

# CalSAWS Data Retention Policy

## Update History

<u>Date</u>	<u>Version</u>	<u>Change Description</u>	<u>Author</u>
<u>9/28/2020</u>	<u>1.3</u>	<u>First Release</u>	<u>Paul Trisler</u>
<u>11/18/2020</u>	<u>1.4 (Draft)</u>	<u>Draft Updates for ACL 20-113 (10/28/2020)</u>	<u>Paul Trisler</u>

## Summary

A data retention policy describes how long an organization's data should be kept. The policy is generally based in laws and/or regulations that govern the organization. The CalSAWS Data Retention Policy pertains to the data related to the eligibility programs administered by the Counties and stored within the CalSAWS system.

California county welfare departments are generally governed by the Code of Federal Regulations (CFR) and State of California Welfare and Institutions (W & I) Code. In addition, the Department of Health Care Services and California Department of Social Services publish All County Welfare Directors Letters (ACWDLs), All County Letters (ACLs), and the CDSS Manual of Policies and Procedures (MPP) to give counties added guidance to meet regulations.

This document presents the Federal and State of California regulations, along with applicable ACLs, ACWDLs, and MPP sections that guide data retention for CalSAWS, i.e., how long CalSAWS should keep data before data is removed. Additionally, this document describes data retention exceptions and the life cycle of the exceptions.

In general, Federal regulations set the longest retention requirement: case information must be retained for 6 years, following case closure. However, there are exceptions, noted in this document, that require case information be retained for longer periods.

The CalSAWS Governance model has accepted this Policy through the Project Steering Committee and the Joint Powers Authority. The CalSAWS Consortium acknowledges the close collaboration among CDSS, DHCS, and the CalSAWS Consortium to arrive at this Data Retention Policy.

## Federal Regulations that Govern Social Services Data Retention

Federal regulations can influence data retention periods, especially when Personally Identifiable Information and Personal Health Information are considered. Federal regulations, 45 Code of Federal Regulations 164.316<sup>1</sup> and 45 Code of Federal Regulations 164.528<sup>2</sup>, extends the general data retention period beyond the State recommended 3 ½ year period:

### **§ 164.316 Policies and procedures and documentation requirements.**

A covered entity or business associate must, in accordance with § 164.306:

(a)Standard: Policies and procedures. Implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of this subpart, taking into account those factors specified in § 164.306(b)(2)(i), (ii), (iii), and (iv). This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirements of this subpart. A covered entity or

<sup>1</sup> <https://www.law.cornell.edu/cfr/text/45/164.316>

<sup>2</sup> <https://www.law.cornell.edu/cfr/text/45/164.528>

business associate may change its policies and procedures at any time, provided that the changes are documented and are implemented in accordance with this subpart.

(b)

(1) Standard: Documentation.

(i) Maintain the policies and procedures implemented to comply with this subpart in written (which may be electronic) form; and

(ii) If an action, activity or assessment is required by this subpart to be documented, maintain a written (which may be electronic) record of the action, activity, or assessment.

(2) Implementation specifications:

(i) Time limit (Required). Retain the documentation required by paragraph (b)(1) of this section for **6 years** from the date of its creation or the date when it last was in effect, whichever is later.

#### **§ 164.528 Accounting of disclosures of protected health information.**

(a) *Standard: Right to an accounting of disclosures of protected health information.*

(1) An individual has a right to receive an accounting of disclosures of protected health information made by a covered entity in the **six years** prior to the date on which the accounting is requested, except for disclosures:

(i) To carry out treatment, payment and health care operations as provided in § 164.502;

(ii) To individuals of protected health information about them as provided in § 164.502;

(iii) For the facility's directory or to persons involved in the individual's care or other notification purposes as provided in § 164.510;

(iv) For national security or intelligence purposes as provided in § 164.512(k)(2);

(v) To correctional institutions or law enforcement officials as provided in § 164.512(k)(5); or

(vi) That occurred prior to the compliance date for the covered entity.

The 6-year data retention period set by these Federal regulations governs the CalSAWS data retention period.

### California Regulations that Govern Social Services Data Retention

California county welfare departments are generally governed by the Welfare and Institutions (W & I) Code Section 10851 (a)<sup>3</sup>, which specifies the retention period for public social services cases, and allows for exceptions in certain cases:

Each county shall establish and maintain a case record for each public social services case and shall retain the record for a period of **three years**. The three-year retention period begins on the date on which public social services were last provided. The records shall be retained beyond the three-year retention period when the county is notified by the department or the State Department of Health Services, whichever has jurisdiction over the records, to retain records for a longer period of time. The department or the State Department of Health Services, whichever has jurisdiction over the records, shall instruct a county to retain records beyond the three-year period when the retention is necessary to a pending civil or criminal action.

These requirements are placed into operations requirements in the CDSS Manual of Policies and Procedures, Operations Section 23-353<sup>4</sup>:

The general statute in California (Welfare and Institutions Code Section 10851) requires that public social service records (aid and services) be maintained for **three years** from the last date of aid or services. It also provides that certain records in active cases may be destroyed after three years. Federal law (45 CFR 74.20) requires that case records which provide the basis for fiscal claims are to be retained for three years, starting on the day the state submits the last expenditure report to HHS for the period. In the case of supplemental expenditure reports this might require retention for a much longer period than three years.

<sup>3</sup>[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=WIC&sectionNum=10851](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=10851).

<sup>4</sup> <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/opsman3.pdf>

Under these requirements, counties shall insure that records needed to prove eligibility may not be destroyed unless three years have passed from the date the last state expenditure report was made to HHS for the period in which such records were last used to document eligibility.

The CDSS Manual of Policies and Procedures, Operations Section 23-353.6 defines an Alternate Retention Period:

Unless a county has made or intends to make a supplemental expenditure report concerning specific cases which it wishes to purge or destroy, it may consider the retention period to be 3-1/2 years from the date a document was last needed to document eligibility or **3-1/2 years from the date the case was closed**. Using this retention period will insure (sic) that the records are retained at least 3 years beyond the filing of the final state expenditure report.

**Data Retention Exceptions: Extending the Retention Period for Certain Case Conditions**  
The State of California, Department of Social Services (CDSS) All County Letter (ACL) 15-26, besides reminding California Counties of the legal requirements for records retention, identifies certain records that require extended or indefinite retention periods beyond the 6-year Federal retention requirement. The following exceptions have been taken from ACL 15-26<sup>5</sup>.

The MPP Sections 23-353 through 23-356 set forth the requirements for certain records, which have retention periods which vary from the general rule. Some records require retention periods of more than three years, while the regulations must be reviewed for a complete listing.

The following are the most common types of records:

1. Records and their supporting documents must be retained when there is an open federal or state audit. This also includes those federal audits in progress and pending issuance of final reports. Counties are to inform contractors providing social services to retain all necessary records for audits which have not been resolved or closed. **For CalSAWS, open county audits are added to this item.**
2. Case records in which criminal or civil litigation was involved are to be retained for three years after the final claim is submitted for federal reimbursement. These records include those which were used in the determination of eligibility, including denials for the amount of retroactive benefits. Other records in the case must be retained in accordance with the requirements for public assistance records specified in this letter. **For CalSAWS, case records associated with a Special Investigation are added to this item.**
3. Form ABCD 278L, or its equivalent, must be retained for a period of ten years following closure in all cases where notification to do so by the Child Support Agency has been received.
4. County welfare warrant registers must be retained for five years unless an imaged record of the register has been made.
5. While not required by regulation, it is desirable that those Aid to Families with Dependent Children (AFDC)/California Work Opportunity and Responsibility to Kids (CalWORKs) case records and their supporting documents identified by CDSS as federal sample Quality Control (QC) cases containing an error be retained until the federal sanction process is resolved for the applicable Federal Fiscal Year (FFY).
6. Records necessary to sustain an Intentional Program Violation (IPV) disqualification should be retained through the life of the individuals.
7. Federal and/or state law and regulations require 60-month time limit on the receipt of Welfare-to-Work (WTW) services and aid and provide for exceptions to the time limit requirements. Therefore, counties are required to track

---

<sup>5</sup> <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-26.pdf>

CalWORKs recipients' time in services and on aid. Welfare case record documentation which support the tracking of time in services and on aid for CalWORKs recipients must be retained and transmitted to the statewide automated time limit tracking (Welfare Data Tracking Implementation Project System). Case records must be retained until the system is validated for completeness and accuracy. **For CalSAWS, time on aid for General Assistance/General Relief will be kept. Additionally, as directed by ACL 20-113<sup>6</sup>, to support federal TANF time limits, CalSAWS will retain:**

- All issuance history (including special needs payments) and Diversion payment amounts for each adult or minor head of household
- Retain all case narratives and appropriate forms to support exceptions to the time limits, including exemptions and other program requirements that affect the time limits, such as sanctions and domestic violence good cause waivers
- Retain documentation that verifies the months in which TANF aid was received in other states or territories
- All person address history

The following are additional data retention exceptions:

1. ACL 11-08<sup>7</sup> (referenced by ACL 15-26): CalFresh program case records that are a part of an assistance case record must be retained in accordance with MPP Sections 23-353 and 23-356. See Part A, Public Assistance Records.
2. ACL 11-23<sup>8</sup>: Adoption case records are confidential (Title 22 CCR section 89131[b]), and shall be kept by the licensed adoption agency indefinitely (Title 22 CCR section 89179 [b]). All adoption case records shall be kept by the licensed adoption agency/CDSS district office indefinitely, regardless of whether or not the county is the primary holder of the child's case. The AAP records shall be kept the same length of time as the adoption case records. The AAP records must be kept separate from the adoption case records (Title 22 CCR section 35351 and MPP section 45-807). The AAP case file is still part of the adoption record and may be accessed by CDSS or by request of a court order. **For CalSAWS, Adoption Assistance case records will be kept indefinitely.**
3. ACL 11-15<sup>9</sup> - Kin-GAP: Program-required forms must be retained consistent with W&IC section 10851, section 23-353 of the Operations Manual of Policies and Procedures, and section 31-075 of the Child Welfare Services Manual of Policies and Procedures. (31-075.2 states "With the exception of an Indian child as stated below, case records shall be maintained a minimum of three years...; 31-075.21 states " An Indian child's case records, including eligibility records, shall be maintained in perpetuity..." **For CalSAWS, Kin-GAP case records will be kept indefinitely.**
4. Foster Care: Foster Care is closely aligned to Adoptions and Kin-GAP programs. **For CalSAWS, Foster Care case records will be kept indefinitely.**
5. Recovery Accounts: Retain all case data associated with a recovery account that is a status other than Closed or Terminated.

---

<sup>6</sup> <https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-113.pdf>

<sup>7</sup> <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11-08.pdf>

<sup>8</sup> <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11-23.pdf>

<sup>9</sup> [http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11\\_15.pdf](http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11_15.pdf)

**6.** For CalSAWS migration, additional consideration will be made for recovery accounts in Closed or Terminated status, and the County wishes to migrate their ancillary system data to CalSAWS.

**6.7.** Local Ordinances. California counties may have local ordinances that must be considered for CalSAWS data retention.

- San Francisco City & County Ordinance: General Assistance inactive case records that are over three years old may be destroyed *but all records pertaining to denial of initial eligibility may be destroyed after five years*. [Administrative Code of the City and County of San Francisco Article VII – County Adult Assistance Programs, Section 20.7-43]

**7.8.** Appeals and State Hearings Requests.<sup>10</sup> The California Code of Regulation (CCR) section requires that Records shall be retained 3 years after adopted decision. Or if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year period, the records shall be kept until the end of the regular three-year period, whichever is later.

---

<sup>10</sup>[https://govt.westlaw.com/calregs/Document/I112238E0D4B811DE8879F88E8B0DAAAE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/calregs/Document/I112238E0D4B811DE8879F88E8B0DAAAE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1)