

FINAL STATEMENT OF REASONS

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

Section 40-107.164

Specific Purpose:

A new Section 40-107.164 is being added to require county welfare departments (CWDs) to provide notice to individuals upon application for CalWORKs of the availability of paid child care.

Factual Basis:

This addition is necessary to comply with Welfare and Institutions Code Section 11323.3 as added by Assembly Bill (AB) 444 (Chapter 1022, Statutes of 2002).

Section 40-131.3(u)

Specific Purpose:

This section is being amended to delete an obsolete requirement and to adopt a new requirement which ensures that the applicant/recipient receives the informing notice.

Factual Basis:

Existing Section 40-131.3(u) is being repealed as a result of changes required by AB 1542 (Chapter 270, Statutes of 1997). AB 1542, Section 140, repealed the SCC Program (Welfare and Institutions Code Section 11451.7). In addition, the emergency CalWORKs Stage One Regulations which became effective on December 28, 1998 (ORD #0598-18) repealed the SCC Program regulations Chapter 44-500 (Sections 44-501 through 44-509). The new requirement is necessary to be in compliance with Welfare and Institutions Code Section 11323.3, as added by AB 444.

Final Modification:

This section is being amended to add the phrase “regarding the availability of Stage One child care.” This change is necessary for clarity.

Section 40-181.1(l)

Specific Purpose:

This section is being amended to delete an obsolete requirement and to adopt a new requirement that ensures that the applicant/recipient receives the informing notice.

Factual Basis:

Existing Section 40-181.1(l) is being repealed as a result of changes required by AB 1542. AB 1542, Section 140, repealed the SCC Program (Welfare and Institutions Code Section 11451.7). In addition, the emergency CalWORKs Stage One Regulations which became effective on December 28, 1998 (ORD #0598-18) repealed the SCC Program regulations Chapter 44-500 (Sections 44-501 through 44-509). The new requirement is necessary to be consistent with Welfare and Institutions Code Section 11323.3, as added by AB 444.

Final Modification:

This section is being amended to add the phrase “regarding the availability of Stage One child care.” This change is necessary for clarity.

Section 42-711.522(b)

Specific Purpose:

This section is being amended to require the CWDs to provide information to individuals about child care which must include the following: for an individual to receive child care, he or she must request and be determined eligible for the services; payments for child care services cannot be made for care provided more than 30 calendar days prior to the applicant’s or recipient’s request for child care; and the individual is responsible for any child care services received prior to the 30-calendar-day period.

Factual Basis:

This section is being amended to comply with Welfare and Institutions Code Section 11323.3, as added by AB 444.

Final Modification:

Section 42-711.522(b)(1)(A) is being amended to delete the commas before and after the phrase “and be determined eligible for.” These grammatical changes are being made for clarity.

Sections 42-711.63 and .64

Specific Purpose:

Section 42-711.631 is being amended to make a technical correction. The cross-reference to Section 42-711.522(c) is being deleted because it is duplicative of the cross- references to Sections 42-711.522(c)(1) and (2).

Section 42-711.64 is being adopted to require that an individual who applies for or receives CalWORKs benefits be provided a written notice of the availability of paid child care when he or she signs an original or amended welfare-to-work plan.

Factual Basis:

Section 42-711.64 is necessary to comply with Welfare and Institutions Code Section 11323.3(b), as added by AB 444.

Section 47-120

Specific Purpose:

This section is being adopted to specify the requirements for the request for child care services.

Factual Basis:

This section is necessary to implement Welfare and Institutions Code Section 11323.3.

Section 47-120.1

Specific Purpose:

This section specifies that clients may request child care either verbally or in writing.

Factual Basis:

This section is necessary to ensure that clients are given the option to request child care either verbally or in writing.

Final Modification:

This section is being amended to add the phrases “from a CalWORKs worker” and “upon entry into the CalWORKs assistance program or at any subsequent time.” These changes are necessary to clarify that clients can request Stage One child care from a CalWORKs worker at any point after entering the CalWORKs program.

Section 47-120.11

Specific Purpose:

This section specifies that if the client verbally requests child care, the county is required to document the request on the informing notice, keep a copy in the case file, provide a copy to the child care worker, and provide or mail a copy to the individual.

Factual Basis:

This section is necessary to ensure that the client's verbal request is documented. It will also ensure that the client receives written confirmation of their verbal request.

Final Modification:

This section is being amended to require counties to document a verbal request, provide a copy of the documentation to the person responsible for processing child care requests who retains a copy in the child care case file, and mail or provide clients with a written request confirmation. This section is also amended to delete the requirement that counties document the verbal request on the informing notice, maintain a copy in the case file, provide a copy to the child care worker and provide or mail a copy to the client. These changes are necessary for clarity and to avoid confusion regarding the use of the informing notice.

Section 47-120.111

Specific Purpose:

This regulation specifies that the date the CWDs receives the verbal request shall constitute the date of the request.

Factual Basis:

This regulation is necessary to ensure that the retroactive payment limit is applied consistently based on the date the verbal request is received by the county.

Section 47-120.12

Specific Purpose:

This section specifies the options that clients have to make a written request for child care.

Factual Basis:

This section is necessary to ensure that clients are given the option to make a written request for child care using any type of written request, including the documents specified.

Final Modification:

This section is being amended to replace “SAWS 7, or CW 7,” with “the eligibility/status report” which is the generic title for these forms. This change is necessary since counties use different “eligibility/status report” forms.

Section 47-120.121

Specific Purpose:

This regulation specifies that the client is required to return the written request to the county.

Factual Basis:

This section is necessary to ensure that the county receives the client’s written request for child care assistance.

Section 47-120.122

Specific Purpose:

This regulation specifies that when the client submits a written request, the county is required to date stamp the request, retain a copy in the case file, provide a copy to the child care worker, and provide a copy to the client.

Factual Basis:

This regulation is necessary to ensure that the county’s records reflect the written request made by the client. It also ensures that the client is provided confirmation of their written child care request.

Final Modification:

This section is being amended to replace the phrase “child care worker” with “person responsible for processing child care requests who retains a copy in the child care case file,” and the word “copy” with “written confirmation.” These changes are necessary to ensure consistency in the processing of verbal and written requests.

Section 47-120.123

Specific Purpose:

This section specifies that if the client hand-delivers the written request, the date of request is the date the request is received by the county. If the client mails the request, the date of request is the date postmarked on the envelope. If the date of request cannot be determined

by the postmark, the date of request shall be three days prior to the date the request is received by the county.

Factual Basis:

This regulation is necessary to ensure that the date of the request is determined consistently throughout the state and to avoid disagreements regarding when a request is made. It also ensures that if the date of the request cannot be determined by the postmark, the date of the request shall be three days prior to the date the request is received. The three days is approximately the length of time for the request to be delivered by the postal service.

Final Modification:

Section 47-120.123(a) is being amended to replace the phrase “the request is received in the county welfare office” with “stamped by the county.” This change is necessary to clarify that if a client hand delivers a written request the date of the request is determined by the date stamped by the county.

Section 47-120.123(b) is being amended to replace “the request was received” with “stamped.” This amended section specifies that if the date of the written request date cannot be determined by the postmark, the date of the request is three days prior to the date stamped by the county.

Section 47-120.2 et seq. (Post-Hearing Modification)

Specific Purpose:

This new section is being adopted to require counties to inform clients that in order for their child care request to be processed, the county must receive certain information. Existing Sections 47-120.211, .212, and .22 are being renumbered to Sections 47-120.21, .22, and .23.

Factual Basis:

This section is necessary so that clients are aware of the information that must be received by the county. The renumbering is necessary to relocate these sections to a more appropriate location for clarity.

Section 47-120.2 et seq. (Post-Hearing -- Renumbered to Section 47-120.3.)

Specific Purpose:

This section specifies the time frame for processing the child care request if certain requirements are met, requires counties to assist the client as needed to obtain the necessary information to determine eligibility, and specifies that if the required information is not received within 30 calendar days, the request may be denied.

Factual Basis:

This regulation is necessary to ensure that child care requests are processed in a timely manner so that clients have access to paid child care when they need it to be employed or participate in a county approved activity. It also provides counties with adequate time to process child care requests. In addition, it ensures that the client understands that in order for their request to be processed they are responsible for submitting certain information. It requires the county to assist the client as needed to determine eligibility. This section also allows the county to deny the request if the necessary information is not received within 30 calendar days. This provides the client and/or child care provider adequate time to submit the required information to the county.

Final Modification:

Sections 47-120.2, .21, and .23 are being renumbered to Sections 47-120.3, .31, and .311 to maintain numerical consistency due to the inclusion of a new Section 47-120.2 and the renumbering of existing Sections 47-120.211, .212, and .22.

In response to public testimony, renumbered Section 47-120.31 is being amended to replace the phrase “five working” with “ten calendar.” This change extends the time frame for counties to process child care requests. In addition, it clarifies that counties are required to process child care requests within ten calendar days of receiving the required information. The word “following” is no longer necessary since the following sections are being renumbered and is replaced with a cross-reference to the renumbered section for clarity. Grammatical corrections are also being made for clarity.

Sections 47-301.2 through .223

Specific Purpose:

These sections are being adopted to require that counties provide applicants and recipients with an informing notice. These sections specify the required content of the informing notice. The informing notice shall be provided to applicants/recipients at the time of CalWORKs application and redetermination, and when they sign an original or amended welfare-to-work plan.

Factual Basis:

These regulations are necessary to comply with Welfare and Institutions Code Section 11323.3(b), which requires that applicants/recipients be provided with a written notice informing them of the availability of Stage One child care. These regulations will ensure that applicants/recipients are promptly and regularly reminded of the availability of Stage One child care to allow them to be employed or participate in welfare-to-work activities. If child care is not provided, CalWORKs applicants and recipients may be unable to achieve self-sufficiency and may fail to meet work participation requirements.

These regulations are also necessary to ensure that applicants/recipients understand the conditions under which they may claim reimbursement for child care and their potential liability for child care payment.

Final Modification:

New Handbook Section 47-301.21 is being added to encourage counties to also inform families verbally of the availability of child care subsidies. Existing Sections 47-301.21 and .22 et seq. are being renumbered to Sections 47-301.22 and .23 et seq. to maintain numerical consistency due to the addition of this new handbook section.

In response to public testimony, renumbered Section 47-301.22(a) is being amended to add the word “approved” before welfare-to-work activities. Also, the phrase “including participating as a volunteer, to the extent that that he/she meets the eligibility criteria” and comma preceding the phrase are being added. These changes are necessary for clarity and to ensure that applicants/recipients are aware of when they are eligible for child care.

Section 47-301.23 (Post-Hearing -- Renumbered to Section 47-301.24.)

Specific Purpose:

This section requires that counties make copies of the informing notice available to applicants/recipients in each county welfare office.

Factual Basis:

This regulation will ensure that applicants/recipients have access to the informing notice which provides information about the availability of Stage One child care. This section is necessary to comply with Welfare and Institutions Code Section 11323.3(a), as added by AB 444.

Final Modification:

Section 47-301.23 is being renumbered to Section 47-301.24 to maintain numerical consistency due to the addition of new Handbook Section 47-301.21. Existing language is being deleted in response to public testimony. Counties have existing procedures for disseminating child care information to clients. New language is being added in its place to require counties to provide applicants/recipients with the county’s child care request form upon request. This section is necessary to ensure that applicants/recipients have immediate access to a child care request form when they need to request child care.

Handbook Section 47-301.24 et seq. (Post-Hearing -- Renumbered to Handbook Section 47-301.25 et seq.)

Specific Purpose/Factual Basis:

This handbook section specifies that counties have the option to provide the informing notice to applicants/recipients at other points in time. This section is not regulatory in nature and is being incorporated as handbook. It provides options for counties to ensure that applicants/recipients are periodically reminded of the availability of Stage One child care to allow them to be employed or participate in welfare-to-work activities.

Final Modification:

Handbook Section 47-301.24 et seq. is being renumbered to Handbook Section 47-301.25 et seq. to maintain numerical consistency due to the addition of new Handbook Section 47-301.21. Renumbered Handbook Section 47-301.251 is being further amended to replace “SAWS 7, or CW 7,” with “the eligibility/status report” which is the generic title for these forms. This change is necessary since counties use different “eligibility/status report” forms.

Section 47-301.25 (Post-Hearing -- Renumbered to Section 47-301.26.)

Specific Purpose:

This regulation requires applicants/recipients to sign and return the informing notice to the county as required by Section 47-301.22.

Factual Basis:

This regulation is necessary to comply with Welfare and Institutions Code Section 11323.3(c), which specifies that applicants/recipients shall be required to sign the informing notice verifying that they have been informed of and understand the notice.

Section 47-301.26 (Post-Hearing -- Renumbered to Section 47-301.27.)

Specific Purpose:

This regulation specifies that once the applicant/recipient returns the informing notice, the county is required to date stamp the notice, retain a copy in the case file, provide a copy to the child care worker, and provide a copy to the applicant/recipient.

Factual Basis:

This regulation is necessary to comply with Welfare and Institutions Code Section 11323.3(c), which requires that the signed informing notice be retained in the applicant/recipient case file. The signed informing notice also serves as dated confirmation that the applicant/recipient received the informing notice.

Sections 47-301.261 and .261(a) (Post-Hearing -- Renumbered to Sections 47-301.271 and .271(a).)

Specific Purpose:

Section 47-301.261 specifies that if the applicant/recipient refuses either verbally or in writing to sign the informing notice, the CWD must make a notation in the case file documenting the applicant's/recipient's refusal. A documented refusal shall have the same effect as a signature. Section 47-301.261(a) specifies that failure to sign the notice that was mailed to the applicant/recipient cannot in itself constitute a refusal.

Factual Basis:

These sections are necessary to document that the applicant/recipient was properly informed of the availability of Stage One child care and to allow the county to apply the retroactive payment limit.

Final Modification:

Sections 47-301.261 and .261(a) are being renumbered to Sections 47-301.271 and .271(a) to maintain numerical consistency due to the addition of new Handbook Section 47-301.21. In response to public testimony, this section is being further amended to provide counties with the flexibility to determine how to document a refusal.

Section 47-301.27 (Post-Hearing -- Renumbered to Section 47-301.28.)

Specific Purpose:

This section specifies that former CalWORKs clients who receive Stage One child care must receive and sign the informing notice upon re-entry into Stage One and at least once a year thereafter.

Factual Basis:

This regulation is necessary to ensure that former CalWORKs clients are informed upon re-entry into Stage One and on an annual basis thereafter of the availability of Stage One child care and the conditions under which they may claim reimbursement.

Final Modification:

Section 47-301.27 is being renumbered to Section 47-301.28 to maintain numerical consistency due to the addition of new Handbook Section 47-301.21. This section is being further amended to delete the phrase "upon re-entry into Stage One child care and" and the word "thereafter." These changes are necessary since some clients never transition from Stage One child care to another stage. The amended section requires that former CalWORKs clients receive and sign the informing notice at least once annually.

Sections 47-301.3 through .8 (Renumbered from Sections 47-301.2 through .7.)

Specific Purpose/Factual Basis:

These sections are being renumbered to accommodate the addition of new Section 47-301.2.)

Section 47-430

Specific Purpose:

This section is being adopted to specify the retroactive payment requirements in the CalWORKs Stage One Child Care Program.

Factual Basis:

This section is necessary to implement Welfare and Institutions Code Section 11323.3.

Handbook Section 47-430.1

Specific Purpose/Factual Basis:

Handbook Section 47-430.1 is being added to provide the legislative intent for enacting the legislation.

Section 47-430.2

Specific Purpose:

This regulation establishes a time frame for child care payment for services already received by the applicant/recipient. It specifies that Stage One child care payments shall not be made for services provided more than 30 calendar days prior to the individual's child care request. This section also specifies that in order for the retroactive payment limit to be applied, the case file must contain a copy of the informing notice signed by the applicant/recipient within the last year or a notation that the applicant/recipient refused to sign and/or return the notice within the last year.

Factual Basis:

This regulation is necessary to comply with Welfare and Institutions Code Section 11323.3(d), which states that no payment shall be made for child care services provided more than 30 calendar days prior the applicant's/recipient's initial request for payment for Stage One child care, when the individual has received the informing notice. This section clarifies that the applicant's/recipient's refusal to sign the informing notice does not nullify notification and the retroactive payment limit shall still be applied.

Section 47-430.21

Specific Purpose:

This section specifies that the retroactive payment limit must be applied each time the applicant/recipient chooses a new child care provider.

Factual Basis:

This section is necessary to clarify that the 30-day retroactive payment limit must be applied consistently to every new child care provider chosen by the applicant/recipient.

Section 47-430.22

Specific Purpose:

This regulation specifies when the retroactive payment limit shall not be applied.

Factual Basis:

This section is necessary to ensure that the limit on retroactive payment is not applied prior to the applicant/recipient being properly informed for the first time of the availability of child care using the informing notice.

Section 47-430.3

Specific Purpose:

This section specifies that Section 47-430 applies to former CalWORKs clients.

Factual Basis:

This regulation is necessary to ensure that the retroactive payment limit applies to former CalWORKs clients who are receiving child care services in Stage One.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 444 (Chapter 1022, Statutes of 2002)

Assembly Bill 1542 (Chapter 270, Statutes of 1997)

c) Local Mandate Statement

These regulations do impose a mandate on local agencies, but not on local school districts. There are no reimbursable state-mandated costs because these regulations only make technical nonsubstantive or clarifying changes.

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) 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 20, 2003 in Sacramento, California. Written testimony was received from the following during the 45-day comment period from July 4, 2003 to 5:00 p.m. August 20, 2003:

Child Care Law Center (CCLC)
County of Los Angeles Department of Public Social Services (LA DPSS)
County of San Diego Health and Human Services Agency (SD HHSA)
County of San Bernardino Human Services System (SBER HSS)
County Welfare Directors Association of California (CWDA)
Kevin M. Aslanian, Executive Director, CCWRO (ASLANIAN)
Legal Services of Northern California (LSNC)
Solano County Health & Social Services Department (SO HSSD)

Oral testimony was received at the public hearing from the following:

Patrick Duterte, Director, Solano County Health & Social Services Department and Chair, County Welfare Director's Child Care Committee (DUTERTE)

The comments received and the Department's responses to those comments follow. At the end of each comment is the name of the commenter in parentheses. General comments follow the specifically identified section comments.

Section 40-107.16

1. Comment:

“Applicants shall be informed orally and in writing:” (LSNC and CCLC)

Response:

The Department appreciates the comment. Although the Department agrees that it is good practice to inform applicants orally about paid child care, it does not agree that it should be required. A new Handbook Section 47-301.21 is being adopted to encourage counties to inform families orally of the availability of paid child care.

Section 40-131.3u.

2. Comment:

“Comments: Section 40-131.3(u) states applicants/recipients shall receive the child care informing notice at application and at each annual redetermination. AB 444 does not require the child care informing notice be given at annual redetermination.

“Recommendation: Delete the requirement to provide the child care informing notice at **annual redetermination**, as the client will receive the informing notice when the WtW plan is signed, when the WtW plan is amended and when child care is requested. AB 444 does not require counties to provide and obtain a signed child care informing notice at annual redetermination.” (CWDA, SBER HSS, and SO HSSD)

Response:

The Department thanks commenters for sharing this concern, but does not agree with the recommendation to delete the requirement. Requiring counties to issue the notice at annual redetermination ensures that employed individuals who have never signed a welfare-to-work plan are informed at least annually.

Sections 40-131u. and 40-181.1(l)

3. Comment:

“At application and each annual redetermination, applicants/recipients shall receive an child care informing notice (see Section 47-301.2), and a language-appropriate oral explanation of the notice.” (LSNC and CCLC)

Response:

The Department appreciates the comment, but believes that the proposed amendment is unnecessary. CWDs already must comply with Manual of Policies and Procedures

Section 21-115, which requires them to provide effective bilingual/interpretive services to limited-English proficient and disabled recipients.

Sections 40-131.3u., 40-181.1(l), 47-301.221, and 47-301.25 (Post-Hearing -- Sections 47-301.221 and .25 renumbered to Sections 47-301.231 and .26.)

4. Comment:

“Comments:

- “These sections state that applicants/recipients shall receive an informing notice at application and each annual redetermination.
- “Not all applicants and recipients are eligible to Stage One Child Care. Non-exempt welfare-to-work and sanctioned working recipients may be eligible to Stage Two and Stage Three and will not be under the jurisdiction of the California Department of Social Services mandates.
- “Receipt of the informing notice at application prior to CalWORKs approval can confuse applicants and lead them to believe that they can receive Stage One for current activities. This is a concern when applicants are exempt from welfare-to-work or activity is not included in a welfare-to-work plan or not eligible to CalWORKs.
- “The requirement to provide the informing notice at redetermination is onerous and can again cause confusion to exempt welfare-to-work recipients. It is not good policy to inform and require signature of a recipient about a benefit and immediately verbally advise that they are ineligible to the benefit.
- “San Diego like many counties in California has designated separate workers in the CalWORKs program for eligibility, employment and child care. The timelines for CalWORKs redetermination, Child Care recertification or employment authorization of child care hours rarely coincides.
- “AB 444 does not require counties to provide and obtain a signed child care informing notice at application and annual redetermination.

“Recommendations:

- “Delete the requirement to provide and obtain a signed child care informing notice at application, and annual redetermination.
- “Require the written informing notice to be provided at the Welfare-to-work appraisal/orientation only. This would ensure that the employment worker would authorize child care requested by recipients in Stage One as a supportive service to an approved Welfare-to-Work activity.

- “Should the regulations continue to require notice to all applicants and recipients, make the request for Stage One Child Care a separate form.” (SD HHSA)

Response:

The Department does not agree that providing the informing notice at redetermination may be confusing to exempt clients. Providing the informing notice to exempt clients ensures that they are aware that child care is also available to them if they should need it in the future. Please also refer to the response to Comment 2.

The Department is not amending these regulations to require that the informing notice be provided only at the welfare-to-work appraisal/orientation. The existing requirement to inform an applicant/recipient about paid child care at CalWORKs application and when an original or amended welfare-to-work plan is signed is clearly specified in Welfare and Institutions Code Section 11323.3.

The Department does not agree that it is necessary to create a separate request form. Although clients can request child care by making a notation on the informing notice, it is not the only way to request child care. Section 47-120.12 specifies some of the other options clients have to make a written request for child care.

Section 40-181.1

5. Comment:

“Comments: Section 40-181.1 states ‘At each annual redetermination, recipients shall receive an informing notice...’ AB 444 does not require the child care informing be given at annual redetermination.

“Recommendation: Delete the requirement to provide the child care informing notice at **annual redetermination**, as the client will receive the informing notice when the WtW plan is signed, when the WtW plan is amended and when child care is requested. AB 444 does not require counties to provide and obtain a signed child care informing notice at annual redetermination.” (CWDA, SBER HSS, and SO HSSD)

“Further, concerns are raised that adding additional paperwork to the annual redetermination process will make it more difficult for clients to complete the process.” (CWDA)

Response:

Please also refer to the response to Comment 2.

Section 42-711.522(b)(1)(C)

6. Comment:

“Recommendation: 42-711.522(C), use the following language: *The individual is may be responsible to pay for any child care services received prior to the 30-calendar-day period in Section 42-711.522(b)(1)(B).*

“Explanation: this modification is important because DSS lacks the authority to mandate that, when Stage 1 does not pay for child care, the applicant or recipient be required to pay. For example, some child care providers may not expect payment from the applicant or recipient. The matter of payment when Stage 1 payments are not forthcoming relates to a private contractual relationship between the CalWORKs participant and the child care provider; DSS should not imply otherwise.” (CCLC)

Response:

The Department thanks the commenter for sharing this concern, but is not amending this section in response to the comment. AB 444 requires CWDs to inform CalWORKs recipients that they can receive subsidized child care, but the recipient must request the child care subsidy from the CWD within 30 days from the first day child care services are received. Given this limitation on payments by the CWD, it is the Department’s position that the intent of AB 444 is to require applicants/recipients to be responsible for any child care services they received if they failed to request child care in a timely manner. However, this section does not imply that applicants/recipients are obligated to pay for the child care services. Payment decisions are between the individual and their chosen child care provider. In the example given by the commenter, no payment is expected so this regulation would not apply.

Section 42-711.64

7. Comment:

“A participant shall be provided language appropriate oral and written notice of the availability of paid child care, pursuant to Section 47-301.2, when he or she signs an original or amended welfare-to-work plan.’

“The regulations need to clarify, by referring to 47-430.22, that the county will pay for child care more than 30 days prior to the request when the applicant or recipient had not previously received language appropriate oral and written information on the limit on retroactive child care or was improperly told that s/he was not eligible for child care support services. So, for example,

“1) An existing recipient, prior to getting the informing notice, had been working and/or participating in WTW, but was not informed of the availability of

child care. The limit on retroactive childcare does not apply, as the recipient had not received the notice;

- “2) The intake worker provides an informing notice in English, with no oral interpretation, to an applicant who identified a non-English primary language on the application. Since the informing notice was not provided in the correct language, the limit to 30 days retroactive childcare payments does not apply.

“The regulations also need an example of when the county incorrectly fails to provide childcare. Example: The county improperly tells a recipient she cannot get child care for her 8 month old because she is a volunteer (infant exemption) who is not doing 32 hours of participation. Since she was told she was not eligible, the recipient did not request childcare assistance. The individual is eligible for retroactive childcare payments, without the 30 days limit.” (LSNC and CCLC)

CCLC suggested also that these examples be added in a handbook section.

Response:

The Department agrees that examples would be helpful to illustrate when the retroactive payment limit cannot be applied. The Department will issue a Q&A after the adoption of the final regulations if it is deemed necessary.

Please refer to response to Comment 3 regarding language issues.

In response to public testimony, renumbered Section 47-301.22(a) is being amended. This amended section now requires that the informing notice indicate that applicants/recipients are eligible for child care when they participate as volunteers.

Sections 42-711.64 et seq. and 47-301.223 (Post-Hearing -- Section 47-301.223 renumbered to Section 47-301.233.)

8. Comment:

“Comments:

- “These sections state that a participant shall be provided written notice of the availability of paid child care when he or she signs an original or amended welfare-to-work plan and copies of the informing notice will be also be available at public counters in each county welfare office.
- “Having the recipient sign the informing notice at the Welfare-to-Work orientation/appraisal once, acknowledges that the recipient has been informed and will minimize the workload impact to workers.

- “Employment staff is continuously evaluating the recipient's barriers from employment and would have provided needed child care at the time of redetermination of the CalWORKs case.
- “Current processes are in place to disseminate child care information as an available supportive service to eligible recipients.

“Recommendations:

- “Change this section by deleting ‘or amended welfare-to-work plan.’
- “Delete the requirement to have the notice available at public counters or revise the form so that it only gives information regarding paid child care.” (SD HHSA)

Response:

Please refer to response to Comment 4.

The Department is deleting the requirement to have the informing notice available at public counters. Counties should continue to use their existing process to disseminate child care information to clients. Instead, a new section is being added to require counties to provide applicants/recipients with a child care request form upon request. This ensures that child care request forms are easily available to applicants/recipients.

Section 47-120 et seq.

9. Comment:

“Comments:

- “This section instructs counties on the verbal and written request for child care.
- “California has chosen the three stage child care system beginning with Stage One.
- “Using the state application form for Stage One that meets the requirements of the California Department of Education (CDE) Stage Two transfer would allow the county to use the same form for requests for child care and for case transitioning to Stage Two.
- “When requesting Stage One Child Care, the recipient should be in an approved welfare-to-work activity or working. Any request for child care should be referred to, evaluated and authorized by the employment worker.

“Recommendation:

- “Have a separate child care request form for Stage One that meets the Stage Two CDE guidelines to provide better customer service and meet the goal of a seamless transition.
- “For recipients mandatory to welfare-to-work, the request for child care must be made to the employment worker.” (SD HSSA)

Response:

Please refer to the response to Comment 4.

Counties have the flexibility to use the Confidential Application for Child Development Services and Certification of Eligibility (CD 9600) as the county child care request form, to help ensure a seamless transition from CalWORKs Stage One to Stage Two. However, while the Department believes that the use of this form is good practice, it will not mandate its use.

The Department does not agree that recipients should be required to request child care from the employment worker. Section 47-120.1 is being amended to allow clients to request Stage One child care from a CalWORKs worker. The request should be forwarded to the appropriate staff for processing.

Section 47-120.1

10. Comment:

““The client may request Stage One child care either verbally or in writing at any point from the date of application through the end of Stage One child care.”” (LSNC)

Response:

The Department appreciates the comment. This regulation is being amended to clarify that clients can request Stage One child care from a CalWORKs worker either verbally or in writing upon entry into the CalWORKs assistance program or at any subsequent time.

11. Comment:

“**Recommendation: 47-120.1, use the following language:** Add a provision that if the request, whether oral or written, is made to a county employee other than a worker who processes welfare-to-work support services, the worker receiving the request shall log it *and* forward the request to the appropriate staff person for processing. The Child Care Law Center hears regularly from applicants and recipients who have difficulty in navigating the bureaucracy of county welfare departments; even if a request is made to

someone who is not responsible for administering child care subsidies, the request should be honored.” (CCLC and LSNC)

Response:

The Department shares the concern that clients may not always know who at the county is responsible for processing child care requests. When clients request child care from a CalWORKs worker, the request should be forwarded to the appropriate staff for processing. Section 47-120.1 is being amended to allow clients to request Stage One child care from a CalWORKs worker. The request should be forwarded to the appropriate staff for processing. Please also refer to response to Comment 9.

Section 47-120.11

12. Comment:

“Comments: Section 47-120.11 states, ‘when a client makes a verbal request for child care, the county shall document the request on the informing notice on the same day the request was made...’ This process is not feasible with the current form/format.

“Example: The client applies for CalWORKs on 7/5/03. The child care informing notice (CCP 7) is signed by the client on 7/10/03. The client checks the box that she does not need child care at this time. On 12/1/03, the client reports that she began working on 11/30/03 and requests child care.

“Questions: Where does the worker document the request for child care? Does the worker have the client sign a new informing notice (CCP7) and mail it to the client for her signature?

“Recommendation: Make the informing notice (CCP 7) two separate forms. One form that informs clients of availability of subsidized child care and explains reimbursement of child care services AND a second form the client can use to request child care.” (CWDA, SBER HSS, and SO HSSD)

Response:

The Department agrees that providing clients with an informing notice as the written confirmation of their verbal request may be confusing. As a result, Section 47-120.11 is being amended to require counties to provide clients with a confirmation of their verbal child care request, but does not mandate that the informing notice be used for this purpose. Also, please refer to response to Comment 4.

Section 47-120.12

13. Comment:

“We would also proposed that 47-120.12 be amended to read:

““A written request may include, but is not limited to, the county's child care request form, a notation on the informing notice, SAWS7, or CW& [sic], which shall provide space for a request of any of the available supportive services, or a letter from a client.” (ASLANIAN)

Response:

The Department thanks the commenter for sharing this concern, but does not concur with the suggested amendment. Revising the SAWS 7 and CW 7 to include a space for the client to request any of the available supportive services is beyond the scope of these regulations. In addition, this amendment is unnecessary since clients can already use these forms to request child care as specified in Section 47-120.12.

Section 47-120.122

14. Comment:

“Comments: Section 47-120.122 requires counties to date stamp the written request. However, Section 47-120.123 (a) and (b) explains the date of request for child care is the date the client hand delivers the written request or the date or if the request is mailed, the postmark is the date of request. Based on these regulations, a date stamp is not necessary.

“Recommendation: Delete ‘the county shall date stamp the request...’” (CWDA, SBER HSS, and SO HSSD)

Response:

The Department thanks commenters for sharing this concern, but does not agree that the date stamp requirement is unnecessary. The purpose of the date stamp is to verify the date the written request is received by the county, since there is no other way to confirm when the request was received. In addition, in instances where the postmark date cannot be determined, the date of the request is three days prior to the date which is stamped by the county. Without a date stamp, the date of the request could not be determined. Furthermore, since clients are provided with a copy of their request after it has been date stamped, clients receive written confirmation that their request was received by the county.

15. Comment:

“Section 47-120.122 should be amended to include at the end the following language:

“‘When the county receives a request for child care, the county shall acknowledge the receipt of this request within five (5) working days.’

“This will assure that the participant is aware of the fact that their request for child care was received by the CWD and not lost in the mail or tossed in the garbage by the county (which has been known to happen as verified by county employees).” (ASLANIAN)

Response:

The Department thanks Mr. Aslanian for his comment, but does not agree with the suggested amendment. The county is already required to provide a date stamped copy of the request to the client. The client can use this copy as written verification that the county received their request.

Section 47-120.2 (Post-Hearing -- Renumbered to Section 47-120.3.)

16. Comment:

“47-120.2 is the approval process. The proposed regulations completely ignore the legislative mandate for payment. There is a huge difference between ‘determining eligibility’ and ‘paid’. Determining eligibility means that payment can be made. Thousands of eligible persons wait for weeks and months to get a payment. Many are today unemployed because DSS and the counties did not pay, thus, they lost their child care supportive services and had to quit their job to protect their children - the option was to leave the child home alone - a felony crime in California - endangering the child. Meanwhile millions are wasted on welfare to work, or what we called ‘welfare to nowhere’, trying to make the participant employable, only to defeat everything because DSS is afraid to make sure counties obey the law by promulgating regulation that are clear and implement the statute. Subsection (e) of Section 11323.2 states: ‘The department shall develop regulations to implement this section.’ It does not say that the Department shall pass the ‘buck’ to the counties by not even defining ‘prompt payment.’

“We would recommend that DSS add subsection .24 to read:

“§47-120.24 Prompt Payment

“Once eligibility is established pursuant to subsection .21, a payment shall be made available to the person eligible for such payment within three (3) working days.’

“This will comply with the law. Obeying the law is a good character that should be championed by government and the recipient community.” (ASLANIAN)

Response:

The Department shares the commenter's concern that child care payments be processed promptly, to ensure that clients receive the necessary child care services to allow them to work and/or participate in their welfare-to-work activities. However, establishing a time frame for processing payments is not within the scope of these regulations. The purpose of this regulation package is to enact the retroactive payment provisions of AB 444.

Section 47-120.21 (Post-Hearing -- Renumbered to Section 47-120.31.)

17. Comment:

“The county shall process the child care request and determine the eligibility of the client and child care provider within five working days ~~if~~ of receiving the following information ~~is received by the county:~~” (LSNC and CCLC)

“**Explanation:** The Child Care Law Center commends DSS for establishing a timeline for turning around applications for child care subsidies. Many applicants and recipients complain that their applications languish for months at a time, and meanwhile, their providers are not paid. Establishing a timeline may prevent some of these problems. As we explained in our comments to All County Letter 03-00, we would prefer a two-step application process, with the first step being processing eligibility for a child care subsidy and the second step being approval of a particular child care provider.” (CCLC)

Response:

The Department is further amending the regulation to reflect the proposed change.

18. Comment:

“Add a new section that indicates: ‘If the county has not received this information, it shall send a language appropriate written request for the information which indicates the deadline by which the information must be received, or else the claim will be limited to 30 days from the date the information is received. The notice shall inform the applicant or the recipient that the county can assist in obtaining the verification, and how to request this assistance. If the applicant or recipient does not provide the information or respond to the notice within 20 days of it’s mailing, the worker shall attempt to make a personal contact with the client to verify whether they still are seeking child care, and document this attempt in the individual’s case record. While the applicant, recipient or county is attempting to obtain the information, the time shall be extended.’

“(This language would be similar to the verification/good cause language that already exists regarding verification of eligibility factors. Denials can be based on the refusal

to cooperate, but not the inability to provide the verification if a good faith effort or request for assistance is made.)” (LSNC)

Response:

The Department thanks the commenter for sharing this concern, but is not amending this section in response to this comment. Counties are required to assist clients as needed to obtain eligibility information. In addition, renumbered Section 47-120.311 specifies that if the county has not received the required information within 30 calendar days, the county “may” deny the child care request. This provides counties with the flexibility to extend the deadline to allow clients additional time to submit the required documentation.

19. Comment:

“Comments: This section requires the county to process child care requests and determine the eligibility of the client and the child care provider within 5 working days, if the information of both the client and provider is received. This new requirement adds a new, unfounded workload to County CalWORKs programs, and has no precedent in other law or regulations. In addition, AB 444 does not require it.

“Recommendation: Delete the five-day requirement and instead direct counties to process the requests ‘in a timely manner.’ There is an incentive to process these requests quickly. By processing them quickly, it benefits the client and helps the county reach its participation rate. The processing of a request in five days may not be legitimately possible. In many counties, the request may come to the eligibility worker and must be sent to a separate child care worker. Expecting the county to process paperwork that is handled by two workers within a 5-day window is neither practical nor reasonable. It would be highly unfair to penalize counties doing the best they can under a heavily regulated program. This adds the many regulatory priorities already established in the CalWORKs program.” (CWDA and SO HSSD)

Response:

The Department understands that clients may request child care from a CalWORKs worker who may not be responsible for processing child care requests. Based on the testimony received and to ensure that counties have adequate time to process child care requests, the Department has increased the time frame to ten calendar days. This time frame is consistent with the other programs’ requirements to process eligibility information. The ten calendar days run from the date the required information is received by the county, not from the date of the request.

20. Comment:

“The second area I'd really like to address is the five-day processing time. I think that by itself is not a problem, but no other program has these restrictive requirements. We want something reasonable. Think about it. If you get a letter, you may legitimately respond to it in five days, but you may also have a legitimate reason for not responding in five days. In many counties, child care requests do not touch one hand. They come to the eligibility worker and they're processed to a child care worker. So legitimately it's going to cross two desks and you want us to process it in five days. I don't think that's reasonable.” (DUTERTE)

Response:

The Department understands the workload required to process child care requests. Please refer to response to Comment 19.

Section 47-120.23 (Post-Hearing -- Renumbered to Section 47-120.311.)

21. Comment:

“Recommendation: 47-120.23, use the following language: *If the county has not received this information, it shall send a language-appropriate written request for the information, stating the deadline by which the information must be received, and indicating that the claim will be limited to 30 days from the date that all necessary information is received. The notice shall inform the applicant or the recipient that the county can assist in obtaining the verification, and explain how to request this assistance. If the applicant or recipient does not provide the information or respond to the notice within 20 days of its mailing, the worker shall attempt to make a personal contact with the applicant or recipient to verify whether he or she is still seeking child care, and document this attempt in the individual's case record. While the applicant, recipient, or county is attempting to obtain the information, the child care application shall not be denied. If the county has not received the required information from the client and/or the child care provider within thirty (30) calendar days of the personal contact, the county may deny the child care request.*

“Explanation: This language is similar to the verification/good cause language that already exists regarding verification of eligibility factors. Denials may be based on the refusal to cooperate, but not the inability to provide the verification if a good faith effort or request for assistance is made. This language makes it sufficiently clear that applicants and recipients are required to cooperate in demonstrating eligibility for child care subsidies, and meets the important goal of establishing timelines for approval of child care subsidies without establishing artificial cut-offs.” (CCLC)

Response:

Please refer to response to Comment 18.

Section 47-301.2

22. Comment:

“The county shall provide the applicant/recipient with an informing notice that informs the individual of the availability of Stage One child care. The informing notice must be on file for 30 days before the 30-day retroactive child care limit may be applied.” (LA DPSS)

Response:

The Department does not agree that this amendment is necessary since Section 47-430.2 already specifies when the retroactive payment limit should be applied.

Section 47-301.21 (Post-Hearing -- Renumbered to Section 47-301.22.)

23. Comment:

“This section needs to be changed and reordered. 1) Insert a new b), that states: “Request child care assistance for any child care payments you made which had related to work/WTW activities, for which you did not receive county reimbursement.” 2) Insert a new (c), that states: “now that you have this notice, in the future, all retroactive child care payments shall be limited to 30 days prior to the request;” 3) current (c) becomes (d).” (LSNC)

Response:

The Department thanks the commenter for sharing this concern, but does not agree with the recommendation to change and reorder this section since this is an implementation issue. Regulations are to be applied more broadly and should not address issues that would only arise during implementation.

24. Comment:

“Comments: 47-301.21 requires more informing than what is required by AB 444. AB 444 requires informing of four basic items:

- “1. Paid child care is available to allow clients to be employed or participate in WtW activities,
- “2. Assistance is available in finding and choosing a child care provider,
- “3. Clients are to inform the county of his/her need to paid child care as soon as the need arises, and
- “4. Clients are to request child care subsidies from the county within 30 days from the first day child care services are received.

“Recommendation: Only include informing that is required by AB 444, delete Sections 47-301.21 (c), (d), (e), and (f).” (CWDA, SBER HSS, SD HSSA, and SO HSSD)

“Recommendation: Separate the request for child care from the informing notice.” (SD HSSA)

Response:

The Department does not concur that these sections should be deleted. The information provided in renumbered Sections 47-301.22(c), (d), and (e) is important to ensure that applicants/recipients are aware of their responsibility to request child care as well as their responsibility to submit the necessary information to determine eligibility. In addition, renumbered Section 47-301.22(f) is essential since it allows applicants/recipients to immediately request child care at the time they receive the informing notice. Please also refer to the response to Comment 4.

Section 47-301.21(a) (Post-Hearing -- Renumbered to Section 47-301.22(a).)

25. Comment:

“47-301.21(a) needs a statement that the applicant/recipient is eligible for CalWORKs Stage One child care while he or she works or participates in welfare-to-work activities, regardless of the number of hours they are participating or whether they are a volunteer.” (LSNC)

Response:

The Department is amending this regulation to ensure that applicants/recipients are aware that they are eligible to receive child care if they participate as a volunteer to the extent that they meet the eligibility criteria. Although applicants/recipients are eligible for child care while they work or participate in welfare-to-work activities regardless of the number of hours of participation, the Department does not agree that the regulation should be amended to require that this additional information be included in the informing notice.

26. Comment:

“**Recommendation: 47-301.21(a), use the following language:** *A statement that the applicant/recipient is eligible for CalWORKs Stage One child care while he or she works or participates in approved welfare-to-work activities, even on a voluntary basis. Eligibility for a Stage One child care subsidy is not contingent the number of hours of work or welfare-to-work activities involved.*”

“**Explanation:** This clarification is important because there are often misunderstandings about eligibility. Voluntary participants in work or welfare-to-work activities are often told that they are ineligible for supportive services, and

participants are often told that they must work for a full 32 hours per week in order to be eligible for supportive services.” (CCLC)

Response:

Please refer to response to Comment 25.

Section 47-301.21(b) (Post-Hearing -- Renumbered to Section 47-301.22(b).)

27. Comment:

“Recommendation: 47-301(b), use the following language: *A statement that child care payments in CalWORKs Stage One shall not be made for services provided more than thirty (30) calendar days prior to the applicant’s/recipient’s request for child care and that the applicant/recipient ~~is~~ may be responsible to pay for any child care services received prior to this period.”* (CCLC)

Response:

Please refer to response to Comment 6.

Section 47-301.21(c) (Post-Hearing -- Renumbered to Section 47-301.22(c).)

28. Comment:

“Recommendation: 47-301(c), use the following language: *A statement that in order to receive paid child care, the applicant/recipient shall request child care from the worker, provide the information... [remains the same] ...If the applicant/recipient and/or child care provider do not provide the required information within thirty (30) calendar days despite assistance from the county in obtaining the needed information, as explained in section 47-201.23, the child care request may be denied.”* (CCLC)

Response:

The Department appreciates the suggestion but does not agree that the proposed language is necessary. The informing notice already includes a statement that the applicant/recipient may request assistance from their worker if they have any questions or need additional information.

Section 47-301.21(d) (Post-Hearing -- Renumbered to Section 47-301.22(d).)

29. Comment:

“Recommendation: 47-301(d), use the following language: *A statement that ... [remains the same]... the applicant/recipient is may be responsible to pay for any ... [remains the same]...”* (CCLC)

Response:

Please refer to response to Comment 6.

Section 47-301.21(j) (Post-Hearing -- Renumbered to Section 47-301.22(j).)

30. Comment:

“Clarify that the county needs to present information orally, as well as in writing, and in appropriate language. Many CalWORKs recipients are not literate, and cannot be asked to certify that they read and understood the notice.” (LSNC and CCLC)

Response:

Please refer to responses to Comments 1 and 3.

Section 47-301.22 (Post-Hearing -- Renumbered to Section 47-301.23.)

31. Comment:

“Insert a new section after 42-307.221 [42-301.221] that provides: ‘is assigned to any CalWORKs activity, outside of the WTW plan, such as orientation, appraisal, job club/search, assessment, etc.’” (LSNC and CCLC)

Response:

The Department does not agree that the informing notice should be provided each time the applicant/recipient is assigned to any CalWORKs activity outside of the welfare-to-work plan since applicants receive an informing notice at the time of CalWORKs application. The regulations also provide counties with the option to provide the informing notice at additional points in time as specified in Section 47-301.25.

Section 47-301.221 (Post-Hearing -- Renumbered to Section 47-301.231.)

32. Comment:

“Comments: Section 47-301.221 states applicants/recipients shall receive the child care informing notice at application and at each annual redetermination. AB 444 does not

require the child care informing notice be given at annual redetermination. Also needs a section title.

“Recommendation: Delete the requirement to provide the child care informing notice at **annual redetermination**, as the client will receive the informing notice when the WtW plan is signed, when the WtW plan is amended and when child care is requested. AB 444 does not require counties to provide and obtain a signed child care informing notice at annual redetermination. Title: Informing applicant/recipient.” (CWDA, SBER HSS, and SO HSSD)

“Further, concerns are raised that adding additional paperwork to the annual redetermination process will make it more difficult for clients to complete the process.” (CWDA)

Response:

Please refer to response to Comment 2.

Section 47-301.23 (Post-Hearing -- Renumbered to Section 47-301.24.)

33. Comment:

“Comments: Section 47-301.23 requires counties to have copies of the informing notice available at public counters. However, since the client must sign the informing notice at application, annual redetermination, original WtW plan sign date and when the WtW plan is amended, there is no need to have the informing notice at public counters. Needs a section title.

“Recommendation: Delete the requirement to have the notice available at public counters or revise the form so that it only gives information regarding paid child care.” (CWDA, SBER HSS, and SO HSSD)

“Further, the staff who understand and can explain the form and related regulations will not be available at the counter to assist clients. There may be confidentiality issues if front-office staff collect signed forms from recipients, and duplication of work for all parties if those recipients have already signed the forms and they are on file.” (CWDA and SO HSSD)

Response:

Please refer to response to Comment 8.

Handbook Section 47-301.24 (Post-Hearing -- Renumbered to Handbook Section 47-301.25.)

34. Comment:

“§ 11323.3(b) states: ‘An applicant for, or a recipient of, CalWORKs benefits shall be provided written notice, both at the time of application and when he or she signs an original or amended welfare-to-work plan, of the availability of paid child care as provided in Section 11323.2.’ This is simple English notice is provided at (1) the time of application; and (2) when the participant sign an original amended WtW plan.

“47-120.24 [should be Handbook Section 47-301.24], which implements this section, provides that the notice has to be signed by mailing it out to applicants and recipients with the SAWS 7s, mailing it out with welfare checks, and when the client contacts the CWD for any reason. THIS IS ILLEGAL. Only Informing Notices provided notice is provided at (1) the time of application; and (2) when the participant sign an original amended WtW plan meet the statutory definition. It appears that this regulation is adding to the statute in DIRECT CONFLICT with the statute. This is not good. DSS should implement the law and let lawmakers make the law. DSS regulations writers are not lawmakers.” (ASLANIAN)

Response:

Counties are only required to provide the informing notice at CalWORKs application, redetermination and when an original or amended welfare-to-work plan is signed. Providing the informing notice at additional points in time, as specified in renumbered Handbook Section 47-301.25, is optional for counties. Please also refer to response to Comment 2.

Section 47-301.26 (Post-Hearing -- Renumbered to Section 47-301.27.)

35. Comment:

“Comments: Section 47-301.26 requires the county to ‘date stamp the notice...provide a copy to the child care worker...’ Section 47-120.123 (a) and (b) explains the date of request for child care is the date the client hand delivers the written request or the date or if the request is mailed, the postmark is the date of request. Based on these regulations, a date stamp is not necessary. The regulation requires a copy of the informing notice be provided to the child care worker. This regulation assumes that every applicant/recipient of CalWORKs will receive child care and have a child care worker. There are many CalWORKs recipients that do not receive child care, therefore do not have a child care worker. This regulation requires workers to provide the form to a child care worker whether or not there is a child care case.

“Recommendations: Delete the requirement to date stamp the informing notice when it is returned from the applicant/recipient. Reword Section 47-301.26 as follows: ‘When the applicant/recipient returns the informing notice, the county will retain a copy in the

case file, provide a copy to the child care worker upon client's request, and provide a copy to the applicant/recipient.” (CWDA, SBER HSS, and SO HSSD)

Response:

Please refer to response to Comment 14.

Section 47-301.261 (Post-Hearing -- Renumbered to Section 47-301.271.)

36. Comment:

“Comments: Section 47-301.261 requires the county to document in the case record when the applicant/recipient refuses to sign and/or return the informing notice. It is easier for the county to document on the informing notice the applicant/recipient refused to sign and/or failed to return it. Have it county option where the refusal to sign and/or return the informing notice is documented.

“Recommendation: Reword Section 47-301.261 as follows: ‘If the applicant/recipient refuses either verbally or in writing to sign and/or return the informing notice, the county shall document on the informing notice or in the case record the refusal.’” (CWDA, SBER HSS, and SO HSSD)

Response:

The Department agrees with the comment. The regulation is being modified to provide counties with the flexibility to determine how to document the refusal.

Section 47-301.261(a) (Post-Hearing -- Renumbered to Section 47-301.271(a).)

37. Comment:

“Comments: What does Section 47-301.261 (a) mean? Why the distinction? Are the requirements different when the applicant/recipient fails to sign the informing notice and when they outright refuse?

“Recommendations: Delete this section and include in Section 47-301.261. Reword Section 47-301.261 as follows: ‘If the applicant recipient refuses or fails to sign and/or return the informing notice, the county shall document on the informing notice or in the case record the refusal.’” (CWDA, SBER HSS, and SO HSSD)

Response:

The Department thanks commenters for sharing their concerns, but does not agree with the recommendation. The distinction between “failure to sign” and “refusal to sign” is necessary. For example, if an informing notice is mailed to a client, but the client does not return it, this in itself cannot be considered a “refusal to sign” since there would be no evidence that the client received the notice. In this case, the retroactive payment

limit could not be applied. On the other hand, if the notice is returned by the client with a notation that s/he did not agree to sign, this would be considered a “refusal to sign,” and the retroactive payment limit could be applied.

39. Comment:

“**Comment:** 47-301.26(a) [47-301.261(a)] The Child Care Law Center commends DSS for this language, which clarifies that failure to sign a notice does not in and of itself constitute a refusal to sign the notice.” (CCLC)

Response:

The Department appreciates the commendation.

Section 47-301.27 (Post-Hearing -- Renumbered to Section 47-301.28.)

40. Comment:

“Delete the language in italics, as follows: ‘Clients. Former CalWORKs clients who receive child care services in Stage One shall receive and sign the informing notice upon *re-entry into* Stage One child care and at least annually thereafter.’ The italicized language makes no sense, as folks may never have transitioned into another stage. The sentence should be rephrased to refer to the receipt of CalWORKs.” (LSNC)

Response:

The Department appreciates the comment. The regulation is being amended to require that former CalWORKs clients receive and sign the informing notice at least once annually.

41. Comment:

“**Recommendation:** 47-301.27, use the following language: *Former CalWORKs clients who receive child care services in Stage One shall receive and sign the informing notice upon entry or re-entry into Stage One child care and at least annually thereafter.*” (CCLC)

Response:

Please refer to response to Comment 40.

Section 47-430.22

42. Comment:

“47-430.22 should contain the limits listed above (3rd comment [Comment 7]) that the limit does not apply if the notice was in the wrong language; if the notice was only writing, if the county wrongly informed the recipient s/he was not eligible for child care.” (LSNC)

Response:

Please refer to response to Comment 3.

Section 47-430.3

43. Comment:

“**Recommendation: 47-430.3** This section should be amended to reflect the language recommended above stating that the limit does not apply if the notice was provided in the wrong language, the notice was only in writing, or the county wrongly informed the applicant or recipient that he or she was ineligible for child care.” (CCLC)

Response:

Please refer to response to Comment 3.

General

44. Comment:

“This regulatory package ignores the intent of the Legislature in subsection (a) of Section 11323.2 that states: ‘...child care providers shall be promptly paid for their services to eligible families.’

“There is no proposed regulation that defines ‘promptly’. It should be noted that most child care providers are living in poverty. The prompt payment is important for they do not have thousands of dollars in savings to pay for food and housing they need for themselves and their families. Not only that, but they also have child care space and related expenses to pay.” (ASLANIAN)

Response:

Please refer to response to Comment 16.

45. Comment:

“There is also no form provided to applicants and recipients to request child care. There is an informing form, but not a child care request form. This is not to say that DSS and the counties have not created a form for recipients to request child care. - There is - but it is not readily accessible to the people who need child care. We have been told by CalWORKs participants that this is done intentionally - by not making the form available to participants to ask for child care and other supportive services, participants cannot request child care and with these regulations, counties could only go back 30 days - thus, many poor families will get stuck with owing thousands and thousands of dollars of child care to low-income providers, while DSS and counties will be laughing at these people in misery.

“It is very simple. Ms. Laura Bush is on welfare and working. She needs child care. The county has contracted with the R&Rs to do child care. Thus, the welfare department does not pay child care. The R&R would not process Stage 1 child care unless they get a referral from the worker. Getting hold of the worker is like getting hold of the Pope, who may be more accessible than many welfare workers in California. These regulations completely ignore that problem. Maybe it is done intentionally. It may be the only way to keep the WtW sanctions going up and up. A recent survey done by DSS concluded that the biggest reason for sanctions is ‘lack of child care’ according to CWDA.” (ASLANIAN)

Response:

The Department thanks the commenter for sharing this concern. Please refer to response to Comment 4.

46. Comment:

“Section 11323.2(a)(3) provides that ‘A recipients required to inform the county welfare department of his or her need for paid child care as soon as the need arises.’

“And how does DSS implement this section? By informing applicants and recipients that that they can get child care.

“Yes, counties are instructed to accept and process child care payment requests. But the regulations fail miserably of providing a rational and user friendly process for the child care recipient to request child care.

“When DSS and counties want to know what income the applicants or recipients have, they created a report form (called WR7, CA7,SAWS7 and CW7) that all recipients are required to complete each month. Why the form? So the county will get the information. Why not just let the applicant or recipient call and tell the county that they have income? Now that would save a lot of staff time and paper. Well, DSS and county staff decided that the most effective way to get income information is to have a monthly income report -- or soon a quarterly report. But when it comes to recipients

getting the child benefits, DSS had decided that this is not important - to warrant a monthly supportive services request form. Support Services Request form would help people, whereas the monthly income report could take benefits away from them. Could that be the reason for having a monthly income report and no monthly supportive services request report? The recipients we talk to believe it is the only reason.

“We would respectfully suggest that the SAWS 7, or CW 7, be amended to include a space for recipients to request supportive services. . . .” (ASLANIAN)

Response:

Please refer to response to Comment 13.

47. Comment:

“CDSS included regulations not in AB 444 specifically. Several years ago a survey went out to sanctioned clients and asked them why they were sanctioned. Enough of them responded that if child care were available I would have participated. So the response to that was, let's pepper the regulations, pepper the process with informing notices to make sure that clients know about child care. The current process has informing notices at welfare-to-work plan signing, when welfare-to-work is amended, and when the child care is requested. Along with personal face-to-face contact with the client at orientation and individual meetings with their case manager. So this is an overkill of the process regulations that are not required in AB 444 and those two particular areas and redeterminations notices are not in AB 444 and there is also the issue of date stamping letters when in fact on the letter itself it has a date stamp that tells you when things were actually supposed to be starting that process.” (DUTERTE)

Response:

Please refer to responses to Comments 2 and 14.

48. Comment:

“Also, the language in Sections 42-711.522(b)(1)(B), 42-711.64, 47-301.22 (.221 through .223) indicates the State’s expectation for counties to provide a written informing notice at **each** of these points of contact. We understood from the State that the intent is for counties to obtain the signed/refused to sign informing notice and place it in the case record within 12 months from the effective date of the emergency regulations at **any** of these points of contact (whichever is first). Thereafter, the requirement is to obtain a signed/refused to sign informing notice annually. To do otherwise would generate multiple copies of the same informing notice in the case record.” (LA DPSS)

Response:

The Department understands that informing applicants/recipients about the availability of paid child care at several points in time will generate multiple copies of the informing notice in the case record. However, the requirement to inform an individual about paid child care at CalWORKs application and when an original or amended welfare-to-work plan is signed is specifically required under the provisions of Welfare and Institutions Code Section 11323.3. In addition, the regulations require that applicants/recipients also be informed at annual redetermination. Providing the notice at additional points in time is optional for counties.

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 November 7, 2003 to November 21, 2003 was received from the following:

Kevin M. Aslanian, Executive Director, CCWRO (ASLANIAN)
County of San Bernardino Human Services System (SBER HSS)
Legal Services of Northern California (LSNC) and Child Care Law Center (CCLC)

The comments received and the Department's responses to those comments follow. At the end of each comment is the name of the commenter in parentheses. General comments follow the specifically identified section comments.

Section 40-131.3(u)

1. Comment:

"Comments: The section states, applicants/recipients shall receive the child care informing notice at application and at each annual redetermination. AB 444 does not require the child care informing notice to be given at annual redetermination.

"Recommendation: Delete the requirement to provide the child care informing notice at annual redetermination, as the client will receive the informing notice when the WtW plan is signed, when the WtW plan is amended and when child care is requested. AB 444 does not require counties to provide and obtain a signed child care informing notice at annual redetermination." (SBER HSS)

Response:

No revisions are being made to the regulations in response to the comment. Assembly Bill (AB) 444 indicates that the applicant/recipient shall be provided with a written notice of the availability of paid child care. Requiring counties to issue the notice at annual redetermination ensures that even employed individuals who have never signed a welfare-to-work plan are informed at least annually.

Section 40-181.1

2. Comment:

"Comments: The section states, 'At each annual redetermination, recipients shall receive an informing notice...' AB 444 does not require child care informing be give at annual redetermination.

"Recommendation: Delete the requirement to provide the child care informing notice at annual redetermination, as the client will receive the informing notice when the WtW plan is signed, when the WtW plan is amended and when child care is requested. AB 444 does not require counties to provide and obtain a signed child care informing notice at annual redetermination." (SBER HSS)

Response:

Please refer to response to Comment 1.

Section 47-120

3. Comment:

"The republished language now states that those seeking Stage One childcare are to contact a CalWORKs worker. Former CalWORKs recipients are likely not to have a CalWORKs worker to contact. RCA families may have a Refugee Services Provider process their application. This person would not fit into the terminology of 'CalWORKs worker.' To provide Counties with flexibility and make it more clear whom applicants and former recipients are to contact, this section should be changed to read 'any County worker or contractor who receives a child care request.' This worker shall log and forward the request. (LSNC and CCLC)

Response:

No revisions are being made to the regulations in response to the comment. Since Stage One child care services are only available to current or former CalWORKs eligible clients, it is reasonable to assume that they will request child care through a CalWORKs worker. These regulations require that when clients request child care, the person who receives the request, whomever that may be, must forward it to the appropriate staff for processing.

Section 47-120.122

4. Comment:

"Comments: This section requires counties to date stamp the request when it is received. Regulations should not dictate counties day-to-day processes and procedures. Additionally, other regulations do not require counties to date stamp applications and forms when submitted by the client.

"Recommendation: Delete 'the county shall date stamp the request'" (SBER HSS)

Response:

No revisions are being made to the regulations in response to the comment. The purpose of the date stamp is to verify the date the written request is received by the county. Clients must be provided a confirmation of the date the client's request for child care was received by the county. Since there is no other way to confirm when the request was received, the regulations require a date stamp.

Sections 47-120.123(a) and (b)

5. Comment:

"Comments: This section requires counties to date stamp the request when it is received. Regulations should not dictate counties day-to-day processes and procedures. Additionally, other regulations do not require counties to date stamp applications and forms when submitted by the client.

"Recommendation 47-120.123 (a): Delete the requirement to have the request date stamped by the county. Reword the section as follows: '...the date of request shall be the date the request is received in the county welfare office.'

"Recommendation 47-120.123 (b): Delete the requirement to have the request date stamped by the county. Reword the section as follows: '...the date of the request shall be three days prior to the date the request was received by the county.'" (SBER HSS)

Response:

Please refer to response to Comment 4.

Section 47-120.123(a)

6. Comment:

"At the end of subsection (a) we would suggest the following:

"and a copy county date stamped written request shall be provided in person or mailed to the client.'

"This is to assure that the client has a copy of the document he or she submitted to the county, just in case the county misplaces the written request." (ASLANIAN)

Response:

No revisions are being made to the regulations in response to the comment. Section 47-120.122 under 'County Responsibility' requires counties to provide or mail a written confirmation to the client, which will serve as proof that the client's request for child care was received.

Section 47-120.31 (Referred to in testimony as Section 47-120.21.)

7. Comment:

"The Department, in response to public testimony, has changed the time for counties to process the childcare request from five to 10 days. This is not consistent with the Legislative intent in Welfare and Institutions Code §11323.3 to 'promptly' pay childcare providers. It is not beyond the scope of these regulations to define prompt payment. Welfare and Institutions Code § 11323.3(e) requires the department to develop regulations to implement the section, *including* the provisions of subsection (a) that child care providers be promptly paid for their services to eligible families.

"The public testimony requesting additional time to process the request mentions the potential of several workers handling the request, the time to process, and unreasonable standards. Lengthening the time to process these claims inappropriately penalizes the applicant/recipients and childcare providers, instead of placing the burden on minimizing or correcting these issues where it belongs, with the County.

"The county already will be aware that the person is seeking childcare. It should set the case up for processing. By doing this and clearly informing those seeking Stage One childcare to whom they are to send the required information, counties would minimize the handling and processing time.

"Counties are regularly expected to issue benefits in periods shorter than 10 days (for example, emergency food stamps, homeless assistance, immediate need), when there is an urgent need for payment. CalWORKs recipients and former recipients already are stretched trying to pay for childcare out of pocket, in order to avoid missing work or WTW assignments, while attempting to negotiate the childcare bureaucracy. The legislative intent of prompt payment and the primary interest in maintaining the provision of childcare should outweigh the county desire to have additional time to process the paperwork.

"We propose, as a compromise position, that the Department leave the 10 calendar day wording, *but* add a provision that counties develop an expedited process to issue

payment to those at risk of losing their child care slot or facing an interruption or cessation in participation in their work or training activity if the childcare is not paid within 5 working days. Workers would need to advise applicants/recipients of this option." (LSNC and CCLC)

Response:

No revisions are being made to the regulations in response to the comment. The purpose of this regulation package is to enact the retroactive payment provisions of AB 444. The Department is changing the time frame from five working days to 10 calendar days to ensure that counties have adequate time to process child care requests. This time frame is consistent with the other programs' requirements to process eligibility information. These regulations allow child care subsidies to be retroactive 30 days from the date of the request. Also child care payments are typically made after the services are provided which allows an individual to receive child care pending the approval of their request. With these two practices in place, it should not be necessary to have an expedited process. However, it is not the intent of these regulations to prohibit the counties from expediting payments if necessary.

Section 47-120.31 (Referred to in testimony as Section 40-120.231.)

8. Comment:

"The revised section changes it from five (5) working days to 10 calendar days. This would assure that people would be able to obtain and then forego their employment due to 'child care'.

"It is our view that 5 working days is way to long to wait. By that time an prudent employer would hire another person who does not need child care - another success story of the Welfare to Work.

"This problem can be resolved by creating an advance payment process which does not exist in current regulations.

"Under this process a WtW participant can request 'expedited child care' which shall be approved on the date of application, but no later than the next working day similar to CalWORKs Immediate Need and Permanent Homeless Assistance. The counties should have no problem administering this program given the fact that they are doing this for CalWORKs Immediate Need and Permanent Homeless Assistance effectively and efficiently. This would assure that WtW participant who finally get a job in these high unemployment days would not have to loose the job due to the bureaucratic problems of child care. (ASLANIAN)

Response:

Please refer to response to Comment 7.

Section 47-120.31 (Referred to in testimony as Section 47-120.21.)

9. Comment:

"Comment 18 (regarding renumbered Section 40-120.31). We reassert our request for regulatory language providing that counties inform those seeking childcare reimbursement if further information is needed and to extend the time to provide the information. It is vital that counties inform those seeking retroactive childcare reimbursement if the information they submitted to document this request is deficient, and give sufficient time to provide any missing information, *or* that the regulations clearly provide a "good cause" reason for late submission of information.

"The regulation provides that counties are to assist applicants/recipients in *obtaining* verification. This needs clarification through a further statement that the county has an affirmation obligation to notify those seeking childcare reimbursement that information is missing. For example, a worker would not need to assist an individual in *obtaining* the name and age of the children, as this clearly is information within the knowledge and control of the individual. The worker, however, should be required to inform the individual that the form was not completed and that the missing information is needed to process the claim.

"This is crucial, as a valid denial terminates the right to receive payment. According to the statement of reasons, Counties are not required to extend the 30 days to verify. As the regulations are currently drafted, if the information provided is not complete, the county could appropriately deny the claim, and the fact that the individual was innocently unaware of the omission would not be a defense to the incomplete form,

"In addition, the distinction between refusal to provide/cooperate and the inability to provide the information needs to be clearer. We reassert our comments that the following language be added: 'Denials may be based on the refusal to cooperate, but not the inability to provide verification if a good faith effort or request for assistance is made.'" (LSNC and CCLC)

Response:

No revisions are being made to the regulations in response to the comment. Counties are required to assist clients as needed to obtain eligibility information as specified in Section 47-120.23. In addition, Section 47-120.311, specifies that if the county has not received the required information within 30 calendar days, the county "may" deny the child care request. This provides counties with the flexibility to extend the deadline to allow clients additional time to submit the required documentation if necessary.

Section 47-301.22(a)

10. Comment:

"We thank the Department for including reference to volunteer participation. However, the wording used is confusing, as there are no specific 'volunteer eligibility criteria.' Childcare is only available for approved WTW activities. This includes volunteer activities, which must also be approved. The phrasing implies that there are separate criteria that apply. Also, this section should be clarified to read 'WTW activities or assignments,' as childcare is available for WTW assignments (such as orientation and appraisal), which are not WTW activities.

"Secondly, we disagree that the comment about 'hours of participation' is beyond the scope of these regulations, and encourage the Department to adopt our recommendations to include this language. It is important to be clear that neither former recipients' nor volunteer eligibility to childcare is dependent on an hours' requirement." (LSNC and CCLC)

Response:

No revisions are being made to the regulations in response to the comment. These regulations ensure that applicants/recipients are aware that they are eligible to receive child care if they participate as a volunteer in an approved welfare-to-work activity. The eligibility criteria referred to, as set off by the commas, is the eligibility criteria for child care not for volunteering. Applicants/recipients are eligible for child care while they work or participate in welfare-to-work activities regardless of the number of hours of participation. Further changing the wording to include "WTW activities or assignments" is not necessary as orientation and appraisal are considered WTW activities in regulation. Additionally, there is no mention in prior comments that hours of participation are beyond the scope of these regulations.

Handbook Section 47-301.21

11. Comment:

"The Handbook section at 47-301.21 encourages counties to provide oral notice of childcare subsidies. At a minimum, for clarity and comprehensiveness, the handbook should say 'of childcare subsidies and the contents of the informing notice.'

"Additionally, this is a key section in which to cross-refer to Division 21 language assistance requirements. The handbook section, standing alone, may imply that counties are *never required* to provide oral information on childcare subsidies and reimbursement limits. The easiest way to address this is to restate the Handbook section to read: 'In addition to when oral informing is required pursuant to Division 21, Counties are encouraged to orally inform applicants and recipients of the availability of childcare subsidies, and the contents of the informing notice.'" (LSNC and CCLC)

Response:

No revisions are being made to the regulations in response to the comment. Section 47-301.1 requires counties to inform families of available child care subsidies and ensure access to these subsidies when there is a need based on the client's participation in employment or county approved activities. New Handbook Section 47-301.21 is added simply to encourage counties to also inform families orally of the availability of paid child care as this is good practice. Requiring counties to orally inform families of the availability of paid child care is not advisable as it is difficult to document what was said and when, however written informing is irrefutable.

Sections 47-301.22(b) and 47-430.22 (Referred to in testimony as Sections 47-301.21 and 47-330.22.)

12. Comment:

"We reassert our comments that these sections specifically indicate that the limitation does not apply if the informing notice was not provided in the non-English language identified by the applicant/recipient. Applicants/recipients, as well as workers, are unaware that the time to appeal is extended if the notice was not issued in the appropriate language." (LSNC and CCLC)

Response:

No revisions are being made to the regulations in response to the comment. County welfare departments (CWDs) already must comply with Manual of Policies and Procedures Section 21-115, which require them to provide effective bilingual/interpretive services to limited-English proficient and disabled recipients.

Sections 47-301.22(b) and (d) and 42-711.522(b)(1)(C)

13. Comment:

"These informing notice sections still state that the applicant/recipient is 'responsible for payment.' In the statement of reasons response to comment 6, the Department states it presumes the legislative intent is that *recipients* would be responsible for payment if they request reimbursement too late. All that may be presumed is that someone *other than the Department* would be liable. The notice should not make statements of liability that are beyond the scope of the Department to determine are true. These sections should be changed to read: 'The Department will not be responsible for the payment for child care services provided prior to the 30-calendar day period...'" (LSNC and CCLC)

Response:

No revisions are being made to the regulations in response to the comment. This section does not imply that applicants/recipients are obligated to pay for the child care services provided more than 30 days prior to the applicant/recipient request for childcare. This section indicates that the applicant/recipient is responsible for child care services provided more than 30 days prior to the request, not for payment. Payment decisions are between the individual and their chosen child care provider.

Section 42-301.27 (Referred to in testimony as Section 47-120.27.)

14. Comment:

"Comments: This section requires counties to date stamp the request when it is received. Regulations should not dictate counties day-to-day processes and procedures. Additionally, other regulations do not require counties to date stamp applications and forms when submitted by the client.

"Recommendation: Delete the requirement for the county to date stamp the notice. Reword the section as follows: "When the applicant/recipient returns the informing notice, the county shall retain a copy for the case record..." (SBER HSS)

Response:

Please refer to response to Comment 4.

General

15. Comment:

"Based on the San Bernardino County's written testimony on August 20, 2003, there appear to be no substantive changes. The regulations as written do not follow AB 444, thus making a simple process difficult and costly to administer at the local level." (SBER HSS)

Response:

No revisions are being made to the regulations in response to the comment. The Department feels that the commenter's concerns regarding when the informing notice must be given and the date stamp as proof of receipt are appropriately addressed in accord with AB 444. As stated in response to Comment 1, Part g, requiring counties to issue the informing notice at annual redetermination ensures that employed individuals who have never signed a welfare-to-work plan are informed at least annually. Further, requiring counties to date stamp a child care request is crucial for proof of receipt of the child care request which establishes the period of potential retroactivity.

16. Comment:

"We urge CDSS to commit to a Q & A clarifying the regulations by providing examples." (LSNC and CCLC)

Response:

The Department will issue a Q&A after the adoption of the final regulations if it is deemed necessary.