FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 11-425.122(a)

Specific Purpose:

The addition of this section will assist counties and the state in determining the fiscal viability of potential group home and foster family agency care providers.

Factual Basis:

SB 84 (Chapter 177, Statutes of 2007) added Welfare and Institutions Code Section 11466.23(c) which requires the repayment of overpaid federal share of funds upon identification which is described as having met due process. It is a common practice of nonprofit corporations to abandon their license and program when an overpayment is assessed, never repaying the overpayment, in part or in full. In these circumstances, those same providers will come back into the business under a different corporation, license and group home. The addition of this section will allow counties to deny county support letters to applicants of a group home rate if those applicants were ever a part of a corporation that has not repaid an assessed overpayment. The determination and denial of a county support letter is limited to those individuals who were part of a Board of Directors, Executive Director, licensee, or Program Administrator as these are the positions with fiscal and programmatic responsibility.

Final Modification:

As a result of public hearing comments, CDSS has determined that its use of the term "reasonable efforts" did not provide sufficient direction to counties when determining whether a current applicant was associated with a closed program with an outstanding overpayment. Accordingly, this section has been amended to clarify that counties must contact the Foster Care Audits and Rates Branch and/or the Community Care Licensing Regional Office to determine whether a new or existing group home board member, executive director, licensee and program administrator were employed in a corporation licensed to operate a group home or foster family agency that has not fully repaid any overpayment of AFDC funds.

Section 22-001(c)(2)(G)

Specific Purpose:

This section is added to the definitions to identify foster care providers, including group home and foster families agencies as those persons or entities identified as a claimant, who request a hearing to challenge an overpayment under Sections 45-304, 45-305, 45-306.

Factual Basis:

This section is added to the definitions to ensure the rights of foster care providers, including group homes and foster family agencies, to be identified as a claimant for the purposes of requesting a hearing to challenge a county action to recover overpayments that have been identified in Sections 45-304, 45-305, and 45-306.

Section 22-003.15

Specific Purpose:

This section is added to identify that state hearing rights are not available to foster care providers including group homes and foster family agencies where the claimant entered into a voluntary repayment agreement.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(d)(1) which requires the establishment of new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayment by counties agencies to foster care providers and adoption assistance recipients. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section is added as clarification that by entering into a voluntary repayment agreement, the provider has agreed that the overpayment determination and the overpayment amount are correct; therefore, it is not necessary to place a financial burden on conducting hearings where the provider has agreed to the overpayment determination and the overpayment amount.

Final Modification:

Prior to the emergency adoption and after the regulations had been noticed for public hearing, the cross reference to Section 45-304.123 was corrected to Section 45-305.231. Further, in response to testimony, this section has been amended to delete unnecessary wording.

Section 22-009.11

Specific Purpose:

This section is amended to reflect the addition of Section 45-306.3, which clarifies the formal hearing timeframe as 90 days. Section 45-306.3 was added to clarify and provide guidance to counties regarding the suspension of the 90-day timeframe if the provider has filed for an informal hearing and to clarify when the 90-day timeframe starts for providers to file a formal hearing. This section now ensures that claimants who were not provided timely notice are not barred from requesting a hearing due to the 90 day rule.

Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This amended section includes the added clarification and guidance section regarding the timeframes between informal and formal hearing requests.

Final Modification

Sections 45-302.23 and .231

These sections are amended for clarity by changing the side title from "Child *Temporarily Absent*" to "Child *Absences*" and by making a grammatical change to Section 45-302.231.

Sections 45-302.231(a) and (b) and Handbook

Specific Purpose:

Existing language in Section 45-302.23 does not adequately define temporary absence for the purpose of determining whether or not an overpayment has been made. Section45-302.231(a) is added to clarify that a temporary absence is defined as no more than 14 days in a calendar month. This clarification is made to avoid potential Title IV-E overpayments by identifying in regulation that a payment may be made to an eligible facility for a child absent not more than 14 days. This clarification is further identified and added to Section 45-304.113. Current Section 45-302.231(a) is renumbered to 45-302.231(b) for consistency.

A handbook section is added to provide current language found at Child Welfare Policy Manual, Section 8.3B, Question #7, which limits temporary absences to a period not to exceed 14 days. This handbook section also provides examples illustrating temporary absences provided by the Administration for Children and Families, Region IX.

Factual Basis:

SB 84 identifies in Welfare and Institutions Code Section 11466.24(a), situations in which the county will not collect an overpayment; this section expands those situations to include a temporary removal (such as hospitalization) or the child was on runaway status and subsequently returned to the same home. The clarification is further defined as no more than 14 days in a calendar month as identified in the Child Welfare Policy Manual at Section 8.3B,Question #7. This section is amended for clarity and additional regulatory guidance is provided for consistency with Section 45-304.113.

Final Modification:

In response to testimony and after further review of the handbook section, the first two paragraphs of the handbook section are deleted to avoid the possibility of directive language being in a handbook section. Other minor changes are made for clarity.

Sections 45-303.2, .21, .22, and .23

Specific Purpose:

These sections are added to identify the conditions of payment delivery the county may require of foster care providers to ensure correct payment of AFDC-FC funds; thereby, avoiding an overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23 which identifies that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Act of 2002, which further identifies that a federal foster care or adoption assistance overpayment is defined as any amount of aid paid to which a foster care provider or adoption assistance recipient was not entitled. An overpayment can occur when the provider does not report in a timely manner that a child received care for the entire month, or does not report the date the child left the provider's care when the provider did not care for the child for the entire month. This includes timely reporting the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 14 days or more. It is the county's responsibility to avoid overpayments, and to identify, collect and repay these overpayments when they occur. This addition will give counties the authority to require providers to submit all relevant verifications upon the county's request as a condition of payment delivery to providers, in order to avoid making overpayments.

Final Modification:

As a result of testimony received, these sections have been amended to clarify that the county must provide adequate advance written notification to a provider of any requirements the county may have in order to make a payment to the provider. This

clarification ensures that the provider is timely made aware of what information they are responsible to provide to the county, in order to receive timely payment.

New Section 45-303.3, modified Section 45-303.4, and new Section 45-303.5

This new section and new Section 45-303.5 are adopted and renumbered Section 45-303.4 are amended to identify that the county will notify the provider of a deadline for submission of any information requested by the county in the written notification and, the consequences to the provider for failure to timely submit the information identified in the county's written notification. These sections were added in order to provide the county with clear authority to avoid overpayments resulting from time periods in which the child was not in the provider's care. These sections also set forth the information the county may require a provider to submit to the county, the deadline for the provider to provide that information to the county and the responsibility of the county to give the provider advance written notice of these requirements.

Section 45-303.3 (Renumbered to 45-303.4 after public hearing)

Specific Purpose:

This section is added to provide regulatory relief for counties for complying with requirements for timely payment delivery to the provider. Current regulations require payment being made no later than the 15th day of the following month. Counties may ask providers for all relevant verifications regarding the number of days of the month the provider cared for the child. The provider may not provide that information timely, allowing the county to issue the check by the 15th day of the following month. This added section allows the county the time to receive and process requested information prior to issuing a check to avoid an overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23 which identifies that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Act of 2002, which further identifies that a federal foster care or adoption assistance overpayment is defined as any amount of aid paid to which a foster care provider or adoption assistance recipient was not entitled. An overpayment can occur when the provider does not report in a timely manner that a child received care for the entire month, or does not report the date the child left the provider's care when the provider did not care for the child for the entire month. This includes timely reporting the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 14 days or more. The addition of Section 45-303.2 allows counties to request all relevant verifications of the number of days a child was in care in order to avoid an overpayment. The addition of Section 45-303.3 allows the county to request the verification, review and process the information and issue a check no later than 15 days after the information is submitted to the county.

Final Modification:

See Final Modification to New Section 45-303.3

Section 45-304 (Title)

Specific Purpose:

The title is amended to clarify that all foster care providers are subject to overpayments and expands in regulation the definition of AFDC-FC overpayments to include all categories of foster care providers. Existing language restricts the ability of the county to collect overpayments from those foster care providers not currently identified in regulations.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(b) which allows the expansion of the definition of facilities and providers for whom overpayments can be assessed by identifying foster care providers as those described in Section 11400. Current regulations specifically identify foster family homes, relative homes, nonrelative extended family members, and nonrelative legal guardians. By identifying all foster care providers, this definition will also include Group Homes, Foster Family Agencies, Small Family Homes, and any other subsequent types of providers licensed by the Department to care for foster children.

Section 45-304.1

Specific Purpose:

This section is amended to expand the category of providers, to all providers receiving foster care funds, for which overpayment recovery is applicable. This provision resolves ambiguity over the authority of counties to collect overpayments made to Group Homes, Foster Family Agencies and Small Family Homes.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(b) which allows the expansion of the definition of facilities and providers for whom overpayments can be assessed by identifying foster care providers as those described in Section 11400. Overpayments occur for all categories of foster care providers; therefore, this amendment is necessary to accurately capture all of the placements in which overpayments can occur and recovery is applicable.

Section 45-304.11

Specific Purpose:

This section is amended to delete the reference to a provider not entitled to aid where the provider did not care for the child in her or her home for the period of time for which he or she was paid.

Factual Basis:

This section is amended for clarity. The provisions of SB 84 in Welfare and Institutions Code Section 11466.23(b) requires a more detailed definition of an overpayment. The repealed sentence is redundant and the definition of an overpayment is explained more thoroughly throughout the adopted regulatory language.

Final Modification:

As a result of testimony received, this section has been amended to include in the definition of overpayment, any expenditure made by a group home or foster family agency that is not in the definition of an allowed use of foster care funds, as identified in Section 11-404. Section 11-404 sets forth the purposes for which group homes and foster family agencies can expend excess funds. Expenditures of excess funds that are not consistent with Section 11-404 are unallowable, but existing regulations did not provide a process through which these funds can be collected. CDSS has determined that the overpayment recovery mechanisms established in these regulations are appropriate to the recovery of unallowable expenditures under Section 11-404, and has therefore described these expenditures as an overpayment.

Section 45-304.111

Specific Purpose:

This section is adopted to provide State oversight to ensure that counties develop internal controls to avoid making overpayments.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state, and county funds by requiring the counties to develop and implement the appropriate internal controls to avoid making overpayments; thereby, avoiding repayment of public funds.

Section 45-304.111(a)

Specific Purpose:

This section is adopted to provide direction in implementing internal controls that may include policies and activities the counties can put into practice prior to issuance of the payment in order to avoid the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state, and county funds by requiring the counties to develop the appropriate policies and procedures to avoid making overpayments.

Section 45-304.111(b)

Specific Purpose:

This section is adopted to cross reference Section 45-303 which allows counties to apply conditions to payment delivery if necessary. This section authorizes counties to require providers to timely report days of care to ensure the correct payment is made and avoid overpayments prior to payment delivery. This system of timely reporting by providers has been implemented in Alameda County where there has been a significant decrease in overpayments.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state, and county funds by authorizing the counties to implement, if necessary, conditions under which a payment can be made to a provider to avoid making overpayments.

Sections 45-304.111(b)(1), (2), and (3)

Specific Purpose:

These sections are adopted as a cross reference to Section 45-303.2 and to provide the specific reporting conditions that counties may require of providers as a condition of payment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding these sections in regulations, the State is protecting federal, state and county funds by authorizing the counties to implement, if necessary, conditions a provider to avoid making overpayments.

Section 45-304.111(c)

Specific Purpose:

This section is adopted as a cross reference to Section 45-303.2 and to provide relief to counties for timely payment if the provider does not provide all the relevant verifications upon the county's request.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23 which identifies that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Act of 2002, which further identifies that a federal foster care or adoption assistance overpayment is defined as any amount of aid paid to which a foster care provider or adoption assistance recipient was not entitled. An overpayment can occur when the provider does not report in a timely manner that a child received care for the entire month, or does not report the date the child left the provider's care when the provider did not care for the child for the entire month. This includes timely reporting the number of days in the month the provider cared for the child when the child leaves and returns after a temporary absence of 14 days or more. The addition of Section 45-304.111 allows counties to request all relevant verifications of the number of days a child was in care in order to avoid an overpayment. The addition of Section 45-304.111(c) allows the county to request the verification, review and process the information and issue a check no later than 15 days after the information is submitted to the county.

Section 45-304.112

Specific Purpose:

This section is adopted to clarify the terms under which a prorated payment can be issued to the provider and addresses circumstances under which timely reporting has identified the child was not in placement for the entire month. Additionally, this section cross references those instances where overpayments cannot be demanded to protect specific placement categories that are not subject to overpayment collection.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which provides relief to counties under specific circumstances wherein the county is not required to repay the federal share of identified overpayments. Under these circumstances, the State is required to repay the federal share, in addition to absorbing the State share of the overpayment. By adding this section in regulations, the State is protecting federal, state and county funds by authorizing the counties to prorate payment when it has been determined that the provider is not entitled to the full month payment. Additionally, this section cross references Section 45-304.123 that identifies for counties that specific placement categories are not subject to overpayment collection.

Section 45-304.113

Specific Purpose:

This section is adopted for clarity and consistency with Section 45-302.23, which defines the circumstances under which an overpayment does not occur.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24 identifying situations in which the county will not demand an overpayment. This section in Welfare and Institutions Code expands those situations to include a temporary removal or the child was on runaway status and subsequently returned to the same home. Clarity was required for temporary absence in these circumstances. The clarification is further defined as 14 days in a calendar month as identified in the Child Welfare Policy Manual at 8.3B, Question #7. This section is amended for clarity and provides consistency with Section 45-302.231.

Final Modification:

As a result of testimony received the phrase "an absent child" is changed to "a child temporarily absent" which will provide clarity for the counties when determining whether or not to assess an overpayment.

Section 45-304.12

Specific Purpose:

This section is amended to require counties to take reasonable steps to assess whether an overpayment has been made to a provider.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that overpayments be determined. The amendment to this section provides authority for counties

to take all reasonable steps to assess or determine whether an overpayment has been paid as the first step in possible recovery of the overpayment.

Section 45-304.121

Specific Purpose:

This section is adopted to clarify that identification of overpayment assessments will include the discovery of the overpayment and the documentation of the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that overpayments be determined and tracked. The addition of this section allows counties to implement processes and procedures to facilitate the determination and tracking of overpayments.

Section 45-304.121(a)

Specific Purpose:

This section is adopted to provide guidance, instruction and authority to counties regarding discovery of overpayments. In order to provide a comprehensive system of avoiding overpayments, counties must ensure that internal controls exist to address the detection of overpayments in a timely manner.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that overpayments be determined. This addition requires CDSS and counties to develop regulations for the identification, determination, tracking, notification and collection of foster care and adoption assistance overpayments. In order to complete this process, counties must have or develop the appropriate internal controls for which discovery and determination can be made.

Final Modification:

As a result of testimony received, this section has been amended to identify that a county develop a written program of internal controls to ensure an adequate system of discovering overpayments exists in a written procedure to ensure consistency. This will ensure that CDSS can effectively and efficiently review the county's program of internal controls.

Section 45-304.121(a)(1)

Specific Purpose:

This section is adopted to provide counties with guidance on the methods by which overpayments could be determined. The methods identified in this section are intended as minimal quality assurance processes that do not limit the county from implementing local best practices and making determinations of the quality assurance practices that may work best in their locale.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the discovery of overpayments, which requires local agencies to ensure there is an adequate internal control and quality assurance system. This section is adopted to identify a baseline of internal controls that should be employed to ensure that internal controls are in place and continuously used on an ongoing basis to discover, in a timely manner, any potential overpayments. Putting these basic quality assurance requirements into regulations allows counties the administrative authority to develop additional county specific flexibility for internal controls based on local needs.

Section 45-304.121(b)

Specific Purpose:

This section is adopted to direct counties to fully document any overpayments made to foster care providers and provides the minimum documentation requirements. Counties will continue to determine other areas of documentation that best suit their local policies and practices.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which mandates that counties have specific processes in place to identify, determine, track, notify and collect overpayments that were made to foster care providers by the counties. It is the intent of the legislature that by putting these processes in place, future Title IV-E overpayments can be reduced or eliminated. This added section provides the minimal documentation areas as agreed to within the collaborative workgroup and is being added to maintain clarity and consistency with Section 45-304.5

Final Modification:

As a result of testimony received, this section has been amended to require the county when documenting overpayments to include the reasons for the payment error, rather than just a description of the circumstances that resulted in the payment error for clarity and consistency. CDSS believes this change provides greater clarity and

direction to the counties relating to identifying the causes for a particular overpayment. Through this requirement, counties should be able to identify trends in the causes for overpayments, which should precipitate corrective steps to reduce the incidences of overpayments.

Section 45-304.121(c)

Specific Purpose:

This section is adopted to clarify that identification of overpayments has a defined process that must be met prior to repayment of the federal share of the overpayment. These processes are further described for counties in Section 45-304.5 and include due process for the foster care provider.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires remittance of the appropriate amount of federal funds following completion of due process.

Section 45-304.122

Specific Purpose:

This section is adopted to provide authority to counties to collect overpayments from all categories of providers with the exception for specific conditions which are identified in Sections 45-304.123 and 45-304.125.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(a) which authorizes counties to demand and collect overpayments from all providers with specific exceptions. Those exceptions include circumstances which exist in statute and regulation for foster family homes, relative homes, nonrelative extended family members, and approved homes of nonrelative legal guardians. Welfare and Institutions Code Section 11466.24(a)(1) also added exceptions for all providers which include the cost of pursuing the collection, that is, an exception applies when the cost would exceed the amount of the overpayment.

Section 45-304.123 (Renumbered from 45-304.121)

Specific Purpose:

This section was amended to specifically identify in regulation that counties will not demand collection of overpayment from foster family homes, approved relatives, non-relative extended family members, and non related legal guardians under certain conditions. It was important to identify in regulation those family home providers who are not subject to

collection under specific conditions differently from those providers who are subject to collection under the same conditions.

Factual Basis:

This amendment identifies specifically those foster family homes, approved relatives, non-relative extended family members, and non related legal guardians who are not subject to a demand by counties for overpayment collection under specific circumstances. This interprets existing statute under Welfare and Institutions Code Section 11466.24. Additionally, Welfare and Institutions Code Section 11466.23(a)(1) authorizes counties to determine if the cost of collection exceeds the overpayment. Under Welfare and Institutions Code Section 11466.23(c)(1), where the overpaid provider is not obligated to repay the overpayment, the counties are not required to repay the overpayment to the state or federal government. The State is however required to repay the federal share under these circumstances.

Section 45-304.123(a)

Specific Purpose/Factual Basis:

This regulation was amended and moved to Section 45-302.231(a) for clarity and consistency with the development of the regulations.

Sections 45-304.123(b), (c), and (d) (Renumbered to 45-304.123(a), (b), and (c) respectively)

Specific Purpose/Factual Basis:

These sections were renumbered to reflect the movement of Section 45-304.123(a) to ensure consistency with the regulations.

Section 45-304.123(e)

Specific Purpose/Factual Basis:

This section is repealed and is now addressed in Section 45-304.125, which provides additional guidance to counties regarding circumstances under which counties will not pursue an overpayment and the documentation requirements for making that determination. Welfare and Institutions Code Section 11466.23(c)(1)(A) identifies those circumstances under which counties are relieved of repayment of the overpayment which includes amounts legally uncollectible under Welfare and Institutions Code 11466.24, the cost of collection exceeds the overpayment, and the foster family agency or group home is no longer in business or licensed by the department.

Section 45-304.124

Specific Purpose:

Section 45-304.123 requires the county not demand an overpayment under certain conditions. This section is added to allow counties the authority to request that a provider voluntarily return overpayments described in Section 45-304.123.

Factual Basis:

In some cases an overpaid foster care provider is willing to repay the overpayment that they are not legally obligated to repay. This section provides authority for counties to ask that a provider voluntarily return an overpayment, provided that the county informs the provider that the provider has no legal or other obligation to return the overpayment and that failure to return the overpayment will not result in any adverse action against the provider and the child/children in the home. Within the workgroup process between CDSS and CWDA, counties were concerned with their ability to ask for a voluntary repayment from providers and providers often will return overpayments. The addition of this section allows the counties to ask but not demand the overpayment be returned to the county.

Final Modification:

As a result of testimony received this section has been amended for clarity to allow counties to request the provider to voluntarily send in funds they were overpaid, but also informs the provider that if they don't return these funds there will be no adverse action taken against the provider or any child living in the home as described in Section 45-304.123. This change will help ensure that repayment of these overpayments is strictly voluntary by the overpaid provider.

Section 45-304.125

Specific Purpose:

This section is adopted to clarify that the counties will not pursue collection of overpayments where the cost of collection exceeds the overpayment amount.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c)(1)(B) which allows counties to not be required to repay overpayments when the cost of collection exceeds the overpayment.

Section 45-304.125(a) Renumbered from 45-304.123(e)(1)

Specific Purpose/Factual Basis:

This section is renumbered from Section 45-304.123(e)(1)

Sections 45-304.125(b) through (b)(4)

Specific Purpose:

These sections are adopted to require counties to have a written debt write-off policy approved by the Board of Supervisors. Additionally, this section provides counties with guidelines regarding the types of write-off situations that should be addressed in the approved policy and procedures.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the federal share of overpayments upon identification and after completion of due process. It also identifies circumstances under which counties are not required to repay the federal share of the overpayment, and includes situations where the cost of collection exceeds the amount of the overpayment. This section requires counties to have a Board of Supervisor approved debt write-off policy that will ensure that county overpayment write-offs are consistent with county policy and standards established by its Board of Supervisors.

Final Modification:

As a result in testimony received, Section 45-304.125(b) has been amended to require the County Welfare Director to approve the debt write-off policy instead of the County Board of Supervisors. Also Section 45-304.125(b)(4) is amended to clarify that even though overpayments totaling $100.00 are still reportable and collectible, they may be written-off. This change will facilitate development of county write-off policies, and will permit greater ease in modifications to those policies.

Sections 45-304.125(c)(1) through (5)

Specific Purpose:

These sections are adopted to require counties to maintain documentation to support the county's decision to write off any overpayment that meets the criteria for an uncollectible overpayment. Additionally, these sections provide guidance to counties on the types of adequate documentation that counties should maintain.

Factual Basis

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the federal share of overpayments upon identification and after completion of due process. It also identifies circumstances under which counties are not required to repay the federal share of the overpayment, and includes situations where the cost of collection exceeds the amount of the overpayment. In order to support the county's decision to write off the overpayment, this section requires counties to maintain the documentation to support the decision and provides guidance regarding the minimum documentation necessary. Documentation of this type will ensure that overpayment write-offs are legitimate and fact based.

Final Modification:

As a result of testimony received Section 45-304.125(c)(2) is being repealed for clarity and consistency. Based on testimony received, the requirement to document reasonable steps that could be taken was vague and could lead to excessive administrative burdens being imposed on counties. As a result of this repeal, the following subsections are renumbered for clarity and consistency.

Section 45-304.125(c)(6) (Renumbered to 45-304.125(c)(5) following public hearing)

Specific Purpose/Factual Basis:

This section is adopted to clarify that if the overpayment amount does not exceed the deminimus amount, the county's documentation should only consist of documenting the amount of the overpayment. The addition of this section will relieve counties of the administrative burdens associated with documenting the cost of collection if the overpayment is below a specified amount of funds.

Section 45-304.126

Specific Purpose:

This section is adopted as a result of statute to authorize counties not to pursue collection activities or initiate financial or fiscal audits on group homes or foster family agencies that are no longer in business or licensed by the department.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the federal share of overpayments upon identification and after completion of due process. It also identifies circumstances under which counties are not required to repay the federal share of the overpayment and specifically addresses group homes and foster family agencies that are no longer in business or licensed by the department.

Sections 45-304.126(a) and (b)

Specific Purpose:

These sections are adopted to require counties to coordinate with the department when initiating or taking further action on conducting fiscal or financial audits on group home or foster family agency providers who are no longer in business or licensed by the department.

Factual Basis

SB 84 added Welfare and Institutions Code Section 11466.23(c)(1)(C) which requires counties to remit the appropriate amount of the federal share of overpayments except under specific circumstances. One of those circumstances is that the group home or foster family agency is no longer in business or licensed by the department. Under current federal law, the California Department of Social Services is obligated to remit the federal share of identified foster care overpayments, regardless of whether or not the county has a duty to remit the state and federal share of overpayments. Accordingly, a county audit of a group home or foster family agency provider who is no longer in business or is no longer licensed could result in an identified overpayment that only the State is obligated to repay. This provision requires suspension of a county audit under these circumstances, which will allow the State the opportunity to consult with the county and decide whether or not to allow the county to continue the audit activity, and to incur the financial liability for any overpayment identified in a county audit.

Final Modification:

As a result of testimony received these sections have been amended to clarify that the counties shall not initiate a financial or fiscal audit or any activity that could lead to an overpayment by a group home or foster family agency that is no longer in business, without written approval of the department unless a fiscal or financial audit is instituted by law enforcement agencies as defined in the Penal Code.

Section 45-304.127 (Renumbered from 45-304.122)

Specific Purpose/Factual Basis:

This section is renumbered and cross references are updated to clarify that sections relating to collectible and uncollectible overpayments continue to be subject to collection resulting from the payment of aid paid pending.

Section 45-304.212

Specific Purpose:

This section is repealed from the existing sequence of activities and a new activity added to provide clarity and consistency to counties in investigations of overpayments. Existing Section 45-304.212 is modified and added in 45-305.213

Factual Basis:

The events surrounding investigation of overpayments has been expanded with the inclusion of all providers as specified in SB 84 (Welfare and Institutions Code Section 11466.23(c)). This section is amended and moved in the sequence of activities and renumbered to provide an organized sequence of activities associated with investigation of overpayments. The new section requires counties to calculate the amount of the overpayment as a second step in determining if an overpayment was made.

Section 45-304.213

Specific Purpose:

This section is amended to provide clarity and consistency with the sequence of activities associated with investigating and determining if an overpayment has been made and could be collectible.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following the completion of due process. Further, Section 11466.23(c)(1)(A) also identifies those circumstances where the county is not required to repay the overpayment, including when the amount is legally uncollectible under Welfare and Institutions Code Section 11466.24. This amendment requires counties to determine if the overpayment is collectible or uncollectible as the third step in the sequence of activities in determining and investigating an overpayment.

Section 45-304.214 (Renumbered to 45-304.213(a))

Specific Purpose:

Section 45-304.214 is renumbered as 45-304.213(a) to provide direction to counties after determining if an overpayment has been made and could be collectible. This is the first of three steps the counties will take to recover overpayments.

Factual Basis:

This section placement requires the county to determine from whom the overpayment may be recovered which is a sequential part of the investigation and determination process.

Section 45-304.213(b)

Specific Purpose:

This section is adopted to sequentially require counties to apply Section 45-305 which provides guidance on collecting and methods of overpayment collection if the overpayment is collectible.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following the completion of due process. Further, Section 11466.23(c)(1)(A) also identifies those circumstances where the county is not required to repay the overpayment, including when the amount is legally uncollectible under Welfare and Institutions Code Section 11466.24. This amendment requires counties to determine if the overpayment is collectible or uncollectible, and if collectible to apply the regulations as identified in Section 45-305.

Section 45-304.213(c)

Specific Purpose:

This section is adopted to allow counties to seek voluntary collection of any overpayment identified.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following the completion of due process. Further, Section 11466.23(c)(1)(A) also identifies those circumstances where the county is not required to repay the overpayment, including when the amount is legally uncollectible under Welfare and Institutions Code Section 11466.24. This section allows counties to seek a voluntary repayment whether or not the overpayment is legally uncollectible and directs counties to Section 45-305.231 for procedures regarding voluntary repayment.

Section 45-304.214

Specific Purpose:

This section is adopted to identify the fourth step that counties are required to take when investigating and determining overpayments.

Factual Basis:

This section requires counties to perform alternative activities after seeking a voluntary repayment on overpayments. When a county enters into a voluntary repayment agreement with a provider and the recovery of the overpayment is not achieved in full, counties are directed to make a determination of continued pursuit as specified in Section 45-304.125, which addresses not pursuing the collection under specific circumstances, including cost effectiveness of pursuing the collection, and/or balance of the overpayment.

Section 45-304.215

Specific Purpose/Factual Basis:

This section is repealed because it is no longer necessary and has been addressed in previous amended sections.

Handbook Section 45-304.321

Specific Purpose/Factual Basis:

The section number is deleted.

Section 45-304.33

Specific Purpose:

This section is adopted to give counties the authority to offset the administrative portion of payments made to group homes and foster family agencies for overpayments assessed.

Factual Basis:

Group Home and Foster Family Agency rates include an administrative portion for costs associated with non-profit corporation overhead such as salaries, benefits, and leases. This section allows counties to offset the administrative portion of assessed overpayments for group homes and foster family agencies in order to reduce the impact to children in placement. SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or jeopardize the best interest of the foster or adoptive child. By allowing counties to offset the administrative

portion of payments made to group homes and foster family agencies, the portion of the rate identified for care and supervision of the child will not be impacted, only the administrative portion of the payment.

Final Modification:

As a result of testimony received, this section has been clarified to require that the recoupment of overpayments made to group homes and foster family agencies shall be reduced by counties by an amount equal to the amount of the administrative portion of the monthly payment to the provider.

Section 45-304.41

Specific Purpose:

This section is amended to allow counties to collect interest on the repayment of an overpayment if interest is included in the provider's repayment agreement.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the department, in consultation with the CWDA, to develop specific processes to implement collection and repayment of overpaid federal AFDC-FC funds. State statute identifies that part of this process will include the accrual of interest on overpayments. The department and CWDA, through the workgroup consultation process, agreed that regulations should indicate that interest should only be collected if it is part of the repayment agreement signed by the provider.

Section 45-304.42

Specific Purpose:

This section regulates the limitations of the recoupment of overpayments and is amended to more accurately clarify for counties the timeframes for which they can initiate any recovery of overpayments.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) to define the steps associated with overpayments as identification, determination, tracking, notification, and collection and remittance of the federal share of the overpayment. This amendment notifies counties that initiation of the recovery must occur within one year of the discovery of the overpayment; otherwise, recovery is not legally an overpayment debt. Additionally, if the recovery is initiated within one year from the date the county discovers the overpayment, the overpayment debt is owed from that point on.

Section 45-304.421

Specific Purpose:

This section is adopted to clarify for counties that an overpayment collection that has been initiated within one year of discovery is collectible for the life of the debt.

Factual Basis:

As identified in Section 45-304.42, the county must initiate overpayment recovery within one year of discovery in order for that debt to be a legal debt for the life of the debt. This added section requires and authorizes counties to continue to recover those debts, once initiated, for the life of the debt.

Final Modification:

As a result of testimony received this section has been amended to clarify that when the overpayment recovery was initiated within one year of the date the county discovered the overpayment, the county shall continue to recover an overpayment until fully recovered or written off pursuant to the county's write off policy.

Handbook Section 45-304.421

Specific Purpose/Factual Basis:

The handbook section number is deleted and the section is amended for clarity and consistency.

Section 45-422

Specific Purpose/Factual Basis:

This section replaces the term "determination" with "discovery" for consistency and clarity with other regulation amendments.

Section 45-304.5

Specific Purpose:

This section is adopted to provide direction to counties regarding identification and remittance of the federal share of the overpayment. This section also provides a cross reference to Section 45-304.12, requiring counties to take all reasonable steps to promptly assess whether an overpayment has been made.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(a) to reflect that it is the intent of the Legislature to comply with the federal requirements of the Improper Payments Information Act with respect to the remittance of the federal share of foster care overpayments. Section 11466.23(c) also directs counties to remit the appropriate amount of the federal share upon identification of the overpayment, following the completion of due process. This added section provides state oversight and guidance to counties regarding the activities required of counties after identification of the overpayment is made.

Section 45-304.51

Specific Purpose:

This section is adopted to clarify for counties the date upon which an overpayment is identified if an appeal has not been filed. The date of identification of the overpayment is the date the federal share of the overpayment must be remitted to the federal government.

Factual Basis:

For the purpose of meeting Welfare and Institutions Code Section 11466.235(a) requirements to establish new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments made by county agencies to foster care providers and adoption assistance recipients, the identification of an overpayment is the point at which due process is exhausted. Due process requires formal notification and specific time frames to file for an appeal; therefore, the date of official identification, if an appeal is not filed, is defined as a time period after the appeal should have been filed, allowing for normal mailing periods.

Section 45-304.52

Specific Purpose:

This section is adopted to clarify for counties the date upon which an overpayment is identified if a provider requests an appeal of the overpayment finding. If a provider files an appeal, the appeal process must take place before the federal share of the overpayment is remitted to the federal government.

Factual Basis:

For the purpose of meeting Welfare and Institutions Code Section 11466.235(a) requirements to establish new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments made by county agencies to foster care providers and adoption assistance recipients, the identification of an overpayment is the point at which due process is exhausted. Due process requires formal notification and specific time frames to file for an appeal; therefore, the date of

official identification, if an appeal is filed, is defined as the date the overpaid provider exhausts due process under Section 45-306, which identifies the formal and informal hearing procedures.

Section 45-304.53

Specific Purpose:

This section is adopted to provide guidance and oversight to counties regarding the remittance of the federal share of the overpayment once identified and after due process has been exhausted.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment, following completion of due process. This section identifies that counties must make an aid claim adjustment within 20 calendar days after the end of the month the overpayment was identified, and specifies the sharing ratios for overpayments, other than those specified in Sections 45-304.122, .123 and .124. These sections identify overpayments for which the county is not liable to repay. Under those circumstances, the overpayment is the responsibility of the state; therefore, the county sharing ratio would not apply to overpayments that are the responsibility of the state.

Section 45-304.54

Specific Purpose:

This section is adopted to provide oversight and guidance to counties to clarify that counties are not responsible for the federal share of overpayments that are uncollectible as defined in Sections 45-304.123, .125(b)(4), .125, and .126.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which requires counties to remit the appropriate amount of federal funds upon identification of the overpayment following completion of due process. Section 11466.23(c)(1) also identifies circumstances under which the county is not required to repay the overpayment. Those circumstances are identified in Sections 45-304.541, .542, .543, and .544.

Sections 45-304.541, .542, .543, and .544

Specific Purpose:

These sections are adopted to identify the cross sections in the regulations that are specific to overpayments where counties are not required to remit the federal share of overpayments.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c) which identifies that counties are not required to repay the overpayment when the overpayment was made to: a Foster Family Home, an approved home of a relative or non-relative extended family member, and/or an approved home of a nonrelated legal guardian; the cost of collection exceeds the overpayment; or when a group home or foster family agency is no longer in business or licensed by the department. These sections provide cross references to sections that specifically identify and clarify those circumstances of uncollectible overpayments where the county is not required to repay the overpayment. Under these circumstances, the state is required to repay the federal share of the uncollectible overpayment.

Final Modification:

As a result of testimony received, Section 45-304.542 is being repealed as it is redundant and has already been addressed in Section 45-304.543. As a result of the deletion, the following subsections are renumbered for clarity and consistency.

Section 45-304.55

Specific Purpose:

This section is adopted to require counties to monthly report all legally uncollectible overpayments and uncollected overpayments to the department.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.23(c)(1) which specifies that counties are not required to repay the overpayment under specific circumstances as identified in Section 45-304.54. Legally uncollectible and uncollected overpayments that counties are not required to repay must be repaid by the state. This section requires counties to provide documentation to support all legally uncollectible overpayments identified in Section 45-304.125 and Section 45-304.126 and uncollected overpayments made as identified in Section 45-304.123.

Section 45-305

Specific Purpose:

The section title is amended to identify that the section provides regulatory instruction to counties for collectible AFDC-FC overpayment for all foster care providers when determining methods of overpayment recovery.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the department in consultation with the County Welfare Director's Association to update existing regulations and establish new regulations where lacking for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments by county agencies to foster care providers or adoption assistance recipients, and requires the regulations to specify the required actions of county agencies to recoup overpayments. This section is amended to give instruction and provide authority to counties regarding procedures to recoup overpayments from all foster care providers.

Section 45-305.1

Specific Purpose:

This section is numbered and amended to direct counties to utilize a Statewide Notice of Action form to inform foster care providers of the overpayment, and that providers are required to repay the overpayment if it is a legal overpayment. This amendment also provides counties with guidance and clarifies specific information that must be in the Statewide Notice of Action form. Providing adequate notice to the overpaid provider of the overpayment is required Due Process under the State and Federal Constitution.

Factual Basis:

A Statewide Notice of Action provides consistency statewide in compliance with Due Process notice requirements under the State and Federal Constitution. This form has been developed in consultation with the County Welfare Director's Association and workgroup members and will be used as an official notification to foster care providers of legally collectible overpayments. This form is NA 1261 (5/09), which is incorporated by reference and is not printed in the CDSS' Manual of Policies and Procedures (MPP) because it would be cumbersome and impractical; however, the form will be available at the CDSS website.

Final Modification:

This section was amended to remove the reference to the "Statewide developed" form.

Sections 45-305.11 through .17

Specific Purpose:

These sections are adopted to identify, for clarity and consistency, the elements of notification that will be used in the Statewide Notice of Action. Counties will be authorized to request overpayments, but must provide information to the provider regarding the overpayment to assist providers in determining if an appeal of the request for repayment of the overpayment is needed.

Factual Basis:

To facilitate consistency statewide, a Statewide Notice of Action form has been developed, and will be used to notify providers of overpayments. This regulatory addition describes the content of the Statewide Notice of Action, which is required Due Process notice under the State and Federal Constitution.

Section 45-305.2 (Renumbered from 45-305.1)

Specific Purpose/Factual Basis:

This section is renumbered to reflect the addition of Section 45-305.1.

Sections 45-305.21 through .213

Specific Purpose/Factual Basis:

These sections are adopted to provide the order of priority when a provider agrees to voluntarily repay an overpayment.

Sections 45-305.22 and .221

Specific Purpose:

These sections are adopted to provide the definition of a Voluntary Lump Sum Repayment as one of the voluntary repayment options.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(c)(1) and requires that specific processes to implement collection and repayment be developed which includes voluntary repayment procedures. By adding a process for the provider to voluntarily repay the overpayment by lump sum prior to the date agreed upon by the county and the provider, it releases the provider from written repayment agreements and reduces costs associated with hearings if the provider fails to comply with written repayment agreements.

Sections 45-305.23 and .231 (Renumbered from 45-305.11 and .111 respectively)

Specific Purpose:

These sections are renumbered for consistency in regulation development. Section 45-305.231 is amended to authorize and clarify for counties the process for entering into a voluntary repayment agreement with providers. This section directs counties entering into a voluntary repayment agreement with providers to ensure the county and the provider sign repayment agreements which will include the terms of repayment and the consequences for failure to comply with the terms of the agreement.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(c)(1) and requires that specific processes to implement collection and repayment be developed which includes voluntary repayment procedures. This section describes the types of provisions that are required content of the voluntary repayment agreement.

Section 45-305.231(a)

Specific Purpose:

This section is adopted to provide assurances in regulation, for both counties and providers, that when voluntary repayment agreements are made, that the provider has sufficient funds for care of the children after payment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section requires that the voluntary repayment agreement contain a provision that the provider has sufficient funds to provide adequate care and supervision after the payment.

Section 45-305.231(b)

Specific Purpose:

This section is adopted to direct counties to include language in the voluntary repayment agreement that informs the provider that the provider is responsible to inform the county of any financial circumstances that may indicate hardship in providing care and supervision to children during the period the agreement is in effect.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section requires that voluntary repayment agreement provide that the provider has a duty to timely notify the county of any circumstances where continued payment may impair its ability to provide adequate care and supervision.

Section 45-305.231(c)

Specific Purpose:

This section is adopted to require counties to include in the voluntary repayment agreement provisions of specific consequences for non-compliance with the terms of the voluntary repayment agreement. This provision will promote compliance with the voluntary repayment agreement, and provide adequate notice to the provider of the consequences for failure to pay.

Factual Basis:

In order to provide authority to counties to apply consequences for failure to comply with voluntary repayment agreements and to provide providers with notice of these consequences, this provision requires that the voluntary repayment agreement contain possible consequences for failure to repay.

Section 45-305.231(d) and Handbook

Specific Purpose:

This section is adopted to ensure that a provider entering into a voluntary repayment agreement is aware that they are waiving their right to appeal of the overpayment determination, thereby providing the county with authority to dismiss any appeal the provider may have filed in that matter. The handbook section provides, for ease of reference, the regulatory language of MPP Section 22-003.15 which is cross-referenced in regulation Section 45-305.231(d).

Factual Basis:

This section is necessary to provide notice to a provider entering into a voluntary repayment agreement that it has waived its appeal of the overpayment determination. By inference, it provides authority for counties to dismiss any pending or future appeals by the provider of the overpayment at issue.

Section 45-305.231(e)

Specific Purpose/Factual Basis:

This section is adopted to ensure that voluntary repayment agreements can be amended only with the written consent of both the provider and the county. This provision will avoid confusion associated with verbal agreements, by requiring that the agreement can be modified only by written consent of both parties.

Sections 45-305.24 and .241 (Renumbered from 45-305.12 and .121 respectively)

Specific Purpose:

Section 45-305.24 is renumbered for consistency in regulation. Section 45-305.241 has been renumbered and amended to provide instruction to counties regarding the content of voluntary grant offsets. This section clarifies that if a voluntary grant offset is agreed to between the county and the provider that specific information regarding the repayment will be in the agreement.

Factual Basis:

Voluntary grant offset is an alternative way a provider can make overpayment repayment. Grant offset relieves a provider from having to make a monthly payment, which may be more convenient for the provider. Grant offset also avoids missed payments.

Section 45-305.241(a) (Renumbered from 45-305.121(a))

Specific Purpose:

This section is renumbered and amended to indicate that the voluntary grant offset agreement must ensure that the provider has sufficient funds to provide care and supervision to all children in care after the offset.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section requires that the provider and counties entering into a voluntary grant offset ensure that sufficient funds to provide adequate care and supervision will exist after the offset occurs.

Section 45-305.241(b) (Renumbered from 45-305.121(b))

Specific Purpose:

This section is renumbered and amended to delete language where it assumes a grant offset has already been agreed to by the provider and establishes in regulation a maximum amount for a grant offset. This amendment is provided for clarity and consistency in regulation.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or

adoptive child. This provision further ensures that the amount of the offset will be modest, and will not likely impair the ability of the provider to provide adequate care and supervision to children in care.

Handbook Section 45-305.241(b)(1) (Renumbered from 45-305.121(b)(1))

Specific Purpose/Factual Basis:

The section number is deleted.

Section 45-305.241(c) (Renumbered from 45-305.121(c))

Specific Purpose:

This section is renumbered and amended to specifically address a voluntary grant offset. This section is also amended to clarify that the voluntary grant offset may only apply to the child's grant for which the overpayment was assessed.

Factual Basis:

This amendment is necessary to clarifies that only the grant of a child for whom the overpayment was assessed may be voluntarily offset.

Handbook Section 45-305.241(b)(1) (Renumbered from 45-305.121(c)(1))

Specific Purpose/Factual Basis:

The section number is deleted.

Section 45-305.241(d)

Specific Purpose:

This section is adopted to provide clarity and guide counties to reassure providers to communicate any fiscal hardships that jeopardize the care and supervision of the children, under a voluntary grant offset.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section is added to clarify that providers are responsible to notify counties of any financial changes that may require the offset to be reconfigured to ensure the best interest of the children are being met.

Final Modification:

As a result of testimony received, this section has been amended to delete the word, "timely" when requiring the provider to inform the counties when an offset may result in insufficient care and supervision to all children in care.

Section 45-305.241(e) and Handbook

Specific Purpose:

This section is adopted to ensure that a provider entering into a voluntary offset agreement is aware that they are waiving their right to appeal of the overpayment determination, thereby providing the county with authority to dismiss any appeal the provider may have filed in that matter. The handbook section provides, for ease of reference, the regulatory language of MPP Section 22-003.15 which is cross-referenced in regulation Section 45-305.241(e).

Factual Basis:

This section is necessary to provide notice to a provider entering into a voluntary offset agreement that it has waived its appeal of the overpayment determination. By inference, it provides authority for counties to dismiss any pending or future appeals by the provider of the overpayment at issue.

Section 45-305.241(f)

Specific Purpose/Factual Basis:

This section is adopted to ensure that voluntary repayment grant offset agreements can be amended and must be done with the written consent of both the provider and the county. Existing regulation allows for voluntary grant offset agreements and this added language provides county and provider protection against jeopardizing the placement of the child(ren). This section allows for amendments to those agreements, and it must be agreed to in writing by both parties.

Sections 45-305.3, .31, .32, .321 (Renumbered from 45-305.2, .21, .22, and .221 respectively)

Specific Purpose/Factual Basis:

These sections are renumbered to provide consistency in regulation development. Renumbered Section 45-305.231 is amended to provide added clarification to counties identifying that repayments of overpayments from providers only apply to legally collectible overpayments.

Section 45-305.321(a) and Handbook (a)(1) (Renumbered from Section 45-305.221 and Handbook (a)(1) respectively)

Specific Purpose:

This section is renumbered and amended to increase the deduction recovered by involuntary grant adjustment, from 5 percent to 10 percent. The handbook number is deleted and the example provided amended to reflect the percent change from 5 to 10.

Factual Basis:

This provision ensures that the amount of the offset will be modest, and will not likely impair the ability of the provider to provide adequate care and supervision to children in care while being consistent with the voluntary grant offset calculation. Existing regulations for voluntary grant offset sets the offset calculation at 10 percent. It is inconsistent that a provider who voluntarily establishes a grant offset should pay more than a provider who does not. Changing the involuntary grant offset to 10 percent provides some measure of equity for providers who voluntarily repay overpayments and those who do not voluntarily repay overpayments.

Section 45-305.321(b) and Handbook (b)(1) (Renumbered from 45-305.221(b) and Handbook (b)(1) respectively)

Specific Purpose/Factual Basis:

This section is renumbered and the handbook number is deleted for consistency.

Section 45-305.32(c)

Specific Purpose:

This section is adopted to provide regulatory authority for counties to reduce involuntary grant adjustments if it is determined that the grant adjustment is jeopardizing the care and supervision to children in care.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section has been added to provide regulatory assurances that if an involuntary grant adjustment is jeopardizing the care and supervision of children in care, the county must reduce the grant adjustment amount to ensure the provider has sufficient funds to care for the children.

Section 45-305.32(d)

Specific Purpose:

This section is adopted to provide clarity and guide counties to reassure providers to communicate any fiscal hardships that jeopardize the care and supervision of the children, under an involuntary grant adjustment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) wich indicates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child. This section has been added to clarify that providers are responsible to notify counties of any financial changes that may require the offset to be reconfigured to ensure the best interest of the children are being met.

Section 45-305.33

Specific Purpose/Factual Basis:

This section is adopted to provide counties with authority to apply interest on overpayments under specific conditions. Welfare and Institutions Code Section 11466.235(a) requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds to include a process for determining the accrual of interest on overpayments.

Section 45-305.331

Specific Purpose:

This section is adopted to provide authority and guidance to counties on the collection of interest for overpayments under certain circumstances.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds to include a process for determining the accrual of interest on overpayments. This section is added to clarify that counties are required to collect interest on the overpayment only if the provider fails to enter a voluntary repayment agreement or the provider does not comply with the terms of a voluntary repayment agreement. This section also identifies that there are circumstances where interest on overpayments will not be assessed and collected.

Sections 45-305.331(a), (a)(1), (2) and (3)

Specific Purpose:

These sections are adopted to clarify for counties the circumstances under which interest on the overpayment will not be assessed and collected.

Factual Basis:

SB 84 amended Welfare and Institutions Code Section 11466.24(a) to allow counties to collect overpayments from foster family homes, an approve home of a relative, an approved home of a nonrelative extended family member, or an approved home of a nonrelative legal guardian except under certain conditions, in which case counties are not authorized to collect overpayments. Specifically, Welfare and Institutions Code Section 11466.24 provides that for overpayments made to specified providers for any period of time in which the foster child was not cared for in that home, interest may not be collected. This added section clarifies that interest will not be assessed on overpayment collection made to specified providers if the overpayment was as a result of the described circumstances.

Final Modification:

Prior to the emergency adoption and after the regulations had been noticed for public hearing, Section 45-305.331(a) was amended for clarity and conformity with law by adding "none of the following conditions existed" at the end of the section.

Section 45-305.331(b)

Specific Purpose:

This section is adopted to provide guidance to counties and an assurance to providers that the collection of interest must not provide a financial hardship jeopardizing the availability of placements for foster or adoptive children.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which mandates that the recovery of unauthorized funds is done in a manner that does not jeopardize overall availability of placements for foster or adoptive children or the best interests of the foster or adoptive child.

Final Modification:

Prior to the emergency adoption and after the regulations had been noticed for public hearing, Section 45-305.331(b) was amended to correctly follow the lead-in section (45-305.331 [The county shall collect interest..., unless:]) by changing "Interest collection ~~*should not*~~ *would* cause a financial hardship..."

Section 45-305.332

As a result of testimony received, this section is being adopted to instruct counties how to accurately calculate interest for overpayments (in accordance with Welfare and Institutions Code Section 11466.22(d)(4)), and to ensure that the collection of interest does not create financial hardship that will impact a provider's ability to provide adequate care and supervision.

Section 45-305.34

Specific Purpose:

This section is adopted to clarify for counties that the collection of overpayments for group homes and foster family agencies will be done in accordance with existing regulations identified in the Manual of Policies and Procedures Section 11-402.66.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds to include a process for determining the accrual of interest on overpayments. The collection of overpayments for group homes and foster family agencies arising from rate audits conducted by the department is in existing regulations; and, this regulatory addition applies those collection rules to county overpayments to group homes and foster family agencies. Counties must reference and apply those regulations for implementing collection from those providers.

Existing Section 45-305.23

Specific Purpose/Factual Basis:

This section is repealed as demand for repayments are being addressed throughout Section 45-305.

Section 45-305.35 (Renumbered from 45-305.24)

Specific Purpose:

This section is renumbered for consistency in regulation development. Additionally, this section is amended to provide guidance to counties to apply civil judgment processes and procedures in those cases where the overpayment debt is uncollectible because of non compliance or other circumstances, unless the costs of pursuing civil judgment exceeds the amount of the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds. Existing regulation allows counties to take action to refer and record a civil judgment against the provider for the overpayment debt. This section is amended to direct the county to take civil judgment action where applicable, unless the costs exceed the amount of the overpayment.

Section 45-305.351, .352, and .353 (Renumbered from 45-305.24 (partial), .241, and .242 respectively)

Specific Purpose/Factual Basis:

These sections are renumbered for consistency in regulation development and amended to provide clarity in regulatory language.

Section 45-305.354

Specific Purpose:

This section is adopted to require counties to document those cases where it did not pursue civil judgment because the costs of recovery exceeded the amount of the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the development of specific processes to implement collection and repayment of overpaid federal AFDC-FC funds. Welfare and Institutions Code Section 11466.23(c)(1) also identifies circumstances under which counties are not required to repay the federal share of the overpayment, and includes situations where the cost of collection exceeds the amount of the overpayment. In this case, the county should document the county's decision to write off the overpayment. This section requires counties to maintain the documentation as specified in Section 45-304.125(c), to support the decision. Documentation of this type will ensure that overpayment write-offs are legitimate and fact based.

Section 45-306

Specific Purpose:

The section title is amended to reflect that this section addresses informal and formal hearing procedures. The introductory paragraph is amended to provide direction to counties regarding the appeal right of providers for collectible overpayments and clarifies that informal and formal hearing processes are not available to providers who have entered into voluntary repayment agreements, to contest the overpayment determination or amount.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the establishment of new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayments by county agencies to foster care providers and adoption assistance recipients. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section clarifies that hearing rights apply to only collectible overpayment assessments; and, reiterates that providers who enter into a voluntary repayment agreement are waiving their right to the hearing process for the purpose of contesting the determination or the amount of the overpayment.

Section 45-306.1

Specific Purpose:

This section is amended to change the phrase "interfere with" to "preclude" the provider's right to a state hearing. This amendment provides clarity and consistency with regulation development.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires the establishment of new regulations for the identification, determination, tracking, notification, and collection of foster care and adoption assistance overpayment by counties agencies to foster care providers and adoption assistance recipients. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section clarifies that the informal hearing process does not preclude the provider from filing a state hearing.

Section 45-306.21

Specific Purpose:

This section is amended to require counties to provide written notice to providers regarding the hearing process at the time the counties notice the providers of the overpayment on the Statewide Notice of Action Form.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of a Notice of Action. A Statewide Notice of Action would provide consistency statewide for the noticing of overpayments which will include information on the provider's rights to appeal. This form has been developed in consultation with the

County Welfare Director's Association and workgroup members and will be used as an official notification to providers of collectible overpayments. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section clarifies that counties will inform providers of the overpayment and the appeal rights through the Statewide Notice of Action.

Section 45-306.22

Specific Purpose:

This section is amended to inform providers and authorize counties to conduct an informal hearing no later than 30 calendar days after the Statewide Notice of Action is mailed to a provider notifying them of the overpayment.

Factual Basis:

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of a Notice of Action. Existing regulation identifies providing an informal hearing no later than 30 days after notification. This section establishes a 30 calendar-day timeframe for the conduct of the informal hearing from the date of the request. This amendment provides clarity and consistency to counties and providers.

Section 45-306.23

Specific Purpose:

This section is amended to more specifically prescribe that the informal hearing will be conducted by a designated county employee who is knowledgeable in the subject area, but not the same person who made the initial determination.

Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing. This section deletes language that requires that the hearing be conducted by a person who is at least one supervisory level above the employee who made the determination, and instead allows the hearing to be conducted by a person who is knowledgeable in the subject area, but not the person who made the overpayment determination. This change will permit counties more flexibility in designating the informal hearing officer, and may lower costs for the informal hearing process.

Final Modification:

As a result of testimony received, this section has been amended to now allow an employee designated by the county to be the informal hearing officer, which allows the county more flexibility in assigning this activity.

Section 45-306.24

Specific Purpose:

This section is amended to update existing regulatory language for clarity and consistency. This section is also amended to facilitate use of more convenient hearing locations and hearings by telephone.

Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing. Existing regulations allow for informal hearings to be conducted in an office or facility of the CWD unless it is necessary to hold the hearing elsewhere or by telephone. This section amendment provides more flexibility for the parties to agree to other hearing locations or to conduct the informal hearing by telephone.

Section 45-306.26

Specific Purpose/Factual Basis:

This section is amended to correct a cross reference that is being changed in this regulation package and to change the word "should" to "may" regarding the county's discussions of the methods of overpayment recovery with providers. These amendments provide consistency in regulatory language development.

Section 45-306.27

Specific Purpose:

This section is amended to reflect that the results of an informal hearing will be issued through a letter instead of a Notice of Action.

Factual Basis

SB 84 added Welfare and Institutions Code Section 11466.235(a) which requires development of a Notice of Action. A Statewide Notice of Action would provide consistency statewide for the noticing of overpayments which will include information on the provider's rights to appeal. This form has been developed in consultation with the County Welfare Director's Association and workgroup members and will be used as an official notification to providers of overpayments. Existing regulations allow providers to request a review of the overpayment determination in an informal hearing. This section clarifies that counties will inform providers of results of the informal hearing through a letter that also informs the provider they can appeal the informal hearing decision. The Statewide Notice of Action will be used to notify providers of the determination of a collectible

overpayment. The results of an informal hearing can be issued through a letter which also informs the provider of their appeal rights of the informal hearing decision.

Handbook Section 45-306.27

Specific Purpose/Factual Basis:

This handbook section provides an example on how to apply the time frames specified in the regulations.

Final Modification:

As a result of testimony received the first paragraph of this handbook section has been amended to replace the word "implementation" with "application." This change clarifies that counties determine an overpayment through application of regulatory procedures to ensure a consistent process statewide as a protection to providers, the county and the state. Further, an unnecessary paragraph is deleted.

Section 45-306.3

Specific Purpose:

This section is adopted to clarify the formal hearing timeframe as 90 days. This section also clarifies and provides guidance to counties regarding the suspension of the 90 day timeframe if the provider has filed for an informal hearing and to clarify when the 90 day timeframe starts for providers to file a formal hearing after the informal hearing, when the provider withdraws the request for an informal hearing, or fails to appear for the informal hearing.

Factual Basis:

Existing regulations allow providers to request a review of the overpayment determination in an informal hearing, or providers may file a request for a formal hearing to appeal the overpayment determination. This section is necessary to provide clarification and guidance to counties regarding the timeframes between informal and formal hearing requests.

Handbook Section 45-306.3

Specific Purpose/Factual Basis:

This handbook section provides examples on how to apply the time frames specified in Section 45-306.3.

Final Modification:

As a result of testimony received, clarifying changes were made to this handbook section.

b) Identification of Documents Upon Which Department Is Relying

- Senate Bill 84, Chapter 177, Statutes of 2007, Sections 32, 33, and 34
- Implementation Guidance for the Improper Payments Information Act of 2002, P.L. 107-300
- Section 472(a)(1), Social Security Act

c) Local Mandate Statement

These regulations do impose a mandate on local agencies but not on school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California. Any local costs associated with this order can be avoided through local agency compliance with State rules requiring accurate payments for foster care providers.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on August 12, 2009 in Sacramento, California. No oral testimony was received, however, written testimony was received from the following during the 45-day comment period from June 26, 2009 to 5:00 p.m. August 12, 2009:

- Marjorie Shelvy, Senior Attorney, Legal Aid Foundation of Los Angeles
- Maritza Rodriguez Farr, MPA, CFS Deputy Director, County of Orange Social Services Agency
- Judy Varela, Supervising Program Specialist, Program Development Division, County of San Bernardino Human Services
- Robert E. Kalunian, Acting County Counsel, County of Los Angeles, Office of the County Counsel

The comments received and the Department's responses to those comments follow.

- Marjorie Shelvy, Senior Attorney, Legal Aid Foundation of Los Angeles, submitted the following comment: (Comment #1)

General Comment

1. Comment:

The proposed regulations, and the proposed Notice of Action (NOA), do not comply with State law, specifically Welfare & Institutions Code § 11466.24. The proposed regulations refer to this statute but omit any provision for safeguarding the rights of the clients/caregivers, in violation of the requirements of due process.

As stated in "DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY," item #4: "The majority of the overpayments were county errors made to providers." Having acknowledged this truth, this proposal would shift the burden to providers. There is no provision in the proposed regulations to require that providers be notified of the legal requirements and prohibitions. Providers are not generally conversant with State regulations. Even if they are properly directed, which they are not, they have little or no capacity for understanding, interpreting and enforcing the law. The proposed regulations rely entirely on Counties' absolute compliance in all respects. This does not happen now and will not happen with this proposal.

In practice, the Counties notify **all** providers that they are **required** to repay the total foster care overpayment. The notice used in Los Angeles County cites various reasons in support of the overpayment but makes no reference to county error or guide the client to dispute the claim. Providers are never informed that they are not required to repay an overpayment. The proposed regulations formally approve this dishonest practice.

The proposed NOA states "You are required to repay the overpayment amount of $_____." It does not refer to who is/was responsible for the overpayment or adequately state the basis for it. Citing § 11466.24 at the bottom of the page, in the section titled "Regulations cited," is not sufficient to inform the provider of the prohibition against collecting overpayments resulting from County error. There is, and will be, nothing to dissuade counties from pressuring uninformed providers to sign a "Voluntary" Payment Agreement.

The proposed notice, as per the current county-developed notice, does not comply with the requirements of due process. Not only is there no reference to county error, the language is insufficient to inform the client of the specific basis for the claim. Thus, they are not given adequate notice of their right to decline repayment. Further, it essentially deprives providers of access to a State Hearing since they lack the required legal knowledge on which to base their appeal, or how to challenge an overpayment that the County alleges is due.

The proposed regulatory language in §§ 45-305.1-.7 does not overcome the glaring deficiencies of the proposed NOA itself.

Proposed regulation MPP § 45-304.124 authorizes the county to request that the provider "voluntarily return an overpayment, provided that the county inform the provider" that there is no "legal or other obligation" to do so. This relies solely on the County's absolute and unvarying compliance with this provision, without error, since providers have no independent knowledge of this requirement.

When, as now, the County does not give full disclosure, and pressures the provider to sign a "Voluntary Repayment Agreement," the provider has then unknowingly and permanently waived all of his/her due process rights to challenge the overpayment. New regulations §§ 45-305.231 and 45-305.241 make this explicit. The logical result will be a revised Agreement with more onerous language, continuing the disregard for due process. In the absence of specific and adequate protections, the term "voluntary" is meaningless.

The provision for an informal hearing, as at present, does no more than invite an unknowing provider to go to a County office to be asked to sign a Voluntary Repayment Agreement, and told the serious consequences of not doing so. The result, as with all the proposed provisions, relies totally on the County's compliance, and absolute accuracy, in the face of an uninformed provider.

In fact, this denial of due process without accurate and adequate information is specifically authorized in the proposed new regulation § 22-003.15, i.e. "state hearing rights are not available ... where the claimant entered into a voluntary repayment agreement." Thus, a provider who unknowingly enters into such an agreement, and later learns the truth, has no recourse.

There is no stated requirement to properly and adequately inform a provider of his/her legal rights, namely the right to refuse to enter into a Voluntary Repayment Agreement when s/he has no legal obligation to do so. The proposed NOA makes clear the State's intent to keep providers uninformed, in conflict with State Law as well as the federal and state requirements of due process.

The new provision to charge interest on overpayments either when a provider "fails" to enter a Voluntary Repayment Agreement, or does so and later defaults, merely exacerbates the injury. Having been denied adequate knowledge, the provider has also waived the right to appeal, even if s/he later learns that the overpayment resulted from county error, or that s/he has a valid basis to dispute it.

The rationale for the proposed regulations, stated throughout the provisions, is to provide "clarification and guidance" to the Counties, without regard to the due process rights of caregivers. They rely entirely on the Counties' unfailing compliance without explicitly requiring such. This is made all the more obvious in the proposed NOA, which assumes the Counties will abide by the law, without error or omission. This is not current county practice and will not be with the proposed changes.

The end result will be more hardship for those individuals caring for children for whom the State is legally responsible and, in turn, will add to the children's deprivation. Please re-examine and revise this proposal to protect caregivers and children.

Response:

The Notice of Action referred to in these regulations does not apply to small family homes, foster family homes, relative homes, nonrelative extended family members and non related legal guardians. As identified in Welfare and Institutions Code Section 11466.24, counties cannot demand repayment from these categories of foster care placement. SB 84 required CDSS to develop a NOA to facilitate collection of legally collectible overpayments. Requests for repayment of an overpayment that fall outside of the legally collectible category will be requested through a letter that identifies the overpayment and asks for voluntary repayment though no adverse action if not repaid. There are no hearing rights identified as there is no adverse action.

- Maritza Rodriguez Farr, MPA, CFS Deputy Director, County of Orange Social Services Agency, submitted the following comments: (Comments #2 - #8)

Section 11-425.122(a)

2. Comment:

The county shall use reasonable efforts to determine if a provider was employed in similar capacities in a corporation that has not fully repaid any overpayment of AFDC funds.

Question: How will counties know there is a provider that has not repaid any overpayments? What needs to be done by counties to meet this new mandate?

Response:

The commenter has identified an area where the scope of the rule might have exceeded our intent and we have clarified this.

The regulations have been amended to allow reasonable efforts to mean that counties can contact the department's audits and rates branch or the community care licensing children's residential services division as reasonable efforts. We have clarified the provider to be a corporation licensed to operate a group home or foster family agency.

Sections 45-123, .124, and .125

3. Comment:

How do we distinguish all legally uncollectible overpayments and uncollected overpayments due to operation of Sections 45-304.123, .124, and .125 from

overpayments made to Group Homes and FFAs on the monthly CA 800 Overpayments Fed claim?

On the CA 800 Overpayments Fed claim, how will the federal share of uncollected newly identified overpayments in the current claiming month be recouped?

The total collections on overpayments are reported in the Recoveries of Aid section on the CA 800A Fed (Aid Type 03) and CA 800FC Fed (Aid type 42). These amounts reduce the total amount eligible for reimbursement. However, the County would have remitted the 60% of the Federal share in the month the overpayment was identified on the CA 800 Overpayments Fed Claim (Row 2). How can we insure that the feds only recoup their share of the collected overpayment amount once since the amounts are reported in both the CA 800 Overpayments Fed Claim and the CA 800A Fed/CA 800 FC Fed?

Response:

The foster care overpayment tab identifies these. CDSS will be replacing the CA 800 tab for overpayments. There will be a check box for counties to indicate uncollectible or uncollected overpayments.

Section 45-304.542

4. Comment:

Overpayments which are uncollectible by operation of Section 45-304.125(b)(4) states This provision is if the overpayment is less than $100.00.

Question: Does this mean any overpayment under $100.00 is not collectible and we do not have to report or pay it back to the state/feds?

Response:

This permits counties to have a write-off policy for amounts made under $100.00. It gives counties the ability to write off these overpayments, but they are still collectible and reportable.

Section 45-305.33

5. Comment:

Interest on overpayments can be collected when the foster care provider has either failed to enter into a voluntary repayment agreement, or has failed to comply with the terms of a voluntary repayment agreement with the following exceptions:

- Relatives, NREFM, LG, and foster homes. Regulation 45-305.331(a) seems inappropriate since the overpayments are not collectible.

Response:

Only those overpayments made to relatives, NREFM, legal guardians and foster homes for periods in which the child was not in the home does the rule for applying interest pertain. Overpayments are uncollectible only when the child is in the home and none of the other conditions apply.

Section 45-305.331

6. Comment:

Section .331 states that, The county shall collect interest on overpayments in circumstances in which the overpaid provider has either failed to enter into a voluntary repayment agreement; or has failed to comply with the terms of a voluntary repayment agreement, unless certain conditions are met. Can the wording be changed to may instead of shall to give the county an option of not applying interest? If the wording cannot be changed, could a clause be added, stating that you don't have to charge interest if it is not cost effective for the county.

What kind of interest are we talking about (percentage rate, straight, compound) and once established, who would maintain the balances on the continuing accumulating interest?

Response:

CDSS has determined that collection of interest is a necessary incentive to comply with voluntary repayment. This section identifies those circumstances where the county should not collect interest on overpayments, and it would be at the county's discretion to determine if those circumstances existed. CDSS has inserted language in Section 45-305.332 to instruct counties to use an interest computation as found in Welfare and Institutions Code Section 11466.22(d)(4).

Section 45-306.23

7. Comment:

The informal hearing shall be conducted by an employee designated by the county welfare director. The designated employee shall be knowledgeable in the subject area and shall not be the person who made the initial overpayment determination.

Question. Can the State provide more clarification about the person who can be the informal hearing officer? Example: Can an employee who works in the chain of command where the initial overpayment determination was made conduct the fair hearings?

Response:

As a result of another comment, CDSS has changed this section to indicate that the informal hearing be conducted by a person designated by the county in order to give the county flexibility in assigning this activity to either an employee or perhaps a contracted entity.

Section 45-306.27

8. Comment:

Question: How will the county cost of a formal State Hearing be addressed by CDSS.

Response:

This is beyond the scope of being a regulation issue. This is an implementation issue.

- Judy Varela, Supervising Program Specialist, Program Development Division, County of San Bernardino Human Services, submitted the following comments: (Comments #9 - #39)

General Comments

9. Comment:

Need to use terms consistently. The word grant, foster care maintenance payment and [sic] have been used to describe aid payment.

Response:

Not identified (where). There are areas in the regulations that were amended and there are areas of regulation that were not changed. In those areas that were ameded, we have ensured consistency in the terms.

10. Comment:

Add a definitions section, and include requirements as related to discovery of overpayment, timely report, identified overpayment, etc.

Response:

CDSS believes that these terms are adequately explained by the operational requirements set forth in regulation Sections 45-303 and 45-304.3. Accordingly, CDSS does not feel that a specific definition section is required. However we have provided further clarity where needed.

Section 22-003.15

11. Comment:

There is unnecessary wording and the regulation cite is incorrect.
Recommendation: Delete the following wording "or where the county requested voluntary repayment," and correct the regulation cite.

Response:

CDSS agrees with the comment and has corrected the mentioned regulation as requested.

Section 45-302 (Handbook)

12. Comment:

The two paragraphs under "handbook begins here" is not appropriate for a handbook section as these are directives
Recommendation: The information should be in regulations, as these appear to be regulations and not examples.

Response:

The mentioned paragraphs are being removed to avoid possibility of directive language in a handbook section.

Section 45-302 (Examples)

13. Comment:

The examples should be written as situations/statement not as questions.
Recommendation: Example 1: Reword example 1 as follows: "The youth is in a foster home placement and runs away from the placement on January 24th. The child returns to the same placement 14 days later on February 7th. Since the child was not absent in January for more than 14 days and was not absent in February for more than 14 days, the county will issue a full month's payment for both January and February."

Recommendation: Example 2: Reword example 2 as follows: "The youth is in a foster home placement and runs away from the placement on January 24th. The child returns to the same placement 18 days later on February 11th. The county will issue a full month's payment for both January and February since the child was not absent more than 14 days in either January or February."

Recommendation: Example 3: Reword example 3 as follows: "The youth is in a foster home placement and is hospitalized in a private hospital from January 2nd to January 14th and then again January 20th through January 27th. Since the youth was absent from placement for more than 14 days in the calendar month, the county will have to prorate the maintenance payment to reduce the payment by the number of days exceeding the 14 days."

Response:

Examples provide adequate guidance to common questions. These examples were developed and reviewed by the regulations workgroup and CDSS disagrees with the comment and respectfully declines to accept it.

Sections 45-303.21 and .22

14. Comment:

Reword .21 and .22 for clarity and define timely report.
Recommendation: Reword .21 as follows "Report timely that a child…"
Recommendation: Reword .22 as follows "Report timely the date the child…"

Response:

We have made the above-referenced grammatical change. Additionally, CDSS has identified in this section of the regulations that counties must provide adequate written notification. This can be considered a definition of timely as the due date will be as defined in the written notification the county has issued to the provider.

Section 45-303.4

15. Comment:

Add .4 to explain what actions the County should take when the provider does not give verifications as requested by the County.

Response:

CDSS is adding Section 45-303.4 to identify that failure of the provider to provide the required information may result in the county not making payment.

Section 45-304.111

16. Comment:

.111 does not appear to follow the information in .1 and CDSS should not regulate that counties develop and institute a program of internal controls to avoid making

overpayment. This is a practice that Counties follow. Additionally, other programs (CalWORKs and Food Stamps) do not regulated that counties develop and institute a program of internal controls to avoid making overpayment
Recommendation: Delete Section .111, and .111(a).

Response:

This section was added in an effort to reduce waste and loss of public funds. CDSS believes that the public has a reasonable expectation that tax dollars are spent reasonably and properly. Since the identification of the State's non compliance with the Improper Payment Information Act of 2002, the state has identified and repaid over 12 million dollars in the federal share of overpayments identified through county error, state audits and county compliance audits. With the enactment of these regulations, counties are required to repay the federal share of legally collectible overpayments, also caused through county error. The State has a stake in reducing overpayments because the State is liable for all legally uncollectible overpayments. Many counties have already implemented best practices and certain internal controls that have already greatly reduced overpayments. Several counties have implemented systems that require providers to verify the number of days a child was in care prior to issuance of payment. Many counties have moved the payment date to the middle of the following month in order to verify the number of days a child was in care for the previous month, allowing a correct payment to be made. Internal controls have the ability to identify fraud as well as accidental overpayments; and, unlike the Food Stamp Program which has criminal sanctions, AFDC-FC allows some providers to keep the overpayment. Requiring the county to develop and institute a program of internal controls yet not specifically prescribing what those internal controls are to be is a reasonable balance of shared responsibility for the discovery, identification, tracking, and repayment of overpayments made to providers.

Section 45-304.111(c)

17. Comment:

.111(c): Explain what actions the County should take when the provider **does not** give verifications as requested by the County.

Response:

CDSS has added Section 45-303.5 to identify that failure of the provider to provide the required information may result in the county not making payment.

Section 45-304.113

18. Comment:

Comment: .113 reword for clarity;

Recommendation: Rewords as follows: "…payment to an eligible facility for a child temporarily absent…"

Response:

The Department agrees and is making this change.

Section 45-304.121(a)(1)

19. Comment:

.121(a)(1): CDSS should not regulate methods of discovering overpayments.
Recommendation: Delete this section.

Response:

CDSS believes an adequate system of discovering overpayments must include at least these three methods to ensure an adequate system exists for overpayments. Accordingly, we decline to accept this comment.

Section 45-304.121(b)

20. Comment:

.121(b): The sentence "… and include a description of the circumstances that resulted in the payment error" is unnecessary.
Recommendation: Reword as follows: "…include the reason for the payment error"

Response:

The Department agrees and is making this change.

Section 45-304.124

21. Comment:

.124: Reword for clarity.
Recommendation: Reword as follows: …the county may request the provider voluntarily return an overpayment when the county informs the provider that they have no legal or other obligation to return the overpayment, and failure to return the overpayment will not result in any adverse action against the provider and any child living in the home.

Response:

The Department agrees and is making this change.

Section 45-304.125(b)

22. Comment:

.125(b) Should not require the Board of Supervisors (BOS) to approve the debt write-off policy. CalWORKs and Food Stamps write-office policy is written in regulations and does not require BOS approval.
Recommendation: Delete the requirement to have BOS approval.

Response:

CDSS agrees with the comment and is changing the regulation language to reflect that a county's debt write off policy should be approved by the county welfare director.

Section 45-304.125(b)(4)

23. Comment:

.125 (b)(4): Item (1), (2), and (3) appear to be any one, but the statement "An amount not to exceed $100," is confusing. Does this mean you cannot write-off any amount over $100, even if the cost of collection is more than $100?
Recommendation: Delete 125 (b)(4): as the amount ($100) seems unreasonable and does not allow for inflation.

Response:

In order to avoid possible confusion CDSS has modified Section 45.304.125(b)(4) to reflect that the written policy may include a provision permitting write off of an amount not to exceed $100. CDSS will not remove the section entirely as recommended as there is a duty to account for public funds and $100 is a reasonable amount based on administrative costs. CDSS believes $100 strikes an appropriate balance between the administrative expense of pursuing small overpayment amounts and the need to protect public funds.

Section 45-304.125(c)(2)

24. Comment:

.125(c)(2): Section 125(b)(4) [sic] write-off reasons appears to be permanent. As written, Counties will be required to constantly try to locate the provider and/or as if they are able to repay the overpayment. This is workload that Counties are unable to absorb.
Recommendation: Delete this section as all write-off reasons should be permanently written-off.

Response:

CDSS agrees with the recommendation and is deleting this section.

Sections 45-304.126(a) and .126(b)

25. Comment:

.126(a) and 126(b): The last sentence "This provision does not apply to law enforcement activities under the Penal Code," is not clear, do not understand what this means.
Recommendation: Either delete this sentence, or clarify what this means.

Response:

CDSS has clarified both sections to identify that these provisions do not apply if fiscal or financial audits are instituted by law enforcement agencies, such as the District Attorney's Office.

Section 45-304.3

26. Comment:

.33: Do not understand what "an offset to the administrative portion of any subsequent payments shall be used to recover the amount of the overpayment" mean.
Recommendation: Need to reword for clarity and state that the administrative portion of a payment is.

Response:

CDSS has revised this section. The administrative portion of a payment is identified on the CDSS AFDC-FC Rates for Group Homes and Foster Family Homes section of our website. Although we have clarified this section, we will also be including a link for where the administrative portion can be found. It is not appropriate to include this link in regulations.

Section 45-304.421

27. Comment:

.421: As written, the section is confusing.
Recommendation: Reword as follows: When the overpayment recovery was initiated within one year of the date the county discovered the overpayment, the county shall continue to recover an overpayment after three years from the date the counties discovered the overpayment.

Response:

CDSS has clarified this section to identify that the county continue to recover an overpayment until fully recovered or written off pursuant to the county's write off policy.

Section 45-304.542

28. Comment:

.542: The regulation cite is incorrect, as the 45-304.125(b)(4) applies to the write-off policy of $100 only.
Recommendation: Correct the regulations cite to read 45-304.125(b).

Response:

CDSS agrees and is deleting this section as it is redundant.

Section 45-305.1

29. Comment:

.1: Should not the revision date of the notice. Having the revision date will make this section incorrect with the first revision.
Recommendation: Remove the revision date.

Response:

The Department appreciates this comment, however, the Office of Administrative Law requires that if forms are used in regulation, they must have a revision date and to update the regulation every time the form is updated.

Section 45-305.24(d)

30. Comment:

.24(d): This cite requires the provider to inform the county timely, of circumstance when a payment offset may result in insufficient funds to provide adequate care to other children in care. If the provider does not report timely, does this mean the County will not stop or reduce the currently repayment amount?
Recommendation: Reword as follows: "…it is the responsibility of the provider to inform the county…"

Response:

CDSS agrees and is removing the word "timely" from this regulation.

Section 45-305.331

31. Comment:

331: The County shall collect interest on overpayment when the provider has failed to enter into a voluntary repayment agreement or failed to comply with the terms of the voluntary overpayment agreement. Who decides the amount of the interest to collect? Can each County establish their own interest rate?
Recommendation: The amount of interest should be prescribed by CDSS and included in regulations.

Response:

In response to this comment the Department has added Section 45-305.331(c).

Section 45-306.23

32. Comment:

.23: Should not regulate that the employee who conducts the informal hearing should be designated by the County Welfare Director. This does not allow for different county structure or flexibility.
Recommendation: The County should be able to determine who should conduct the informal hearing, and the decision may not be made the County Welfare Director. Delete the wording "county welfare department director.

Response:

CDSS has reviewed the comment and has reworded the section to indicate that the informal hearing shall be conducted by a person designated by the county. This will allow counties maximum flexibility to designate any appropriate person to review and conduct the informal hearing.

Section 45-306.24

33. Comment:

.24: Delete the word (Continued) at the end of this section.

Response:

The Department thanks the testifier for this comment. The word "(Continued)" at the end of the section means that there is a gap in the numbering sequence because not all the regulations in this section are being revised and therefore only the regulations being revised are shown, i.e., .25 is not being revised and therefore it is not shown.

Section 45-306 (Handbook)

34. Comment:

Handbook begins here – First Example: As worded, this seems to apply to initial implementation.
Recommendation: Reword as follows. "The county determines an overpayment was made to a group home provider.

Response:

CDSS wants to ensure that counties determine an overpayment through the regulatory procedures. CDSS is clarifying to indicate "through application of procedures…"

35. Comment:

Fourth paragraph under .24 [sic] states the county must repay the federal share of the overpayment. How does the County determine the federal/state/county share.
Recommendation: List the sharing ratios. This information is needed by eligibility staff who are entering this information into the computer system.

Response:

CDSS provides information on sharing ratios through a County Fiscal Letter. This information is not necessary to include in regulations due to any immediacy in a need to change the sharing ratios.

36. Comment:

The last example under .24 [sic] is not needed.
Recommendation: Delete the example.

Response:

CDSS has reviewed the comment and is removing the example.

37. Comment:

.3, Example #1: This example is not needed.
Recommendation: Delete the example.

Response:

CDSS has reviewed the comment and is removing the example.

38. Comment:

.3, Example #2: Need to clarify when the 90 days for filing for a formal hearing begins.
Recommendation: Add the following wording to the last sentence. "…of the date the decision letter was mailed."

Response:

CDSS agrees with the recommendation and is making the change.

39. Comment:

.3, Example 4. Reword for clarity.
Recommendation: Reword the example as follows: "The hearing is scheduled for January 31 and the provider's notice is mailed 7 days prior to the hearing…

Response:

CDSS agrees with the recommendation and is making the suggested change.

- Robert E. Kalunian, Acting County Counsel, County of Los Angeles, Office of the County Counsel, submitted the following comment: (Comment #40)

40. Comment:

Los Angeles County submits the following Argument and Statement regarding the general definition for "overpayment" set forth in Regulation 45-304 AFDC-FC; Overpayments For Foster Care Providers – General and the Notice of Action revisions.

A. OVERVIEW;

The County of Los Angeles has several concerns regarding the proposed regulations and those concerns can be summarized as follows:

1. We believe the proposed definition of an overpayment is insufficient. As currently written, it gives little, if any, practical guidance. The proposed regulations strive to implement certain provisions of SB 84 of 2007 which, in turn, were intended as a response to a June 1, 2006 letter from the United States Department of Health and Human Services ("HHS") to the State of California. In that letter, HHS informed the State that it had failed to fully comply with the Federal Improper Payments Act, and HHS referenced specific instances in which media and counties had identified payments which fell within the Improper Payments Act, but which the State had not treated as such. These regulations should clarify what circumstances constitute an overpayment lest this issue reoccur. For example, the regulations do provide for a county to conclude that payments made to a foster care provider, while a child is in the

home will be an "overpayment". However, for purposes of these regulations, there is no indication as to whether the term "overpayment" applies to cirucumstances such as the provider failed to adequately document how the funds were spent, or spent them in a manner inconsistent with applicable federal regulations. As currently written, the regulations do not clearly speak to this important issue.

2. We believe the Notice of Action document is also insufficient. In its current form, the Notice of Action allows the issuing agency to indicate "Other" as the reason for issuance. But this provides insufficient guidance, particularly in light of the preceding concern, as to what is the proper subject matter of the Notice of Action document.

B. ARGUMENT;

1. Definition of Overpayment -- The definition provided in Regulation 45-304.1.11 reiterates the statement of the legislature regarding the general definition but, fails to provide clarity regarding the Improper Payments Act of 2002, as it pertains to the definition of what circumstances constitute an "overpayment". The States Regulation 45-304.1.11 utilizes the broad terminology "an overpayment is any amount of aid paid which a foster care provider received on behalf of a child to which the provider was not entitled" as expressed in Welfare and Institutions Code Section 11466.23(b). This could also apply to circumstances not addressed by the regulations but, considered within the term "overpayment".

The State noted in its Initial Statement of Reasons, page 5, pursuant to Welfare and Institutions Code Section 11466.23(b), it was required to provide a more detailed definition of "overpayment". It went on to note that the definition of an "overpayment" was explained more thoroughly throughout the adopted regulatory language. However, the regulations fail to advise or refer to which other regulations clarify, limit, or provide further information/definition regarding the term "overpayment" and/or the circumstances which could give rise to an overpayment.

The Federal Improper Payments Act of 2002 lists overpayments as an "included" form of improper payment, within the Federal Improper Payments Act of 2002. Further, the Federal Improper Payments Act of 2002 addressed circumstances which could give rise to various forms of improper payments but, not necessarily be categorized or considered as an "overpayment". Based on the States regulations and nature of the States comments, it appears that the State defined "overpayment" in relation to the circumstance of placement cost for periods a child is not in the home but, for which the provider received payment. However, in light of the broad language noted in the general definition, counties could either include or not include, depending on their independent determinations, circumstances such as funds paid for items/actions not documented and or costs not qualifying for payment. This would result in disparity in determinations on what constitutes an overpayment as well as the application of due process.

A clear definition which includes the cirucumstances giving rise to an overpayment will avoid added county administrative costs/confusion resulting from the miss-application of the term "overpayment". If the circumstances giving rise to an overpayment are not included in the definition, then an additional regulation should be created which lists the known circumstances intended by the State as "overpayments" and should be referenced by Regulation 45-304.1.11. Last, if the State feels it has created such regulations, then the State should specifically identify the regulations which provide further guidance and reference those regulations within the General Definition of Regulation 45-304.1.11.

2. Notice of Action Lacks Clarity –"Other" -- If the State finds a further definition of "overpayment" should include circumstances which give rise to the "overpayment", then the Notice of Action should also be revised to provide for the further clarification(s). As it presently stands, the States Notice of Action includes a box "Other" which does give rise to concerns that other circumstances, not defined by the regulations, could exist. The State, if the term "Other" has an application to unidentified circumstances, should provide guidance and direction to the counties regarding the nature or limitations of other circumstances. the State could then provide "example(s)" of possible identified "Other" overpayment situations. This would assure the "Other" possible scenarios are collectible, assure proper notice, due process, and access to State Fair Hearings.

Even if the State determines the definition is sufficient, the revision of the Notice of Action should still occur. The counties will continue to be in a position requiring them to assume/guess what "Other" would refer to. As the State referred the counties to unidentified regulations for further clarity, the Notice of Action should at least set forth those regulations or provide examples of known/probable circumstances giving rise to an identified "overpayment". The section noted "Other" should be revised to include all probable circumstances contemplated by the State, if it believes "other circumstances or interpretations of the known circumstances" could give rise to an overpayment. This would insure a proper Notice of Action and Due Process will be offered, under circumstances or similar circumstances contemplated by the State in the definition of overpayments which could be set forth in the section "Other"

C. CONSIDERED DEFINITIONS AND REGULATIONS ;

1. PL 107-300 Improper Payments Information Act Of 2002;

(2) Improper Payment .—The term "improper payment" –

(A) means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory contractual, administrative, or other legally applicable requirements; and

(B) includes any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payments for services not received, and any payment that does not account for credit for applicable discounts.

2. Regulation 45-304.1.11 sets forth the following;

An overpayment is any amount of aid which a foster care provider received on behalf of a child to which the provider was not entitled. (The State struck the following language; "A provider is not entitled to aid where the provider did not care for the child in his or her home for the period of time for which he was paid.)

3. Initial Statement of Reasons, page 5, Section 45-304.11;

Specific Purpose;

The section was amended to delete the reference to a provider not entitled to aid where the provider did not care for the child in her home or for the period of time for which he/she was paid.

Factual Basis;

This section is amended for clarity. The provisions of SB 84 and Welfare and Institutions Code Section 11466.23(b) requires a more detailed definition of an overpayment. The repealed sentence is redundant and the definition of an overpayment is explained more thoroughly throughout the adopted regulatory language.

C. STATEMENT/CONCLUSION;

The broad nature of the language used in WIC 11466.23 and the failure to further define overpayment within the regulation, without details/circumstances, could result in counties failing to address other circumstances of payments which the State intended to categorize as an "overpayment". The regulations need to define the term "overpayment" by including the circumstance(s) which give rise to the application of the term "overpayment", within the context of "an amount of aid for which the provider is not entitled".

As the State is to define and implement the Federal Improper Payments Act of 2002, **as it pertains to "overpayments"**, without a further definition of the circumstances giving rise to "overpayments, the counties are left to extrapolate, assume, and implement a definition based on it's independent interpretation of unidentified other regulations, either within this series of regulations or not, which may or may not apply. This could result in various counties providing an interpretation greater or lesser than the definition intended by the State.

At present, there is no direction in 45-304.1.11 identifying other regulation(s) which provide further clarification, enumerates circumstances, or provides limitations regarding the definition of the term "overpayment". If the State determines that the general definition of 45-304.1.11 is sufficient, the State should consider an additional regulation which can be referenced by 45-304.1.11 and sets forth the circumstances intended by the State to constitute an "overpayment" If the State believes this

clarifying information is set forth in the present regulations, then the specific regulations which provide further definition of overpayment should be referenced by 45-304.1.11.

Last the State should consider revision of the Notice of Action, whether it further clarifies the definition or not. If a further definition or regulation including defined circumstances for overpayment issues, the forms provision of a section "Other" will not address the above concerns and will need further specificity to avoid compromising proper notice. The Notice of Action would still require revision, if no further definition is provided. It does not, without examples, provide sufficient guidance as to what "Other" circumstances give rise to an "overpayment". Again, it leaves each county to independently interpret what other acts would/may constitute overpayments for purposes of due process regarding overpayments.

The above concerns, if addressed, would avoid added State costs for Fair Hearing expenditures on cases for costs which may be questioned improper payments but, were not the costs considered by the State within the definition of "overpayment". Assure accurate reporting of all circumstances intended by the State which meet the definition of overpayment. Avoid interference and confusion for improper costs handled under different processes and regulations.

Response:

CDSS appreciates the comment and has added language to Section 45-304.11 to indicate that an overpayment can be an expenditure that does not conform to MPP Section 11-404.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from February 25 through March 12, 2010 was received. The comments received and the Department's responses to those comments follow.

- Marjorie Shelvy, Senior Attorney, Legal Aid Foundation of Los Angeles, submitted the following comments: (Comments #1 - 6)

General Comment

1. Comment:

The proposed regulations, and the proposed Notice of Action (NOA), do not sufficiently conform to State law, specifically to Welfare & Institutions Code § 11466.24. The proposed regulations do not adequately safeguard the rights of the caregivers and, in many respects, violate the requirements of due process. This

revision is an improvement but, despite this fact, these regulations assume Counties' absolute compliance in all respects.

In the initial notice of proposed changes, it was acknowledged that the majority of foster care overpayments are caused by county error. The provision against collecting such overpayments is buried in § 45-304.123, "shall not demand," but is overridden by the extensive and onerous emphasis on collection and on "voluntary" payment agreements, and now including interest.

These changes place the burden on the caregivers to *disprove* an overpayment. The repeated emphasis on no right to a state hearing, without exception, will serve only to deny due process to all caregivers who do not understand their rights and/or are mislead by the county. Taking the relevant regulations as a whole, the result is, will be, no right to a hearing:

§ 22-003.15: no right to a state hearing "where the claimant entered into a voluntary repayment agreement." No exception, no requirement that it be knowing and truly voluntary.

§ 45-305.241(c): "no right to a state hearing ... where the claimant entered into a voluntary payment agreement *or where the county requested voluntary repayment....*"

§ 45-305.231(d): "waiving rights to appeal."

§ 45-305.31: involuntary repayment procedures will be used "only when a provider has refused to enter a voluntary repayment agreement . . . ."

It must be recognized that counties do not routinely give full and accurate information to caregivers. With no provision for good cause or any other exception, the county may act with impunity. There needs to be a good cause exception, including in § 45-305.35, Civil Judgment.

The provision for using Form NA 1261 states that it "shall not be used in connection with an overpayment that the provider has no legal obligation to repay." § 45-305. This is essentially the same form used by Los Angeles County and is sent to *all* providers charged with an overpayment. In fact, several Counties notify **all** providers that they are **required** to repay the total foster care overpayment. Providers are *never* informed when they are not required to repay an overpayment. When a claimant in Los Angeles County requests a state hearing on the notice, the county cancels the overpayment without question (and only then).

The proposed regulations formally approve this dishonest practice. Under the current proposed regulations, if the form is sent to a non-liable provider, and the provider, not familiar with the law, signs a voluntary payment agreement and later learns of the error, there is no right to a hearing. The threatening language on the form (If you fail, etc.)

will be a further deterrent to appeal. The burden of any error, mistake, ignorance, etc. falls on the caregiver.

The form cites the applicable law as required, but this is not sufficient to adequately inform the caregiver of the prohibition against collecting overpayments resulting from County error. There is, and will be, nothing to dissuade counties from pressuring, as now, uninformed providers to sign a "Voluntary" Payment Agreement, and thereby waive their appeal rights.

These problems are exacerbated by § 45-304.125(c). The requirements to document *not* pursuing collection are more tedious than those for collection: a reverse incentive.

The provision for informal hearings, as at present, is insufficient. § 45-306. The reference to "collectible" does not overcome the county's incentive to get a Voluntary Repayment Agreement signed by an unknowing, uninformed caregiver. The result, as with all the proposed provisions, is an unrealistic reliance on the County's full compliance and absolute accuracy, presuming that errors are never made.

Response:

The Department thanks the commenter for these comments. CDSS respectfully disagrees that the proposed regulations unfairly or unreasonably limits the due process rights of providers who receive an overpayment. Due process to challenge an overpayment demand should be inapplicable to an overpaid provider who agrees that they were overpaid and who have voluntarily entered into a repayment plan. In this situation, the provider has already agreed with the overpayment determination and the duty to repay. Due process should be inapplicable to an alleged overpaid provider who the county has requested voluntary repayment from. In this situation, there is no consequence for the provider's decision to reject the request. There is no harm or impact on the provider from a voluntary request for repayment. Indeed, these rules will prohibit a county from demanding overpayment unless the county is legally authorized to demand repayment of the overpayment. This situation is distinguishable from the repayment of an overpayment that a provider is legally required to repay. In this situation, due process is a right for all overpaid providers to challenge the existence of the overpayment. This issue however is different from the issue of once an overpayment is established, either as a result of due process or from waiver of the right to due process, how the overpayment will be recovered. These rules provide that a provider can enter into a voluntary agreement that specifies the terms of repayment such as the amount to be repaid each month. If a provider refuses to enter into a voluntary repayment agreement where repayment is legally required, then the county is authorized to engage involuntary repayment measures against that provider.

We agree with the commenter that reducing the incidence of overpayments is in the interest of county welfare departments and providers alike. CDSS believes that implementation of these regulations should promote best practices that reduce county

error overpayments, which will also reduce the need of counties to request or demand overpayment recoupment from providers.

Section 45-304.4

2. Comment:

The provisions for discovery and documentation, § 45-304.4, provide a time limit on collection, based on the discovery date. How is that date determined, documented, verified? Depending on who decides and how, there is potentially an unlimited time frame for collection. Can the caregiver dispute the claimed discovery date?

Response:

Thank you for your comment. The date of discovery of the overpayment is determined when the county identified that it has made an overpayment. The regulations do not provide for a verification process associated with discovery date. It is not true that recovery of the overpayment can go on for an unlimited time period. When overpayment recovery could impact a provider's ability to care for children, these rules allow the county to enter into a repayment plan which will reduce or eliminate that impact. In these situations, the prolonged repayment plan is intended to relieve the provider from the financial stress associated with standard repayment protocols.

The provider can dispute the discovery date of the overpayment.

Section 45-305.33

3. Comment:

The new provision, § 45-305.33, to charge interest on overpayments, notably when a caregiver has "failed to enter into a voluntary payment agreement or has failed to comply," can easily cause unnecessary hardship. An otherwise non-liable caregiver, who has unknowingly waived the right to a state hearing will be further burdened. Only if the counties read § 45-305.331 and follow the law, which is not at all certain, will the problem be avoided.

Response:

Thank you for your comment. If the commenter means by the term "non-liable" caregiver to be one who is not otherwise legally required to repay an overpayment, it is not legally permissible for the county to demand repayment of the overpayment or to assess interest on the overpayment amount. CDSS requires that counties follow the law.

Section 45-302.231

4. Comment:

§ 45-302.231 Payment Conditions. Continuation of aid, regardless of circumstances, is entirely the county's option ("*may* make payment").

Response:

Thank you for your comment. CDSS agrees with the comment, when the child is temporarily absent from an eligible facility, it is the county's option to decide whether or not payment is warranted in order to meet the child's needs.

Section 45-304.111(a)

5. Comment:

§ 45-304.111(a). What does "policies and activities" refer to?

Response:

Thank you for your comment. The phrase "policies and activities" in this context means those protocols that occur prior to payment that may contribute to the issuance of overpayments. This could include for example supervisorial review, reconciliation of automated payment systems information with other automated information systems, and similar examples.

6. Comment:

The proposed regulations, if followed, should improve county responsibility, but they also constitute a major disregard for the due process rights of caregivers. They rely entirely on the Counties' unfailing compliance without explicitly requiring such. These regulations *assume* the Counties will abide by the law, without error or omission, but there is no penalty for failing to do so.

The end result will be more hardship for those individuals caring for children for whom the State is legally responsible and, in turn, will add to the children's deprivation. Please re-examine and revise this proposal to better protect caregivers and children.

Response:

Thank you for your comment. While no administrative payment system is perfect, and while no county can operate error free, CDSS has great confidence in the capacity, integrity, and good faith of all counties to comply with these rules. Where mistakes are made, providers are afforded the right to challenge any county payment action, and to obtain a decision from a qualified and neutral hearing officer. CDSS believes these

rules, taken as a whole, will greatly improve county payment performance, and will greatly reduce the number of overpayments issued. This outcome clearly benefits providers, and will preserve scarce public funds so that these funds can be applied to serve the needs of foster care children throughout the State.

- Judy Varela, Supervising Program Specialist, Program Development Division, County of San Bernardino Human Services, submitted the following comments: (Comments #7 - 11)

General Comment

7. Comment:

   - Need to use terms consistently. The word grant, foster care maintenance payment and have been used to describe aid payment.
   - Add a definitions section, and include requirements as related to discovery of overpayment, timely report, identified overpayment, etc.
   - Remove Notice of Action (NOA) form revision dates. Having the revision date will make the sections incorrect with the first revision of the NOA.

   Response:

   Please see response to public comments number 9, 10, and 29 under section f of this final statement of reasons.

Handbook Section 45-302

8. Comment:

   Section 45-302 – Payment; Scenarios
   Comment: The examples should be written as situations/statement not as questions. Regulations, including handbook is not usually done in a question and answer format.

   Recommendation: Example 1: Reword example 1 as follows: **"The youth is in a foster home placement and runs away from the placement on January 24th. The child returns to the same placement 14 days later on February 7th. Since the child was not absent in January for more than 14 days and was not absent in February for more than 14 days, the county will issue a full month's payment for both January and February."**

   Recommendation: Example 2: Either reword example 2 or delete this example, as there is little difference between example 1 and example 2.

   Recommendation: Example 3: Reword example 3 as follows**: "The youth is in a foster home placement and is hospitalized in a private hospital from January 2nd to January 14th and then again January 20th through January 27th. Since the**

youth was absent from placement for more than 14 days in the calendar month, the county will have to prorate the maintenance payment to reduce the payment by the number of days exceeding the 14 days."

Response:

Please see response to public comment number 13 under section f of this final statement of reasons.

Section 45-304

9. Comment:

Section 45-304 – AFDC-FC Overpayments for Foster Care Providers –

Comment: .111 does not appear to follow the information in .1 and CDSS should not regulate counties develop and institute a program of internal controls to avoid making overpayment. This is a practice that Counties currently follow. Additionally, other programs (CalWORKs and Food Stamps) do not regulated that counties develop and institute a program of internal controls to avoid making overpayment
Recommendation: Delete Section .111, and .111(a).

Comment: .121(a)(1): CDSS should not regulate methods of discovering overpayments.
Recommendation: Delete this section.

Response:

Please see response to public comment number 16 under section f of this final statement of reasons.

Section 45-305

10. Comment:

Section 45-305 Collectible AFDC-FC Overpayment for Foster Care Providers; Methods of Overpayment Recovery

Comment: .24(e) Reword
Recommendation: Reword as follows: The agreement shall provide that by agreeing to voluntary grant offset**,** the provider is waiving **his/her** rights…

Response:

The referenced section is grammatically correct. CDSS respectfully declines to accept this comment.

Section 45-306

11. Comment:

Section 45-306 Informal and Formal Hearing Procedures

Comment: .24: Delete the word **(Continued)** at the end of this section.

Comment: Section .25 is missing or the sections need to be renumbered. The regulations go from.24 to .26.

Response:

Please see response to public comment number 33 under section f of this final statement of reasons.

- Kelly M. Hardy, Principal Deputy County Counsel, Social Services Division, County of Los Angeles, Office of the County Counsel, submitted the following comments: (Comments #12 - #17)

Section 11-425.122(a)

12. Comment:

1. Clarification of Regulation 11-425.1.122(A); Determination of Provider's Capability To Effectively And Efficiently Operate a Program

Regulation 11-425.1.122(a) requires the county to determine whether a new or existing Board of Directors member, Executive Director, licensee and Program Administrator is capable of effective and efficient operation of a program. In order to make that determination, the regulation requires a county to contact the Foster Care Audits and Rates Branch, presumably to discover whether the new or existing Board of Directors member, Executive Director, licensee and Program Administrator was a part of former or other Foster Care Agency or Group Home which failed to repay overpayments pursuant to a "state audit."

Regulation 45-304.1.11 sets forth the definition of an "overpayment" and was changed to include "an expenditure made by a Foster Family Agency or Group Home provider which is not in conformity with Regulation Section 11-404". The county who performs an audit on a Foster Family Agency or Group Home may record overpayments of this nature and experience failure to repay county audits. In fact, The Foster Care Audits and Rates Bureau could provide a county with a clear record regarding repayment of state audits identified with specific Group Homes or Foster Family Agencies, yet a county may have its' own information regarding failures to repay overpayments pursuant to county audit, by the same Group Homes or Foster Family Agencies. As

information regarding county audits may not be registered with the Foster Care Audits and Rates Branch, the county information regarding their audit could lead a county to a negative determination regarding a new or existing Board of Directors member, Executive Director, licensee and Program Administrator as to their ability to provide effective and efficient operation.

Los Angeles County would request clarification as to whether information from county audits, which may not be maintained by the Foster Care Audits and Rates Bureau, could or should be utilized as the sole information and/or information in addition to the Foster Care and Audits Rates Bureau when making the county determination required by Regulation 11-425.1.122(a). As the definition of overpayment has been extended to expenditures made by a Foster Family Agency or Group Home provider, not in conformity with Regulation Section 11-404 (See Regulation 45-304.1.11), this regulation should state the county's ability to review county information and to what extent such county information can be relied on, regarding county's own audits and failures to repay, to make the determination required by Regulation 11-425.1.122(a).

However, if it was the intent of the State to limit the Regulation 11-425.1.122(a) to information received only from the Foster Care Audits and Rates Branch, the regulation should state this limitation. Clarification of the regulation would avoid confusion and/or miss-application of Regulation 11-425.l.22(a) regarding what information shall be used to constitute the determination required by the county.

Response:

Thank you for your comment. While regulation section 11-425.122 requires a county to contact the Foster Care Audits and Rates Bureau and the Community Care Licensing Division as a part of its duty to determine whether an applicant provider is capable of effectively and efficiently operating the program, this provision does not preclude a county from basing its assessment of an applicant provider's capacity to effectively and efficiently operating the program on other information available to a county, including the results of county reviews and audits. It is not the intent of CDSS in this section to limit the information upon which a county may determine that a provider is not capable of effectively and efficiently operating the program to information received only from the Foster Care Audits Branch or Community Care Licensing. Any information that is probative to the issue of the provider's fitness to operate the program can be considered by a county in this regard. It is the intent of CDSS to ensure that information held by the Foster Care Audits and Rates Bureau and the Community Care Licensing Division is accessed and considered by the county when making its determination of the applicant provider fitness to operate the program. CDSS does not believe that a change to these regulations for clarity on this issue is necessary.

Section 45-304.543

13. Comment:

2. Clarification Of Regulation 45-304.5.543 (Which Includes Regulation Section 45-304.126); County Relief Of Remittance Of The Federal Share When The Foster Family Agency Or Group Home Is Out Of Business Or No Longer Licensed

Regulation Section 45-304.5.543 does not require the remittance of the federal share for overpayment amounts uncollectible under Section 45-304.126, *provided that the county complies with section 45-304.126(a) and (b)".* However, subsections (a) and (b) only contemplate the Foster Family Agency or Group Home going out of business before instigation of an audit or while an audit is in progress, prior to completion and identification of overpayments. *The regulation does not address an overpayment identified b a completed county audit and thereafter, the Foster Family Agency or Group Home goes out of business or has its license revoked.* In this situation, subsections (a) and (b) of Regulation 45-304.1.126 can never be met.

The definition of overpayment was changed to include expenditures made by a Foster Family Agency or Group Home provider not in conformity with Regulation Section 11-404 (See Regulation 45-304.1.11). In order to identify whether a Foster Family Agency or Group Home expended funds inappropriately, a county may perform a county audit. California Welfare and Institutions Code (hereinafter referred to as "WIC") Section 11466.23(c)(1)(C) provides for relief of the federal share by the county, without condition, based solely on the Foster Family Agency or Group Home being no longer in business or licensed by the department. As the conditions of subsection (a) and (b) of Regulation 45-304.1.126 are in conflict with statutory law set forth in WIC 11466.23(c)(1)(C), Los Angeles County would seek further clarification of Regulation 45-304.5.543.

Regulation 45-304.5.543 and 45-304.126, should be clarified to provide direction regarding uncollectable overpayments which include the situation in which an overpayment is identified by a completed county audit and, thereafter the Foster Family Agency or Group Home goes out of business or has its license revoked.

Such further clarification of Regulation 45-304.5.543 would assure the additional conditions are applied correctly, do not conflict with WIC 11466.23(c)(1)(C), and will avoid additional unwarranted state fair hearings. Last, it will provide counties with direction regarding the state or the counties responsibility for the federal share, in light of the direct statement set forth in 45-304.126 and WIC 11466.23(c)(I)(C), which declares no county shall collect where a Foster Family Agency or Group Home is no longer in business.

Response:

Thank you for your comment. This provision was made necessary by county sponsored legislation which requires the state to pay 100% of the federal share of overpayments arising from county audits or county actions in furtherance of audits of group homes who are no longer in business or licensed by the department. County sponsored

legislation requires the state to assume all of the financial risk associated with federal recoupment of identified overpayments arising from county reviews and audits under these circumstances. In order to protect vital and scarce state funds, CDSS found it necessary to establish rules giving it the authority to limit county audit and review activity that could result in an obligation by the state to repay federal overpayments. It is possible that a group home or foster family agency program that was active at the time of a county review or audit may close or lose its license. The existence of an audit or review of a program operations however does not necessarily result in the existence of an identified overpayment for federal recoupment purposes. That is why CDSS established Regulation section 45-304.126(b), which speaks to county actions in furtherance of such an audit or review, as these actions may result in the establishment of an identified overpayment, which under county sponsored legislation, the county has shifted the entire financial risk associated with federal recoupment of overpayments under these circumstances to the State. If an overpayment is already established by the county, then these provisions do not apply. CDSS does not believe that changes are needed to provide greater clarity in this area.

Sections 45-304.122, .123, .53 and SOC 841

14. Comment:

3. Clarification Of Regulations 45-304.1.122, 45-304.1.123, 45-304.5.53 And SOC 841; Application Of Criteria For Uncollectible Overpayments When Child Is No Longer In The Home But Aid Is Paid To Foster Family Agencies And Group Homes

Regulation 45-304.1.122 specifically states, "The county "shall" demand and collect overpayments ... from Group Homes ... Foster Family Agencies for any period of time the child was not cared for in that home, *except as provided in Sections 45-304.123 .. "*

Regulation 45-304.1.123, fails to include Group Home or Foster Family Agency for application of the conditions set forth in subsections (a) through (c), to determine an overpayment uncollectible.

Regulation 45-304.5.53, requires the county to make an aid claim adjustment, in an amount equal to the 60 percent of the federal share of the overpayment, for all identified overpayments, *other than overpayments specified in Sections 45-304.122, .123 and 124.*

Regulation 45-304.1.122 identifies an overpayment can occur with a Group Home and Foster Family Agency for periods of time when a child was not cared for in the Group Home or Foster Family Agency. However, the exceptions set forth in Regulation 45-304.1.123 fail to identify application to a Group Home or Foster Family Agency. Thus, as Regulation 45-304.1.122 appears to identify the exceptions noted in Regulation 45-304.1.123, Los Angeles County would request that either Regulation 45-304.1.123 be changed to reflect the application to Group Homes and Foster Family Agencies or the

State clarify, separate from Regulation 45-304.1.123, what exceptions exist regarding the county's ability to collect overpayments

Further, without clarification of the above, the proposed regulation creates a lack of clarity regarding when a county shall apply aid claim adjustments to pursuant to Regulation 45-304.5.53, involving a Group Home and Foster Family Agency when the overpayment is for a period of time when the child is not in the home and aid is paid. As noted above, Regulation 45-304.5.53 references 45-304.1.122 as exception but, without clarity as to how this regulation alone would apply as an exception and a lack of clarity regarding Regulation 45-304.1.123(a) through (c) application to Group Homes and Foster Family Agencies.

Los Angeles County would request Regulation 45-304.1.122 and 45-304.1.123 be clarified regarding the application of conditions to determine an overpayment uncollectible, as set forth in 45-304.1.123, subsections (a) through (c), to Group Homes and Foster Family Agencies. Further, if the state intended the conditions set forth in 45-304.1.123 to apply to Group Homes and Foster Family Agencies, *State Form SOC 841 "Notice of Overpayment And Request For Voluntary Repayment" should be revised to include Foster Family Agencies and Group Homes. It presently only references single foster family homes, relatives and non related legal guardians.* .

However, if the conditions to assess an overpayment as "uncollectible" under Regulation 45-304.1.123(a) through (c) were not intended by the State to apply to Group Homes or Foster Family Agencies, then Regulation 45-304.1.122 should be clarified to state Regulation 45-304.1.123 will not apply as an exception to Group Homes and Foster Family Agencies. The State is requested to further develop Regulation 45-304.1.122 and references to exceptions for aid claims adjustment in Regulation 45-304.5.53, regarding what exceptions apply to determine an overpayment uncollectible. This would clarify application of aid claim adjustments exceptions regarding overpayments to Group Homes and Foster Family Agencies when aid is paid for a period of time and the child was no longer in the placement.

The clarifications will assure the accurate application of the exceptions to Group Homes and Foster Family Agencies, proper reporting for federal and state shares as uncollectible by counties, and accuracy for aid claim adjustments by counties, assure due process is offered and avoid improper scheduling of state hearings regarding overpayments, when a child is not in the home but, aid continued to be paid, to a provider who is a Group Home or Foster Family Agency.

<u>Response</u>:

Thank you for your comment. County sponsored legislation shifts the burden of repaying the federal share of county caused overpayments to the state where overpayments cannot be legally collected. Existing law makes legally uncollectible county caused overpayments made to foster family homes under certain circumstances. No comparable provision in law exists for overpayments made to group homes or

foster family agencies. Accordingly, the regulations provide for different rules depending on the type of facility or program that is the subject of the overpayment. The regulations do not require the county to pay the federal share of group home or foster family agency based overpayments that are no longer in business or who are no longer licensed. CDSS does not perceive a conflict or the need for clarification in these regulations.

Section 22-003.15 and SOC 841

15. Comment:

4. Clarification Of 22-003.1.15 And SOC 841; Right To State Hearing And Notice Of Overpayment And Request For Voluntary Repayment

The proposed change to Regulation 22-003.1.15 deleted *"or where the county requested voluntary repayment"*. The State Form SOC 841, advises two options for requested voluntary repayment. The first is the ability to make a one time payment (Lump Sum 45-305.2.22). The second is to request a payment plan (Repayment Agreement Regulation 45-305.23.231). It appears clear that a person wanting to voluntarily repay, after receiving the SOC 841 request, will enter a repayment agreement subject to specified conditions under Regulation 45-305.23. By doing so, they would not be entitled to a State Hearing under Regulation 22-003.1.15. However, the same is not true for the person who determines to repay a county by lump sum, per Regulation 45-305.2.22, as no agreement appears to need to exist, prior to the lump sum payment being proffered.

If the State intended to continue to allow a state hearing for the person paying the lump sum pursuant to a request for voluntary payment by SOC 841, the removal of *the language from 22-003.1.15 would be inconsistent with Regulation 22-001 (c)(2)(G).* This language identifies a claimant as a person requesting a hearing to challenge county action to recover an overpayment under Sections 45-304. 45-305, and 45-306, *except for overpayment requests made by a county pursuant to Section 45-304.124*.

By deleting the language pertaining to the request for voluntary repayment under Regulation 45-304.1.123, which allows for the voluntarily repay per Regulation 45-304.1.124, it is unclear if a State intended to continue to offer a State Hearing to the person who pays a lump sum payment pursuant to the SOC 841 request. Los Angeles County would request the original statement *"or where the county requested voluntary repayment" be allowed to remain in Regulation 22-003.1.15.* This will allow consistency with other regulations (i.e., Regulation 22-001(c)(2)(G)) and avoid confusion regarding appropriate requests for State Hearings. However, if the State intended to continue the right to a State Hearing after request for voluntary repayment pursuant to SOC 841, Los Angeles County would request this right be clearly set forth in the regulations. Further, Los Angeles County would request the State consider developing Regulation 45-305.2.22, regarding lump sum payments, to include and allow for a written agreement similar to the agreement and statements set forth in

Regulation 45-305.2.23.231. Thus allowing a provider who intends to voluntarily repay amounts after request, pursuant to SOC 841 or not, to avoid additional contact by Notice of Action. This will avoid confusion and needless filings for State Fair Hearings.

Last, as noted in #3 Statement above, if a request to voluntarily repay by SOC 841 was intended to apply to Group Homes and Foster Family Agencies, the form should be changed to include these providers to allow for use and request for voluntary repayment with these programs as well.

Response:

Thank you for your comment. CDSS regards the payment of a lump sum by an overpaid foster care provider pursuant to a voluntary repayment request as an implied voluntary repayment agreement, and that due process is not available to overpaid providers who make these payments. CDSS will clarify its interpretation of this regulation in an All County Letter.

Section 45-304.33

16. Comment:

5. Clarification Of Regulation 45-304.3.33; Overpayment Recoupment From Foster Family Agency Or Group Homes Regarding Mandatory Administrative Off Set

This regulation states the county "shall" reduce subsequent payments by an amount equal to the amount of the administrative portion of the monthly payment to the provider. It then refers the county to "*See Section 45-305 for offset methodology*." However, there is no specific limitation regarding application of the entire Regulatory Section of 45-305. Further, there is no clarification of what the term "methodology" refers to as it pertains to the application of Regulation 45-305, in its entirety. Regulation 45-305 requires that the child for whom the overpayment was made, remains in the home. Further, as overpayments now include expenditures not in conformity with Regulation 11- 404 (See Regulation 45-304.1.11), Los Angeles County believes further clarification of this Regulation 45-304.3.33 is necessary regarding the application of the "methodology" as follows:

a. Methodology: Does the term "methodology", as used in Regulation 45-304.3.33 include the requirement that the child for whom the overpayment was assessed continues to remain in the Foster Family Agency or Group Home? If so, the regulation is unclear on how a county "shall" recoup overpayments for expenditures not in conformity with Regulation 11-404, which may not or are not strictly related to a particular child in the home when applying Regulations 1l-402.8.82(b) and 11-403(c).

b. *Timing of* Administrative *Off Set*; When can the recoupment action by administrative off set occur? Prior to completion of due process or after completion of due process. If a Group Home or Foster Family Agency disputes the ability to collect an amount discovered as a probable overpayment (aid paid when a child is not in the home and/or expenditure not in conformity with Regulation 11-404), and refuses to pay the amount, the action of administrative offset would be considered "an involuntary method of recovery". *This method of involuntary recoupment of an overpayment would be in conflict with Regulations 45-305.3.34 regarding involuntary methods of recovery*. Regulation 45-305.34 directs the county to collect on an involuntary basis, *unless otherwise provided for "in this section,*" pursuant to Regulation Section 11-402.66. Regulation 45-304.3.33 is not referred to or mentioned in Regulation 45-305. Neither, is the *administrative offset of Regulation 45-304.3.33 included in Section 11-402.66* under involuntary methods of recovery.

c. *Interest Payments When Provider Prevails on Appeal*; If the county is required to implement an action of recoupment pursuant to Regulation 45-304.3.33, prior to completion of due process and during the dispute with the Foster Family Agency or Group Home regarding the overpayment, *will the county be subject to interest on the amounts withheld pursuant to Regulation 11-402.6.613 and WIC 11466.22(g)?.*

Both the above sections allow for interest to apply where a the Foster Family Agency or Group Home prevails on appeal. If a county will be subject to a penalty for interest payments pursuant to Regulation 11-402.6.613 and WIC 11466.22(g), after successful appeal by a Foster Family Agency or Group Home, *the county should be given discretion on when it will or will not apply such an administrative set off recoupment action*. Because there are often disagreements regarding the interpretation of regulations subject to challenge, especially were expenditures are raised under Regulation 11-404, the county should be given the ability to clarify and determine the risk of interest, if intended to apply, based on its legal and regulatory analysis of the overpayments in question.

Los Angeles County would request Regulation 45-304.3.33 be changed to a discretionary standard of action if recoupment by administrative offset is applied prior to completion of due process on a disputed overpayment. This will allow the county to review the type of overpayment and regulations, determine if the regulation(s) are subject to other interpretations, and make an informed decision regarding the risk of interest and additional cost,.

Based on Statements 5 (a) through (c), Los Angeles county would request the issues be clarified to assure the proper and timely application of administrative off set to Group Homes and Foster Family Agencies. Further, the regulations be clarified to allow for the application of administrative off set methodology to one or both types of overpayment. Last, Los Angeles County would request the regulations be modified, if an administrative off set is intended to occur prior to due process completion and

subject a county to interest, to allow the county to have discretion to determine the risk of interest and additional costs.

Response:

Thank you for your comment. CDSS agrees with the commenter that interpretive questions exist with respect to overpayment recovery regulations. CDSS anticipates that counties will have operational and interpretive questions following the establishment of these regulations, and that the regulation process can only go so far in answering these questions. CDSS believes that after this process of establishing regulations is complete, it will be appropriate for the CDSS to address county questions concerning interpretation of these regulations in an All County Letter which includes answers to county questions. Accordingly, CDSS respectfully declines to modify its regulations in response to the county's comment in this regard.

General Comment

17. Comment:

STATEMENT/CONCLUSION:

The County of Los Angeles Department of Children and Family Services believes the identified regulations set forth in the above Statements 1 through 6, should be further developed and clarified. Los Angeles County believes further development and clarification of the identified regulations will assure proper application of the regulations to the various types of providers, assure appropriate determinations are made within the intent set forth by the regulations, and will clarify conflicting language with other regulations and statutes. These clarification would avoid State Hearings being offered incorrectly or scheduled due to confusion regarding the present state of the regulations as written.

Last, Los Angeles County would request, as set forth in Statement "6", that the State determine if counties will be subject to interest payments when administrative off sets occurs prior to completion of due process. If interest is not applicable to a county, the clarification and change in language will avoid counties being subject to claims for interest payments and being required to defend against interest payments, if not intended by the Overpayment Regulation Changes. However, if the counties will be subject to interest payments, then the clarification of the timing of application and language for application should change from mandatory to discretionary. (See Regulation 45-304.1.11) Counties should be allowed to review the overpayment in question, make determinations regarding regulations applicable on overpayment, and determine if it will risk interest payments by allowing an administrative off set prior to completion of due process.

Response:

See responses to comments #12 through #16.

ADDENDUM TO THE FINAL STATEMENT OF REASONS

f) Testimony and Response

(The following response was corrected to reflect the correct regulation added, Section 45-305.332.)

Section 45-305.331

31. Comment:

331: The County shall collect interest on overpayment when the provider has failed to enter into a voluntary repayment agreement or failed to comply with the terms of the voluntary overpayment agreement. Who decides the amount of the interest to collect? Can each County establish their own interest rate?
Recommendation: The amount of interest should be prescribed by CDSS and included in regulations.

Response:

In response to this comment the Department has added Section 45-305.332.

g) 15-Day Renotice Statement

(The following response was amended as it was realized that Section 45-304.543 was inconsistent with Welfare and Institutions Code Section 11466.23(c)(1)(C) and therefore such section is being repealed to correct the inconsistency.)

Section 45-304.543

13. Comment:

2. Clarification Of Regulation 45-304.5.543 (Which Includes Regulation Section 45-304.126); County Relief Of Remittance Of The Federal Share When The Foster Family Agency Or Group Home Is Out Of Business Or No Longer Licensed

Regulation Section 45-304.5.543 does not require the remittance of the federal share for overpayment amounts uncollectible under Section 45-304.126, *provided that the county complies with section 45-304.126(a) and (b)".* However, subsections (a) and (b) only contemplate the Foster Family Agency or Group Home going out of business before instigation of an audit or while an audit is in progress, prior to completion and identification of overpayments. *The regulation does not address an overpayment identified b a completed county audit and thereafter, the Foster Family Agency or*

Group Home goes out of business or has its license revoked. In this situation, subsections (a) and (b) of Regulation 45-304.1.126 can never be met.

The definition of overpayment was changed to include expenditures made by a Foster Family Agency or Group Home provider not in conformity with Regulation Section 11-404 (See Regulation 45-304.1.11). In order to identify whether a Foster Family Agency or Group Home expended funds inappropriately, a county may perform a county audit. California Welfare and Institutions Code (hereinafter referred to as "WIC") Section 11466.23(c)(1)(C) provides for relief of the federal share by the county, without condition, based solely on the Foster Family Agency or Group Home being no longer in business or licensed by the department. As the conditions of subsection (a) and (b) of Regulation 45-304.1.126 are in conflict with statutory law set forth in WIC 11466.23(c)(1)(C), Los Angeles County would seek further clarification of Regulation 45-304.5.543.

Regulation 45-304.5.543 and 45-304.126, should be clarified to provide direction regarding uncollectable overpayments which include the situation in which an overpayment is identified by a completed county audit and, thereafter the Foster Family Agency or Group Home goes out of business or has its license revoked.

Such further clarification of Regulation 45-304.5.543 would assure the additional conditions are applied correctly, do not conflict with WIC 11466.23(c)(1)(C), and will avoid additional unwarranted state fair hearings. Last, it will provide counties with direction regarding the state or the counties responsibility for the federal share, in light of the direct statement set forth in 45-304.126 and WIC 11466.23(c)(I)(C), which declares no county shall collect where a Foster Family Agency or Group Home is no longer in business.

Response:

Thank you for your comment. After further review of the above-mentioned citations CDSS concurs with the inconsistency between statute and the proposed regulations, as a result Section 45-304.543 is being repealed.