

FINAL STATEMENT OF REASONS

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

Section 35000(r)(3)

Specific Purpose/Factual Basis:

The specific purpose of this revision is to replace the term recertification with the term reassessment to provide clarity and to be consistent with the AAP regulations, statutes and the title of the AAP 3 form. It is not necessary to recertify a child's AAP eligibility, once a child is determined AAP-eligible they remain eligible until the age of 18 or 21, if there is a mental or physical disability that warrants the continuation of benefits. This change is consistent with terminology in the regulations and Welfare and Institutions Code Section 16121.05(c).

Post-hearing Modification

The forms listed in Section 35001 are incorporated by reference as it would be cumbersome, unduly expensive or impractical to print the new versions of the existing forms or the new forms in the CCR. These seven amended and two new forms incorporated by reference were available upon request and at CDSS office for review by anyone who had requested to see them during the 45-day comment period.

Section 35001(a)(1)

Specific Purpose:

Form AAP 1 (Request for Adoption Assistance Program Benefit) was revised by deleting question number one, which is the child's income, to bring the form into compliance with federal requirements.

Factual Basis:

The deletion of question number one is necessary to be consistent with federal requirements 45 CFR 1356.40(c), ACYF-CB-PA-01-01 (1/30/01), Welfare and Institutions Code Section 16119(d)(1), and meets the Program Improvement Plan Primary Strategy 12. The use of a means test is prohibited in determining AAP eligibility, the selection of a suitable adoptive family or in negotiating an adoption agreement, including the amount of payment.

Post-hearing Modification

Section 35001(a)(2)

Specific Purpose:

Form AAP 2 (Payment Instructions Adoption Assistance Program) was amended by deleting an obsolete statement. The Department of Health Care Services Health (DCHS) Questionnaire is no longer required by DCHS. A line for the Payee's email address was added as another form of contact for the payee. A statement was revised for purposes of clarification and to correspond with the AAP agreement.

Factual Basis:

The deletion of the DHCS statement is necessary because DHCS has stopped accepting copies of the DHS 6155 form. See Section 35341(a)(2)(C) for further explanation. The statement confirming the monthly payment for a child placed out of the home does not exceed the amount the child would have received had they remained in foster care was revised to read as follows: The child is placed outside of the adoptive home and the monthly payment amount does not exceed the maximum state-approved facility rate for which the child is eligible. This revision is consistent with Welfare and Institutions Code Section 16121(b).

Post-hearing Modification

Section 35001(a)(3)

Specific Purpose:

Form AAP 3 (Reassessment Information - Adoption Assistance Program) was amended to delete question number two, child's income, to bring the form into compliance with federal requirements. A line for the Payee's email address was added as another form of contact for the payee and other technical edits were done for clarity and consistency.

Factual Basis:

The deletion of question number two is necessary to be consistent with federal requirements 45 CFR 1356.40(c), ACYF-CB-PA-01-01 (1/30/01), Welfare and Institutions Code Section 16119(d)(1), and meets the Program Improvement Plan Primary Strategy 12. The use of a means test is prohibited in determining AAP eligibility, the selection of a suitable adoptive family or in negotiating an adoption agreement, including the amount of payment.

Post-hearing Modification

Section 35001(a)(4)

Specific Purpose:

Form AAP 4 (Eligibility Certification Adoption Assistance Program) was amended to bring the form into compliance with federal requirements. The section referring to family responsibility and the references to a child's income and/or property was deleted. The form was reformatted based on the revisions made to the regulations and to provide clarity and consistency.

Factual Basis:

The amendments to the AAP 4 are consistent with the amended regulations stated in Section 35326, the federal requirements of the Social Security Act, Sections 471, 473 and Welfare and Institutions Code Section 16120. The deletion of questions related to a child's income and/or property was necessary to be consistent with federal requirements 45 CFR 1356.40(c), ACYF-CB-PA-01-01 (1/30/01), Welfare and Institutions Code Section 16119(d)(1), and meets the Program Improvement Plan Primary Strategy 7, 8 and 12. The use of a means test is prohibited in determining AAP eligibility, the selection of a suitable adoptive family or in negotiating an adoption agreement, including the amount of payment. The section referring to family responsibility is not relevant and does not relate to determining a child's AAP eligibility.

Post-hearing Modification

Section 35001(a)(5)

Specific Purpose:

The specific purpose of form AAP 6 (Adoption Assistance Program Negotiated Benefit Amount and Approval) is to document the initial and subsequent AAP rate negotiation process completed between the responsible public agency and the adoptive family.

Factual Basis:

The federal Administration of Children, Youth and Families requires documentation be in the AAP case file supporting the AAP rate/benefit negotiation process. The AAP 6 was developed to meet this requirement. This form is consistent with the Social Security Act Section 473 and Welfare and Institutions Code Sections 16119 and 16121.

Post-hearing Modification

Section 35001(a)(6)

Specific Purpose:

The specific purpose of form AAP 8 (Adoption Assistance Program Nonrecurring Adoption Expenses Agreement) is to document the adoptive parent's agreement of the receipt of Nonrecurring Adoption Expenses.

Factual Basis:

The federal Administration of Children, Youth and Families requires documentation be in the AAP case file stating the adoptive parents have been informed, have submitted a claim or plan to submit a claim for Nonrecurring Adoption Expenses. The AAP 8 form was developed to meet this requirement; the form informs the adoptive parents of the benefit and the option to submit a claim immediately or at a later date. This form is consistent with the Social Security Act Section 473 and Welfare and Institutions Code Section 16120.1.

Post-hearing Modification

Section 35001(a)(87) (Renumbered from 35001(a)(85))

Specific Purpose:

Form AD 4320 (Adoption Assistance Program Agreement) was amended to bring the form into compliance with federal and state requirements.

Factual Basis:

The amendments to the AD 4320 are consistent with the amended regulations stated in Section 35337 and 35339. These changes are consistent with federal requirements of the Social Security Act, Section 473; 45 CFR 1356.40 and Welfare and Institutions Code Sections 16120(d), (d)(1); 16121; 16121.1 and 16121.2. The revisions to the AD 4320 also meet the Program Improvement Plan Primary Strategy 13 and 14.

Post-hearing Modification

Section 35001(f)(8)

Specific Purpose:

Form FC 8 (Federal Eligibility Certification for Adoption Assistance Program) was amended to bring the form into compliance with federal requirements.

Factual Basis:

The amendments to the FC 8 are consistent with the amended regulations stated in Section 35326, the federal requirements of the Social Security Act, Sections 471, 473 and Welfare and Institutions Code Section 16120 (j), (k), (m), (n).

Post-hearing Modification

Section 35001(f)(10)

Specific Purpose:

Form FC 10 (Income and Property Checklist for Federal Eligibility Determination - Adoption Assistance Program) was amended to bring the form into compliance with federal requirements.

Factual Basis:

The amendment of this form is necessary to correspond with amended Section 35341(a)(2)(C)1.

Post-hearing Modification

Section 35325(c)

Specific Purpose:

As a result of testimony received and upon further review of the regulations, Section 35325(c) is amended to define the terms "responsible public agency" and "county" as they relate to AAP.

Factual Basis:

The term "responsible public agency" is based on the definition stated in Section 35000(r)(10) and Welfare and Institutions Code Section 16119. The term "county" is based on the definition stated in Section 35000(c)(9) and Welfare and Institutions Code Section 16118. To avoid redundancy Section 35325(c)(1) is repealed.

Section 35325(c)(1) (Repealed after the public hearing)

Specific Purpose/Factual Basis:

The specific purpose of this section is to change the capitalized "D" in the word department to a lower case "d." This editorial change is consistent with all other references that use the word department including the language in the Adoption Assistance Program (AAP) California (CA) statutes.

Final Modification:

To avoid redundancy with the amendments made to Section 35325(c) after the public hearing, this section is repealed.

Sections 35325(c)(2) and (c)(2)(A) (Repeal)

Specific Purpose:

The specific purpose of this repeal is to allow the adoption of amended language regarding which county is financially responsible for the AAP payments when a child is relinquished for adoption to a California licensed public or private adoption agency.

Factual Basis:

Repeal of these sections is necessary to allow for the adoption of language to provide clarity and consistency with federal requirements, Social Security Act Section 473(a)(2), ACYF-CB-PA-01-01 (1/23/01) and Welfare and Institutions Code Section 16118(e).

Section 35325(c)(2) (Adopt) (Renumbered to 35325(c)(1) after the public hearing)

Specific Purpose:

The specific purpose of this section is to provide guidance for the adoption agency when determining the financially responsible county for a child who is relinquished for adoption and placed with an adoptive family in the state of California.

Factual Basis:

This section is necessary to meet the requirements of Welfare and Institutions Code Section 16118(e). When a child is voluntarily relinquished to a public or private adoption agency and placed with an adoptive family, the financially responsible county is the county where the relinquishing parent resides. The Program Improvement Plan Primary Strategy # 7 and the Social Security Act Section 473(a)(2); ACYF-CB-PA-01-01 (1/23/01) mandates California's AAP regulations state that a child may be relinquished to a licensed public or private adoption agency.

Since current Section 32325(c)(2)(A) is being repealed, Section 32325(c)(2)(B) is renumbered to (c)(2)(A) for clarity and consistency.

Final Modification:

As a result of testimony received and upon further review of the regulation, Section 35325(c)(2) (Renumbered to 35325(c)(1) after the public hearing), is further amended to provide clarity in regards to which agency the completed form AAP 1 should be

submitted to when a child has been voluntarily relinquished for adoption to a California licensed public or private adoption agency and placed with a California prospective adoptive family.

Section 35325(c)(3) (Renumbered to 35325(c)(2) after the public hearing)

Specific Purpose:

The specific purpose of this section is to provide clarity regarding which state is responsible to determine AAP eligibility, enter into the adoption assistance agreement and pay the subsidy when a child is relinquished to a private adoption agency in another state and placed with a California adoptive family.

Factual Basis:

This section is necessary to provide policy interpretation of the Social Security Act, Section 473; ACYF-CB-PA-01-01 (1/23/01). When an out of state child is relinquished to a private adoption agency in another state and placed with a prospective adoptive family in California, the responsible public agency in which the prospective adoptive parents reside is responsible for determining the child's AAP eligibility and entering into the adoption assistance agreement. The financially responsible county in California pays the subsidy. The prospective adoptive parents must apply for AAP with the responsible public agency representing their county of residence in California.

Section 35325(c)(4) (Renumbered to 35325(c)(3) after the public hearing)

Specific Purpose:

The specific purpose of this section is to provide clarity regarding which state is responsible to determine AAP eligibility, enter into the adoption assistance agreement and pay the subsidy when a child is relinquished to a California private agency and placed with an adoptive family in another state.

Factual Basis:

This section is necessary to provide policy interpretation of the Social Security Act, Section 473; ACYF-CB-PA-01-01 (1/23/01). When a child is relinquished to a California private adoption agency and placed with a prospective adoptive family in another state, the public child welfare agency in the adoptive parents' state of residence is responsible for determining the child's AAP eligibility, entering into the adoption assistance agreement and paying the subsidy. Accordingly, the prospective adoptive parents must apply for AAP with the public child welfare agency in their state of residence, not with the county where the relinquishing birth parent resides.

Handbook Section 35325(d)

Specific Purpose/Factual Basis:

The specific purpose is to delete the Welfare and Institutions Code quotation. It is not necessary to quote the Welfare and Institutions Code in the AAP regulations. If the reader questions the regulations, it would be best for them to review the current version of the Welfare and Institutions Code Section 16118(e) referenced in the AAP regulations.

Section 35325(d)(2)

Specific Purpose/Factual Basis:

Current Section 35325(d)(2) is renumbered to Section 35325(d) for clarity and consistency. Current Section 35325(d) is being repealed.

Section 35325(e)(3) et seq.

Specific Purpose:

The specific purpose of this amendment is to repeal these sections to avoid duplication of information stated in Sections 35326; 35333; 35337; and 35341.

Factual Basis:

Repeal of these sections is necessary to provide clarity and consistency for the reader, and structure the regulations in a more logical order. The consolidation of information will encourage the reader to read the entire section related to the specific topic versus a brief synopsis stated in this section.

Section 35326 (Repeal)

Specific Purpose:

The specific purpose of this repeal is to allow the adoption of new sections which describe more clearly the methodology to be used by the responsible public agency to determine a child's AAP eligibility.

Factual Basis:

Repeal of these sections is necessary to allow the adoption of accurate methodology consistent with federal and state laws for the responsible public agency to follow when determining a child's AAP eligibility.

Section 35326 (Adopt)

Specific Purpose:

The specific purpose of the introductory paragraph is to provide an overview of the AAP eligibility determination process to be conducted by the responsible public agency.

Factual Basis:

This section is necessary to provide a description of the AAP eligibility determination process. The content of the introductory paragraph and more detailed information that follows is based on Welfare and Institutions Code Section 16120 that states AAP eligibility determination requirements. This section is consistent with federal requirements stated in Social Security Act, Sections 471(a)(19); 473(a)(2); 473(a)(2)(A); 473(a)(2)(A)(ii); 473(c); 473(e); Deficit Reduction Act of 2005; and Fostering Connections to Success and Increasing Adoptions Act of 2008. California is mandated by the AAP Program Improvement Plan to amend the AAP regulations to be consistent with federal law. The adoption of this section meets the Program Improvement Plan Primary Strategies: 1 through 6; 10; 15; and 17.

Final Modification:

As a result of testimony received and upon further review of the introductory paragraph, the regulation was reworded for clarity and consistency with the intent of Welfare and Institutions Code Section 16120.

Section 35326(a)

Specific Purpose:

The specific purpose of this section is to describe the methodology to be used by the responsible public agency to determine if the child meets all three conditions of the three-part special needs criteria.

Factual Basis:

This section is necessary to provide direction to the responsible public agency when determining if a child is AAP eligible, the child must meet all three parts of the special needs criteria. The stated three-part special needs determination is consistent Welfare and Institutions Code Section 16120(a) through (c).

Sections 35326(a)(1) and (a)(1)(A)

Specific Purpose:

The specific purpose of these sections is to determine if the child meets the first criteria of the three-part special needs determination.

Factual Basis:

Section 35326(a)(1) is necessary to meet the requirement specified in Welfare and Institutions Code Section 16120(a). To meet the first criteria of the three-part special needs determination, there must be evidence in the case file stating the child cannot or should not return to the home of his or her parents.

Section 35326(a)(1)(A) is necessary to meet Welfare and Institutions Code Section 16120(a) as it provides a description of what may be considered evidence when determining if the child cannot or should not return to the home of his or her parents.

Sections 35326(a)(2) and (a)(2)(A)

Specific Purpose:

The specific purpose of these sections is to determine if the child meets the second criteria of the three-part special needs determination.

Factual Basis:

Section 35326(a)(2) is necessary to meet the requirement stated in Welfare and Institutions Code Section 16120(b). To meet the second requirement of the three-part special needs determination, the child must have at least one characteristic that is a barrier to his or her adoption.

Section 35326(a)(2)(A) is necessary to meet Welfare and Institutions Code Section 16120(b) as it provides a description of what may be considered barriers to adoption.

Final Modification:

As a result of testimony received, Section 35326(a)(2)(A) is amended to include adverse parental background as a special needs factor and is consistent with Welfare and Institutions Code Section 16120(b).

Section 35326(a)(3)

Specific Purpose:

The specific purpose of this section is to determine if the child meets the third criteria of the three-part special needs determination.

Factual Basis:

This section is necessary to meet the requirement stated in Welfare and Institutions Code Section 16120(c). To meet the third requirement of the three-part special needs

determination, an effort must be made to place the child for adoption with appropriate parents without providing AAP unless it is against the best interest of the child.

Sections 35326(a)(3)(A) through (a)(3)(A)2.

Specific Purpose:

The specific purpose of these sections is to describe the activities to be completed by the responsible public agency when searching for an adoptive family who does request AAP benefits.

Factual Basis:

Section 35326(a)(3)(A) is necessary to meet the requirement specified in Welfare and Institutions Code Section 16120(c). The section instructs the responsible public agency to document in the case file the effort made to search for an adoptive family who does not request AAP benefits.

Sections 35326(a)(3)(A)1. and 2. describe the search activities to be considered when a responsible public agency is searching for an adoptive family who does not request AAP benefits. This section is consistent with Welfare and Institutions Code Section 16120(c).

Sections 35326(a)(3)(B) through (a)(3)(B)1.b.

Specific Purpose:

The specific purpose of these sections is to describe what factors are to be considered when a search for adoptive parents who do not request AAP benefits is not required.

Factual Basis:

Section 35326(a)(3)(B) is necessary as it describes when the responsible public agency is not required to conduct a search for adoptive parents who do not request AAP benefits. A search is not required when a child has significant emotional ties with the prospective adoptive parents while in their care as a foster child or if a relative plans to adopt the child. This section is consistent with Welfare and Institutions Code Section 16120(c).

Sections 35326(a)(3)(B)1. through (a)(3)(B)1.b. describe circumstances for the responsible public agency to consider when determining if a search for adoptive parents who are not requesting AAP benefits is not required. This information is consistent with Welfare and Institutions Code Section 16120(c).

Section 35326(f) (Renumbered to 35326(b) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the methodology to be used by the responsible public agency to determine if the child meets the citizenship requirements for AAP eligibility.

Factual Basis:

This section is necessary to provide direction to the responsible public agency when determining if the child meets the citizenship requirements for AAP eligibility. The stated citizenship requirements that a child be a U.S. citizen or qualified alien are consistent with Welfare and Institutions Code Section 16120(l).

Final Modification:

As a result of testimony received and upon further review of the regulations, this section is renumbered to 35326(b). The Title IV-E (federal) funding eligibility paths and state funding eligibility paths have been restructured to provide clarity. Amended Section 35326(c) through 35326(e) reflect the five eligibility paths for Title IV-E funding and new Section 35326(f) states the eligibility paths specific to State funding. The language of Section 35326(f) was moved, and expanded on, from 35326(b)(1)(D). These amended sections are consistent with Welfare and Institutions Code Sections 16120(i) and (j).

Sections 35326(f)(1) through (f)(3) (Renumbered to 35326(b)(1) through (b)(3) after the public hearing)

Specific Purpose:

The specific purpose of these sections is to describe the requirements that must be met if a child is not a U.S. citizen or qualified alien.

Factual Basis:

Section 35326(f)(1) is necessary to describe the criteria the child must meet if the child is an unqualified alien and placed with an unqualified alien family. Welfare and Institutions Code Section 16120(l) states that if a child is placed with an unqualified alien, the child must be a qualified alien or have lived in the U.S. for at least five years if the child entered the United States on or after August 22, 1996.

Section 35326(f)(2) is necessary to state that a child is exempt from the five year residency requirement if they are placed with a U.S. Citizen or qualified alien or a member of one of the stated excepted groups. This information is found in Welfare and Institutions Code Section 16120(l).

Section 35326(f)(3) is necessary to provide guidance to the responsible public agency as to the applicable funding stream when placing an unqualified alien child with an unqualified alien family in another country.

Final Modification:

Please see Final Modification for Section 35326(f) (Renumbered to 35326(b) after the public hearing).

Section 35326(b) (Renumbered to 35326(c) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the methodology to be used by the responsible public agency to determine if the child meets one of the five paths to AAP eligibility.

Factual Basis:

This section is necessary to provide direction to the responsible public agency when determining if a child is AAP eligible; to be AAP eligible the child must meet one of the five paths to eligibility. The stated five paths to eligibility are consistent with Welfare and Institutions Code Sections 16120(i) and (j).

Final Modification:

Please see Final Modification for Section 35326(f) (Renumbered to 35326(b) after the public hearing).

Sections 35326(b)(1) through (b)(1)(D) (Renumbered to 35326(c)(1) through (c)(1)(D) after the public hearing)

Specific Purpose:

The specific purpose of these sections is to describe the first path of the five paths to AAP eligibility.

Factual Basis:

Section 35326(b)(1) is necessary to describe the criteria as stated in Welfare and Institutions Code Section 16120(j)(2) that the child would have had to have been eligible for Aid to Families with Dependent Children (AFDC) in the home of removal and at the time of removal.

Section 35326(b)(1)(A) is necessary per Welfare and Institutions Code Section 16120(j)(2) to require when a child is involuntarily removed from the home to obtain judicial determination, that it would be contrary to the child's welfare to have remained in the home of removal.

Sections 35326(b)(1)(A)1. and 2. are necessary to be consistent with Welfare and Institutions Code Section 16120(j)(2) that judicial determination must be made in the first court ruling sanctioning (even temporarily) the removal from the home and that the "contrary to welfare" finding is explicit in the first court order.

Section 35326(b)(1)(B) is necessary to state the requirements that must be obtained within six months of the date the child lived with the specified relative when a child was voluntarily relinquished to a licensed public or private adoption agency. These requirements are consistent with Welfare and Institutions Code Section 16120(j)(3).

Sections 35326(b)(1)(B)1. and 2. are necessary as they describe the specific requirements that a petition to the court to remove the child from the home of the specified relative is obtained within six months of the removal and that there is subsequent judicial determination that remaining in the home would be contrary to the child's welfare. These requirements are specified in Welfare and Institutions Code Section 16120(j)(3).

Section 35326(b)(1)(C) is necessary to be consistent with Welfare and Institutions Code Section 16120(j)(2). If a child is removed from the home pursuant to a voluntary placement agreement with the public agency there must be at least one Title IV-E Foster Care (FC) payment made on behalf of the child.

Section 35326(b)(1)(D) is necessary per Welfare and Institutions Code Section 16120(i). If the child does not meet one of the five paths to AAP eligibility, the placing agency must document the child was at risk of dependency at the time of relinquishment or removal from the home of the specified relative. The document stating the child is at risk of dependency must be certified by the responsible public child welfare agency.

Final Modification:

Please see Final Modification for Section 35326(f) (Renumbered to 35326(b) after the public hearing).

Section 35326(b)(2) (Renumbered to 35326(c)(2) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the second path of the five paths to AAP eligibility.

Factual Basis:

This section is necessary per Welfare and Institutions Code Section 16120(j)(4). If the child is placed with their minor parent in a foster home or a child care institution, there must be at least one Title IV-E FC payment made on behalf of the child's minor parent.

Sections 35326(b)(3) through (b)(3)(B) (Renumbered to 35326(c)(3) through (c)(3)(B) after the public hearing)

Specific Purpose:

The specific purpose of these sections is to describe the third path of the five paths to AAP eligibility.

Factual Basis:

Section 35326(b)(3) is necessary to describe the third path of the five paths to AAP eligibility. If the child was receiving AAP benefits in a prior adoption and later the adoption dissolved and the child is again available for adoption, the child may continue to receive AAP benefits provided two requirements are met. This section is consistent with Welfare and Institutions Code Section 16120(m).

Sections 35326(b)(3)(A) and (B) are necessary to state the requirements that a child must continue to meet, the three-part special needs determination and the citizenship requirements, to receive AAP benefits in a subsequent adoption per Welfare and Institutions Code Section 16120(m).

Section 35326(b)(4) (Renumbered to 35326(c)(4) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the fourth path of the five paths to AAP eligibility.

Factual Basis:

This section is necessary to describe the fourth path of the five paths to AAP eligibility per Welfare and Institutions Code Section 16120(j)(1). A child may meet this fourth path to AAP eligibility if the Social Security Administration has determined the child is eligible to receive federal Supplemental Security Income benefits.

Section 35326(b)(5) (Renumbered to 35326(c)(5) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the fifth path of the five paths to AAP eligibility.

Factual Basis:

This section is necessary to describe the fifth path of the five paths to AAP eligibility as stated in Welfare and Institutions Code Section 16120(j)(5). A child will meet this fifth path to AAP eligibility if they are an Indian child and the subject of an order of adoption based on tribal customary adoption of an Indian child.

Sections 35326(c) through (c)(3) (Renumbered to 35326(d) through (d)(3) after the public hearing)

Specific Purpose:

The specific purpose of these sections is to describe the methodology to be used by the responsible public agency to determine if the child meets the "applicable child" requirements.

Factual Basis:

These sections are necessary to provide the requirements of what defines an "applicable child" for determining AAP eligibility. As stated in Welfare and Institutions Code Section 16120(n) a child may be an "applicable child" if they meet the applicable age requirements anytime before the end of the prescribed federal fiscal year; they have been in foster care for 60 consecutive months; or are a sibling of an "applicable child" and placed together in the same prospective adoptive home.

Final Modification:

As a result of testimony received and upon further review of the regulations, the definition of an "Applicable Child" and the corresponding age/FFY chart have been moved and amended for clarity from Section 35326(e) to amended Section 35326(d)(3). To provide more clarity, these sections were reordered.

Section 35326(d) (Renumbered to 35326(e) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the methodology to be used by the responsible public agency to determine if the "applicable child" meets one of the four paths to AAP eligibility.

Factual Basis:

This section is necessary to provide direction to the responsible public agency when determining if an "applicable child" meets one of the four paths to AAP eligibility. The stated four paths to eligibility for an "applicable child" are consistent with Welfare and Institutions Code Section 16120(k).

Final Modification:

Please see Final Modification for Section 35326(f) (Renumbered to 35326(b) after the public hearing).

Section 35326(d)(1) through (d)(1)(B)2. (Renumbered to 35326(e)(1) through (e)(1)(B)2. after the public hearing)

Specific Purpose:

The specific purpose of these sections is to describe the first path of the four paths to AAP eligibility for an "applicable child."

Factual Basis:

Section 35326(d)(1) is necessary to describe the first path of the four paths to AAP eligibility specific to an "applicable child" as stated in Welfare and Institutions Code Section 16120(k)(1). An "applicable child" in the care of a public or private child placement agency or Indian tribal organization must meet one of two factors.

Sections 35326(d)(1)(A) through (d)(1)(B)2. are necessary to describe the factors that must be met as they relate to Section 35326(d)(1): 1. Child was involuntarily removed from the home and judicial determination was made that continuation in the home was contrary to the child's welfare. 2. If a voluntary placement agreement or voluntary relinquishment was made, judicial determination does not have to be made nor does there have to have been a Title IV-E FC payment made on the child's behalf. These sections are consistent with Welfare and Institutions Code Section 16120(k)(1)(A) and (B).

Section 35326(d)(2) (Renumbered to 35326(e)(2) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the second path of the four paths to AAP eligibility for an "applicable child."

Factual Basis:

This section is necessary to describe the second path of the four paths to AAP eligibility per Welfare and Institutions Code Section 16120(k)(2). An "applicable child" may meet this second path to AAP eligibility if the Social Security Administration has determined the child is eligible to receive federal Supplemental Security Income benefits.

Section 35326(d)(3) (Renumbered to 35326(e)(3) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the third path of the four paths to AAP eligibility for an "applicable child."

Factual Basis:

This section is necessary per Welfare and Institutions Code Section 16120(k)(3). If the "applicable child" is placed with their minor parent in a foster home or a child care institution, they meet the third path of the four paths to AAP eligibility for an "applicable child."

Section 35326(d)(4) (Renumbered to 35326(e)(4) after the public hearing)

Specific Purpose:

The specific purpose of this section is to describe the fourth path of the four paths to AAP eligibility for an "applicable child."

Factual Basis:

This section is necessary to describe the fourth path of the four paths to AAP eligibility for an "applicable child." If the child was receiving AAP benefits in a prior adoption that dissolved, the child may continue to receive AAP benefits per Welfare and Institutions Code Section 16120(m).

Sections 35326(e) through (e)(8) (Renumbered to 35326(d)(3)(B) after the public hearing)

Specific Purpose:

The specific purpose of these sections is to provide an example of how the age of an "applicable child" decreases every two years for each federal fiscal year.

Factual Basis:

These sections are necessary to provide an example of how the age of a child decreases by two years every federal fiscal year. A child may meet one of the "applicable children" requirements based on their age, if their age correlates with the stated federal fiscal year. This section is consistent with Welfare and Institutions Code Section 16120(n)(1).

Final Modification:

Please see Final Modification for Sections 35326(c) through (c)(3) (Renumbered to 35326(d) through (d)(3) after the public hearing)

New Section 35326(f) et seq.

Please see Final Modification for Section 35326(f) (Renumbered to 35326(b) after the public hearing)

Section 35326(g)

Specific Purpose:

The specific purpose of this section is to inform the responsible public agency that there shall be no form of a means test used for determining a child's AAP eligibility.

Factual Basis:

This section is necessary to direct the responsible public agency that any form of a means test may not be used for determining a child's AAP eligibility per Welfare and Institutions Code Section 16119(d)(1).

Section 35326(h)

Specific Purpose:

The specific purpose of this section is to provide the responsible public agency with the requirements that prospective adoptive parents and any other adults living in the home must complete the criminal background check to receive AAP benefits on behalf of their AAP eligible child.

Factual Basis:

This section is necessary as there shall be no final approval for adoptive placement if one of the prospective adoptive parents or another adult living in the home has been convicted of a one of the listed felonies. This section is consistent with Welfare and Institutions Code Section 16120(h); Health and Safety Code Sections 1522 and 1522.1; and Family Code Sections 8712, 8811 and 8908.

Final Modification:

As a result of testimony received and upon further review of the regulation, Section 35326(h) et seq. is amended to be consistent with Welfare and Institutions Code Section 16120(h). To receive AAP benefits on behalf of their AAP eligible child, the prospective adoptive parents and any other adults living in the home must have completed a criminal background check.

Sections 35326(h)(1) and (2)

Specific Purpose:

The specific purpose of these sections is to describe the specific felonies and time of occurrence that would deny the approval of adoptive placement for prospective adoptive parents.

Factual Basis:

Section 35326(h)(1) is necessary to describe the types of convicted felonies by a prospective adoptive parent and/or other adult living in the home that would deny the final approval of adoptive placement of an AAP eligible child. This section is consistent with Welfare and Institutions Code Section 16120(h); Health and Safety Code Sections 1522 and 1522.1; and Family Code Sections 8712, 8811 and 8908.

Section 35326(h)(2) is necessary to state that final approval for adoptive placement for an AAP eligible child will not be granted if the prospective adoptive parent or any other adult living in the home was convicted of a felony within five years related to a physical assault, battery or a drug or alcohol related offense. This section is consistent with Welfare and Institutions Code Section 16120(h); Health and Safety Code Sections 1522 and 1522.1; and Family Code Sections 8712, 8811 and 8908.

Final Modification:

Please see Final Modification to Section 35326(h).

Section 35327

Specific Purpose:

The specific purpose of this repeal is to allow adoption of a new section which describes the methodology to be used by a responsible public agency when determining if the search for adoptive parents who do not require AAP has been met.

Factual Basis:

Repeal of this section is necessary because all the contents of this section are being placed in Sections 35326(a)(3) et seq. This will improve the clarity of the regulations by structuring the regulation content in a more logical order.

Section 35329(a)

Specific Purpose:

The specific purpose of this section is to state the corresponding reference related to this topic.

Factual Basis:

This section is necessary to provide the reader with the statute corresponding to the adoptive parent's legal residence, Welfare and Institutions Code section 16121.1.

Handbook Section 35329(a)(1)

Specific Purpose:

This section is repealed; it is not necessary to quote the Welfare and Institutions Code in the AAP regulations.

Factual Basis:

This repeal is necessary to provide clarity and accurate information for the reader. If the reader questions the regulations, it would be best for them to review the current version of the Welfare and Institutions Code Section 16121.1 referenced in Section 35329(a).

Section 35331(a)

Specific Purpose:

The specific purpose of this section is to add a statement regarding the completion of the FC 8 form and a copy is to be placed in the AAP case file.

Factual Basis:

This section is necessary to inform the responsible public agency that the form FC 8 needs to be completed in addition to the completion of the AAP 4 to ensure proper Federal Eligibility Certification for each AAP case.

Final Modification:

As a result of testimony received and upon further review of the regulations, new Sections 35331(a)(1) and (a)(1)(A) were added for clarity. This language is from repealed Section 35325(e)(3)(A) et seq. The responsible public agency shall submit the Federal Eligibility Certification for AAP form (FC8) to the county responsible for payment. This clarification is consistent with Welfare and Institutions Code Section 16118(e).

Section 35333 (Introductory Paragraph)

Specific Purpose:

The specific purpose of this editorial change is to provide clarity and consistency in the use of terms and process for the reader.

Factual Basis:

This editorial change is necessary to clarify that the responsible public agency is required to negotiate the AAP benefit amount with the adoptive family. The AAP benefit amount is a negotiated amount based on the needs of the child and the circumstances of the family which requires the concurrence of the adoptive parents. This information is consistent with Welfare and Institutions Code Sections 16119(d)(1) and 16121.05(c)

Section 35333(a) through (a)(5)

Section 35333(a) is relocated from Section 35333(e)(2)

Section 35333(a)(1) is relocated from Section 35333(e)(3)

Sections 35333(a)(2) and (2)(A) are relocated from Sections 35333(e)(4) and (4)(A)

Section 35333(a)(3) is relocated from Section 35333(a)

Section 35333(a)(4) is relocated from Section 35333(e)(6)

Section 35333(a)(5) is relocated from Section 35333(e)(6) (A)

Specific Purpose:

The specific purpose of these sections is to relocate the language from current Sections 35333(a) and 35333(e) et seq. to structure the regulations in a more logical order.

Factual Basis:

This editorial change is necessary improve clarity of the regulations by structuring the regulation content in a more logical order.

Final Modification:

As a result of testimony received and upon further review of the regulations, clarifying language was added to amended Section 35333(a)(3). The amended section clarifies

that there shall be no means testing of the child or adoptive parent when determining the AAP benefit amount.

Sections 35333(b) et seq.

Specific Purpose:

Current Sections 35333(b) and (b)(1) are combined and amended for clarity and consistency. Current Sections 35333(b)(1)(A) through (b)(1)(A)4. are renumbered for consistency.

Factual Basis:

These amendments are necessary to: allow for the regulations to be more concise, improve clarity and avoid redundant statements; to be consistent with terms throughout the regulations [Title 22 California Code of Regulations Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts. This section is consistent with Welfare and Institutions Code Sections 16118(c) and 16119(c)]. Furthermore, the amendments clarify that the AAP benefit amount is a negotiated amount based on the needs of the child and the circumstances of the family as specified in Welfare and Institutions Code Sections 16119(c), (d)(1) and (d)(2).

Sections 35333(c) and (c)(1)

Specific Purpose:

The specific purpose of these sections is to combine the sections and delete a redundant statement.

Factual Basis:

These amendments are necessary so that the regulations be more concise, improve clarity and avoid redundant statements. Title 22, CCR Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts. This section is consistent with Welfare and Institutions Code Sections 16118(c) and 16119(c).

Final Modification:

As a result of testimony received and upon further review of the regulation, this combined section is amended for clarity and consistency.

Handbook Section 35333(c)(1)(A) (Repeal)

Specific Purpose:

The specific purpose of this repeal is to delete irrelevant information in the AAP regulations.

Factual Basis:

Repeal of this section is necessary and consistent with Welfare and Institutions Code Section 16119(c); (d)(1) and (d)(2) that states the AAP benefit amount is a negotiated amount based upon the needs of the child and the circumstances of the family. This repeal will provide clarity for the responsible public agency when negotiating the AAP benefit amount.

Sections 35333(c)(1)(A)1. and new Section 35333(c)(1)(A)

Specific Purpose:

Current Section 35333(c)(1)(A)1. is renumbered to Section 35333(c)(1). The specific purpose of new Section 35333(c)(1)(A) is to include a paragraph that provides direction to the responsible public agency when a child requires additional services from the foster family agency (FFA).

Factual Basis:

The renumbering is necessary for clarity and consistency. New Section 35333(c)(1)(A) is necessary to provide the responsible public agency with direction on how to proceed with AAP benefits, if a child requires additional services from the foster family agency. When the adoptive placement agreement is signed, the FFA is no longer eligible to receive foster care payments for the child because the adoptive placement agreement is between the responsible public agency and the adoptive family. Thus, the placement is no longer eligible to receive the services provided under the auspices of the FFA. Furthermore, AAP does not pay for specific goods or services and it is the adoptive parents' discretion as to how the AAP funds are used to meet their child's needs. This information is consistent with the Social Security Act Section 473; ACYF-CB-PA-01-01 (1/23/01).

Sections 35333(c)(1)(B) through (c)(1)(B)3. (Renumbered to 35333(c)(2) through (c)(2)(C))

Specific Purpose:

Current Sections 35333(c)(1)(B) through (c)(1)(B)3. are renumbered to Sections 35333(c)(1) through (c)(2)(C) respectively. These sections are amended to clarify that the AAP benefit payment is a negotiated amount based on the needs of the child and the circumstances of the family.

Factual Basis:

These amendments are necessary and consistent with Welfare and Institutions Code Sections 16119(c), (d)(1) and (d)(2) that state the AAP benefit amount is a negotiated amount based on the needs of the child and the circumstances of the family. These amendments will provide clarity for the responsible public agency when negotiating the AAP benefit amount.

Sections 35333(c)(1)(B)4. and (c)(1)(B)4.a. (Renumbered to 35333(c)(2)(D) and (c)(2)(D)1.)

Specific Purpose:

The specific purpose of these changes is to renumber the sections as stated, add the acronym for specialized care increment (SCI), and to clarify that the AAP payment for a child who qualifies for SCI shall include the state-approved SCI in addition to the age-related, state-approved foster family home rate.

Factual Basis:

These amendments are necessary and consistent with Welfare and Institutions Code Section 16121(a). These amendments will provide clarity for the responsible public agency when negotiating the AAP benefit amount with the adoptive parents.

Handbook Section 35333(c)(1)(B)4.b. (Adopted as Regulation Section 35333(c)(2)(D)2.)

Specific Purpose:

The specific purpose of this section is to repeal the handbook section and adopt it as regulation. It clarifies that the specialized care provides a supplemental payment to a caregiver of a child who has a health or behavior problem.

Factual Basis:

These amendments are necessary and consistent with Welfare and Institutions Code Section 16121(a). These amendments will provide clarity for the responsible public agency when negotiating the AAP benefit amount with the adoptive parents.

Section 35333(c)(1)(B)4.c. (Renumbered to 35333(c)(2)(D)3.)

Specific Purpose/Factual Basis:

This section is renumbered for clarity and consistency.

Section 35333(c)(1)(C) (Renumbered to 35333(c)(3))

Specific Purpose:

The specific purpose of this section is to update the language to language that is correct and consistent with California law.

Factual Basis:

The amendment to this section is necessary to provide the correct terminology to be consistent with Welfare and Institutions Code Section 16121(c) and to provide the reader with the correct statute reference specific to an AAP-eligible child who is also a recipient of California Regional Center (CRC) services.

Section 35333(c)(1)(D) (Renumbered to 35333(c)(4))

Specific Purpose:

The specific purpose of this section is renumber the section and to repeal the statement "when the eligibility requirements of Section 35326 continue to be met."

Factual Basis:

The repeal of this statement is necessary to be consistent with Welfare and Institutions Code Sections 16120(d) and 16121.05(c). Once a child is determined AAP-eligible, they remain eligible until the age of 18, or 21 if there is a mental or physical disability that warrants continuation of benefits; the adoptive parents are no longer legally responsible for the support of the child; or the responsible public agency determines the adoptive parents are no longer providing support to the child. It is not necessary to determine a child's AAP eligibility again when they are placed in an out-of-home placement.

Sections 35333(c)(2), (c)(2)(A), and (c)(3)

Specific Purpose:

The specific purpose of these repeals is to bring the AAP regulations into compliance with federal requirements.

Factual Basis:

The repeal of these sections are necessary to be consistent with federal requirements 45 CFR 1356.40(c), ACYF-CB-PA-01-01 (1/23/01), Welfare and Institutions Code Section 16119(d)(1), and meets the Program Improvement Plan Primary Strategy 12.

The repeal of Section 35333(c)(2) is necessary because the use of a means test is prohibited in the process of selecting a suitable adoptive family or in negotiating an adoption assistance agreement, including the amount of the payment.

The repeal of Sections 35333(c)(2)(A) and (c)(3) is necessary because the AAP benefit amount should never be determined through the use of a means test or reduced because of income from any source. The reduction of the AAP benefit amount based on any type of income the child receives from a birth parent/relative or adoptive parent is prohibited. The amount of AAP a child receives cannot be reduced to a formula and/or lessened dollar for dollar based on any resources the child, adoptive parents or family receives from any source including SSI or survivor's benefits.

Section 35333(d)

Specific Purpose:

The specific purpose of this repeal is to delete a redundant section.

Factual Basis:

Repeal of this section allows for the regulations to be more concise, to improve clarity and avoids redundant statements. This information is stated in Section 35333(a)(2).

Section 35333(d)(1)

Specific Purpose:

The specific purpose of this repeal is to delete a redundant section.

Factual Basis:

The repeal of this section is necessary to provide clarity of the regulations, the adoptive parents' are asked on the Request for Adoption Assistance Program form (AAP 1) to describe the impact, if any, that adopting may have on their family circumstances. The adoptive parents' written statement as requested on the AAP 1 form is considered sufficient written documentation.

Section 35333(d)(1)(A) (Renumbered to 35333(c)(5))

Specific Purpose:

The specific purpose of this section is to editorially change the wording of the sentences and to add reference to the form "AAP 1."

Factual Basis:

This editorial change is necessary to improve clarity and consistency in the AAP regulations. The adoptive parents' written statement as requested on the AAP 1 form is considered sufficient written documentation; it is not necessary to request further documentation.

Section 35333(d)(1)(B) (Renumbered to 35333(c)(6))

Specific Purpose/Factual Basis:

This section is renumbered for clarity and consistency.

Handbook Section 35333(d)(1)(B)1.

Specific Purpose:

The specific purpose of this section is to repeal the Welfare and Institutions Code quotation.

Factual Basis:

It is not necessary to quote the Welfare and Institutions Code in the AAP regulations. If the reader questions the regulations, it would be best for them to review the current version of the Welfare and Institutions Code Section 16119(d)(2).

Handbook Section 35333(d)(1)(B)2. (Adopted as Regulation Section 35333(c)(6)(A))

Specific Purpose:

The specific purpose of this section is to repeal the handbook section and adopt it as regulation. It clarifies that the agency should not control or participate in adoptive family's choices regarding lifestyle, standard of living, or future plans.

Factual Basis:

These amendments are necessary and consistent with Welfare and Institutions Code Section 16119(d). These amendments will provide clarity for the responsible public agency when negotiating the AAP benefit amount with the adoptive parents.

Sections 35333(e) et seq.

Section 35333(e) is relocated to the introductory paragraph of Section 35333

Section 35333(e)(2) is relocated to Section 35333(a)

Section 35333(e)(3) is relocated to Section 35333(a)(1)

Sections 35333(e)(4) and (4)(A) are relocated to Section 35333(a)(2) and (2)(A)

Section 35333(e)(6) is relocated to Section 35333(a)(4)

Section 35333(e)(6) (A) is relocated to Section 35333(a)(5)

Specific Purpose:

The specific purpose of these editorial changes is to structure the regulations in a more logical order. Sections 35333(e)(5) and (5)(A) are renumbered to 35333(d) and (d)(1) respectively. Handbook Section 35333(e)(1)(A) and (b) repeal the Welfare and Institutions Code quotations. Section 35333(e)(7) is repealed because it is redundant.

Factual Basis:

The rearrangement of the sections as stated above will improve clarity by structuring the regulations in a more logical order.

Sections 35333(e)(5) and (5)(A) are renumbered and amended to be consistent with the terms stated in the AAP regulations and Welfare and Institutions Code Section 16121(a). This is necessary to provide clarity for the responsible public agency when negotiating the AAP benefit amount with the adoptive parents.

The repeal of Handbook Sections 35333(e)(1)(A) and (B) is necessary to delete quotations from the Welfare and Institutions Code in the AAP regulations. If the reader questions the regulations, it would be best for them to review the current version of the Welfare and Institutions Code Sections 16115.5 and 16119(d)(1).

The repeal of Section 35333(e)(7) is necessary to provide clarity for the reader and to avoid redundant statements.

Final Modification:

Renumbered Section 35333(d) is amended to direct the agency to complete the Adoption Assistance Program Negotiated Benefit Amount and Approval Form (AAP 6) and file in the child's AAP file. The federal Administration of Children, Youth and Families requires documentation be in the AAP case file supporting the AAP rate/benefit negotiation process. The AAP 6 was developed to meet this requirement. This form is consistent with the Social Security Act Section 473 and Welfare and Institutions Code Sections 16119 and 16121.

Sections 35333(f) and (g)

Specific Purpose/Factual Basis:

Sections 35333(f) and (g) are renumbered to 35333(e) and (f) respectively for clarity and consistency.

Handbook Section 35333(g)(1) (Adopted as Regulation Section 35333(f)(1))

Specific Purpose:

The specific purpose of this section is to repeal the handbook section and adopt it as regulation. It clarifies that if the adoptive parent does not agree with the AAP benefit, the parent may request a state hearing pursuant to MPP Section 22-004.

Factual Basis:

This amendment is necessary to alert the adoptive parents of their right to a state hearing pursuant to MPP Section 22-004 if they do not agree with the AAP benefit.

Sections 35333(h) and (h)(1)

Specific Purpose:

Section 35333(h) is renumbered to 35333(g) for consistency. Current Section 35333(h)(1) is repealed because it has incorrect information.

Factual Basis:

The repeal of Section 35333(h)(1) is necessary and consistent with Welfare and Institutions Code Section 16121.05(c) and federal requirements stated in Social Security Act Section 473(a)(4) and (a)(4)(B); 45 CFR 1356.40(b); ACYF-CB-PA-01-01 (1/23/01). There are to be no automatic AAP payment adjustments whether it is an increase or decrease in AAP benefit amounts at anytime. The duration of assistance shall not be changed without the concurrence of the adoptive parents.

Section 35333(g)(1) through (g)(1)(C)

Specific Purpose:

The specific purpose of these sections is to state the three ways in which AAP may be terminated.

Factual Basis:

These sections are necessary to provide the responsible public agency with direction as to when AAP may be terminated. These sections are consistent with Welfare and Institutions Code Section 16121.05(c) and meet the Program Improvement Plan Primary Strategy 13. Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless: 1) The child has attained the age of 18 or 21; 2) The adoptive parents are no longer legally responsible for the support of the child; or 3) The responsible public agency determines the adoptive parents are no longer providing support to the child.

Unless one of the above situations occurs, AAP payments may not be adjusted without the concurrence of the adoptive parents.

Final Modification

As a result of testimony received Section 35333(g)(1)(A) was amended to reflect the recent change in Welfare and Institutions Code Section 16120(d)(3) enacted by the passage of AB12 (Chapter 559, Statutes of 2010). Starting January 1, 2012, youth who have an initial AAP agreement signed on or after their 16th birthday and meet the conditions stated in Welfare and Institutions Code Section 11403, may be eligible for the extension of AAP benefits to the age of 19; to the age of 20 effective January 1, 2013; and to the age of 21 effective January 1, 2014.

Section 35334 (Title)

Specific Purpose:

The specific purpose of this editorial change is to clarify the title of the section.

Factual Basis:

This editorial change is necessary to clarify that this section is specific to AAP benefits for an AAP eligible child placed in a temporary out-of-home placement.

Section 35334(a)

Specific Purpose:

The specific purpose of this editorial change is to state it is the responsible public agency's role is to confirm the amount of the out-of-home versus determine the amount.

Factual Basis:

The editorial change is necessary to provide clarity for the responsible public agency and is consistent with Welfare and Institutions Code Section 16121(b). The decision to place an AAP eligible child in an out-of-home placement is the adoptive parents and all placement paperwork is to be signed between the adoptive parents and the facility. The adoptive parents are legally and financially responsible for the child and have requested to utilize AAP funds to cover the costs of the out of home placement which is an AAP benefit. The county's primary role is to facilitate the AAP funding requested by the parent provided the placement meets the out-of-home placement requirements and does not exceed the maximum state-approved foster care facility rate for which the child is placed.

Final Modification:

As a result of testimony received and upon further review of the regulation, this section was amended to provide clarity for the reader. This section speaks to the various situations that may impact a child's out-of-home placement and how the placement may affect their AAP benefits.

Section 35334(a)(2)(B)

Specific Purpose:

The specific purpose of this amendment is to make editorial changes to the section.

Factual Basis:

These editorial changes are consistent with all other references that refer to the age-related, state-approved foster family home rate and Welfare and Institutions Code Section 16121(a). The update to the cross reference is necessary due to the revisions in Section 35333.

Section 35334(a)(2)(B)1.

Specific Purpose:

The specific purpose of this adoption is to provide a description of the criteria used to determine the share of cost. This will provide clarity to the reader and explains the share of cost is not limited to the age-related state-approved foster family home rate.

Factual Basis:

This section is necessary to provide examples of what the AAP benefit amount may consist of when negotiating the share of cost of an out-of-home placement and that the share of cost is not limited to the age-related state-approved foster family home rate.

Handbook Section 35334(a)(2)(B)1. (Adopted as Regulation Section 35334(a)(2)(B)2.)

Specific Purpose:

The specific purpose of this section is to repeal the handbook section and adopt it as regulation. It states which county is responsible for mental health assessments and mental health services.

Factual Basis:

This amendment is necessary to clarify that under California Code of Regulations, Title 2, Section 60020(c), the county financially responsible for making AAP payments is also responsible for the provision of mental health assessments and mental health services.

Post-Hearing Modification

Section 35334(c)

Specific Purpose/Factual Basis:

As a result of testimony received, Section 35334(c) is repealed as it contradicts existing Section 35334(a)(2)(B). The intent of Welfare and Institutions Code Section 16121(b) is to not penalize AAP eligible children of their benefits due to their out-of-home placement as a ward of the court. Subsequent sections are renumbered accordingly.

Section 35334(e)(1) (Renumbered to 35334(d) after the public hearing)

Specific Purpose:

The specific purpose of this amendment is to clarify the AAP benefit for a child's out-of-home placement is for a limited duration.

Factual Basis:

This section is necessary to provide clarification for the responsible public agency that an out-of-home placement is limited to 18 months per episode or condition and that the AAP agreement shall state the increased benefit amount is limited to 18 months.

This information is consistent with Welfare and Institutions Code Section 16121(b) and meets the Program and Improvement Plan Primary Strategy 11. AAP may pay for an eligible out-of-home placement if the placement is justified by a specific episode or condition and does not exceed 18 months. After an initial authorized out-of-home placement, subsequent authorizations for payment for the out-of-home placement must be based on an eligible child's subsequent and specific episode or conditions.

Final Modification:

As a result of testimony received, this section was amended for clarity. Further, the section is renumbered to 35334(d) as a result of the repeal of Section 35334(c).

Section 35334(e)(1)(A) (Renumbered to 35334(d)(1)(A) after the public hearing)

Specific Purpose:

The specific purpose of this section is to clarify for the responsible public agency that it is the adoptive parent's choice as to who pays the out-of-home placement.

Factual Basis:

This section is necessary to provide the responsible public agency clarification that it is the adoptive parent's choice whether they pay the out-of-home placement directly or they request the financially-responsible county to directly pay the facility. This section is mandated by the Program Improvement Plan Primary Strategy 11 and is consistent with federal requirements Social Security Act Section 473; ACYF-CB-PA-01-01 (1/23/01). The adoptive parent may request the financially-responsible public county to pay the facility directly using the child's eligible AAP funds, or the adoptive parents may request the AAP check continue to be sent to them and they will pay the facility. This should be discussed and mutually agreed on by the responsible public agency and the adoptive parent(s).

Section 35337(a)(2)(A)

Specific Purpose:

The specific purpose of this section is to clarify for the responsible public agency the duration of the AAP agreement.

Factual Basis:

This section is necessary and is consistent with Welfare and Institutions Code Section 16120.05(c). The AAP agreement is effective until terminated in accordance of its terms or an amended agreement is signed.

Section 35337(a)(2)(B)

Specific Purpose:

The specific purpose of this change is to move the language from Section 35325(e)(3)(D)1. to a more logical place.

Factual Basis:

This change is necessary to improve the clarity of the regulations by structuring the regulation content in a more logical order.

Sections 35337(a)(2)(C) and (C)1.

Specific Purpose:

The specific purpose of this change is to move the language from Sections 35325(e)(3)(D)2. and (e)(3)(D)2.(i) to a more logical place.

Factual Basis:

These sections are more relevant in the AAP agreement section than the request for AAP section. This change is necessary to improve the clarity of the regulations by structuring the regulation content in a more consistent order.

Section 35337(a)(3)

Specific Purpose:

The specific purpose of repeal is to delete this section; it is not necessary to state the child's specific special needs on the AAP agreement.

Factual Basis:

The repeal of this section is necessary because prior to the signing of the AAP agreement, the responsible public agency has determined the child is AAP-eligible, which includes meeting the Three-part Special Needs Determination. The AAP payment is a negotiated rate based on the child's special needs and the circumstances of the family which is completed before the execution of the AAP agreement. Furthermore, there is documentation in the file such as the AAP 1 and AAP 4 forms. This information is consistent with Welfare and Institutions Code Sections 16120(a) through (c) and 16121.05(c).

Section 35337(a)(4)

Specific Purpose:

The specific purpose of this repeal is to delete this section; it is not necessary to state on the AAP agreement the child has meet the Three-part Special Needs Determination. The responsible public agency has determined the child meets the Three-part Special Needs Determination which includes this statement.

Factual Basis:

The repeal of this section is necessary because prior to the signing of the AAP agreement, the responsible public agency has determined the child is AAP-eligible, which includes meeting the Three-part Special Needs Determination that is documented on the AAP 1 and AAP 4 forms. This information is consistent with Welfare and Institutions Code Sections 16120(a) through (c) and 16121.05(c).

Sections 35337(a)(5) through (a)(5)(D)

Specific Purpose:

The specific purpose of this repeal is to delete inconsistent information on the termination of an AAP agreement.

Factual Basis:

Repeal of these sections is necessary to delete information that is inconsistent with state and federal laws. A new section is being adopted below which states correctly the ways in which an AAP agreement may be terminated.

New Section 35337(a)(3) through (a)(3)(C)

Specific Purpose:

The specific purpose of this section is to state the three ways in which AAP may be terminated.

Factual Basis:

These sections are necessary to provide the responsible public agency with direction as to when AAP may be terminated. These sections are consistent with Welfare and Institutions Code Section 16121.05(c) and meet the Program Improvement Plan Primary Strategy 13. Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless: 1) The child has attained the age of 18 or 21; 2) The adoptive parents are no longer legally responsible for the support of the child; or 3) The responsible public agency determines the adoptive parents are no longer providing support to the child. Unless one of the above situations occurs, AAP payments may not be adjusted without the concurrence of the adoptive parents.

Final Modification:

As a result of testimony received and upon further review of the regulations, clarifying language was added to amended Section 35337(a)(3)(A). The amended section clarifies that AAP benefits may continue beyond the age of 18, if the child has a mental or physical disability that warrants the continuation of AAP benefits to the age of 21. This amendment is consistent with state and federal regulations, Welfare and Institutions Code Section 16120(d) and Social Security Act Section 473(a)(4); 45 CFR 1356.40(b).

New Sections 35337(a)(4) through (a)(4)(D)

Specific Purpose:

The specific purpose of these sections is to adopt language that details the adoptive parents' responsibilities.

Factual Basis:

These sections are necessary to describe the adoptive parents' responsibility to keep the responsible public agency informed of circumstances which would make them ineligible for AAP payments or eligible for AAP payments in a different amount. This information is consistent with Welfare and Institutions Code Sections 16119(f), 16120.05, and 16121.05(c).

New Section 35337(a)(5)

Specific Purpose:

The specific purpose of this section is to state that the financially-responsible county is responsible for needed services when the child lives in another state.

Factual Basis:

This section is necessary to clarify that the financially-responsible county is responsible for the child's needed services regardless of the child's state of residence. This section is consistent with Welfare and Institutions Code Sections 16121(d)(1), 16121.1, and 16121.2 and meets the Program Improvement Plan Primary Strategy 14. The AAP agreement is to remain in effect regardless of the adoptive parent's residence. The AAP agreement is to state a provision for services and medical care under the Interstate Compact on Adoption and Medical Assistance for the protection of the adoptive parents and child when they move to another state. The financially-responsible county/state must take measures to assure that the terms of the AAP agreements are met either directly or through agreements with other states.

Final Modification:

As a result of testimony received and upon further review of the regulations, clarifying language was added to Section 35337(a)(5). When the adoptive family resides in another state, the responsible public agency shall assist the adoptive parents with information and referral services offered in their current state of residence. Federal regulations require the state to have a state policy that ensures if a needed service specified in the adoption assistance agreement is not available in the new State of residence, the State remains financially responsible for providing the specified service per 45 CFR 1356.40(d).

In addition, if the child is eligible for state funded Medi-Cal benefits, the responsible public agency shall inform the adoptive parents that if they move or reside in another state, access to medical services in their state of residence are contingent on whether their state of residence extends COBRA-reciprocity for children receiving California state funded Medi-Cal benefits.

Section 35337(a)(6)

Specific Purpose:

The specific purpose of this section is to require the adoptive parents' to contact the responsible public agency to request an extension of AAP benefits beyond the age of 18.

Factual Basis:

This section is necessary to state that it is the adoptive parent's responsibility to contact the responsible public agency prior to their child's 18th birthday, if they wish to have their child evaluated for AAP eligibility to the age of 21. To be eligible to receive AAP to the age of 21, the responsible public agency must determine whether the child has a mental or physical disability that warrants continuation of assistance as stated in Welfare and Institutions Code Section 16120(d).

Final Modification:

As a result of testimony received and upon further review of this section, language was added to clarify that the adoptive parents may request assistance continue beyond the child's 18th birthday. The Notice of Action (NOA) is sent prior to the child's 18th birthday per MPP Section 22-001(a)(1). The NOA informs the adoptive parent that their child's AAP benefits will terminate the month following the child's 18th birthday and that they may request an extension to the age of 21, if their child has a mental or physical disability that warrants the continuation of benefits. The adoptive parents are informed of this policy when they review and sign the AAP Agreement.

Sections 35337(a)(7) and (a)(7)(A)

Specific Purpose:

The specific purpose of these sections is to detail the AAP rates for dual agency children.

Factual Basis:

These sections are necessary to describe the eligible AAP rates specific for children who meet the definition of a dual agency child per Welfare and Institutions Code Section 16121(c)(1) through (c)(4).

Section 35337(a)(7) is necessary to state the eligible AAP rate for a dual agency child may not exceed the maximum of \$3006. If the child received AAP benefits prior to July 1, 2007, that exceeds the maximum \$3006 rate, they may continue to receive the higher rate until the child is no longer eligible for AAP benefits or the adoption dissolves.

Section 35337(a)(7)(A) is necessary to state the eligible AAP rate for children under the age of three years and receiving services under the California Early Intervention Services Act, the maximum AAP available benefit is \$898.

Final Modification:

As a result of testimony received and upon further review of the regulations clarifying language was added to Section 35337(a)(7) et seq. This language is consistent with Welfare and Institutions Code Section 16121(c). If the CRC has determined the child has a developmental disability as defined by the Lanterman Act, the maximum AAP benefit is \$2006. If the child is under the age of three and receiving services under the California Early Intervention Services Act, the maximum eligible AAP benefit is \$898 or the foster family home rate and SCI rate, whichever is greater. Furthermore, following the adoption finalization and the child's third birthday, it is the adoptive parents' responsibility to request the CRC to evaluate their child's eligibility for CRC services and notify the responsible public agency of any changes in their child's needs that may affect the AAP benefit amount. Section 35337(a)(7) states the maximum eligible benefits a child may receive if they are a current CRC consumer.

Section 35337(a)(8) and (a)(8)(A)

Specific Purpose:

The specific purpose of these sections is to provide direction to the responsible public agency regarding the age-related rate increases.

Factual Basis:

These sections are necessary to provide direction to the responsible public agency regarding who is eligible to receive an age-related rate increase as stated in Welfare and Institutions Code Section 16121(a)(1) and (a)(2).

Section 35337(a)(8) is necessary to state that initial AAP agreements signed on or after January 1, 2010 for an AAP eligible child will no longer be eligible to receive an AAP age-related increase.

Section 35337(a)(8)(A) is necessary to state that for AAP-eligible children whose initial AAP agreements were signed prior to January 1, 2010, will still be eligible to receive the AAP age-related increase upon request.

Final Modification

As a result of testimony received and upon further review of the regulation, Section 35337(a)(8) et seq. was amended for clarity.

Section 35337(a)(8)(B)

Specific Purpose:

The specific purpose of this change is to move the language from Section 35326(c) to a more logical place.

Factual Basis:

This section is more relevant in the AAP agreement section than the AAP eligibility section. This change is necessary to improve the clarity of the regulations by structuring the regulation content in a more consistent order.

Sections 35337(a)(6) through (a)(8) (Renumbered to 35337(a)(9) through (a)(11))

Specific Purpose/Factual Basis:

Current Sections 35337(a)(6) through (a)(8) are renumbered to 35337(a)(9) through (a)(11) respectively to accommodate the adoption of new sections.

Section 35337(a)(9)

The specific purpose of this repeal is to bring the AAP regulations into compliance with federal requirements.

Factual Basis:

The repeal of this section is necessary to be consistent with federal requirements 45 CFR 1356.40(c), ACYF-CB-PA-01-01 (1/23/01), Welfare and Institutions Code Section 16119(d)(1), and meets the Program Improvement Plan Primary Strategy 12. The use of a means test is prohibited in the process of selecting a suitable adoptive family or in negotiating an adoption assistance agreement, including the amount of the payment. The reduction of the AAP benefit amount based on any type of income the child receives from a birth parent/relative or adoptive parent is prohibited. The amount of AAP a child receives cannot be reduced to a formula and/or lessened dollar for dollar based upon any resources the child, adoptive parents or family receives from any source including SSI or survivor's benefits.

Sections 35337(a)(10) through (a)(14) (Renumbered to 35337(a)(12) through (a)(16))

Specific Purpose/Factual Basis:

Current Sections 35337(a)(10) through (a)(14) are renumbered to 35337(a)(12) through (a)(16) respectively to accommodate the adoption of new sections.

Final Modification:

A new Section 35337(a)(12) is adopted to specify that the increased rate for children receiving Wraparound services or placed in an out-of-home placement is time limited and may not exceed the state-approved facility rate. This revision is consistent with Section 35334 and Welfare and Institutions Code Section 16121(b).

Section 35339(a)

Specific Purpose:

The specific purpose of this amendment is to provide an accurate description of the purpose of the deferred AAP agreement.

Factual Basis:

This section is necessary to provide the responsible public agency the purpose of signing a deferred AAP agreement as stated in Welfare and Institutions Code Section 16119(b). The signing of a deferred AAP agreement will retain the child's eligibility if the adoptive parents choose to access and utilize AAP benefits at a later date. If a deferred AAP Agreement is not signed prior to the finalization of the adoption, the child will not be able to access the benefits in the future, should the need arise.

To be AAP-eligible, a child would have had to meet the AAP eligibility requirements as stated in Section 35326. It is not necessary to state the specific needs on the AAP agreement as it has been established the child is AAP-eligible prior to the execution of the deferred AAP agreement.

Sections 35339(a)(1) and (2)

Specific Purpose:

The specific purpose of this repeal is to delete unnecessary regulations, it is not necessary to state the child's specific special needs on the AAP agreement.

Factual Basis:

The repeal of these sections is necessary because prior to the signing of the deferred AAP agreement, the responsible public agency has determined the child is AAP-eligible which

includes meeting the Three-part Special Needs Determination. Furthermore, there is documentation in the file such as the AAP 1 and AAP 4 forms. This information is consistent with Welfare and Institutions Code Sections 16120(a) through (c) and 16121.05(c).

Sections 35339(a)(3) and (4) (Renumbered to 35339(a)(1) and (2) respectively)

Specific Purpose/Factual Basis:

These sections are renumbered to accommodate the repeals addressed above.

Section 35341(a)(2)(C)

Specific Purpose:

The specific purpose of this repeal is to delete an obsolete regulation. This form is no longer required to be completed by the Department of Health Care Services (DHCS) and DHCS no longer accepts copies of this form. Current regulation Section 35341(a)(2)(D) is renumbered to 35341(a)(2)(C) for consistency.

Factual Basis:

The repeal of this section is necessary because DHCS has stopped accepting copies of the completed Health Insurance Questionnaires. DHCS has increased tape matches with health insurance carriers, automated batch transactions from county consortiums, Department of Child Support Services, Social Security Administration, and other automated systems to receive other health coverage information in a timely manner. Title 22, California Code of Regulations, Section 50763 directs Medi-Cal beneficiaries to report other health coverage at the time of application, reapplication, or redetermination, and Section 50765 requires counties to report this information to the DHCS. This requirement will be met through the use of the Medi-Cal Eligibility Data System (MEDS). The elimination of the paper Health Insurance Questionnaire is stated in DHCS Letter No.: 09-25; Subject: Elimination of the Health Insurance Questionnaire.

Section 35341(a)(2)(C)1.

Specific Purpose:

The specific purpose of this section is to include a statement that clarifies the reason for the completion of the FC 10 form.

Factual Basis:

This statement is necessary as it meets Program Improvement Plan Primary Strategy 8 and is consistent with Welfare and Institutions Code Section 16120(j)(2). This section is to provide clarity that the FC 10 is to be used only for the purposes of determining if the child

would have been AFDC-eligible in the home of removal according to July 16, 1996 standards. The federal requirements referenced are as follows: Social Security Act Sections 473(a)(2) and 473(c); The Deficit Reduction Act of 2005; and ACYF-CB-PA-01-01 (1/23/01).

Handbook Section 35341(a)(3)(A) (Adopted as Regulation Section 35334(a)(3)(A))

Specific Purpose:

The specific purpose of this section is to repeal the handbook section and adopt it as regulation. It states that the AAP 2 form triggers the creation of a new county payment case record.

Factual Basis:

This amendment is necessary to require the creation of a new and distinct county payment.

Handbook Section 35341(a)(3)(A)1.

Specific Purpose/Factual Basis:

The repeal of this handbook section is necessary to delete the reference to the Welfare and Institutions Code quotation. If the reader questions the regulations, it would be best for them to review the current version of the Welfare and Institutions Code Section 16118(e) referenced in Section 35325.

Handbook Section 35341(b)(1) (Adopted as Regulation Section 35341(b)(1))

Specific Purpose:

The specific purpose of this section is to repeal the handbook section and adopt it as regulation. It specifies when the initial AAP payment shall be delivered to the adoptive parent(s).

Factual Basis:

This amendment defines 20 days as a reasonable and timely delivery by the county of the initial AAP payment.

Section 35343(a)

Specific Purpose:

The specific purpose of this amendment is to provide clarity for the reader and to be consistent with terms throughout the regulations.

Factual Basis:

This editorial is necessary for clarity. Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts.

Section 35343(a)(1) through (a)(2)(C)

Specific Purpose:

The specific purpose of this repeal is to delete information that is incorrect.

Factual Basis:

Repeal of these sections is necessary because they are inconsistent with Welfare and Institutions Code Section 16121.05(c).

New Sections 35343(a)(1) through (a)(3)

Specific Purpose:

The specific purpose of this adoption is to include the reasons for when the reassessment process is no longer required for an AAP-eligible child.

Factual Basis:

These sections are necessary to provide the responsible public agency with direction as to when reassessments are no longer necessary to complete. These sections are consistent with Welfare and Institutions Code Section 16121.05(c) and meet the Program Improvement Plan Primary Strategy 13. Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless: 1) The child has attained the age of 18 or 21; 2) The adoptive parents are no longer legally responsible for the support of the child; or 3) The responsible public agency determines the adoptive parents are no longer providing support to the child. Unless one of the above situations occurs, AAP payments may not be adjusted without the concurrence of the adoptive parents. This information is consistent with federal requirements at Social Security Act Section 473(a)(4); 473(a)(4)(B); 45 CFR 1356.40(b); ACYF-CB-PA-01-01 (1/23/01).

Sections 35343(b)(1) and Handbook Section 35343(b)(1)(A)

Specific Purpose:

The specific purpose of these amendments is to delete the reference to the CDSS Manual of Policies and Procedures and instead include the information referred to in this regulation and to repeal the handbook section.

Factual Basis:

The repeal of reference to the CDSS Manual of Policies and Procedures is necessary because it would be better to have the actual language referred to from another manual that is not a part of the CCR. Handbook sections are not printed in the CCR and the Department is trying to stay away from them in order to maintain a user-friendly manual that is easy to follow.

Section 35343(b)(1)(B) and (b)(1)(A)1.

Specific Purpose:

Current Section 35343(b)(1)(B) is renumbered to 35343(b)(1)(A) and amended for clarity and consistency and Section 35343(b)(1)(A)1. is adopted to include directions to follow to the responsible public agency when the adoptive parents do not return the AAP 3 form.

Factual Basis:

Section 35343(b)(1)(A)1. is necessary to provide the responsible public agency with direction as to how to proceed with the reassessment process if the AAP 3 form is not returned to the agency. As stated in previous sections, AAP may not be terminated unless one of the three ways to terminate is met. Any suspension of AAP benefits is considered to be a termination and is not allowable. This is consistent with federal requirements at Social Security Act Section 473(a)(4); 473(a)(4)(B); 45 CFR 1356.40(b); ACYF-CB-PA-01-01 (1/23/01) and Welfare and Institutions Code Section 16120.05. The completed reassessment form (AAP 3) is due every two years; however, if the family does not submit a reassessment form, AAP must continue at the same rate reflected on the last AAP agreement and Payment Instructions (AAP 2) form.

Final Modification:

As a result of testimony received, a typo was corrected in Section 35343(b)(A)1.

Section 35343(b)(2)

Specific Purpose:

This section is amended to provide consistency with terms throughout the AAP regulations and clarity for the reader.

Factual Basis:

These editorial changes are necessary to provide clarity for the reader and to be consistent with terms throughout the regulations. Title 22, CCR, Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts.

Section 35343(b)(2)(B)

Specific Purpose:

The specific purpose of these editorial changes is to provide more clarity and consistency in directions for the responsible public agency when conducting an AAP reassessment.

Factual Basis:

These editorial changes are necessary to provide consistency in the reassessment process. If there have been no changes in the AAP agreement or AAP benefit, the responsible public agency is not required to submit a new AAP 2.

Handbook Section 35343(b)(2)(B)1.

The specific purpose is to repeal this section due to inconsistencies with state and federal requirements.

Factual Basis:

This repeal is necessary as this section conflicts with the Social Security Act Section 473(a)(4); 473(a)(4)(B); 45 CFR 1356.40(b); ACYF-CB-PA-01-01 (1/23/01) and Welfare and Institutions Code Section 16120.05. Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless: 1) The child has attained the age of 18 or 21; 2) The adoptive parents are no longer legally responsible for the support of the child; or 3) The responsible public agency determines the adoptive parents are no longer providing support to the child. Unless one of the above situations occurs, AAP payments may not be adjusted without the concurrence of the adoptive parents.

Section 35343(b)(2)(C)

Specific Purpose:

This section is amended to delete a redundant sentence.

Factual Basis:

This repeal is necessary to provide clarity, relevance and avoid duplication for the reader.

Final Modification:

As a result of testimony received and upon further review of the regulation, this section was amended for clarity and consistency. The negotiated AAP benefit is based on the child's needs and the circumstances of the family as stated in Welfare and Institutions Code Section 16119(d)(1).

Section 35343(b)(2)(C)1.c.

Specific Purpose:

The specific purpose of this section is to include "circumstances of the family" as part of the information necessary to reassess the child's needs and required level of care.

Factual Basis:

This section is necessary as the circumstances of the family must be considered when renegotiating the AAP benefit amount. The AAP benefit amount is a negotiated amount based on the needs of the child and the circumstances of the family and requires the concurrence of the adoptive parents. This information is consistent with Welfare and Institutions Code Section 16119 (d)(1) and (d)(2) and federal requirements Social Security Act-Section 473(a)(3); ACYF-CB-PA-01-01 (1/23/01).

Section 35343(b)(2)(C)2.

Specific Purpose/Factual Basis:

This editorial change is necessary to ensure the responsible public agencies are consistent in implementing AAP procedures and policies. When determining the amount of and duration of the AAP benefit, it is best to read the whole Section 35333 not just a portion of it.

Section 35343(b)(2)(C)3.a.

Specific Purpose:

The specific purpose of these editorial changes is to provide more clarity and consistency in directions for the responsible public agency when conducting an AAP reassessment and renegotiating the AAP benefit amount.

Factual Basis:

These editorial changes are necessary to provide consistency in the reassessment and renegotiation process. Although the responsible public agency is required to make a good faith effort to renegotiate the AAP benefit with the adoptive parents. The AAP benefit may not exceed the maximum foster care maintenance payment that would have been paid had the child remained in foster care. This section is consistent with Welfare and Institutions Code Section 16121(a) and Section 473(a)(3) of the Social Security Act.

Section 35343(b)(2)(C)4.

Specific Purpose:

The specific purpose of these editorial changes is to provide clarity to the regulation.

Factual Basis:

These editorial changes are necessary to provide clarity for the reader and to be consistent with terms throughout the regulations. Title 22, CCR, Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts.

Handbook Section 35343(b)(2)(C)4.b.

Specific Purpose:

The specific purpose of this repeal is to delete redundant information.

Factual Basis:

Repeal of this section is necessary to avoid duplication. This information is stated in amended Section 35333(g) and the reader is directed to Section 35333 in Section 35343(b)(2)(C)2.

Handbook Section 35343(b)(2)(C)5.a.

Specific Purpose:

The specific purpose of this repeal is to delete incorrect information that is inconsistent with state and federal requirements.

Factual Basis:

This repeal is necessary as this section conflicts with state and federal requirements. Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless: 1) The child has attained the age of 18 or 21; 2) The adoptive parents are no longer legally responsible for the support of the child; or 3) The responsible public agency determines the adoptive parents are no longer providing support to the child. Unless one of the above situations occurs, AAP payments may not be adjusted without the concurrence of the adoptive parents.

Section 35343(b)(2)(D)

Specific Purpose:

The specific purpose of these editorial changes is to provide clarity to the regulation.

Factual Basis:

These editorial changes are necessary to provide clarity for the reader and to be consistent with terms throughout the regulations.

Final Modification:

As a result of testimony received, this section was amended for clarity.

Sections 35343(b)(2)(E) through (E)(2)

Specific Purpose:

The specific purpose of this repeal is to delete incorrect information that is inconsistent with state and federal requirements.

Factual Basis:

Repeal of these sections is necessary because they conflict with Welfare and Institutions Code Section 16121.05(c); Social Security Act Section 473(a)(4) and 473(a)(4)(B); 45 CFR 1356.40(b); ACYF-CB-PA-01-01 (1/23/01). The Adoption Assistance Program form (AAP 3) reminds parents to keep the responsible public agency informed of circumstances which may affect the receipt of AAP benefits. The completed reassessment form is due every two years; however, if the family does not submit a reassessment form, AAP must continue at the same rate reflected on the last AAP agreement and Payment Instructions (AAP 2) form.

Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless: 1) The child has attained the age of 18 or 21; 2) The adoptive parents are no longer legally responsible for the support of the child; or 3) The responsible public agency determines the adoptive parents are no longer providing support to the child.

Section 35343(b)(3)

Specific Purpose:

The specific purpose of this repeal is to delete an obsolete regulation. This form is no longer required to be completed by the Department of Health Care Services (DHCS) and DCHS no longer accepts copies of this form.

Factual Basis:

The repeal of this section is necessary because DHCS has stopped accepting copies of the completed Health Insurance Questionnaires. DHCS has increased tape matches with health insurance carriers, automated batch transactions from county consortiums, Department of Child Support Services, Social Security Administration, and other automated systems to receive other health coverage information in a timely manner. Title 22, California Code of Regulations, Section 50763 directs Medi-Cal beneficiaries to report other health coverage at the time of application, reapplication, or redetermination, and Section 50765 requires counties to report this information to the DHCS. This requirement will be met through the use of the Medi-Cal Eligibility Data System (MEDS).

Handbook Sections 35344 (a)(1)(B) 1. and 2. and Regulation Section 35344(a)(1)(B)3.

Specific Purpose:

The specific purpose of this repeal is to delete incorrect information that is inconsistent with state and federal laws.

Factual Basis:

Repeal of these sections is necessary because the stated examples are limited, incorrect and do not cover all possible scenarios. As stated in Welfare and Institutions Code Section 16121.05(c), and Social Security Act Sections 473(a)(4) and 473(a)(4)(B); 45 CFR 1356.40(b); ACYF-CB-PA-01-01 (1/23/01), once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless: 1) The child has attained the age of 18 or 21; 2) The adoptive parents are no longer legally responsible for the support of the child; or 3) The responsible public agency determines the adoptive parents are no longer providing support to the child.

Handbook Section 35344(e)

Specific Purpose:

The specific purpose of this repeal is to delete redundant information.

Factual Basis:

Repeal of this section is necessary to avoid duplication, provide clarity, relevance and logical order to the regulations.

Section 35344(e) (Adopt)

Specific Purpose:

The specific purpose of this adoption is to state that the county is not to demand overpayment collection when the overpayment was due to a county error.

Factual Basis:

This section is necessary to provide clarification to the reader that it is not the adoptive parent's responsibility to ensure the responsible public agency and/or financially responsible county enters data correctly or follows proper AAP policy and procedures.

Section 35345(a)(4)

Specific Purpose/Factual Basis:

The specific purpose of this revision is to replace the term "recertification" with "reassessment" to provide clarity and to be consistent with the AAP regulations, statutes and the title of the AAP 3 form. It is not necessary to recertify a child's AAP eligibility, once a child is determined AAP-eligible they remain eligible until the age of 18 or 21, if there is a mental or physical disability that warrants the continuation of benefits. This change is consistent with terminology in the regulations and Welfare and Institutions Code Section 16121.05(c).

Section 35347

Specific Purpose:

The specific purpose of this repeal is to delete information that is no longer applicable for AAP-eligible children.

Factual Basis:

Repeal of this section is necessary due to the termination of these AAP agreements based on age. Welfare and Institutions Code Section 16121.05(d) was repealed in legislative year 2009/2010. AAP eligible children whose initial AAP agreements were signed prior to October 1, 1982 are no longer eligible to receive AAP benefits due to their age. As of 2010, these children would be approximately 28 years of age.

Section 35351(a)

Specific Purpose:

The specific purpose of this amendment is to clarify that it is the responsible public agency that shall maintain separate copies of the documents.

Factual Basis:

This amendment is necessary for clarity. Title 22, CCR Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts.

Section 35351(a)(3)(B)

Specific Purpose:

The specific purpose of this repeal is to delete information that is not applicable to AAP cases. Current Section 35351(a)(3)(C) is renumbered to maintain consistency.

Factual Basis:

Repeal of this section is necessary to provide clarification to the responsible public agency. It is not necessary to determine a child's Federal AFDC-FC Eligibility (FC 3) when determining AAP eligibility. The AAP 4 and FC 8 forms are the only forms required to be completed when determining a child's AAP eligibility.

Section 35352(a)(1)

Specific Purpose:

The specific purpose of this amendment is to include a statement of the correct eligibility methodology to be applied by the responsible public agency for reimbursement of nonrecurring adoption expenses.

Factual Basis:

This amendment is necessary to be in compliance with Program Improvement Plan Primary Strategy 9; Welfare and Institutions Code Section 16120.1; Social Security Act Section 473(a)(6); 45 CFR 1356.40(i); ACYF-CB-PA-01-01 (1/23/01). The only eligibility criterion to be applied for reimbursement of nonrecurring adoption expenses is that the child meets the three-part special needs determination and citizenship requirements. The child does not have to be eligible for AFDC, Title IV-FC, SSI, or be an "applicable child" for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses even when the public agency does not have responsibility for placement and care of the child.

Section 35352.1(a)(2)

Specific Purpose:

The specific purpose of this amendment is to include a statement of the correct eligibility methodology to be applied by the responsible public agency for reimbursement of nonrecurring adoption expenses.

Factual Basis:

This amendment is necessary to be in compliance with Program Improvement Plan Primary Strategy 9; Welfare and Institutions Code Section 16120.1; Social Security Act Section 473(a)(6); 45 CFR 1356.40(i); ACYF-CB-PA-01-01 (1/23/01). The only eligibility criterion to be applied for reimbursement of nonrecurring adoption expenses is that the child meets the three-part special needs determination and citizenship requirements. The child does not have to be eligible for AFDC, Title IV-FC, SSI, or be an "applicable child" for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses even when the public agency does not have responsibility for placement and care of the child.

Section 35352.1(a)(3)

Specific Purpose:

The specific purpose of this repeal is to delete a redundant statement. Subsequent regulation Sections 35352.1(a)(4) through (a)(9) are renumbered to 35352.1(a)(3) through (a)(8) for consistency.

Factual Basis:

The repeal of this section is necessary to avoid redundant statements and to provide clarity for the reader. The search requirement is one of the three-part special needs determination and if the child meets the three-part special needs determination as stated in Section 35352(a)(1) and Section 35352.1(a)(2) they will have met the search requirement.

Post-hearing Modification

Section 35352.1(a)(6)

Specific Purpose:

The specific purpose of this amendment is to direct the agency to ensure the adoptive parents sign the Adoption Assistance Program Nonrecurring Adoptions Expenses Agreement (AAP 8) and file it in the child's AAP file.

Factual Basis:

The federal Administration of Children, Youth and Families requires documentation be in the AAP case file stating the adoptive parents have been informed, have submitted a claim or plan to submit a claim for Nonrecurring Adoption Expenses. The AAP 8 form was developed to meet this requirement; the form informs the adoptive parents of the benefit and the option to submit a claim immediately or at a later date. This form is consistent with the Social Security Act Section 473 and Welfare and Institutions Code Section 16120.1.

Section 35352.1(a)(8)

Specific Purpose:

The specific purpose of the amendment to this section is to delete an inconsistent statement (an AAP eligible child) due to inconsistencies with state and federal laws.

Factual Basis:

The amendment of this section is necessary to be in compliance with Program Improvement Plan Primary Strategy 9; Welfare and Institutions Code Section 16120.1; Social Security Act Section 473(a)(6); 45 CFR 1356.40(i); ACYF-CB-PA-01-01 (1/23/01). The only eligibility criterion to be applied for reimbursement of nonrecurring adoption expenses is that the child meets the three-part special needs determination and citizenship requirements. The child does not have to be eligible for AFDC, Title IV-FC, SSI, or be an "applicable child" for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses even when the public agency does not have responsibility for placement and care of the child.

Section 35352.1(a)(9)(B)

Specific Purpose:

The specific purpose of this section is to repeal an incorrect statement due to inconsistencies with state and federal laws.

Factual Basis:

The repeal of this section is necessary to comply with Welfare and Institutions Code Section 16120.1; Social Security Act Sections 473(a)(1)(B)(i) and 473(a)(5); 45 CFR 1356.41(b). Payments may be made on behalf of a child in an adoptive placement prior to the finalization of adoption when all eligibility requirements are met and there is a signed agreement for nonrecurring expenses of adoption. This nonrecurring adoptions agreement may be a separate document or a part of the agreement for either federal or state adoption assistance.

Section 35352.2(a)

Specific Purpose:

The specific purpose of this amendment is to include a statement of the correct eligibility methodology to be applied by the responsible public agency for reimbursement of nonrecurring adoption expenses.

Factual Basis:

This amendment is necessary to be in compliance with Program Improvement Plan Primary Strategy 9; Welfare and Institutions Code Section 16120.1; Social Security Act Section 473(a)(6); 45 CFR 1356.40(i); ACYF-CB-PA-01-01 (1/23/01). The only eligibility criterion to be applied for reimbursement of nonrecurring adoption expenses is that the child meets the three-part special needs determination and citizenship requirements. The child does not have to be eligible for AFDC, Title IV-FC, SSI, or be an "applicable child" for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses even when the public agency does not have responsibility for placement and care of the child.

Section 35352.2(a)(1)

Specific Purpose:

The specific purpose in repealing this section is to avoid redundancy and to provide clarity for the reader.

Factual Basis:

Repeal of this section is necessary to provide clarity, relevance and to avoid duplication. The information is stated in the amended Sections 35352.2(a) and (a)(1).

Section 35352.2(a)(1)(A) (Renumbered to 35352.2(a)(1))

Specific Purpose:

The specific purpose of this amendment is to renumber the section, delete an inconsistent statement, and structure the regulations in a more logical order.

Factual Basis:

These amendments are necessary because a child does not have to be AAP eligible for the adoptive parents to receive reimbursement for nonrecurring adoption expenses. The only eligibility criterion to be applied for reimbursement of nonrecurring adoption expenses is that the child meets the three-part special needs determination and citizenship requirements. The child does not have to be eligible for AFDC, Title IV-FC, SSI, or be an "applicable child" for the adoptive parents to receive reimbursement for their nonrecurring adoption

expenses even when the public agency does not have responsibility for placement and care of the child.

New Section 35352.2(a)(1)(A)

Specific Purpose:

The specific purpose of the adoption of this section is to structure the regulations in a more logical order.

Factual Basis:

This section is necessary to improve the clarity of the regulations and avoid redundancy of information. Per Welfare and Institutions Code Section 16120.1(d), an AAP-eligible child's ongoing benefits are separate from the nonrecurring adoption expenses reimbursement.

Section 35352.2(a)(2)

Specific Purpose:

The specific purpose of this section is to relocate current Section 35352.3(c) here, to structure the regulations in a more logical order.

Factual Basis:

This relocation is necessary to improve clarity of the regulations by structuring the regulation content in a more consistent and logical order.

Section 35352.3

Specific Purpose:

The specific purpose of this section is to repeal regulations that have been included in a more logical place [Section 35352.3(a) and (c) to 35352.2(a)(1) and (a)(2) respectively], delete redundant information [Section 35352.3(b)], and delete reference information of the Welfare and Institutions Code Section 16120.1 [Handbook Sections 35253.3(a)(1), (b)(1) and (c)(1)].

Factual Basis:

The repeal of this section is necessary because the pertinent information was moved to a more logical place; this will improve clarity. The information that was redundant was repealed as it is not necessary and it is also not necessary to quote the Welfare and Institutions Code in the AAP regulations. If the reader questions the regulations, it would be best for them to review the current version of the Welfare and Institutions Code Section 16121.1.

Handbook Section 45-801.1

Specific Purpose/Factual Basis:

The specific purpose is to delete the CCR Title 22, Section 35000 quotation. It is not necessary to quote the Title 22, CCR Section 35000 in the Manual of Policy and Procedures (MPP). If the reader questions a definition, it would be best for them to review the definitions in Title 22, CCR Section 35000 as referenced in Section 45-801.

Section 45-802.1

Specific Purpose:

The specific purpose of this section is to state the corresponding reference related to this topic.

Factual Basis:

The amendment to this section is necessary to provide the reader with the statute corresponding to federal or state AAP eligibility requirements, Welfare and Institutions Code Section 16120.

Sections 45-802.11 and Handbook Section 45-802.111

Specific Purpose:

The specific purpose of this repeal is to delete a redundant statement and the Welfare and Institutions Code quotation.

Factual Basis:

This repeal is necessary to be more concise, improve clarity and avoid redundant statements. The AAP eligibility requirements are stated in Welfare and Institutions Code Section 16120 as referenced in Section 45-802.1. It is not necessary to quote the Welfare and Institutions Code in the Manual of Policy and Procedures (MPP). If the reader questions the MPP, it would be best for them to review the current version of the Welfare and Institutions Code Section 16120 referenced in Section 45-802.1.

Handbook Section 45-802.121

Specific Purpose/Factual Basis:

The specific purpose of this repeal is to delete the Welfare and Institutions Code quotation. It is not necessary to quote the Welfare and Institutions Code in the Manual of Policy and Procedures (MPP). If the reader questions the MPP, it would be best for them to review the

current version of the Welfare and Institutions Code Section 16121.05(b) referenced in Section 45-802.12.

Section 45-802.13

Specific Purpose:

The specific purpose of this amendment is to clarify that the responsible public agency determines the child has met certain conditions and the county determines federal and state AAP eligibility based on Welfare and Institutions Code Section 16120 when the adoption petition is filed.

Factual Basis:

These changes are necessary to improve clarity and to be consistent with the terminology in the AAP regulations. If the reader questions the AAP eligibility requirements, it would be best for them to review the current version of the Welfare and Institutions Code Section 16120.

Sections 45-802.131 through .133

Specific Purpose/Factual Basis:

The specific purpose of repealing these sections is because they are incomplete and inconsistent with federal and state AAP eligibility requirements stated in Welfare and Institutions Code Section 16120 as referenced in Section 45-802.13.

Handbook Section 45-803.21

Specific Purpose/Factual Basis:

The specific purpose is to delete the Welfare and Institutions Code quotation. It is not necessary to quote the Welfare and Institutions Code in the Manual of Policy and Procedures (MPP). If the reader questions the MPP, it would be best for them to review the current version of the Welfare and Institutions Code Section 16118(e) referenced in Section 45-803.2.

Section 45-804.11

Specific Purpose:

This section is amended for clarity and consistency with the terminology used in the AAP regulations and the Welfare and Institutions Code.

Factual Basis:

These changes are necessary to improve clarity and to be consistent with the terminology in the AAP regulations and correspond with Welfare and Institutions Code Sections 16118(c) and 16119(c). If the reader questions the AAP eligibility requirements, it would be best for them to review the current version of the Welfare and Institutions Code Section 16120.

Section 45-804.111

Specific Purpose/Factual Basis:

The specific purpose of the amendment of this section is to reference the Welfare and Institutions Code Sections 16120(j), (m), and (l) that provide current federal AAP eligibility requirements. Sections 45-802.131, 132, or 133 are being repealed.

Section 45-804.113

Specific Purpose/Factual Basis:

The specific purpose of this section is to delete the reference to MPP Section 45-802.11 and replace it with reference to Welfare and Institutions Code Sections 16120(i) and (l). It would be best for the reader to review the current version of the Welfare and Institutions Code section that provides current state AAP eligibility requirements.

Section 45-804.4 and .41

Specific Purpose:

The specific purpose of this amendment is to delete the heading and renumber Section 45-804.41 to Section 45-804.323 and amend for clarity and consistency.

Factual Basis:

These changes are necessary to improve clarity and to be consistent with the terminology in the regulations. These changes are consistent with Welfare and Institutions Code Sections 16118(c), 16119(c) and 16121.05(c).

Section 45-805 (Title)

Specific Purpose/Factual Basis:

The specific purpose is to replace the title "Recertification of Eligibility" with "Reassessment." It is not necessary to recertify a child's AAP eligibility, once a child is determined AAP-eligible, they remain eligible until the age of 18 or 21, if there is a mental or physical disability that warrants the continuation of benefits. The title change is

consistent with terminology in the AAP regulations and Welfare and Institutions Code Section 16121.05(c).

Section 45-805.1

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to replace the term "recertification" with "reassessment" to provide clarity and to be consistent with the AAP regulations, statutes and the title of the AAP 3 form.

Sections 45-805.2 through .31

Specific Purpose:

The specific purpose of this amendment is to repeal the sections as they are inconsistent with the AAP regulations and statutes.

Factual Basis:

It is necessary to repeal these sections because AAP may not be terminated unless one of the three ways to terminate is met per Welfare and Institutions Code Section 16121.05(c). Any suspension of AAP benefits is considered to be a termination and is not allowable. This is consistent with federal requirements, Social Security Act Section 473(a)(4); 473(a)(4)(B); 45 CFR 1356.40(b); ACYF-CB-PA-01-01(1/23/01). The completed reassessment form (AAP 3) is due every two years; however, if the family does not submit a reassessment form AAP must continue at the same rate reflected on the last AAP agreement and Payment Instructions (AAP 2) form.

Handbook Section 45-805.21 (Renumbered to Handbook Section 45-805.11)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to replace the term "recertification" with "reassessment" to provide clarity and to be consistent with the AAP regulations, statutes and the title of the AAP 3 form. This handbook section is renumbered to 45-805.11

Section 45-806.1

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the words "responsible public" before "agency" to be consistent with the terminology in the AAP regulations. Title 22 CCR Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent

payment amounts. This change is consistent with Welfare and Institutions Code Sections 16118(c) and 16119(c).

Final Modification:

As a result of the testimony received, this section was further amended to include a cross reference to Section 22-001(l)(1). The Notice of Actions should be timely, adequate and language compliant.

Section 45-806.2

Specific Purpose:

The specific purpose of this amendment is to repeal the section. It is inconsistent with the AAP regulations and statutes. Subsequent sections are renumbered for consistency.

Factual Basis:

The repeal of this section is necessary because AAP may not be terminated unless one of the three ways to terminate is met stated in Welfare and Institutions Code Section 16121.05(c). Any suspension of AAP benefits is considered to be a termination and is not allowable. This is consistent with federal requirements, Social Security Act Sections 473(a)(4) and (a)(4)(B), 45 CFR 1356.40(b), ACYF-CB-PA-01-01(1/23/01). The completed reassessment form (AAP 3) is due every two years; however, if the family does not submit a reassessment form, AAP must continue at the same rate reflected on the last AAP agreement and Payment Instructions (AAP 2) form.

Section 45-806.3 (Renumbered from 45-806.4)

Specific Purpose:

The specific purpose of this amendment is to replace the words "discontinuance and suspension" with "termination" to be consistent with the AAP regulations and statutes.

Factual Basis:

This amendment is necessary because AAP may not be terminated unless one of the three ways to terminate is met as stated in Welfare and Institutions Code Section 16121.05(c). Any suspension of AAP benefits is considered to be a termination and is not allowable. This is consistent with federal requirements, Social Security Act Sections 473(a)(4) and (a)(4)(B), 45 CFR 1356.40(b), ACYF-CB-PA-01-01(1/23/01).

Final Modification:

This section is amended for consistency. The format numbering of Sections 22001a.(1) and t.(1) have been changed to 22-001(a)(1) and (t)(1) respectively.

Section 45-806.4 (Renumbered from 45-806.5)

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the words "responsible public" before "agency" to be consistent with the terminology in the AAP regulations. Title 22 CCR Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts. This change is consistent with Welfare and Institutions Code Sections 16118(c) and 16119(c).

Section 45-807.13

Specific Purpose/Factual Basis:

The specific purpose of the amendment of this section is to make an editorial change to be consistent with the AAP regulations and all other references to the FC 10 form.

Section 45-807.14

Specific Purpose/Factual Basis:

The specific purpose of this amendment is to add the words "responsible public" before "agency" to be consistent with the terminology in the AAP regulations. Title 22 CCR Section 35000(r)(10) defines responsible public agency as the department or licensed public adoption agency responsible for determining AAP eligibility and initial and subsequent payment amounts. This change is consistent with Welfare and Institutions Code Sections 16118(c) and 16119(c).

Section 45-806.15

Specific Purpose:

The specific purpose of this amendment is to repeal the section. This form is no longer required to be completed by DCHS and DCHS no longer accepts copies of this form.

Factual Basis:

The repeal of this section is necessary because DHCS has stopped accepting copies of the completed Health Insurance Questionnaires. DHCS has increased tape matches with health insurance carriers, automated batch transactions from county consortiums, Department of Child Support Services, Social Security Administration, and other automated systems to receive other health coverage information in a timely manner. Title 22, California Code of Regulations, Section 50763 directs Medi-Cal beneficiaries to report other health coverage at the time of application, reapplication, or redetermination, and Section 50765 requires

counties to report this information to the DHCS. This requirement will be met through the use of the Medi-Cal Eligibility Data System (MEDS). The elimination of the paper Health Insurance Questionnaire is stated in DHCS Letter No.: 09-25; Subject: Elimination of the Health Insurance Questionnaire.

b) Identification of Documents Upon Which Department Is Relying

- Assembly Bill (AB) 4 (Chapter 4, Statutes of 2009)
- AB 1325 (Chapter 287, Statutes of 2009)
- Senate Bill 597 (Chapter 339, Statutes of 2009)
- Social Security Act Sections 471 and 473
- 45 CFR 1356.40 and .41
- Administration for Children and Families- Children's Bureau-Policy Announcement-01-01 (1/23/01) [ACYF-CB-PA-01-01 (1/23/01)]
- California Strategy Measurement Plan and Quarterly Status Report – Adoptions Assistance Program
- Deficit Reduction Act of 2005
- Fostering Connections to Success and Increasing Adoptions Act of 2008
- Department of Health Care Services Letter No.: 09-25
- AB 12 (Chapter 559, Statutes of 2010)

c) Local Mandate Statement

These regulations do constitute a mandate on local agencies, but not on local school districts. There are state mandated local costs that are not reimbursable by the state pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code.

d) Statement of Alternatives Considered

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

e) Statement of Significant Adverse Economic Impact On Business

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

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on February 16, 2011 in Sacramento, California. Written testimony was received from the following during the 45-day comment period from December 31, 2010 to 5:00 p.m. February 16, 2011.

- Guy Trimarchi, CSA III, DCFS Policy Section Manager, Los Angeles County (Comments #1 - #3)

Section 35333

1. Comment:

Section 35333 - page 15-21 - references are made to the age related, state-approved foster family home rate.... WIC Code 16121(a)(1), no longer makes a reference to age related for adoption assistance agreements signed after January 1, 2010 instead the language reads "...foster care maintenance payment, and any applicable specialized care increments...."

Response:

The department disagrees with this comment. The age-related state approved foster family home rate is consistent with the language stated in Welfare and Institutions Code Section 16121(a). Regardless of whether the child is eligible for an age-related increase, the AAP rate may not exceed the maximum eligible rate they would have received had they remained in foster care. The maximum eligible AAP rate may include the age-related state approved foster family home rate, specialized increment, if eligible, the dual agency rate or RCL rate.

Section 35343(b)(2)(C)3.a.

2. Comment:

Section 35343 - 3(a) on page 32 - states that the adoptive parents' concurrence is not required if the payment amount is changed to prevent the payment from exceeding the maximum foster care maintenance payment that would have been paid had the child remained in foster care. ACL 09-51 states on page 6 second paragraph under the heading Reassessment Information:

"Once a child is determined eligible to receive AAP, he or she remains eligible and the subsidy continues unless one of the following occurs:

1. The child has attained the age of 18 or 21;
2. The adoptive parents are no longer legally responsible for the support of the child. This would apply if parental rights were terminated or the child becomes an emancipated minor, marries or enlists in the military.
3. The responsible public agency determines the adoptive parents are no longer providing support to the child. Support may include any type of financial contributions, maintaining a room for the child, covering the costs for clothing, personal incidentals, tuition, therapy or other expenses related to the child's care.

Unless one of the above occurs, AAP payments may not be adjusted without the concurrence of the adoptive parents (Social Security Act sections 473(a)(3) and (4). There may be circumstances in which adoptive parents may be eligible for payments in a different amount. In these circumstances, the responsible public agency may renegotiate the agreement and reduce the payment, but only with the concurrence of the adoptive parent.

This contradicts the proposed change.

Response:

The department disagrees with this comment. The section is consistent with federal and state law. The AAP rate is a negotiated rate based on the needs of the child and the circumstances of the family and may be readjusted periodically with the concurrence of the adoptive parents, however, in no case may the amount exceed the foster care maintenance payment that would have been paid had the child remained in foster care, Social Security Act Section 473(a)(3). Welfare and Institutions Code Sections 16119(f)(3) and 16121(a) state the AAP payments may continue at the agreed upon amount unless the AAP payment exceeds the amount that the child would have been eligible for in a licensed foster home.

Section 35352(a)(1)

3. Comment:

Section 35352 (a) (1) page 38 - missing the word a after adopt. Sentence should read: Reimbursement for nonrecurring adoption expenses is available to adoptive parents who adopt a child who meets the three part....

Response:

The department disagrees with this comment. The "a" in the word "an" is not struck out, only the "n".

- Jodie Berger, Regional Counsel, Legal Services of Northern California (Comments #4 - #11)

Section 35333(c)(1)(A)

4. Comment:

There was a typographic error at 35333(c)(1) 1.A.: "(A) If a child continues to require the additional services provided by the FFA, ~~the~~ the placement should continue as an FFA placement funded by foster care payments rather than by AAP benefits."

Response:

The department agrees with the comment and the suggested grammatical change was made.

Section 35337(a)(6)

5. Comment:

35337(a)(6) should be amended, to provide sufficient time for the adoptive parents to seek and receive the evaluation whether benefits should continue beyond the 18th birthday. Adoptive parents shall be informed at least six months (? Or that time that is administratively appropriate), that they must request an evaluation of child's needs for a determination of whether a continuation of benefits beyond the age of 18 is appropriate. The responsible agency shall make this termination so as to avoid any break in assistance for those eligible to continue receiving the benefits. Upon the child's eighteenth birthday, the adoptive parents are to inform the responsible public agency and request an evaluation of child's needs for continuation of benefits beyond the age of 18.

Response:

As a result of this comment and upon further review of the regulation, clarifying language was added to Section 35337(a)(6). The Notice of Action (NOA) is sent prior to the child's 18th birthday as specified in MPP Section 22-001(a)(1). The NOA informs the adoptive parent that their child's AAP benefits will terminate the month following the child's 18th birthday and that they may request an extension to the age of 21 if their child has a mental or physical disability that warrants the continuation of benefits. The adoptive parents are informed of this policy when they review and sign the AAP Agreement

Section 35337(a)(7)(A)

6. Comment:

35337(a)(7) (A) has a punctuation error. If the child is under the age of three and receiving services under the California Early Intervention Services Act, but not yet determined by the CRC to have a developmental disability as defined by the Lanterman Act, the maximum AAP benefit is \$898.

Response:

The department agrees with the comment and the suggested grammatical change was made.

Section 35337(a)(8)

7. Comment:

35337(a)(8) states that "AAP agreements signed on or after January 1, 2010 will no longer be eligible to receive an AAP age-related increase." The statement of reason cites WIC § 16121. While the code does make that provision, the regulations are confusing for not including the remainder of the statutory language. The regulation should reflect that additional language, to wit, that this "shall not preclude any reassessments of the child's needs."

Response:

As a result of this comment and upon further review of the regulation, clarifying language was added to amended Section 35337(a)(8). However, it is not necessary to directly quote the Welfare and Institutions Code Section 16121(a)(2). The purpose of this regulation is to state a child is no longer eligible to receive a rate increase based on their age, if their initial AAP Agreement was signed after January 1, 2010.

Section 35337(a)(8)(A)

8. Comment:

35337(a)(8)(A) requires adoptive parents to request age-related increases. This increase should happen automatically; if not, adoptive parents must be informed that they have the right to make this request, and must make it annually, if an increase is desired. (This can cross-refer the assessment section, and/or include "age related needs" on the AAP3 form.)

Response:

The department disagrees with this comment. Adoptive parents are informed of the eligible age-related rate increases when they review their signed AAP Agreement. The AAP Agreement states it is the adoptive parent's responsibility to contact the agency to request the age-related rate increase.

Section 35337(a)(9)

9. Comment:

35339 (a) should be re-written for clarity. Either the sentence that follows should say "the child ...'who is eligible'" or should clarify that the condition is the basis for the APP, as follows: "When the effective date of payment is not known because a child has a mental, physical, medical or emotional condition which otherwise would be the basis eligible for AAP, does not require current benefits but ~~which~~ who could require future benefits, the Adoption Assistance Program Agreement form (AD 4320) shall

indicate that the family may request benefits to meet needs associated with the condition at an unspecified future date. Additionally, often it is difficult to determine whether infants and small children have a mental, emotional, or other condition which would render them eligible for AAP in the future. This right should be reserved in all AAP agreements so that adoptive families are able to meet the previously unidentified needs of their child.

Response:

The department disagrees with this comment. A child's AAP eligibility must be determined prior to the adoption finalization. If following the determination the child is AAP eligible and the adoptive parents do not wish to utilize the AAP benefits including Medi-Cal, they may sign an AAP deferred agreement which retains a child's AAP eligibility and benefits for a later date. This section is consistent with Welfare and Institutions Code Section 16119(b).

Section 45-806.1

10. Comment:

Modify 45-806.1 to refer to MPP Section 22-001(l)(1), as the notices must not only be timely and adequate, but must also be language compliant.

Response:

As a result of this comment and upon further review of the regulation, reference to MPP Section 22-001(l)(1) was added to amended MPP Section 45-806.1. The department agrees, Notice of Actions should be timely, adequate and language compliant.

General Comment

11. Comment:

The regulations should specify that the AAP payments are excluded as income for purposes of TANF/CalWORKs.

Response:

This comment is outside the scope of the regulations. The TANF/CalWORKS program will need to publish regulations to clarify and specify that AAP payments are to be excluded as income for the purpose of calculating a family's CalWORKS grant.

- Maria Meza, Program Specialist II, Program Development Division, San Bernardino County (Comments #12 - #18)

Section 35000

12. Comment:

Add the following definitions to section 35000:

- Applicable child
- Circumstances of the family

Response:

The department disagrees with this comment. The definitions for these specific terms are stated in the respective amended Sections 35326(d) and 35333(c)(6).

Section 35331(a)

13. Comment:

Section 35-331 – Documentation of Child's Eligibility:

Comment: The FC 8 was removed from all sections except this one.

Recommendation: Need to address if the agency still sends to the county to fill out, if the birth name of the child still required, and if referrals to SSI will still be required by the agency if not eligible to federal AAP.

Response:

As a result of this comment and upon further review of the regulation, clarifying language from repealed Sections 35325(e)(3)(A) and (A)1. and 2. were added as Sections 35331(a)(1) and (a)(1)(A). The responsible public agency shall submit the Federal Eligibility Certification for AAP form (FC8) to the county responsible for payment. This clarification is consistent with Welfare and Institutions Code Section 16118(e).

Sections 35333(e), (f), and (f)(1)

14. Comment:

Section 35-333 – Determination of Amount and Duration of AAP Benefit for all Children:

Comment: Need further clarification regarding the AD 4320.

Recommendation: (e) Need to address if the form will still require the use of the child's adoptive name.

Recommendation: (f) Explain if the previous AD 4320 would still be valid in situations where the agency and adoptive parents do not agree on the AAP benefit and refuse to sign a new one.

Recommendation: (f)(1) Clarify if the adoptive parent is entitled to Aid Paid Pending when they request a state hearing.

Response:

The department disagrees with the recommendations, Section 35337(a)(1) states the child's adoptive name shall be used on the AD 4320 and Amended Sections 35333(g)(1) and 35337(a)(3) state when AAP may be terminated. Unless one of the stated ways to terminate AAP is met, then AAP is to continue as stated on the most recent executed AD 4320. Amended MPP Section 45-806.3 refers to MPP Section 22-001(a)(1) which addresses the aid paid pending issue when a fair hearing has been requested.

Section 35334(e)(1)

15. Comment:

Section 35-334 – AAP Benefits for a Child in a Temporary Out-of-Home Placement

Comment: Reword (e)(1) for clarity.

Recommendation: Reword as follows: "The agency shall state in the agreement that the AAP benefit is intended for the child's out-of-home placement and is not to exceed 18 months.

Response:

The department agrees with this comment and the suggested grammatical change was made.

Section 35339(a)

16. Comment:

Section 35-339 – Deferred Payment of AAP

Comment: Reword (a) for clarity.

Recommendation: Reword as follows "The Adoption Assistance Program Agreement form (AD 4320) shall indicate the family may request benefits at an unspecified future date when a child otherwise eligible for AAP does not require current benefits, but which could require benefits in the future.

Response:

The department disagrees with this comment. The recommended wording seems repetitive and does not provide clarity.

Sections 35343(b)(1)(A)1., (b)(2)(C), and (b)(2)(D)

17. Comment:

Section 35-343 – Procedures for Reassessment of the Child's Needs:

Comment: Typo found in sentence and clarification needed.

Recommendation: (b)(1)(A)(1) Change from to form, "If the family does not submit a completed AAP 3 form,..."

Recommendation: (b)(2)(C) Add form number, "If the adoptive parents select box 3 on the AAP 3..."

Recommendation: (b)(2)(D) Add form number, "If the adoptive parents select box 4 on the AAP 3..."

Response:

The department agrees with the comment and the suggested changes were made.

Sections 35352(a)(1)

18. Comment:

Section 35-352 – Notification Requirements for Agencies

Comment: Reword (a)(1) for clarity.

Recommendation: Reword as follows, "Reimbursement for nonrecurring adoption expenses is available to adoptive parents who adopt a child..."

Response:

The department disagrees with this comment. The "a" in the word "~~a~~n" is not struck out, only the "n".

- Maria F. Ramiu, Staff Attorney, Youth Law Center (Comments #19 - #40)

Section 35325

19. Comment:

Page 2. This section does not clearly distinguish between the "responsible public agency" and the "financially responsible county" and seems to conflict with WIC § 16118 responsibilities for voluntarily relinquished children.

Response:

Upon further review of the regulations, the department agrees with this comment and has amended Section 35325(c) to define the terms "responsible public agency" and "county" as they relate to AAP.

Section 35325(c)(2) [renumbered to 35325(c)(1)] was also amended to provide clarity in regards to which agency the completed form AAP 1 should be submitted to when a child has been voluntarily relinquished for adoption to a California licensed public or private adoption agency and placed with a California prospective adoptive family.

Section 35325(c)(3) (Renumbered to 35325(c)(2) after the public hearing)

20. Comment:

Page 2. The regulation states that if a child is voluntarily relinquished to private adoption agency in another state and placed in California, the adoptive parents' county is responsible, but the statute does not distinguish between in and out-of-state relinquishments and provides that the county where the relinquishing parents reside is responsible.

Proposed Language: If a child is relinquished to a private adoption agency in another state and placed with a prospective adoptive family in California, ~~the prospective adoptive family's county of residence is financially responsible~~ the state where the relinquishing parents reside is responsible for determining AAP eligibility and all AAP payments. ~~The prospective adoptive parents shall submit the completed AAP 1 and supporting documentation to the responsible public agency representing their county of residence.~~

Response:

The department disagrees with this comment. The suggested revisions contradict federal policy interpretation of the Social Security Act, Section 473; ACYF-CB-PA-01-01(1/23/01). As stated in the Initial Statement of Reasons: When an out of state child is relinquished to a private adoption agency in another state and placed with a prospective adoptive family in California, the responsible public agency in which the prospective adoptive parents reside is responsible for determining the child's AAP eligibility and entering into the adoption assistance agreement. The financially responsible county in California pays the subsidy. The prospective adoptive parents should apply for AAP with the responsible public agency representing their county of residence in California. Welfare and Institutions Code Section 16118(e) is only applicable to children relinquished to a California public or private adoption agency and placed with an adoptive family who resides in California.

Section 35325(c)(4) (Renumbered to 35325(c)(3) after the public hearing)

21. Comment:

Page 2. The regulation states that if a child is voluntarily relinquished to a private adoption agency in California and placed with a family in another state, the state of the adoptive parents is responsible for determining AAP eligibility and all AAP payments, but the statute provides that the county where the relinquishing parents reside is responsible.

Proposed Language: (4) If a child is relinquished to a private adoption agency in California and placed with a prospective adoptive family in another state, ~~the public child welfare agency in the adoptive parents' state of residence is responsible for determining the child's eligibility and for all AAP payments.~~ the County where the relinquishing parents reside is responsible for determining AAP eligibility and all AAP payments.

Response:

The department disagrees with this comment. The suggested revisions contradict federal policy interpretation of the Social Security Act, Section 473; ACYF-CB-PA-01-01(1/23/01). As stated in the Initial Statement of Reasons: When a child is relinquished to a California private adoption agency and placed with a prospective adoptive family in another state, the public child welfare agency in the adoptive parents' state of residence is responsible for determining the child's AAP eligibility, entering into the adoption assistance agreement and paying the subsidy. Accordingly, the prospective adoptive parents should apply for AAP with the public child welfare agency in their state of residence, not with the county where the relinquishing birth parent resides. Welfare and Institutions Code Section 16118(e) is only applicable to children relinquished to a California public or private adoption agency and placed with an adoptive family who resides in California.

Section 35325(d)

22. Comment:

Page 3. The "county of responsibility" is not defined and how it is established has been deleted. A definition or explanation should be added.

Proposed Language: (1) The county responsible for making AAP payments and determining eligibility is the county financially responsible for making the CalWORKS or AFDC-FC payment on behalf of the child at the time of the adoptive placement, the county where the relinquishing parents reside in the case of a voluntary relinquishment or the county where the child physically resides prior to placement with the adoptive family in all other cases.

Response:

Upon further review of the regulation, the term county has been defined as it relates to AAP in Section 35325(c).

Section 35325(e)

23. Comment:

Page 3. The proposal eliminates the requirement that the agency apply for SSI on behalf of children who are not otherwise IV-E eligible and the child appears potentially eligible for the SSI program.

Title IV-E eligibility not only provides benefits, such as categorical Medicaid eligibility, for children but also allows the state to obtain federal financial participation in the cost of providing adoption assistance benefits. The agency should make every effort to ensure that eligible children are qualified for federal adoption assistance benefits.

The regulations should (1) retain the requirement in section 35325(e)(3)(B) that the agency apply for SSI on behalf of children who are not otherwise IV-E eligible and appear potentially eligible for SSI, and (2) require the agency to screen "applicable children" who are not otherwise IV-E eligible and appear potentially to meet the medical or disability requirements for SSI and obtain the determination required by section 35326(d)(2).

Proposed Language: (e)(1) For children who do not meet one of the federal funding eligibility paths specified in Section 35336, including "applicable children" who are not otherwise IV-E eligible, the responsible public agency shall screen for potential eligibility and apply for Supplemental Security Income (SSI) benefits on the child's behalf or obtain a determination that the child meets the medical or disability requirements of SSI, if the child appears to meet the medical or disability requirements for the SSI program.

Response:

The department disagrees with this comment and the proposed language as it implies that the responsible public agency must apply on behalf of a child who may meet the SSI eligibility requirements. For independent adoptions or a child who is relinquished to a private adoption agency, if the child does not meet the criteria for Title IV-E or State funded AAP eligibility, a Notice of Action is sent to the prospective adoptive parents informing them of the denial for eligibility and the reason for the denial. If the child appears to meet the medical or disability requirements for SSI it is the prospective adoptive parents' responsibility to apply on their adoptive child's behalf. Furthermore, neither federal law/regulations nor state AAP statutes require the responsible public

agency to apply for SSI on a child's behalf, if it appears that the child may meet the SSI eligibility criteria established by the Social Security Administration.

Section 35326 (Introductory Paragraph)

24. Comment:

Page 7. The eligibility section should be restructured. The proposed regulation does not accurately state the eligibility requirements in WIC § 16120.

Proposed Language: In order for a child to be eligible for Adoption Assistance Program (AAP) benefits, the three part special needs determination, ~~the one of five~~ the paths to either state or federal funding eligibility determination or "applicable child" criteria and the procedural and status ~~citizenship~~ requirements specified in Welfare and Institutions Code Section 16120 shall be met.

Response:

As a result of this comment and upon further review of the regulation, the introductory paragraph for Section 35326 was reworded and is now consistent with the intent of Welfare and Institutions Code Section 16120.

Section 35326(a)(2)(A)

25. Comment:

Page 7. Need to add adverse parental background as a special needs factor as provided in WIC § 16120.

Proposed Language: (A) Factors or conditions include a child's ethnic background, age or membership in a minority or sibling group, parental background of a medical or behavioral nature that can adversely affect the development of the child, the presence of a medical condition, or physical, mental or emotional disabilities.

Response:

The department agrees with this comment and the suggested proposed language has been added to Section 35326(a)(2)(A). This change is consistent with Welfare and Institutions Code Section 16120(b).

Section 35326(b)

26. Comment:

Page 8. It is not clear what the 5 paths are to eligibility. Sections (b)(1) through (b)(5) are not 5 distinct paths. These sections do not include the state only funding paths to

eligibility (for children who are not IV-E eligible) including agency adoptions of children who are juvenile court dependents or in legal guardianships under the supervision of a county. While (b)(2) through (b)(5) are 4 distinct paths, (b)(1) describes a mix of IV-E paths (and a misstated state only path) and does not include the paths described in 35326 (c) through (e). Subsection (b) should be restructured listing each federal eligibility path first and then listing each state only funding pathway (renumbering paragraphs (c)- (e) as subsections of (b) i.e., (b)(6) through (b)(7).

Proposed Language: (b) One of the following ~~five~~ paths to eligibility must be met: (keep (b)(1)(A-C))

Response:

The Department agrees with this comment and the regulations have been restructured to provide clarity. Amended Section 35326(c) through 35326(e) reflect the five eligibility paths for Title IV-E funding and amended Section 35326(f) states the eligibility paths specific to State funding. The amended sections are consistent with Welfare and Institutions Code Sections 16120(i) and (j).

Section 35326(b)(1)(D)

27. Comment:

Move to state-only funding section.

Proposed Language: Renumber as 35326 (b)(7)

Response:

The department agrees with this comment. See response to comment #26.

Section 35326(c) and (d)

28. Comment:

Page 9. The "applicable child" definition sections should follow paragraph (e) which should be renumbered as (b)(6)

Proposed Language: Renumber as (b)(6)(A) & (B)

Response:

As a result of this comment and upon further review of the regulation, the definition of an "Applicable Child" and the corresponding age/FFY chart have been renumbered to amended Section 35326(d)(3). To provide more clarity, amended Sections 35326(d)(1) and (d)(2) have been reordered.

Section 35326(b)

29. Comment:

Create section on state-only funding pathways.

Proposed Language: (b)(7) A child shall be eligible for state-only funding if:

- (A) The child was at risk of dependency at the time of relinquishment or removal from the home of the specified relative and the at risk of dependency finding is documented by the placing agency and certified by the responsible public child welfare agency;
- (B) The child is a juvenile court dependent or in a guardianship under county supervision; OR
- (C) The child is committed to the department pursuant to §8505 or §8918 of the Family Code.

Response:

The department agrees with this comment. See response to comment #26.

Section 35326(f)

30. Comment:

Page 10. Section should be renumbered as (c).

Proposed Language: (f c)

Response:

As a result of this comment amended Section 35326(f) has been reordered to 35326(b).

31. Comment:

Page 11. New subsection (d) with age requirement should be added.

Proposed Language: (d) The child must be under the age of 18 or under the age of 21 if the child has a mental or physical disability that warrants continued assistance.

Response:

See amended introductory paragraph that corresponds with response to Comment #24. The department disagrees with adding all of the proposed language as it would be

misleading. To initially be eligible for AAP the child must be under the age of 18. AAP may be extended to the age of 21, if the child has a mental or physical disability that warrants the continuation of AAP benefits that the child received prior to the age of 18. This is consistent with the intent of Welfare and Institutions Code Section 16120(d) and Social Security Act Section 473(a)(4); 45 CFR 1356.40(b).

32. Comment:

Page 11. New subsection (e) with legal support obligation should be added.

Proposed Language: (e) The adoptive family must be legally responsible for the support of the child and the child must receive support from the adoptive family.

Response:

The department disagrees with this comment. The proposed language is not relevant to a child's AAP eligibility. This proposed language is more applicable to the AAP termination which is specified in amended Section 35337(a)(3).

33. Comment:

Page 11. New subsection (f) with additional procedural requirements.

Proposed Language: (f) the adoptive family must be responsible for the child pursuant to an adoptive placement agreement or a final decree of adoption and have a signed adoption assistance agreement.

Response:

The department disagrees with this comment. The proposed language does not relate to a child's AAP eligibility. The proposed language is referenced in amended Section 35337 (a)(2)(B).

Section 35326(h)

34. Comment:

Page 11. This section purports to govern approval for an adoptive placement, not adoption assistance. Therefore it appears to be in the wrong section of Title 22.

To the extent that this subsection was intended to govern adoption assistance eligibility, the underlying authority is unclear. Although WIC § 16120(h) requires completion of a background check pursuant to 42 USC 671 (a)(20)(A) and (C), the proposed sub-section 32326(h)(2) includes an additional criterion not present in federal law, *i.e.*, an alcohol related offense. The term "alcohol related offense" is not defined.

If the department determines that it has the authority to deny adoption assistance based on the fact that a prospective adoptive parent or any adult living in the prospective adoptive home has been convicted of a felony that occurred within the past five years for an alcohol related offense, it should clearly state the authority for that determination.

Proposed Language: ~~(h) There shall be no final approval for an adoptive placement in which the prospective adoptive parent or any adult living in the prospective adoptive home has been convicted of one of the following:~~

~~(1) A felony for child abuse or neglect, spousal abuse, crimes against the child, including child pornography, or for a crime of violence including rape, sexual assault, or homicide, but not other physical assault and battery.~~

~~(2) A felony that occurred within the past five years for physical assault, battery or a drug or alcohol related offense.~~

The adoptive family and any adult living in the adoptive home must complete a criminal background check.

Response:

As a result of this comment and upon further review of the regulation, amended Section 35326(h) has been amended to be consistent with Welfare and Institutions Code Section 16120(h). To receive AAP benefits on behalf of their AAP eligible child, the prospective adoptive parents and any other adults living in the home must have completed a criminal background check.

Section 35333(c)(1)(A)

35. Comment:

Page 16. The provision that states if a child continues to need the services of the FFA, the placement should continue as an FFA foster care placement should be rephrased as an admonition rather than a commandment. The section should also include a statement that any available SCI should be explored to see if it would cover needs provided by the FFA.

Proposed Language: (c)(1)(A) If a child continues to require the additional services provided by the FFA, the adoptive parents and the responsible public agency should consider whether ~~the placement should continue as an FFA placement funded by foster care payments rather than an adoptive placement funded by AAP benefits.~~ The responsible public agency should in consultation with the adoptive parents consider whether the child's needs may be met by any available SCI.

Response:

The department disagrees with this comment. The responsible public agency is directed to negotiate the AAP benefit in a good faith effort based on the needs of the child and the circumstances of the family. The maximum eligible AAP rate to be negotiated may include a SCI rate, if the child is eligible per amended Sections 35333(a)(2), (a)(4) and (c)(2)(D). Furthermore, the agency is directed to advise the parents that the negotiated AAP rate does not include specific goods or services as stated in amended Section 35333(a)(5).

Section 35333(c)(6)

36. Comment:

Page 18/19. The handbook statutory definition of "circumstances of the family" is deleted eliminating one of the core guidelines for determining the AAP payment. The definition should be kept or rephrased. .

Proposed Language: (6) (B) "Circumstances of the Family" ~~means circumstances of the family~~ as defined in Welfare and Institutions Code Section 16119(d)(2), includes the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future plans and needs, including education, of the child.

Response:

The department disagrees with this comment. It is not necessary to directly quote the referenced Welfare and Institutions Code Section 16121(d)(2) stated in amended Section 35333(c)(6).

Section 35333(g)(1)(A)

37. Comment:

Page 21. Add a paragraph on the AB12 phased in extension of age eligibility for certain children beginning January 1, 2012 since the effective date is so close to the effective date of the regulations.

Proposed Language: (g)(1)(A)(1)(i) Beginning January 1, 2012 an extension of the eligibility age limit will be phased in for non-disabled youth with an initial AAP agreement signed on or after the child's 16th birthday as follows: to age 19 effective January 1, 2012; to age 20 effective January 1, 2013 and to age 21 effective January 1, 2014.

Response:

As a result of this comment, Section 35333(g)(1)(A) was amended to reflect the recent change in Welfare and Institutions Code Section 16120(d)(3) enacted by the passage of AB 12 (Chapter 559, Statutes of 2010). Starting January 1, 2012, youth who have an initial AAP agreement signed on or after their 16th birthday and meet the conditions stated in Welfare and Institutions Code Section 11403, may be eligible for the extension of AAP benefits to the age of 19; the age of 20 effective January 1, 2013 and to the age of 21 effective January 1, 2014.

Section 35334(a)

38. Comment:

Page 22. This section should be amended for the reasons set forth in All County Letter 02-02.

Proposed Language: The responsible public agency shall determine the amount and duration of the AAP benefit when the child is placed, either on a voluntary basis or pursuant to ~~as a court order dependent~~, in out-of-home care to treat a condition that the agency has determined to have existed before the adoptive placement.

Response:

As a result of this comment Section 35334(a) was amended to provide clarity for the reader. The amended introductory paragraph speaks to the various situations that may impact a child's out-of-home placement and how the placement may affect their AAP benefits.

Section 35334(c) (section not included in the package.)

39. Comment:

Page 22. This section should be deleted for reasons set forth in All County Letter 02-02. Additionally, the intent section of this package and additional public notice (a reissuance of ACL 02-02 noting that the new regulations will address) should be given that this section has been in the regulations 9 years without statutory authorization.

Proposed Language: ~~(c) If the child is placed out of home as a ward of the court under Welfare and Institutions Code Section 601 or 602, the maximum AAP benefit for which the child is eligible shall be either the adoptive parents' actual share of cost for support of the child or the foster family home rate as determined under Section 35333(c)(1), whichever is less.~~

Response:

As a result of this comment Section 35334(c) is being repealed as it contradicts existing Section 35334(a)(2)(B). The intent of Welfare and Institutions Code Section 16121(b) is to not penalize AAP eligible children of their benefits due to their out-of-home placement as a ward of the court.

Section 35343(b)(2)(C)

40. Comment:

Page 31. Delete "special" before "needs". An increase at reassessment by statute may be requested if the child's needs or family's circumstances change. There is no requirement of "special needs" unless there is a need to establish that the child qualifies for SCI.

Proposed Language: (C) If the adoptive parents select box 3 requesting an increase in the amount of the AAP benefit, the adoptive parents shall provide written documentation of the child's ~~special~~ needs justifying the increase

Response:

As a result of this comment and upon further review of the regulation, the suggested change was made. The negotiated AAP benefit is based on the child's needs and the circumstances of the family as stated in Welfare and Institutions Code Section 16119(d)(1).

- Brian Capra, Senior Staff Attorney and Karen Ullman, Supervising Staff Attorney, Children Rights Project, Public Counsel Law Center (Comments #41 - #49)

Section 35333(c)

41. Comment:

The removal of the statement "shall determine the maximum AAP benefit for which the child is eligible" does not provide clarity as the Initial Statement of Reasons contends, as determining the maximum AAP benefit for which the child is eligible is an essential part of the AAP negotiation. In addition, given that all the subsections in section (c) are instructions about how to calculate the maximum AAP benefit, the following sections do not make sense if these words are removed and combined with former (c)(1). Section (c)(1) should not be combined with (c) and should remain as (c)(1).

Suggested revision: 35333(c) should not be changed and should continue to read "the responsible public agency shall determine the maximum AAP benefit for which the

child is eligible." Alternatively, section (c) and (c)(1) could be combined to read: "The responsible public agency in consultation with the financially responsible county, if different from the agency, shall determine the maximum AAP benefit by determining the state-approved foster care maintenance payment and any applicable Specialized Care Increment the child would have received in a foster family home if the child had remained in foster care."

Response:

The department agrees with the suggestion to add the term maximum to the sentence in amended Section 35333(c) and the change has been made. The department disagrees with the additional suggestions. Amended Section 35333(c)(2)(D) addresses the determination of the specialized care increment, if the child is eligible.

Section 35333(c)(3)

42. Comment:

Children with developmental disabilities under the jurisdiction of juvenile courts in California are sometimes placed out of state. In addition, some children are placed with families in California and then those families later move out of state. In some circumstances, the child will be a consumer of regional center services, or services under the California Early Intervention Services Act, at the time they move to a state outside California. However, in other cases, a child will be diagnosed as having a developmental disability that would have qualified that child to be a regional center client if the child lived in California, once the child is living outside California. Such children will receive regional center equivalent services from the appropriate agency in that state, but only California has the regional center structure. More clarification is needed regarding the rate children are eligible to receive in these latter circumstances.

Suggested revision: Add the following sentence:

If a child is receiving services through another state's regional center system based on a diagnosed developmental disability as defined in the Lanterman Act, the child should be eligible for the Dual Agency rate and the Supplement if applicable.

Alternatively, the State needs to develop a means to ensure that families are properly advised by the responsible agency of the Dual Agency Rate prior to finalizing the adoption so that families can establish Dual Agency Rate eligibility through a CRC prior to leaving the state.

Response:

The department disagrees with this suggested revision. For a child to be eligible to receive the dual agency rate, they must be a concurrent recipient of AFDC-FC or AAP benefits and a consumer of California Regional Center services due to a developmental

disability, as defined by the Lanterman Act, and/or children receiving services under the California Early Start Intervention Services Act. If the child leaves the state of California prior to the California Regional Center (CRC) determining eligibility for services as defined by the Lanterman Act, the child does not meet the definition of a dual agency child and therefore is not eligible for the dual agency rate. Welfare and Institutions Code Section 16121(c) referenced in amended Section 35333(c)(3) does not provide eligibility for AAP children who are clients of Regional Centers located in other states.

Amended Sections 35333(a), (b) and (c) direct the responsible public agency to consider the child's needs when determining the maximum AAP rate and negotiating the AAP benefits with the adoptive parent. Furthermore, the adoptive parent is made aware of the dual agency when reviewing and signing the AAP agreement.

Section 35333(c)(2) Step 2

43. Comment:

This section has been properly removed as the child's income including, but not limited to, SSI/SSP and Social Security benefits based on earnings of the birth parent, should not be included in the AAP calculation. However, these sections are being removed without being replaced by an affirmative statement that such income should not be considered.

Suggested revision: Include the following language from ACL 09-51:

The reduction of the AAP benefit amount based on any type of income the child receives from a birth parent/relative or adoptive parent is prohibited. The amount of AAP a child receives cannot be reduced to a formula and/or lessened dollar for dollar based upon any resources the child, adoptive parents or family receives from any source include SSI or survivor's benefits.

Response:

As a result of this comment and upon further review of the regulation, clarifying language was added to amended Section 35333(a)(3). The amended section clarifies that there shall be no means testing of the child or adoptive parent when determining the AAP benefit amount.

Section 35337(a)(3)(A)

44. Comment:

This proposed provision states that the AAP benefit will continue until the child has attained the age of 18 or 21, which is confusing without further explanation as to why the rate would be extended past the age of 18.

Suggested revision:

The child has attained the age of 18, unless the child has a mental or physical disability which warrants continuation of AAP benefits to the age of 21 years.

Response:

As a result of this comment and upon further review of the regulation, clarifying language was added to amended Section 35337(a)(3)(A). The amended section clarifies that AAP benefits may continue beyond the age of 18, if the child has a mental or physical disability that warrants the continuation of AAP benefits to the age of 21. This amendment is consistent with state and federal regulations, Welfare and Institutions Code Section 16120(d) and Social Security Act Section 473(a)(4); 45 CFR 1356.40(b).

Section 35337(a)(5)

45. Comment:

This section appears to replace the existing provisions at 35333(a)(10) and (11), which provided assurances to the adopting family that the child is eligible for Medi-Cal and Title XX services. However, the Adoption Assistance Agreement Form should specify more clearly what the effect will be on the adopted child's Medi-Cal if the child only receives state-only AAP and moves to or resides in a non- reciprocating ICAMA state.

Suggested revisions:

Add a second sentence (or create an additional subsection) that states:

The adoption assistance agreement shall specify whether the child is eligible for federal AAP or State AAP and what effect the receipt of State-only AAP will have on the adopted child's Medi-Cal if the child moves to or resides in a non-reciprocating ICAMA state. In addition to remaining financially responsible for needed services, the financially responsible county will also provide information and referral services to the adoptive family in such instances.

Response:

As a result of this comment and upon further review of the regulation, clarifying language was added to amended Sections 35337(a)(5)(A) and (B). When the adoptive family resides in another state, the responsible public agency shall assist the adoptive parents with information and referral services offered in their current state of residence. Federal regulations require the state to have a state policy that ensures if a needed service specified in the adoption assistance agreement is not available in the new State

of residence, the State remains financially responsible for providing the specified service per 45 CFR 1356.40(d).

In addition, if the child is eligible for state funded Medi-Cal benefits, the responsible public agency shall inform the adoptive parents that if they move or reside in another state, access to medical services in their state of residence are contingent on whether their state of residence extends COBRA-reciprocity for children receiving California state funded Medi-Cal benefits.

Section 35337(a)(6)

46. Comment:

Because the proposed provision 35337(a)(3)(A) does not explain why and how a child may receive AAP benefits until they are 21 years old, this proposed provision similarly is problematic in its current state.

Suggested revision:

Upon the child's eighteenth birthday, the adoptive parents are to inform the responsible public agency and request an evaluation of the child's needs for continuation of benefits beyond the age of 18, if the adoptive parents believe the child has a physical or mental disability that warrants the continuance of assistance.

Response:

As a result of this comment and upon further review of the regulation, clarifying language was added to amended Section 35337(a)(6). If the adoptive parents believe their child has a mental or physical disability that warrants the continuation of benefits to the age of 21, it is the adoptive parents' responsibility to request the responsible public agency evaluate their child prior to their child's 18th birthday.

Section 35337(a)(7)

47. Comment:

Information should also be included about the maximum rate for children under 3 who have been determined to have a developmental disability under the Lanterman Act, which is \$2,006.

Suggested revision: Add a sentence stating:

If the child is under the age of three and has been determined to have a developmental disability under the Lanterman Act, the maximum AAP benefit is \$2,006.

[Alternatively, the above addition could be renumbered as 35337(a)(7)(A), and the current proposed 35337(a)(7)(A) can be renumbered to 35337(a)(7)(B), with the suggested additions noted immediately below.]

Response:

The department agrees with this comment (see response to Comment #48).

Section 35337(a)(7)(A)

48. Comment:

This proposed provision states that for a child under 3 receiving Early Intervention services through regional center, the maximum AAP benefit is \$898. This is not correct, as the child could qualify for a SCI through the applicable county's rate system, which may be higher than \$898.

Further, this proposed regulation should clarify the rate that a child will receive if the child continues to be eligible for Regional Center services after turning age 3. Currently, the proposed regulation only states that the family must contact the responsible public agency if the child is eligible for Regional Center after age 3, but does not state what the maximum rate would be.

Additionally, the proposed provision states: *"it is the adoptive parents' responsibility to request the CRC to evaluate the child's eligibility... ."* However, the AAP agreement is signed before the adoption is finalized and before dependency court jurisdiction is terminated. As a result, we suggest adding proposed language which states: *"After the adoption is finalized, it is the adoptive parents' responsibility ..."* to reflect that the child welfare agency has the responsibility to refer the child to regional center prior to adoption finalization and termination of dependency court jurisdiction.

Suggested revisions:

"If the child is under the age of three and receiving services under the California Early Intervention Services Act, but not yet determined by the CRC to have a developmental disability, as defined by the Lanterman Act, the maximum AAP benefit is \$898 or the foster family home rate plus the applicable Specialized Care Increment rate, whichever rate is higher. After the adoption is finalized, it is the adoptive parents' responsibility to request the CRC to evaluate the child's eligibility for CRC services and notify the responsible public agency if the child is eligible and receiving CRC services beyond the age of three. If the child is determined to be eligible for CRC services beyond the age of three, the maximum available benefit is \$3,006.

Response:

As a result of this comment and upon further review of the regulation, clarifying language was added to amended Section 35337(a)(7)(A), (B) and (B)1. This language is consistent with Welfare and Institutions Code Section 16121(c). If the CRC has determined the child has a developmental disability as defined by the Lanterman Act, the maximum AAP benefit is \$2006. If the child is under the age of three and receiving services under the California Early Intervention Services Act, the maximum eligible AAP benefit is \$898 or the foster family home rate and SCI rate, whichever is greater. Furthermore following the adoption finalization and the child's third birthday, it is the adoptive parents' responsibility to request the CRC to evaluate their child's eligibility for CRC services and notify the responsible public agency of any changes in their child's needs that may affect the AAP benefit amount. Section 35337(a)(7) states the maximum eligible benefits a child may receive if they are a current CRC consumer.

Section 35339(a)

49. Comment:

We think it would be helpful to include language to clarify that although a family may choose to defer the AAP benefit, Medi-Cal eligibility may nevertheless be established for the child as needed. This would be consistent with 24 USC 473(b)(1)-(4) and California Welfare and Institutions Code Section 16119(d)(1).

Suggested revision: Add a second sentence stating:

In those instances where an otherwise eligible child does not require cash benefit, the child will remain eligible for Medi-Cal nevertheless.

Response:

The department disagrees with this suggested revision. As used in this section, "benefits" refers to all AAP benefits, including Medi-Cal/Medicaid services.

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 August 11 to 26, 2011, was received from Maria F. Ramiu, Managing Director, Youth Law Center. The comments received and the Department's responses to those comments follow.

Section 35325(e)

1. Comment:

We originally commented on the elimination of the SSI related requirement in §35325(e) and suggested that new language be incorporated to require screening for potential eligibility, applying for SSI and obtaining the qualifying SSI disability determination where warranted. Specifically, we suggested that:

The regulations should (1) retain the requirement in section 35325(e)(3)(B) that the agency apply for SSI on behalf of children who are not otherwise IV-E eligible and appear potentially eligible for SSI, and (2) require the agency to screen "applicable children" who are not otherwise IV-E eligible and appear potentially to meet the medical or disability requirements for SSI and obtain the determination required by section 35326(d)(2).

The response disagreed with our comments citing justifications that were not responsive to the full scope of our comments and were in some respects inaccurate in terms of the characterization of our comments or the law. The main point in our comments was that the elimination of the SSI requirements reduces the State's ability to maximize Federal Financial Participation. Why in such lean fiscal times would the state eliminate a requirement that would generate federal funding for children who would otherwise be funded with only state and local dollars? The response also misses the mark on several other levels. It does not address the issues of AAP eligible children in foster care and erroneously pawns off the duty to apply for SSI on prospective adoptive parents for potentially eligible children who are the subject of relinquishments or independent adoptions. For children who are in foster care, the state retains its *in loco parentis* status and should make every effort to ensure that the child's best interests are being met until the adoption is finalized. Furthermore the responsible public agency in this situation has an obligation to all children and their prospective adoptive parents as applicants for public benefits to assist them in securing the benefits to which they are entitled pursuant to Welfare & Institutions Code §10550. Additionally, prospective adoptive parents have no authority to apply for SSI on their adoptive child's behalf until after the adoption is finalized which is too late to establish AAP eligibility. Also, the responsible public agency is authorized and in a position to obtain a determination that the child meets the medical or disability requirements for the SSI program, in lieu of applying for SSI.

We renew our request to add the following proposed language or similar language that keeps the SSI related screening requirements:

e)(1) For children who do not meet one of the federal funding eligibility paths specified in Section 35336, including "applicable children" who are not otherwise IV-E eligible, the responsible public agency shall screen for potential eligibility and apply for Supplemental Security Income (SSI) benefits on the child's behalf *or*

obtain a determination that the child meets the medical or disability requirements of SSI, if the child appears to meet the requirements.

Response:

SSI provides a path to eligibility primarily for children adopted through the independent adoption process. The commenter's assertion that the prospective adoptive parent has no authority to apply for SSI on their child's behalf until after finalization is false. Prospective adoptive parents can and do apply for SSI prior to finalization and if the child is found to be SSI eligible by the Social Security Administration and meets the other criteria for AAP, benefits are provided. Likewise, prospective adoptive parents of a child who has been relinquished to a public or private agency may apply for SSI on that child's behalf prior to finalization. Welfare and Institutions Code Sections 13750 et seq. (The Foster Care Social Security and Supplemental Security Income Assistance Program) provides counties with best practice guidelines for assisting in the application process for children in foster care and informing caretakers at the time the child leaves foster care of potential eligibility for social security or SSI/SSP benefits. For children being adopted from the foster care system, this process is in effect.