rates or to audits performed of group home programs with provisional rates; and 3) group home providers remain responsible for ensuring the health and safety of children in placement. The current statutory point ranges specified in W&IC Section 11462(f)(1) shall continue to apply for provisional rate program audits. Providers should be aware that if the Legislature does not extend the adjusted point schedule in any year, providers will be held to the regular point ranges for biennial rate setting and auditing purposes. The temporary point ranges are also provided in ACL No. 09-45.

### **NON-PROVISIONAL GROUP HOME PROGRAM AUDITS OF LESS THAN 12 MONTHS**

The W&IC Section 11466.2(a)(2) was amended and subsection (3) was added to allow CDSS the flexibility to use a shortened audit period (fewer than 12 months) when performing non-provisional program audits of group home programs. The CDSS is authorized to reduce the RCL and rate based on an audit of fewer than 12 months, but is not authorized to establish an overpayment.

#### **Shortened Audit Period**

For existing group home providers who are selected for a non-provisional program audit, CDSS will:

- Review one quarter (three months) of data using the same three months of the provider's prior FY. For example, if an audit is scheduled for January 2010 (January- March quarter), the months to be audited will be January, February, and March 2009.
- Not change the paid RCL and rate, if a provider's audited RCL determines that the program is operating at the paid RCL.
- Reduce the provider's RCL and rate 60 days after issuance of the audit report, if the provider's RCL audits at **no more than three levels** below the paid RCL.

#### **Corrective Action**

The provider will be given the opportunity to bring the program into compliance with the paid RCL, by submitting documentation to CDSS that demonstrates that corrective action has been achieved. The CDSS will:

- Include an attachment that will outline the process for "Corrective Action" and the timeframe for submission with the issuance of the Final Audit Report.
- Issue a Corrective Action Final Audit Report that identifies the results of the corrective action and the RCL achieved.

- Based on the results of the corrective action, the RCL will either be restored to the paid RCL and rate or to the audited RCL and corresponding rate. If the provider demonstrates that the program has fully achieved corrective action, the RCL and rate will be restored retroactively to the date the RCL and rate were reduced.

### **Formal Hearing for the Shortened Audit Period of Group Home Programs**

- AB X4 4 allows providers, under the three-month audit period, to request a **formal** hearing to appeal CDSS' RCL audit determination, no later than 30 days after the date CDSS issues the Final Audit Report.
- If a provider does not request a hearing within the specified timeframe, CDSS' RCL and audit determination is final.
- All hearings requested will be held within 60 days of receipt of the request for the hearing. The standard of proof shall be based on the evidence, and the burden of proof shall be on CDSS.
- The hearing officer will issue the proposed decision within 45 days of the close of the evidentiary record, and CDSS' director is required to adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision.
- In the event that CDSS' director does not take any action on the proposed decision within the 100 days, the proposed decision shall take effect by operation of law.

### **Non-Provisional Group Home Program Audits Requiring a 12-Month Audit Period**

- If the provider's RCL for the three-month audit period is **more than three levels** below the paid RCL, CDSS will then perform a non-provisional program audit in accordance with existing state law, pursuant to W&IC Section 11466.2(a)(2), which is a 12-month audit period plus the current month.

### **Overpayments**

- If the provider does not meet the points necessary for the paid RCL, based on a 12-month audit, CDSS will establish an **overpayment**. Based on the audit results of the current month, the provider will be given the opportunity to bring the program into compliance with the paid RCL, within 60 days of the notice of the audit findings, by submitting documentation to demonstrate that corrective action has been achieved, using the same process as described above.

### **Administrative Review Procedures for Group Home Programs with a 12-Month Audit Period**

- The W&IC Section 11468.6 was amended by adding subsection (e)(4) to provide consequences of action not taken by CDSS' director on proposed decisions for non-provisional program audits of a 12-month period. This section always included the administrative review procedures for appeals filed by group home providers for non-provisional audits of a 12-month period; however, the section did not provide the

authority for when action has not been taken within 120 days after submission of the proposed decision.

- Therefore, this section now requires that if CDSS' director does not take any action on the proposed decision within the 120 days, the proposed decision shall take effect by operation of law, as well.

## **ADDITIONAL INFORMATION RELATED TO FINANCIAL AUDIT REPORTS (FARS) AND PENALTIES FOR GROUP HOME PROGRAMS AND FFAS**

### **Submission of FARs**

#### **Requirement to Receive a Rate**

- A provider is required to submit a FAR as a condition to receive a foster care rate, pursuant to W&IC Section 11466.21(a) and audited/unaudited Cost Data, pursuant to MPP Section 11-405.21. Providers are reminded that they must submit a timely FAR and audited/unaudited Cost Data either annually or triennially, depending on the total amount of their combined federal revenues received. All FARs and audited/unaudited Cost Data must be **acceptable** and in accordance with MPP Section 11-405.2. Providers who do not comply with the requirement to submit a timely FAR and audited/unaudited Cost Data, either annually or triennially as required, will have their program rate terminated, in accordance with W&IC Section 11466.21(b)(2) and may also be referred to the CDSS' Community Care Licensing Division for failure to comply with laws and regulations applicable to the operation of a group home and/or FFA.

#### **Request for Good Cause**

- If a provider is unable to submit a timely FAR and audited/unaudited Cost Data by the due date, the provider may submit a written request for determination of good cause, as defined in MPP Section 11-400g.(1). Good cause is established when providers can show an inability to comply with submission of the FAR and audited/unaudited Cost Data, "due to circumstances beyond the control of the provider including but not limited to, natural disasters and emergency medical situations." A change in accountant will not by itself establish good cause. The good cause request must meet the requirements and be submitted prior to the due date of the FAR and audited/unaudited Cost Data, as outlined in MPP Section 11-405.217. A decision will be made by CDSS within 15 calendar days of receipt of the request to determine if good cause exists to grant an extension of time to submit the FAR and audited/unaudited Cost Data.
- When CDSS determines that good cause exists for a late submission of the FAR and audited/unaudited Cost Data, CDSS will notify the provider of the revised due date.
- When CDSS determines that good cause does not exist for late submission of the FAR and audited/unaudited Cost Data, CDSS will notify the provider that it may be subject to rate termination for failure to submit a timely FAR and audited/unaudited Cost Data.
- A provider who has had its program rate terminated can be reinstated upon submission of **all required documents**, including all overdue and acceptable FARs and audited/unaudited Cost Data, rate applications and satisfying any outstanding

overpayment requirements, as applicable, pursuant to MPP Section 11-402.451.

## **Assessed Penalties for Submission of Late Biennial Applications for Group Home Programs and FFAs**

### **Submission of Biennial Rate Applications**

- MPP Section 11-402.3 describes the group home and FFA rate application process, and defines a rate application to be considered complete when all required forms have been completed and submitted with the necessary information and supporting documentation to CDSS. In accordance with MPP Section 11-402.32, the due date for on-going rate applications is determined by CDSS. The FCARL Number 2008-02, dated August 1, 2008, informed group home and FFA providers of a new biennial rate application schedule wherein group home and FFA providers are required to submit a biennial rate application based upon an odd/even system. Providers with even-numbered program numbers (i.e. **1234**.00.01) must submit their rate applications on October 1, on all even years (i.e. 2010). Providers with odd-numbered program numbers (i.e. **1233**.00.02) must submit their rate applications on October 1, on all odd years (i.e. 2011). Furthermore, MPP Section 11-402.34 defines the effective date of the rate to be the first day of the second full month following the application due date.
- The requirements set forth in MPP Section 11-402.38 were not enforced during the first biennial application period, a two-year period, to ensure all providers have concluded the new schedule, which ends with the October 1, 2009 application period for odd numbered program numbers.

### **Assessed Penalties for Submission of Late Biennial Rate Applications**

- Providers with late or incomplete rate applications are subject to monetary penalties pursuant to MPP Section 11-402.38 and 11-403(f)(3). Therefore, for biennial rate applications due before October 1, 2010 (for even-numbered program numbers), and applications submitted according to the schedule thereafter, which have not submitted on or before the due date of October 1 and applications that are incomplete will be considered late applications and subject to a monetary penalty equal to three (3) percent of the RCL rate. (MPP Section 11-402.38 and Section 11-403(f)(3)).
- An assessed penalty will be based upon the number of months the rate application is late, beginning on either the effective date of the rate, or the date the rate was reinstated (if previously terminated). For example: the application is due on October 1, 2010 and the effective date of the rate is December 1, 2010 (the first day of the second full month following the application due date). If the rate application is late, but completed in November of 2010, the provider is penalized for two months (December 2010 and January 2011). Additionally, in accordance with MPP Section 11-402.381(d), the rate is subject to termination, if the complete application is not received on or before the effective date of the rate or December 1, 2010.

FCARL 2009-01  
October 29, 2009

**SENATE BILL (SB) 597 (CHAPTER 339, STATUTES OF 2009)**

The Department intends to issue an All County Letter (ACL) in the near future which will describe the changes made as a result of SB 597 including a reduction to the grandfathered rates and the introduction of a second schedule of adjusted point ranges under the RCL system. All ACLs can be found at the following website:

<http://www.dss.cahwnet.gov/lettersnotices/PG931.htm>

If you have any questions regarding the information in this FCARL pertaining to audits, please contact the Program and Financial Audits Bureau for additional information/questions at (916) 324-1717. Any questions pertaining to rate setting issues, please contact the Foster Care Rates Bureau at (916) 324-4857.

***Original Document Signed By:***

BARBARA EATON, Chief  
Foster Care Audits and Rates Branch