STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
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February 4, 1987

ALL-COUNTY LETTER NO. 87-23

TO: ALL COUNTY GAIN COORDINATORS
ALL COUNTY WELFARE DIRECTORS

SUBJECT: REIMBURSEMENT FOR IN-HOME CHILD CARE

The purpose of this letter is to provide counties direction in the reimbursement of child care expenses of GAIN participants who choose to have their children cared for in their home. This information is also intended to be used by counties to assist GAIN participants in making an informed choice of child care arrangements.

The GAIN program places a high degree of emphasis on parental choice for child care. Welfare and Institutions Code Section 11320.3(f) and Manual of Policies and Procedures (MPP) Section 42-750.2 specifically provide that child care "by family members shall be encouraged, but choice between licensed or exempt... arrangements shall be made by the recipient." Child care by a relative in the child's home is exempt from licensure.

SIBLING CHILD CARE

The MPP Section 42-750.213 requires that certain information be on file in situations where the county welfare department or contractor pays for child care services which are exempt from licensure. Included in this information is a copy of a valid California Drivers License or other identification to establish that the caregiver is at least 18 years old. Therefore, no GAIN funds may be used for child care expenses when the child care is exempt from licensure unless the person providing the care is at least 18 years old. However, this does not mean that child care by a sibling less than 18 years old can be prohibited. A participant may elect to use a sibling child care arrangement without receiving any reimbursement for care.

There are no statutes, regulations, or guidelines which prohibit care by siblings in the child's own home. Consequently, the department has developed some suggested general guidelines for use by the county welfare departments in discussion with GAIN participants who choose sibling child care arrangements. These guidelines are attached for your information and should be used in the context of making sure the participant is making an informed choice. If after

discussion of child care options with the GAIN participant, the participant chooses sibling care, the county should assist the participant in insuring the adequacy of the care arrangements.

REIMBURSEMENT FOR IN-HOME CHILD CARE

The option of paid child care by a provider who cares for the participant's child in the child's home presents payment circumstances which do not occur when the child is cared for in a licensed facility or the care is provided outside the participant's home. Two questions have arisen regarding in-home child care.

1. Must the child care provider be paid the minimum wage?

2. Will the participant be responsible for withholding the employee's unemployment, disability and social security taxes?

The Industrial Welfare Commission, Order 15-86, expressly excludes "personal attendants", including babysitters, from the list of occupations that are required to pay minimum wage in the State of California. Consequently, in-home care providers are considered "babysitters" for these purposes and are exempt from the minimum wage laws.

In keeping with the intent of the law, participants must be allowed to choose the child care option that best suits their needs. However, the choice of in-home child care creates an employer/employee relationship, for tax purposes, between the participant and caregiver that subjects participants to the requirement to withhold and pay any of the following if the wages exceed specified limits in a quarter as follows:

Withholding	Wages/Quarter
Social Security Taxes	$ 50
Disability Insurance	$ 750
Federal and State Unemployment	$1,000

Federal and State income taxes need only be withheld if the child care provider specifically requests it, 26 CFR Section 31.3401(a)(3) - 1(a)(1), Unemployment Insurance Code Sections 13009(b), 13020. The County should provide this information to the participant to make them aware of the complexities involved with this selection of child care. Counties should also provide any necessary assistance to participants regarding the understanding of their responsibilities.

If you have any questions regarding the above information, please contact your GAIN County Consultant.

Carl B. Williams

CARL B. WILLIAMS
Deputy Director
Employment and Community
Services Division

Attachment

MINIMUM SUGGESTED SIBLING CHILD CARE ISSUES WHICH SHOULD BE CONSIDERED IN DETERMINING THE ADEQUACY OF CHILD CARE

1. What is the age(s) of the child(ren) in relation to the age of the "caretaker" minor?

2. What is the level of maturity development evidenced by the caretaker minor?

3. What will be the specific circumstances of the care, e.g., how often, for how long, etc., will the children be left alone?

4. Does the caretaker minor have the knowledge and ability to respond properly in an emergency situation?

5. Will the child care conflict with the caretaker minor's attendance in school?

6. Has there been a previous positive experience in the family for this type of care?

7. How does the participant intend to monitor the situation?

8. Does the caretaker minor have access to an adult if necessary?