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Regulation Package # 1008-07

CDSS MANUAL LETTER NO. CWS-09-03

TO: HOLDERS OF THE CHILD WELFARE SERVICES MANUAL, DIVISION 31

Regulation Package # 1008-07

Effective 11/10/09

Sections 31-002 and 31-502

This manual letter has been posted on the Office of Regulations Development website at <http://www.dss.cahwnet.gov/ord/PG603.htm>.

These regulations make permanent the emergency amendments to the California Department of Social Services' Manual of Policies and Procedures regarding procedures to follow by child welfare agencies following the death of a child under circumstances of suspected or determined abuse or neglect. It defines previously undefined terms, updates a county reporting form, itemizes documents which must be released to the public following a public request, establishes a process whereby counsel for other children may challenge all or part of the release of records of a deceased child, lists a number of related information-privacy laws which establish the confidentiality of certain information, and specifies what information must be redacted from any records which are released.

These regulations were considered at the Department's public hearing held on March 18, 2009.

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 Child Welfare Services Manual changes was CWS-09-02.

Page(s)

Replace(s)

11 and 12
18.1 and 18.2
110 through 111

Pages 11 and 12
Pages 18.1 and 18.2
Pages 110 through 111

Attachment

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31-002	DEFINITIONS (Continued)	31-002
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- (7) "Foster Care" means, for purposes of the Independent Living Program (ILP), 24 hour substitute care for children placed away from their parents or guardians and for whom the state or county agency has placement and care responsibility and who are likely to remain in foster care until age 18.

- (8) "Foster care" means the provision of 24-hour care and supervision to a child who has been placed by a child placing agency, including county child welfare services and probation departments, in one of the following types of foster homes:
 - (A) A licensed foster family home.
 - (B) A licensed small family home.
 - (C) A family home certified by a licensed foster family agency for its exclusive use.
 - (D) An approved foster family home.
 - (E) A licensed group home for children.
 - (F) A home, pursuant to a court order or voluntary placement agreement.

- (9) "Foster family agency" means any organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home.

- (10) "Foster family home" means any residential facility providing 24-hour care for six or fewer foster children which is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. A foster family home may also be authorized to provide care for more than six children for the purpose of keeping siblings together provided that the conditions of Health and Safety Code Section 1505.2 are met.

- (11) "Foster parent" means a person whose home is licensed or approved as a foster family home or licensed as a small family home or certified by a licensed foster family agency for 24-hour care of children, and a person who has the responsibility for the provision of foster care pursuant to a court order or voluntary placement agreement.

31-002	DEFINITIONS (Continued)	31-002
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- (g) (1) "Grievance" means an expression of dissatisfaction with a child-placing agency's procedures or actions, as such procedures or actions relate to the placement or care of a child in, or removal of a child from, a particular foster home.
 - (A) "Grievance review agent" means the person or panel designated by the director of the child-placing agency to conduct the grievance review and render a recommended decision to the director of the agency.
 - (B) "Party to grievance review" means a foster parent, legal parent, legal guardian, or child requesting the review; and the child-placing agency responsible for the action upon which the complaint is based.
 - (2) "Group home" means a nondetention privately operated residential home of any capacity that provides services in a group setting to children in need of care and supervision, as required by Paragraph (1) of Subdivision (a) of Section 1502 of the Health and Safety Code.
 - (3) "Guardian" means a person appointed by the superior court pursuant to the provisions of Probate Code Section 1514, or appointed by the juvenile court pursuant to the provisions of Welfare and Institutions Code Section 366.26.
- (h) Reserved
- (i) (1) "Independent Living Program (ILP)" as defined in Section 477 of the Social Security Act means the program administered by counties with oversight by the Department to provide services and activities as described by the childrens' Transitional Independent Living Plans (TILPs) to assist eligible children up to the day prior to their 21st birthday to prepare them to live independently upon leaving foster care.
 - (A) Repealed by Manual Letter No. CWS-02-01, effective 7/1/02.
 - (2) "Independent Living Program Coordinator" means the individual who is either an employee of the county or its designee/contractor and who is responsible for administering the ILP to all eligible youth.
 - (3) "Indian" means a person who is a member of an Indian tribe, or who is an Alaskan Native and a member of a Regional Corporation as defined in 43 USC 1606.

31-003	DEFINITIONS – FORMS	31-003
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- (a) (Reserved)
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)
- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
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- (j) (Reserved)
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- (l) (Reserved)
- (m) (Reserved)
- (n) (Reserved)
- (o) (Reserved)
- (p) (Reserved)
- (q) (Reserved)
- (r) (Reserved)
- (s) (1) SOC 826 (Rev. 8/09) Child Fatality/Near Fatality County Statement of Findings and Information.
- (2) SOC 832 (Rev. 5/08) Notice of Child Abuse Central Index Listing, hereby incorporated by reference, is used for the purpose of notifying individuals that their name has been submitted to the Department of Justice (DOJ) for listing on the Child Abuse Central Index (CACI).

31-003	DEFINITIONS – FORMS (Continued)	31-003
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- (3) SOC 833 (Rev. 3/08) Grievance Procedures for Challenging Reference to the Child Abuse Central Index, hereby incorporated by reference, is used for the purpose of informing individuals of the requirements for requesting a grievance hearing, as well as providing information regarding timeframes and all required components of a grievance hearing.

- (4) SOC 834 (Rev. 6/08) Request for Grievance Hearing, hereby incorporated by reference, is used for the purpose of providing individuals with a mechanism for requesting a grievance hearing to challenge their listing on the CACI.

- (t) (Reserved)

- (u) (Reserved)

- (v) (Reserved)

- (w) (Reserved)

- (x) (Reserved)

- (y) (Reserved)

- (z) (Reserved)

NOTE: Authority cited: Sections 10553, 10554, and 10850.4, Welfare and Institutions Code. Reference: *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896; Section 11169, Penal Code and Sections 827 and 10850.4, Welfare and Institutions Code and 42 USC 5106.

31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502

- .1 When the county learns that a child fatality has occurred and has reasonable suspicion that the fatality was a result of abuse and/or neglect, the county shall generate a referral within the Child Welfare Services/Case Management system, and the county shall respond to the referral as described in Section 31-101.

- .11 If the county finds an allegation to be inconclusive or substantiated, they shall complete the reporting requirements as described in Section 31-501.

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- .111 The county may "learn" of the fatality in ways that may include, but not be limited to, a formal report, emergency response referral, a cross report from a law enforcement agency or a private party. Once this information is learned the standard condition of reasonable suspicion is applied.
 - (a) Penal Code Section 11166(a)(1) defines "reasonable suspicion" and states in pertinent part: "reasonable suspicion" for the purposes of this section means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect.

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- .2 The county shall submit a report to the Department for each child fatality when, upon completion of the child abuse and/or neglect investigation, it has been determined that the child fatality was the result of abuse and/or neglect. The county shall report this information to the Department using the SOC 826 form. The report shall include the following information:
 - .21 The age and gender of the child.
 - .22 The date of death.
 - .23 Residence of child at the time of death.
 - .231 Foster care placement as defined by Section 31-002(f)(8).
 - .232 Parent or Guardian as defined by Sections 31-002(p)(1) and (g)(3).

31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502
(Continued)

.24 Whether an investigation is being conducted by a law enforcement agency and/or the county child welfare agency.

.25 The agency that made the determination whether the child fatality was or was not the result of abuse and/or neglect:

.251 CWS or Probation

A "determination" of abuse and/or neglect by CWS or Probation is the substantiation of abuse and/or neglect allegations which resulted in the fatality.

.252 Law Enforcement

A law enforcement investigation concludes that the child's death was a result of abuse and/or neglect.

.253 Coroner/Medical Examiner

A coroner/medical examiner concludes that the child's death was a result of abuse and/or neglect.

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.254 Penal Code 11165.12(b) defines a "substantiated" report as one "that is determined by the investigator who conducted the investigation to constitute child abuse or neglect, as defined in Section 11165.6, based upon evidence that makes it more likely than not that child abuse or neglect, as defined, occurred."

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.3 Upon public request, whether written, verbal, or via email or facsimile, the county shall release information related to a child fatality to the requesting party in the following circumstances:

.31 When there is reasonable suspicion that the fatality was a result of abuse, and/or neglect, the county shall provide the information as listed in Section 31-502.2 to the requesting party within five (5) business days of receiving the request.

31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502
(Continued)

- .32 Upon receiving the public request for information pursuant to Sections 31-502.33 and/or .34, the county shall notify counsel for any child directly or indirectly related to the deceased child's case record.
- .33 When the agency, pursuant to Section 31-502.25, makes the determination that the child fatality was a result of abuse and/or neglect, the child resided with his/her parent or guardian, as defined by Sections 31-002(g)(3) and (p)(1), and the abuse and/or neglect was inflicted by the parent or guardian, the county shall release additional documents pertinent to that parent or guardian.
- .331 The following information, subject to redactions specified in Section 31-502.4, shall be released by the county upon public request within ten (10) business days of receiving the request or the determination of the investigation, whichever is later:
- (a) All information listed in Section 31-502.2.
 - (b) Any emergency response referral information, completed by the county, which pertains to the abuse and/or neglect that resulted in the death of the child.
 - (c) Any previous referrals of abuse or neglect specific to the deceased child that were determined to be inconclusive or substantiated while living with that parent or guardian.
 - (d) Any cross reports relating to the deceased child that were completed by the county and sent to a law enforcement agency.
 - (e) Any copies of police reports about the person against whom the child abuse and/or neglect was substantiated.
 - (f) Any health care records, excluding mental health records, related to the child's death and previous injuries reflective of a pattern of abuse and/or neglect.
 - (g) Any risk and safety assessments, as defined by Sections 31-002(r)(7) and 31-002(s)(1), relating to the deceased child that were completed by the county.

31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502
(Continued)

- .34 When the agency, pursuant to Section 31-502.25, makes the determination that the child fatality was a result of abuse and/or neglect, the child resided in foster care, and the abuse and/or neglect was inflicted by the foster parent(s), the county shall release additional documents pertinent to the foster parent(s).
- .341 The following documents, subject to redactions specified in Section 31-502.4, shall also be released by the county to the requesting party within ten (10) business days of the request or the final determination of the investigation, whichever is later:
- (a) All of the information listed in Section 31-502.21 through .25.
 - (b) The emergency response referral information, completed by the county, which pertains to the abuse and/or neglect that resulted in the death of the child.
 - (c) Any previous referrals of abuse or neglect specific to the deceased child that were determined to be inconclusive or substantiated while living with the foster parent(s).
 - (d) Any cross reports relating to the deceased child that were completed by the county and sent to a law enforcement agency pertinent to the foster parent(s).
 - (e) Any copies of police reports about the person(s) against whom the child abuse and/or neglect was substantiated.
 - (f) Any health care records, excluding mental health records, related to the child's death and previous injuries reflective of a pattern of abuse and/or neglect inflicted by the foster parent(s).
 - (g) Any risk and safety assessments, as defined by Sections 31-002(r)(7) and (s)(1), relating to the deceased child that were completed by the county pertinent to the foster parent(s).
 - (h) Records pertaining to the foster parent's license and type of license or licenses held, if in the case record.
 - (i) Records pertaining to the approval of the foster family home of the relative or non-related extended family member, including a caregiver assessment, and health and safety inspection of the home, if in the case record.
 - (j) All documented licensing violations, including plans of correction, if in the case record.

31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502
(Continued)

- (k) Records of any training completed by the foster parent(s), if in the case record.
 - (l) If licensing records pertaining to the foster parent(s) are not contained in the child's case record, the county shall release the documents and information specified in Sections 31-502.341(a) through (k) that are available within the case record and direct the requesting party to the appropriate licensing agency for any additional information or documents. For licensing/approval files maintained by the county, the county shall forward that part of the request to the appropriate county custodian of records.
- .35 When a child fatality has occurred as a result of abuse and/or neglect by a non-residential licensed child care provider, the county shall direct any public request to the appropriate licensing department or agency that has jurisdiction over the facility.
- .4 The county shall redact information that is privileged, confidential, or not subject to disclosure prior to public release.

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- .41 This section does not apply to those entitled to unredacted records; for example, Welfare and Institutions Code Section 4903 states that counties are required, in some circumstances, to release information without redactions to the protection and advocacy agency in California.

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- .42 After consultation with law enforcement or the District Attorney, if the release of specific information would jeopardize a criminal investigation or proceeding, that information shall be redacted prior to release.
- .43 If disclosure of information about a child, including the deceased child or any sibling of the deceased child, as listed in Sections 31-502.331(a) through (g) and Sections 31-502.341(a) through (k), may be detrimental to the well-being of another child, counsel for that child may petition the juvenile court to prevent the release of any document or part of a document requested pursuant to Welfare and Institutions Code Section 827.
- .431 To comply with federal law, 42 USC 5106, the county shall release the SOC 826 form, whether or not a petition has been filed in the juvenile court.
- .432 Only information or documents that may pose potential detriment to a child who is directly or indirectly connected to the case, as found by the juvenile court, shall be redacted.

31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502
(Continued)

- .44 Information that shall be redacted includes:
- .441 Names, except that the name of a county or state department or agency shall not be redacted.
 - .442 Addresses, except that the address of a county or state department or agency shall not be redacted.
 - .443 Telephone numbers, except that the public telephone number of a county or state department or agency shall not be redacted.
 - .444 Ethnicity.
 - .445 Religion.
 - .446 Social Security numbers or referral/case identifiers.
 - .447 Any other identifying information of any person or institution, other than the county or state department or agency information indicated in Sections 31-502.441, .442 and .443.
- .45 The county shall adhere to all laws that govern confidentiality of the release of information.

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- .451 The following are examples of state laws and rules and are not intended to be an exhaustive list of such laws and rules.
- (a) Family Code Sections 3041.5, 3111, and 7643
 - (1) Family Code Section 3041.5 provides for alcohol and drug testing in judicial proceedings concerning custody, visitation, and guardianship. The results of such tests are confidential and shall be redacted.
 - (2) Family Code Section 3111 provides for confidential child custody evaluation reports in cases of contested child custody and contested visitation rights. For example, one family member may object to visits from another family member. Documents from such cases are in the files of the Superior Court, or the Juvenile Court. If such evaluation reports are found in the case record, they shall be redacted.

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31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502
(Continued)

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- (3) Family Code Section 7643 provides for confidentiality of court proceedings to establish the identity of a child's father. Records of such proceedings shall be redacted.
- (b) Health and Safety Code Section 1255.7 and 1522
- (1) Health and Safety Code Section 1255.7 provides for "safe-surrender site" and for the confidentiality of any identifying information that pertains to a parent or individual who surrenders a child pursuant to this section. Any identifying information that pertains to a parent or an individual who surrenders a baby under this section is exempt from disclosure and, therefore, if this information is in the case record, this information shall be redacted.
- (2) Health and Safety Code Section 1522 provides for a process to obtain fingerprints, the criminal history, and a criminal records clearance or criminal records exemptions for persons working with or in contact with clients in a community care facility, foster family home or certified family home of a licensed foster family agency. This statute also provides for the confidentiality and privacy of this information. If any of this information is found in the case record it shall be redacted.
- (c) Penal Code Sections 851.8, 11081, 11105, 11167.5, and 13300
- (1) Penal Code Section 851.8 provides for the sealing and destruction of arrest records if a determination of factual innocence was made by the court. If the Child Welfare Agency still maintains such records in the case record those records shall be destroyed.
- (2) Penal Code Section 11081 provides the general rule that there is no access to any criminal offender record information obtained from the Department of Justice unless otherwise authorized by law. This information shall be redacted if it is part of the case record.
- (3) Penal Code Section 11105 provides that Child Welfare Agency may obtain summary criminal history information from the Department of Justice. This information shall be redacted if it is part of the case record.

HANDBOOK CONTINUES

31-502 CHILD FATALITY REPORTING AND DISCLOSURE REQUIREMENTS 31-502
(Continued)**HANDBOOK CONTINUES**

- (4) Penal Code Section 11167.5 provides that all reports of child abuse or neglect by mandated reporters shall be confidential and may be disclosed only to authorized persons or agencies. Reports of suspected child abuse or neglect may only be disclosed to authorized persons. Therefore, reports written pursuant to 11166, 11166.2, or authorized by 11166.05 may not be disclosed. Any information that may identify a mandated reporter that is maintained in the case record shall be redacted.
- (5) Penal Code Section 13300 allows several government agencies, including child welfare agencies, to obtain "local summary criminal history information," more commonly known as "rap sheets." Rap sheet information concerning the perpetrator(s) of neglect or abuse that has come from a local criminal justice agency shall be redacted. Rap sheet information concerning the criminal history of persons other than the perpetrator(s) of neglect or abuse shall be redacted. Information about the criminal history of the perpetrator(s) of neglect or abuse that has come from sources other than a "rap sheet," such as police reports, the individual concerned, family members, child welfare department personnel, or any other documents subject to disclosure pursuant to Welfare and Institutions Code Section 10850.4 shall not be redacted.
- (d) Welfare and Institutions Code Section 11478.1
- (1) Welfare and Institutions Code Section 11478.1 requires public agencies to maintain the confidentiality of information gathered for purposes of child and spousal support enforcement. (See 42 U.S.C., Chapter 7, Part D, Section 651.) Documents generated or acquired for purposes of child or spousal support enforcement, as well as information derived from such documents, shall be redacted. Information that could have been acquired for purposes of child or spousal support enforcement, but which actually was acquired through other channels (for example: mother tells Child Welfare Services caseworker how much father earns) shall not be redacted.

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- .46 When a public request is made for documents other than those listed in Sections 31-502.331(a) through (g) and Sections 31-502.341(a) through (l), the county shall only release this information upon an order from the juvenile court pursuant to Welfare and Institutions Code Section 827.

31-502 CHILD FATALITY REPORTING AN DISCLOSURE REQUIREMENTS 31-502
(Continued)

- .47 All case records shall be retained as described in Sections 31-075.2 through .21. The county is not required to retain case record documents beyond any date otherwise required by law.
- .48 The county is not required to obtain documents that are not within the child's case record as defined in MPP Section 31-002(c)(5).

NOTE: Authority cited: Sections 10553, 10554, and 10850.4, Welfare and Institutions Code. Reference: Penal Code Sections 11165.12, 11166, and 11169; 42 USC 5106; 45 CFR 1340.15(b), and Sections 827, 4903, and 10850.4, Welfare and Institutions Code.

31-503 CHILD SUPPORT REFERRAL REQUIREMENTS 31-503

- .1 For a child receiving AFDC-FC in accordance with Welfare and Institutions Code Section 11400, the social worker shall determine whether it is in the child's best interest to make a referral to the local child support agency.
 - .11 In making this determination, the social worker shall evaluate each case on an individual basis considering the best interests of the child and the circumstances of the family, which may include but are not necessarily limited to, the parent(s)' employment status, housing status, the impact on other children who may be at risk of removal, availability of community-based services, efforts to reunify, whether parental rights have been terminated, connection with CalWORKs or other public assistance programs.
 - .111 If the child's case plan goal is family reunification, the social worker shall consider whether the payment of support by the parent will pose a barrier to the proposed reunification in that the payment of support will compromise:
 - (a) The parent's ability to meet the requirements of the reunification plan if the child's case is referred to the local child support agency.
 - (b) The parent's ability to meet the current or future financial needs of the child if the child's case is referred to the local child support agency.
 - (c) The parent's ability to meet the needs of other children in the household who may be at risk of removal.

31-503 CHILD SUPPORT REFERRAL REQUIREMENTS 31-503
(Continued)

- .112 If the child's case plan goal is other than reunification, the social worker shall consider whether the payment of support by the parent will pose a barrier to a successful outcome of the case plan in that the payment of support will compromise:
- (a) The parent's ability to meet the requirements of the case plan if the child's case is referred to the local child support agency.
 - (b) The parent's ability to meet the current or future financial needs of the child if the child's case is referred to the local child support agency.
 - (c) The parent's ability to meet the needs of other children in the household who may be at risk or removal.
- .2 If the social worker determines it is in the best interest of the child not to refer the parent(s) to the local child support agency, the social worker shall forward his or her determination to the appropriate county eligibility worker for appropriate action.
- .21 The social worker shall review this decision following each court hearing held under Welfare and Institutions Code Section 361.5.
- .211 If reunification services are terminated by the court, and the social worker determines that it is no longer contrary to the child's best interest, the social worker shall inform the appropriate county eligibility worker to refer the child's case to the local child support agency.
- .3 The social worker shall document in the child's case file the determination of whether it is in the best interest of the child to refer the child's case to the local child support agency and the basis for this determination.
- .4 When a determination has been made that it is not contrary to the best interest of the child to refer the child's case to the local child support agency, the social worker shall notice the parent that the parent has access to the grievance procedures set forth in MPP Section 31-020, provided the parent appeals the agency's decision in writing within 5 working days of their receipt of the notice.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code; and Section 17552 Family Code. Reference: Section 17552, Family Code.

31-505 OUT-OF-COUNTY PLACEMENTS 31-505

- .1 Out-of-county placements shall be subject to the provisions of Welfare and Institutions Code Sections 361.2(c) and (d).