STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order
[ ] Clarification Requested by One or More Counties
[X] Initiated by CDSS

March 6, 2014

ALL COUNTY INFORMATION NOTICE NO. I-11-14

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY PROBATION OFFICERS
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: ACCESS TO ELIGIBILITY CASE RECORDS IN CHILD WELFARE CASES

REFERENCE: 45 C.F.R. 205.10; WELFARE AND INSTITUTIONS CODE (W&IC) SECTION 10850.2; HEALTH AND SAFETY CODE (H&S) §§ 123110 & 123115; MANUAL OF POLICIES AND PROCEDURES (MPP) SECTIONS 19-005.1, 19-005.2, 19-005.4; MPP 22-001; MPP 22-051.1; MPP 22-051.2; MPP 22-073; ALL COUNTY LETTER NO. 07-29.

The purpose of this letter is to remind county child welfare departments (CWDs) of state and federal requirements that the county provide claimants and their authorized representatives (ARs) access to non-privileged, non-confidential information in the case record when a hearing has been requested. County actions can affect the amount and type of aid a child receives and result in the request for a hearing. In order to ensure that claimants are fully prepared for hearings and that benefits decisions are properly made, claimants must be provided access to information in the case record to the extent permitted by law. In an effort to promote consistent practice across counties, CDSS is issuing this All County Information Notice (ACIN).

Notice of Action

When the county takes an adverse action, federal law requires adequate and timely notice of the action. Adequate notice includes the information about the action the county intends to take, the reasons for the action, the regulation(s) supporting the action, and the claimants right to a hearing (45 C.F.R. §205.10). The notice must identify the reasons for the action with enough specificity to help the recipient of a benefit understand why a benefit is being denied or reduced or terminated. This, in turn, may help the recipient determine whether they agree with the basis of the county's decision, whether there is additional information that may influence the county action, and whether he or she should to file for a hearing to appeal the decision.

Releasing Information

Current law provides that the recipient of a public assistance benefit be allowed to inspect factual information provided to the agency by the recipient, regardless of whether a hearing has been requested (W&IC §10850.2, MPP §19-005.1).

When a state hearing has been requested, the law provides a claimant with expanded access to the case record. The claimant may access the case records, including the case narrative relating to the applicant or recipient but excluding privileged information (MPP §§19-005.4; 19-006). A claimant must be permitted to examine all non-privileged information the county has used in making its decisions to take the action which is being appealed (MPP §22-051.2). Note that the county child welfare agency may not require a claimant to specifically identify documents that he or she wants to see. The county child welfare agency must allow the claimant to examine the case record during regular working hours prior to the hearing and during the hearing (45 C.F.R. §205.10[a][13]), W&IC §10850.2, MPP §22-051.1, MPP §22-051.2).

When the county determines that the action leading to hearing was in error, the hearing representative must contact the claimant and attempt to resolve the case without a hearing. If the county concludes that the action was correct, the county hearing representative is required to provide any and all non-privileged information which can be of assistance to the claimant in preparing for the hearing (MPP §22-073.232[c]). This includes information that may or may not be favorable to the position of the county, regardless of whether the county has cited this information in the position statement or intends to introduce it at the hearing. For information regarding accessing records which are maintained in automated eligibility systems, see All County Letter No. 07-29, available at http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl07/pdf/07-29.pdf. Additionally, MPP §22-051 requires the county to reproduce the specific policy materials, including regulations, necessary for an applicant, a recipient, or his or her authorized representative to determine whether a hearing should be requested or to prepare for a state hearing. These policy materials must be provided without charge or at a charge related to the cost of reproduction.

In certain circumstances, a foster parent or foster care provider may be a claimant. When the CWD has taken an action that affects the child's aid and the child resides with, or has resided with the foster parent, the foster parent may request a hearing on behalf of the child (MPP §22-001[c][2][B]). A relative who cares for a child may also be a claimant on behalf of a child with regard to the child's application for or receipt of aid (MPP §22-001[c][2][D]).

Documents submitted to the Administrative Law Judge in a state hearing by either the claimant or the county must be made available to both parties (MPP §22-049.81). Copies of these documents must be provided to the claimant free of charge. This includes the position statement submitted by the counties and any attachments thereto.

Authorized representatives who have written authorization from the claimant are permitted to act on the claimant's behalf (MPP §19-005.21.) Telephone authorizations may be accepted in lieu of written authorizations as indicated in MPP §19-005.22. Therefore, ARs are to be allowed to inspect non-privileged, non-confidential information contained in the case record to the same extent as the claimant.

Privileged/Confidential Information

The determination of when information is privileged or confidential can be complicated in child welfare cases and it is difficult to draw a "bright line" rule in this area. County hearing representatives are strongly encouraged to consult with county counsel prior to denying access to file information on this basis.

Certain information, such as claimant-provided information, must always be provided to the claimant or his or her AR (MPP §19-005.1). However, information that is privileged or otherwise confidential may not be released. Instances of potentially privileged, private or confidential information include attorney-client privileged communications, confidential or privileged medical records, or confidential juvenile case file records containing information about multiple parents and siblings. Even routine information provided by an unrelated adult to the social worker may be confidential with regard to another unrelated adult or child living in the home. If records from the juvenile case file, such as court reports, are provided to the claimant or AR in preparation for the hearing, counties must ensure compliance with W&IC section 827 and should carefully redact the reports as necessary in order to protect confidential and privileged information in the underlying child welfare case.

Privileged information may be inspected by the claimant only when the claimant is the holder of the privilege (MPP §22-051.1). However, there may be situations where medical information may not be directly released to the claimant or his or her AR. For example, the claimant is not entitled to review mental health records when it contains information that the health care provider has indicated could be harmful to the health of the individual if seen by him or her (H&S Code § 123115). Additionally, confidential minor health services information may not be released to anyone other than the minor without the minor's consent (Civ. Code §§ 56.10 & 56.11, H&S Code § 123110).

County CWDs are encouraged to establish protocols to address how to make eligibility information available to claimants and their ARs when a hearing has been requested. Further, establishing procedures to review eligibility decisions, without violating confidentiality provisions, prior to the request for a hearing are encouraged in order to avoid unnecessary hearings.

If you have any questions regarding this notice, please contact the Children's Services Operations and Evaluation Branch at (916) 651-8111.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division