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July 17, 2014

Regulation Package No. 0414-04

CDSS MANUAL LETTER NO. OPS 14-01

TO: HOLDERS OF THE OPERATIONS MANUAL, DIVISION 11

**Regulation Package #0414-04**

**Effective 7/1/14**

**Section 11-403**

This manual letter has been posted on the Office of Regulations Development website at <http://www.cdss.ca.gov/ord/PG609.htm>.

County placement agencies use licensed private Foster Family Agencies (FFAs) for the placement of children who require more intensive care as an alternative to group homes. Senate Bill (SB) 1013 (Chapter 35, Statutes of 2012) changed the rate-setting system to reflect increases in the basic care and supervision rates paid to foster families certified by FFAs and an annual cost-of-living adjustment to those rates, to bring them into parity with basic rates paid to licensed foster family homes. SB 1013 further specifies that these changes shall not change the remaining components of the FFA rate.

Beginning in the 2011-12 fiscal year and for each fiscal year thereafter, an annual cost of living increase based on the California Necessities Index shall occur, eliminating the prior rate ceiling. The rate amounts will no longer appear in regulation but in an All County Letter issued every fiscal year.

These amendments were adopted on an emergency basis effective July 1, 2014. The public hearing to consider these amendments has been scheduled for September 3, 2014.

## **FILING INSTRUCTIONS**

**Revisions to all manuals are indicated by a vertical line in the left margin.** The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Operations Manual regulation changes was OPS-10-01.

Page(s)

Replace(s) Page(s)

162 through 170

162 through 170

Attachment

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**11-403 FOSTER FAMILY AGENCY RATES** **11-403**

(a) Rate Determination Process

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

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

1. As used in (A) above, "treatment needs" means that the placement agency, as defined in Section 11-400p.(3), has determined that the child has services needs which:

(i) Cannot be provided in an available family home;

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(See family home definition specified in Section 11-400f.(3).)

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(ii) Would require group home placement if the child was not referred to a foster family agency; and

(iii) Can be met by the program offered by the foster family agency to which the child is being referred.

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

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

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

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**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

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

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**HANDBOOK BEGINS HERE**

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

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

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1. A specialized care rate as defined in Section 11-400s.(7) may be paid for a child placed in a certified family home of a foster family agency program as described in (B) above when the following conditions are met:
    - (i) The placing agency has determined that the child has care needs greater than those of a normal foster child; and
    - (ii) The placing county has a specialized care system as specified in Section 11-401.3.
  2. When a child is placed in a certified home in a county that is different from the county with payment responsibility, the county with payment responsibility shall pay the specialized care rate as specified in Section 11-401.42.
- (2) One rate shall be set for each program for which a rate request is received from a given foster family agency.
- (A) Each foster family agency shall identify and describe each of the programs it offers.
  - (B) The Department shall have the authority to verify the legitimacy and accuracy of the descriptions of each program offered.

**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

(C) Where a foster family agency submits a rate request for more than one program and the Department determines that no significant difference exists between the programs, a separate rate or set of age-based rates shall not be set.

(b) Allowable Costs

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

(A) Allowable costs shall include:

1. Payment to the foster parents for those items specified in Sections 11-401.11 and .12.
2. Reasonable social work activities provided by the foster family agency as defined in Section 11-400s.(4).
3. The reasonable cost of activities of recruiting and training certified family home foster parents and administration of the provision of items or services described in 1. and 2. above.
4. Executive Compensation

All executive compensation shall be reported for each executive officer. The reasonableness standards and criteria for executive compensation are contained in Internal Revenue Code Section 4958. This rule shall apply to all individuals of the non-profit corporation deemed by the Internal Revenue Service (IRS) to be anyone in a position to exercise substantial influence over a non-profit corporation's affairs. This rule may apply to the individual's immediate family as well as to family-controlled entities. Compensation provided in accordance with Internal Revenue Code Section 4958 shall be deemed to be reasonable for the purposes of reporting AFDC-FC costs.

(c) Rate Calculation

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

(A) The foster family agency child basic rate shall be the rate, which varies according to the age of the child, as specified in Welfare and Institutions Code section 11461(g)(1).

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

**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

- (C) An additional standard amount, as established by the Department, for social work services, or the actual allowable amount for the most recent program fiscal year reported by the provider, whichever is less;
- (D) An additional standard amount for recruitment, training, and administration as established by the Department.
- (E) An annual cost of living adjustment shall be applied to the child basic rate component of the foster family agency rate identified in (A) in accordance with Welfare and Institutions Code section 11463(m)(2).

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

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

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

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

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(d) Rate Adjustments for Existing Foster Family Agency Rates

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

**11-403 FOSTER FAMILY AGENCY RATES (Continued)** **11-403**

- (e) On-going Foster Family Agency Rate Request Submission
  - (1) Rate Request Submission
    - (A) Each foster family agency shall submit to the Department a complete rate request for each program being provided in order to receive a rate for that program.
    - (B) A rate request shall be considered complete when all required forms, program statement, and other supporting documentation have been completed and submitted to the Department.
      - 1. A complete rate request shall include:
        - a. A complete Foster Family Agency – Data and Certification Sheet (FCR 1FFA);
        - b. A complete Program Description Checklist (FCR 2FFA);
        - c. A complete Days of Care Schedule (FCR 3FFA) for the rate period;
        - d. A copy of the license issued by CCL in accordance with Title 22, Division 6, of the California Code of Regulations, for each foster family agency, when received;
        - e. Documentation of non-profit status, e.g., the organization's tax exempt status letter from either the Internal Revenue Service (IRS) or the California Franchise Tax Board designating the provider as tax exempt; if any changes have occurred since submission of the last tax exempt status letter.
        - f. An endorsed copy of the agency's Articles of Incorporation, filed with the California Secretary of State, if any changes have occurred since submission of the last Articles of Incorporation, demonstrating the organization:
          - (i) Operates in the public interest for scientific, education, service or charitable purposes;
          - (ii) Is not organized for profit making purposes; and
          - (iii) Uses its net proceeds to maintain, improve or expand its operations.
        - g. A declaration signed by the non-profit Board of Directors that the non-profit corporation will operate during the rate period in the public interest for scientific, education, service or charitable purposes; is not organized for profit making purposes; and uses its net proceeds to maintain, improve or expand its operations.

**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

- (i) The provider shall immediately notify the Department if the non-profit ceases to operate on a non-profit basis.
  - (ii) The provider shall immediately notify the Department whenever the non-profit becomes inactive, suspended, or otherwise is not in good standing.
  - h. A copy of the credentials submitted to Community Care Licensing for each social worker providing services for the program if not submitted with a previous rate request.
- (C) A complete rate request shall be due according to the biennial schedule determined by the Department. The Department shall provide reasonable written notice of the scheduled biennial due date.
- 1. A foster family agency that does not submit a complete rate request by the rate effective date shall not have a rate set for the new rate period, and shall not be eligible to receive AFDC-FC funds 60 days after the rate effective date.
- (D) Exceptions to these due dates are as specified in Section 11-403(f).
- (2) Effective Date of Rates
- (A) The effective date of the rate shall be the first day of the second full month following the rate request due date.

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Example: Due date is January 1

- January is not counted
- First day of second full month following January is March

Effective date is March 1

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- (B) Exceptions to the effective dates of rates are as specified in Section 11-403(f).

**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

(3) Rate Reestablishment

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

1. The effective date of the rate for a complete rate request shall be no earlier than the first day of the second month following the rate request due date.

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

(i) Once the Department has determined that the provider has satisfactorily met the financial audit requirements as specified in Section 11-405.2, the effective date for the reestablishment of the rate shall be when the Department provides written notification to the foster family agency.

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

(1) New Foster Family Agency Providers

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

1. Has not operated a foster family agency or group home program for AFDC-FC funded children in the fiscal year preceding that for which the rate is being set; or

2. Has operated a foster family agency in the fiscal year preceding that for which the rate is being set but did not accept AFDC-FC funded children during that fiscal year; and

3. Has a program that has changed its corporate identification.

**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

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

1. The rate effective date for a new provider or a new program shall be the later of the:
  - a. date the Department received a complete rate request as specified in Section 11-403(e)(1)(B); or
  - b. date the license was issued; or
  - c. date of first placement

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

(2) New Foster Family Agency Programs

(A) A new foster family agency program is one that serves a different population at a different level of service than that currently served by the foster family agency's existing program(s); and with a rate set in accordance with Section 11-403(a)(1).

(B) Foster family agencies requesting a new program rate shall obtain and submit to the Department:

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

**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

- (g) The administrative review procedure for foster family agencies is specified in Section 11-430.
- (h) State Audit Requirements: Audit requirements for foster family agencies are specified in Section 11-405.1.
- (i) Overpayments: Overpayment requirements for foster family agencies are specified in Section 11-402.6. An overpayment shall be caused by, but is not limited to, the expenditure of AFDC-FC program funds on items not allowable as specified in paragraph (b) above.
- (j) Accounting Requirements: Accounting requirements for foster family agencies are specified in Section 11-402.84.
- (k) Good Cause for Late Foster Family Agency Rate Request
  - (1) A provider who is unable to submit a complete rate request by the due date shall be allowed to submit in writing a request for a determination of good cause as defined in Section 11-400g.(1). The good cause request shall be postmarked no later than five (5) calendar days following the rate request due date and shall contain the following:
    - (A) A clear statement that the request is for a determination of good cause;
    - (B) The specific reason(s) for submitting an untimely rate request;
    - (C) The provider's name, address and telephone number;
    - (D) The name, address and telephone number of the person to be notified regarding the determination of good cause; and
    - (E) The name, location and program number of the affected program(s).

**11-403 FOSTER FAMILY AGENCY RATES (Continued) 11-403**

- (2) Within 15 calendar days of the postmarked date of a provider's request for a 30-day good cause extension, the Department shall either approve or deny the request and shall notify the provider in writing of the determination.
  - (A) When the Department approves a request for good cause for a late or incomplete filing of a rate request, a complete rate request is due within 30-days of the postmark of the Department's approval notification or 30 days after the original rate request due date, whichever is later.
  - (B) Rate requests which are not submitted in accordance with Subsection (A) shall be subject to the appropriate penalty contained in Section 11-403(e)(3).
  - (C) When the Department denies a good cause request, the provider shall submit a complete rate request prior to the first of the next calendar month and shall be subject to the applicable penalty provisions as specified in Section 11-403(e)(3). The effective date of the rate shall be set in accordance with Section 11-403(e)(1)(B).

NOTE: Authority cited: Sections 10553, 10554, 11463, 11463(1)(2) and 11466.21(c), Welfare and Institutions Code. Reference: Sections 11461(a), 11461(g)(1), 11463, 11463(b), (i), (l) and (m), 11466.21, 11466.22, 11466.24, 11468, and 11468.2, Welfare and Institutions Code; Public Laws 98-502 and 104-156; Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; *Government Auditing Standards* of the Comptroller General of the United States (Yellow Book); Department of Health and Human Services, Administration for Children and Families letters dated April 19, 2001, February 22, 2002 and May 7, 2002; 2 CFR Part 230; 45 CFR Part 74; 45 CFR Part 1356 and Internal Revenue Code Section 4958.