

## UPDATED INFORMATIVE DIGEST

Currently, in accordance with Welfare and Institutions Code Section 11466.21, all group home and foster family agencies are required to submit independent financial audits as a condition of receiving an annual rate. Previously, CDSS policy determined that group home and foster family agency providers were vendors and not subrecipients of federal funds, in which CDSS regulations required the financial audit be conducted according to the Government Auditing Standards of the Comptroller General of the United States, commonly known as the Yellow Book. This audit standard is less in scope than the audit standard required for subrecipients expending combined federal funds of \$300,000 and greater.

In a letter dated April 3, 2001 from the DHHS, Administration for Children and Families (ACF), the CDSS was notified that group home and foster family agency providers are not vendors and instead, are subrecipients of federal funds. As subrecipients of federal funds, federal regulations require group home and foster family agency providers to comply with the federal OMB Circular A-133 audit requirements. Existing CDSS regulations only require that group home and foster family agency providers obtain a Yellow Book audit and permits these providers to have audits conducted according to the standards established by the federal OMB Circular A-133, either voluntarily or to meet the requirements of other government agencies.

In an April 19, 2001 letter from DHHS, ACF, the CDSS was informed that the type of audit California has required under Welfare and Institutions Code Section 11466.21 does not meet the federal audit standard as required under federal OMB Circular A-133. Accordingly, all federal Foster Care Program funding received by California group homes and foster family agencies is at serious risk. In addition, California's current audit and operational costs under Welfare and Institutions Code Section 11466.21 would not be allowable for federal claiming purposes.

Significant changes in these regulations include: 1) the requirement that all group home and foster family agency corporations who expend \$300,000 or more in combined federal funding in any year adhere to the audit standards contained in OMB Circular A-133; 2) the requirement for the CDSS to issue written management decisions regarding the findings in the providers' OMB Circular A-133 audit reports; 3) the establishment of an appeal process for disputed management decisions concerning disallowed costs; and 4) the creation of a rate reestablishment process for foster family agencies.

These regulations were considered at the Department's public hearings held on January 15 and 16, 2002, in Culver City and Sacramento, respectively. Written and oral testimony was received and as a result, and at the Department's discretion, the proposed regulations were amended as follows:

Section 11-400f.(4) is being amended to include audit of the cost data of the non-profit corporation.

Section 11-400f.(7) is being amended to delete the annual financial audit definition within the fiscal audit definition.

Section 11-400f.(13) is adopted to provide a definition for the term "fraud" and examples of fraud in

relation to reporting financial information and misappropriation of assets.

Section 11-400m.(4) is being adopted to provide a definition for the term “management decision.” It is further amended to expand the management decision process to include the Department’s evaluation of a provider’s cost data and other financial information.

New Section 11-400m.(5) is being adopted to provide a definition for the term “misuse.”

Sections 11-400r.(1) through r.(1)(C) are amended to delete the definition of “rate application.”

Sections 11-402.31 and .33 are amended to cite the appropriate sections that set the requirements for a complete rate application.

Section 11-402.351 is amended for clarity and consistency.

Section 11-402.352 is amended to repeal the revision date of the SR 2 and to add the Group Home Program Days of Care Schedule (SR 5) to the list of documents required for a complete application.

Sections 11-402.354 and .354(a) are amended for clarity.

Sections 11-402.36 through .364(b) are repealed and moved to Section 11-405.214 to appropriately associate the requirements for submission of cost data reports with the requirement for financial audits.

Sections 11-402.371(b) through (b)(4) and 11-402.372(c) through (c)(2) are being repealed for clarity and consistently with the rate application process for a non-profit organization that operates a group home program.

Section 11-402.393 is amended to add “failure to submit a financial audit report” as a reason for rate termination.

Section 11-402.411 is amended to revise a reference citation due to deletion of Section 11-402.36, and to ensure projected data to be reported on the Group Home Program Cost Report (SR 3) as a component of an initial rate application for a new program.

Section 11-402.411(b) is amended to clarify that providers who are discontinuing a group home program(s) in favor of a new program shall submit the Group Home Program Days of Care Schedule (SR 5) instead of the previously required SR 3 and SR 4.

Sections 11-402.411(e) and (e)(1) are repealed for clarity and consistency with the rate application process for a non-profit corporation that operates a group home program.

Section 11-402.422 is amending a reference citation for clarity.

Section 11-402.422(b) is amended to repeal reference to “cost information forms,” repeal the previous requirement for submission of the SR 4, and form revision dates. This section is also amended to now provide for the submission of the Group Home Program Cost Report (SR 3) and Group Home Program Days of Care Schedule (SR 5).

Section 11-402.422(e) is repealed because the requirement to submit an annual financial audit report is being separated from the annual rate application.

Section 11-402.426 amends a reference citation.

Section 11-402.432(d) is amended to clarify that providers who are discontinuing one group home program in favor of another or otherwise discontinuing a program shall submit the Group Home Program Days of Care Schedule (SR 5) instead of the previously required SR 3 and SR 4. Reference to the SR 3 and SR 4 have been repealed.

Sections 11-402.432(f) and (f)(1) are repealed because the requirement to submit an annual financial audit report is being de-linked from the requirement to submit an annual rate application and the exemption for new providers was a one-time only provision for fiscal year 2000/01.

Section 11-402.451 is amended to provide the appropriate reference of Section 11-405.2 for financial audit report program reinstatement requirements and repeals the reference to application requirements.

Sections 11-402.62 and .629 are adopted to clarify that AFDC-FC funds that are spent on items not permissible as specified in Section 11-404 shall be considered an overpayment.

Section 11-402.636 is amended to now clarify that if an overpayment is identified under Section 11-402.63 and the Department has determined misuse or fraud during the same period, only the greater of the overpayment or the amount of misused or fraudulent costs subject to recovery, will be recovered.

Section 11-402.636(a) is repealed as a result of the amendment to Section 11-402.636.

Section 11-402.81 is amended to reference a calendar year reporting period and add reference to Section 11-405.214. This section is also amended to delete the obsolete references for use of the forms previously used under this section.

Section 11-402.811 is amended to change a reference from a calendar year to a provider’s fiscal year.

Section 11-402.812 is being repealed as it is now obsolete.

Section 11-402.82 is not being amended because of the federal DHHS’ determination that the OMB Circular A-122 Cost Principles are not applicable to California’s capitated rate structure.

Section 11-402.828 is amended to add reference to the actions a prudent person would take in similar circumstances in determining what is reasonable when reporting AFDC-FC costs.

Section 11-402.828(c) is amended to provide parity for a non-profit corporation's executive compensation for the operative compensation for the operation of a group home program.

Sections 11-402.828(c)(1) through (c)(3) are repealed for clarity and consistency with Section 11-402.828(c).

Sections 11-402.841 through .841(b) are repealed because the references to the requirement for a cost basis of accounting conflict with Section 11-402.842, which pertains to an accrual basis of accounting. This section is now reserved.

Section 11-402.846 is amended to repeal the term "process" from the section title only and is necessary to specify AFDC-FC overhead cost allocation instruction instead of a process.

Sections 11-402.846(a) and (a)(1) are amended to specify that "AFDC-FC overhead" costs are to be allocated to each AFDC-FC program and to make reference to Welfare and Institutions Code Section 11460(b)(1) and replace "shall" to "may" for clarity.

Sections 11-402.846(a)(1)(A) through (C) are amended only for punctuation.

Section 11-402.846(a)(1)(D) is adopted to include AFDC-FC revenue percentage as an alternative allocation basis.

Section 11-402.846(a)(2) is adopted to specify that the non-profit corporation's chosen methodology for allocation of AFDC-FC costs to each AFDC-FC program shall be documented and subject to audit.

Sections 11-402.85 and .851 have been repealed and reserved for future use.

Section 11-403(c)(1) is amended to repeal reference to Section 11-405 as that reference is unnecessary to clarify that this section addresses reporting of costs, not eligibility for reimbursement.

Section 11-403(c)(1)(A)4. is adopted to provide reference to executive compensation standards and criteria contained in Internal Revenue Code Section 4958 applicable to foster family agencies.

Section 11-403(f)(1)(B) is amended to provide consistency for the rate request process for a non-profit organization that operates a foster family agency.

Section 11-403(f)(1)(B)1. is repealed to separate the financial audit submission with the rate application. This repeal is necessary to comply with the federal audit standard, OMB Circular A-133.

Sections 11-403(f)(1)(B)3. through 4.(ii) are being repealed to separate submission of the financial audit from the rate request. This repeal is necessary to comply with the federal audit standard, OMB Circular A-133.

Section 11-403(f)(1)(D) is amended to provide clarity on the complete rate request submission process.

Section 11-403(f)(1)(D)1. is repealed because of duplication.

Section 11-403(f)(1)(D)2. is amended to require that a foster family agency that does not submit a complete rate request by July 1, that the agency will be denied a rate and payment of AFDC-FC funds will cease effective September 1 until a complete rate request has been submitted.

Section 11-403(f)(2)(B)3. is amended for clarity.

Section 11-403(f)(3)(A) is amended to clarify that the rate request process is available only through the remainder of the fiscal year, and to eliminate unnecessary language and renumbering as a result.

Section 11-403(f)(3)(A)1. is being amended to state that the effective date of the complete rate request submitted after July 1 shall be no earlier than September 1.

Section 11-403(f)(3)(A)3. is adopted to specify that a foster family agency whose rate was terminated because of an unacceptable financial audit report shall not have the rate reestablished until audit reporting requirements have been met.

Section 11-403(f)(3)(A)3.(i) is adopted to specify that once the foster family agency's financial audit reporting requirements have been met, the rate may be reestablished effective the date the Department provides written notice to the corporation.

Sections 11-403(g)(1)(B) through (g)(1)(B)3. are amended to repeal duplicative and obsolete requirements created by adoption of amendments made in other sections.

Sections 11-403(g)(1)(C) through (g)(1)(C)3. are amended to repeal reference to a "permanent" rate and remove the requirement that a complete rate request be based on actual costs for social work in specified cost periods.

Sections 11-403(g)(1)(D) through (D)1. are being repealed because the requirement to submit an annual financial audit report is being separated from the requirement to submit an annual rate request.

Section 11-403(g)(2)(B) is amended to make the rate application process clearer and more consistent with existing foster family agency rate application requirements.

Sections 11-403(g)(2)(D) through (D)1. are being repealed because the requirement to submit an annual financial audit report is being de-linked from the requirement to submit an annual rate application.

Section 11-403(j)(1) is amended to clarify when an FFA overpayment exists and to clarify that AFDC-FC funds that are spent on items not permissible as specified in Section 11-404 shall be considered an overpayment.

Sections 11-403(k) and (k)(1) are amended to correct the use of an ambiguous term and a reference citation.

Sections 11-403(l) through (l)(1)(E) are adopted to establish good cause procedures for a foster family rate request that was not submitted timely.

Section 11-403(l)(2) is adopted to provide a timeframe for the Department to approve or deny the foster family agency's request for a good cause extension and to provide a written determination to the provider.

Section 11-403(l)(2)(A) is adopted to allow a foster family agency with an approved good cause request 30 additional days to submit a complete rate request.

Section 11-403(l)(2)(B) is adopted to establish the rate effective date for a foster family agency that does not submit a complete rate request within the 30-day good cause extension time frame.

Section 11-403(l)(2)(C) is adopted to require a foster family agency whose good cause request is denied to submit a complete rate request prior to the first of the next calendar month to avoid late penalties.

Section 11-404 is adopted to provide a title.

Section 11-404.1 is adopted to specifically identify that state and federal foster care funds to non-profit corporations are to be used to meet the cost of providing care and supervision to eligible children including the associated administrative costs.

Sections 11-404.2 through .24 are adopted to provide that any unexpended foster care funds may only be used for the non-profit organization's charitable purposes.

Section 11-404.3 is adopted to provide the definition of "foster care children."

Section 11-405.11 is amended to state that for purposes of fiscal audits, certified public accountants and others specified in the original amendment are already considered the "Department" agents.

Section 11-405.112 is amended to clarify the distinction of documentation requirements for foster family homes and group homes.

Section 11-405.13 is amended for clarity and consistency with the federal DHHS' determination that the A-122 Cost Principles are not applicable within California's capitated rate structure and now identifies the appropriate cost reports to be used by non-profit organizations to report costs expended for the FC program.

Section 11-405.2 is adopted to comply with Welfare and Institutions Code Section 11466.21, which requires providers to submit a financial audit report as a condition to receive an AFDC-FC rate.

Section 11-405.213 is amended to ensure the application of all financial accounting standards for entities organized and operated on a non-profit basis, in addition to GAGAS.

Section 11-405.213(a) is amended to ensure that California meets the federal audit standard for the foster care program as required under OMB A-133 and that Title IV-E federal financial participation in the program is not jeopardized.

Section 11-405.213(a)(1) is adopted to inform a group home or a foster family agency corporation that its program shall be deemed to have expended federal funds when it receives funds from its pass-through entity via the foster care rate.

Section 11-405.213(a)(2) is adopted to instruct group home and foster family agency corporations to submit the report packages, as defined by OMB Circular A-133 to the Department.

Section 11-405.213(a)(3) is adopted to specify that group home and foster family agency corporations that meet the federal funding threshold requiring an OMB Circular A-133 audit, but their fiscal year ends prior to the adoption of new federal audit requirement regulations, are required to submit a financial audit in accordance with Government Auditing Standards in lieu of the OMB Circular A-133 audit.

Section 11-405.213(b) is amended to specify the audit standards for a non-profit corporation that is exempt from an OMB Circular A-133 audit.

Section 11-405.213(b)(1) is repealed since the references to report due dates for audits which require OMB Circular A-133 standards contained in the original amendment were moved to Section 11-405.213(a).

Sections 11-405.213(b)(2) and (b)(3) are repealed since the references to report due dates for audits which require OMB Circular A-133 standards were moved to Section 11-405.213(a).

Section 11-405.214 is amended to specify that cost data previously reported to Foster Care Rates Bureau as a component of the rate application, shall now be examined and reported as part of the financial audit.

Section 11-405.214(a) is adopted to provide specific instructions on cost data to be submitted as part of the required financial audit report when the non-profit corporation's fiscal year ends prior to the effective date of the regulations implementing the new audit requirements.

Section 11-405.215 is repealed because specific reference to audit compliance testing is already specified in OMB Circular A-133. The original Section 11-405.215 is reinstated.

Section 11-405.215(a) is being amended to remove language associated with the submission of a financial audit report to receive an annual foster care rate.

New Section 11-405.217 (new) is necessary to specify that, for those situations when the provider has good cause for submitting an audit report after the due date the provider may submit a written request for such a determination.

Sections 11-405.217(a) through (a)(6) are necessary to provide a list of the specific information that must be included in the written request for a determination of good cause for late submission of a financial audit report.

Sections 11-405.217(b) through (b)(2) are adopted to specify the time period when the Department must notify the provider in writing of the determination of a good cause decision.

Sections 11-405.218 and .219 are being amended to change the wording from "provider" to "non-profit corporation" for language consistency in the regulations.

Sections 11-405.22 through .222(b) are being repealed. There is no need for a partial listing of group home and foster family agency corporation and Department responsibilities to be included in the regulations since a complete listing of each entity's responsibilities for ensuring that the requirements of the OMB Circular A-133 audit is contained in the circular itself.

New Sections 11-405.23 through .231(c) are necessary to require that the Department notice group home and foster family agency non-profit corporations of the amounts subject to recoupment when misuse or fraud involving foster care funds has been identified in a fiscal or financial audit.

Section 11-405.232 is adopted to establish a process for appeals of the Department's decision on audit findings where misuse or fraud of AFDC-FC funds is disclosed in a fiscal or financial audit report.

Section 11-405.233 is adopted to establish alternatives for repayment of funds after an amount for recoupment has been determined.

Sections 11-405.234 through .234(b) are being adopted to establish criteria and guidance for rate termination where a non-profit corporation has had findings of misuse or fraudulently expended AFDC-FC funds disclosed from a financial or fiscal audit.

Sections 11-405.24 through .249 are being repealed. The appeals process for management decision findings identifying questioned costs reflecting misuse or fraud resulting from an OMB Circular A-133 audit are now addressed in the new Section 11-405.232.

Section 11-406 et seq. is adopted to identify specific forms, definitions of forms, and revision dates required by the Department for use by non-profit corporations in submission of cost and audit documentation to the Department as required by regulation.

In addition, various renumbering has been done due to above-mentioned repeals.

A 15-day renote was conducted from November 22, 2002 to December 9, 2002. No changes have been made as a result of testimony received, but at the Department's discretion the following change has been made:

Section 11-406 is amended to revise some of the forms.

A second 15-day renote was conducted from December 20, 2002 to January 6, 2003. No testimony or amendments have been made as a result of this 15-day renote.