

All County Letter 21-103

September 13, 2021

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 21-103

The purpose of this All County Letter is to provide information about the addition of Welfare and Institutions Code Section 11402(m) which allows for an AFDC-FC maintenance payment to be made for a child placed with a parent who is receiving inpatient substance abuse treatment services in a licensed residential treatment facility, as long as the placement meets federal criteria for a maintenance payment in 42 United States Code 672, subdivision (j).



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DEPARTMENT OF SOCIAL SERVICES
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September 13, 2021

ALL COUNTY LETTER NO. 21-103

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CHILD WELFARE PROGRAM MANAGERS
ALL FOSTER FAMILY AGENCY DIRECTORS
ALL CDSS ADOPTION REGIONAL OFFICES
ALL TITLE IV-E AGREEMENT TRIBES
ALL FOSTER CARE ELIGIBILITY SUPERVISORS

SUBJECT: GUIDELINES FOR PLACING CHILDREN WITH A PARENT WHO IS IN A LICENSED RESIDENTIAL SUBSTANCE ABUSE TREATMENT FACILITY, USING A VOLUNTARY PLACEMENT AGREEMENT

REFERENCES: [42 UNITED STATES CODE \(USC\) 672\(j\) AS AMENDED BY PUBLIC LAW \(PL\) 115-123](#);
[ASSEMBLY BILL \(AB\) 2944 \(STATUTES OF 2020, Ch. 104\)](#), [WELFARE AND INSTITUTIONS CODE \(WIC\) SECTIONS 11400](#), [WIC 11401.1](#), [WIC 11402](#), [WIC 16507.3](#), [WIC 16507.4](#), [WIC 16507.5](#) AND [WIC 16507.6](#);

The purpose of this All County Letter (ACL) is to provide guidelines for Child Welfare Placing Agencies regarding the foster care maintenance payments allowable for placement of a child residing with a parent who is receiving inpatient substance abuse treatment pursuant to WIC section 11402, subdivision (m).

BACKGROUND

Federal law permitted a new placement type to be funded under Title IV-E as part of Section 50712 of the "[Family First Prevention Services Act](#)" (FFPSA), by adding subdivision (j) to the foster care maintenance payments statute at 42 USC 672. In order to implement this new placement type, California added subdivision (m) to WIC section 11402. Effective April 1, 2021, an AFDC-FC maintenance payment is available to facilities who meet the criteria outlined in this ACL and is available for children who are placed with their parent in a licensed residential family-based substance abuse

treatment facility under a Voluntary Placement Agreement (VPA). For the placement to be eligible for a foster care maintenance payment, the Title IV-E placing agency must have legal placement and care responsibility of the child, and the parent will have physical custody of the child for the length of the VPA. This new placement type creates an opportunity for the child to remain with their parent while the parent is undergoing substance abuse treatment. The intention is to prevent children from entering traditional foster care and other out of home placement settings, while maintaining safety.

There are no age specifications in the federal law, but individual family-based treatment facilities have age criteria for children that they allow to reside in the facility with the parent. It is the responsibility of the placing agency to make child placement arrangements in the best-suited facility based on the needs of the family.

The law specifically directs that treatment provided by the eligible facility must support parenting skills and be provided in a trauma informed framework. The Title IV-E placing agency may pay the foster care maintenance payment to the licensed residential substance abuse treatment facility for room and board of the child for up to 12 months, within the standard time limitations of a VPA.

ELIGIBILITY REQUIREMENTS TO RECEIVE AFDC-FC MAINTENANCE PAYMENT FOR A CHILD PLACED WITH A PARENT IN A LICENSED RESIDENTIAL SUBSTANCE ABUSE TREATMENT FACILITY

As of April 1, 2021, a foster care maintenance payment (Basic Level Rate only) may be made on behalf of the child placed with their parent in a substance abuse treatment facility for up to 12 months if the following eligibility conditions as outlined in WIC section [11402, subdivision \(m\)](#), are met:

- The Title IV-E placing agency and the parent have both signed the voluntary placement agreement;
- A case plan has been created and signed that specifies it is in the best interest of the child(ren) to be placed with the parent in an approved licensed residential substance abuse treatment facility;
- The VPA and case plan must be signed prior to placing the child(ren) with the parent; and
- In the case of an Indian child, the voluntary placement conforms with WIC section 16507.4, subdivision (b)(3) and notice has been provided pursuant to WIC section 224.2, as applicable.

A [VPA](#), as defined in [WIC section 11400, subdivision \(p\)](#), and sections [11401.1, 16507.3 through 16507.6](#), is a document signed by the parent and placing agency that

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describes the child's legal status and "the rights and obligations of the parents or guardians, the child, and the agency in which the child is placed." CDSS is formalizing a new VPA form and Placement Agreement form that will be used specifically and only in this placement type. The forms will be published to the [CDSS webpage](#) as soon as they are approved.

Voluntary cases may not have court involvement for up to 180 days, but the placing agency has placement and care responsibility for the child, and a worker is assigned to monitor and support the family. Voluntary case plans contain goals and services for both the child and the parent and are evaluated and assessed regularly by the placing agency. For purposes of foster care maintenance payment eligibility, the case plan must identify that it is in the child's best interest to be placed with their parent in a licensed residential substance abuse treatment facility prior to the placement. The rules of [WIC Section 16507.6](#) apply to this VPA and all existing standards and practice are applicable except for the AFDC eligibility requirements.

- If a placement is needed for longer than 180 days the rules of [WIC Section 16507.6](#) apply, requiring either the return of the child to the legal custody of the parent or a referral for filing of a petition to the juvenile court. A judicial determination that continued placement is in the best interests of the child is required prior to the 180th day from the signing of the VPA, or funding eligibility ceases. Prior to the 180th day a county must file a petition and a judicial decision must be made.
- Although the child has been placed in the same facility with the parent, the child is not in the legal custody of the parent for the duration of the VPA.
- A child with who is court-ordered to be *reunified* with a parent residing in this type of facility **is not eligible** for a foster care maintenance payment.

For a facility to be eligible to receive the established basic rate maintenance payment (same amount for all facilities), the residential substance abuse treatment facility must be licensed through the Department of Health Care Services (DHCS). In addition to licensure, the facility treatment program must also offer the following:

- Parenting skills training - parent education - individual and family counseling in a trauma-informed framework

For more information about the licensing requirements and facility logistics please refer to DHCS [Licensing and Certification](#). These types of facilities are not required to be a childcare institution (CCI) for Title IV-E licensing and background check requirements. Because the treatment facility is not a CCI, the payment may not include the cost of administration and operation of the facility but is **limited** to a basic rate for the provision of food, shelter, and daily supervision of the child.

CLAIMING GUIDANCE

All voluntary cases that meet the eligibility requirements (both family and facility requirements) described in the ACL are eligible for the Title IV-E maintenance payment. The California Department of Social Services (CDSS) and DHCS have assigned a new aid code to support these payments. Aid code 3J (Federal) will be used to support payments for youth being placed with their parent who is receiving inpatient substance abuse treatment services in a licensed residential treatment facility. Aid code 3J will appear under a new column titled *Pre-FC Placement* on the CA 800 assistance claim. It is important to note that although aid code 3J (Federal) has been assigned, the aid code has not yet been made active. Counties will need to manually track costs associated with this placement type until aid code 3J (Federal) has been made active. CDSS will provide additional claiming instructions for this placement type and payments in a forthcoming County Fiscal Letter.

The foster care maintenance payment may be made on behalf of a child(ren) placed with a parent in a licensed residential substance abuse treatment facility for a period not to exceed 12 consecutive months. The 12-month period begins with the start of each placement into a substance abuse treatment facility with a parent. The payment will be made directly to the facility. Counties may claim allowable administrative costs associated with the child's placement which include case management activities.

Under subdivision (j) of 42 USC 672, the child in this type of placement does not have to meet the AFDC eligibility requirements for a maintenance payment to be made to the facility.

- If the child does not meet AFDC eligibility requirements, they will not be categorically eligible for full-scope Medi-Cal benefits as this is not considered a Foster Care Placement for purposes of Medi-Cal benefits
- The parent(s) and child(s) existing benefits (including private insurance coverage) will not be changed as a result of this placement type.
- If, at the time of placement, the child doesn't have health benefits, then the parent will need to apply for benefits for their child.

NOTICE OF ACTION REQUIREMENTS

Counties will continue to use the standard Notice Of Action (NOA) ([NA403](#)) for termination of payments to the licensed residential substance abuse treatment facility. Substitutions of the form will be permitted as approved by CDSS. Consistent with existing due process counties will notify facilities by issuance of an NOA that explains the provisions of the Substance Abuse Treatment Placement funding described in this ACL. Any county decision to grant, deny, change, or terminate payments must be

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communicated by providing adequate written notice to the provider. The notice shall meet the requirements of Chapter 22 of the CDSS Manual of Policies and Procedures and inform the individual of the right to a state fair hearing if they disagree with the county's action. There is no right to a state hearing when the law requires automatic grant adjustments for classes of recipients

OVERPAYMENTS

The county must seek to collect overpayments that occur if payments are made when the child is no longer placed in the facility with their parent. For further clarification of what constitutes an overpayment please refer to Manual Policies and Procedures section 45-304.

IDENTIFYING ELIGIBLE LICENSED RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROVIDERS

In order for counties to make this Title IV-E eligible payment to the facility, CDSS will issue a unique program number, upon request, for licensed residential substance abuse treatment providers. Counties can identify which facilities have been assigned a program number on the Foster Care Rates database.

If a licensed residential substance abuse treatment provider would like to request a program number they must submit the program number request via email to the Foster Care Rates & Outcomes Bureau at: Fosterca@dss.ca.gov. The subject line of the email must read: **Residential Substance Abuse Treatment Program Number Request**. Additional claiming instructions regarding the use of Title IV-E assistance and administrative funds for this placement type will be provided in a forthcoming County Fiscal Letter.

If you have any questions or need additional guidance regarding the information in this letter, contact the Permanency Policy Bureau at (916) 657-1858 or at concurrentplanningpolicyunit@dss.ca.gov.

Original Document Signed By

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