C.A. NO. 08-16267

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES, Appellant, v. CLIFF ALLENBY, Interim Director of the California Department of Social Services, in his official capacity; MARY AULT, Deputy Director of the Children and Family Services Division of the California Department of Social Services, in her official capacity, Respondents.	USDC Case No. 3:06-cv-04095-MHP

On Appeal From the United States District Court
for the Northern District of California
Honorable Judge Marilyn Hall Patel

APPELLANT'S OPENING BRIEF

Bingham McCutchen LLP
William F. Abrams (SBN 88805)
Jennifer A. Lopez (SBN 232320)
Craig A. Taggart (SBN 239168)
Michael D. Mortenson (SBN 247758)
1900 University Avenue
East Palo Alto, CA 94303-2223
Telephone: 650.849.4400
Facsimile: 650.849.4800

Attorneys for Appellant
CALIFORNIA ALLIANCE OF CHILD
AND FAMILY SERVICES

CORPORATE DISCLOSURE STATEMENT

PURSUANT TO FRAP 26.1

Pursuant to Rule 26.1(a) of the Federal Rules of Appellate Procedure, Plaintiff-Appellant California Alliance of Child and Family Services ("the Alliance") states the following: the Alliance has no parent companies, and no publicly-held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF CITATIONS

Page(s)

FEDERAL CASES

FEDERAL STATUTES

STATE STATUTES

REGULATIONS

MISCELLANEOUS

I. STATEMENT REQUESTING ORAL ARGUMENT

Counsel for Plaintiff-Appellant California Alliance of Child and Family Services ("the Alliance") respectfully requests twenty minutes of oral argument to assist the Court in evaluating the issues presented herein.

II. STATEMENT OF JURISDICTION

A. District Court's Jurisdiction

The district court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) because the Alliance's Complaint against the California Department of Social Services ("the State" or "CDSS") raised claims under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679b (hereafter, "the Child Welfare Act" or "the Act"), and its implementing regulations.

B. Court of Appeals' Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1291 based on the district court's March 11, 2008 Order granting the State's Motion for Summary Judgment, the district court's March 12, 2008 entry of judgment and the district court's April 10, 2008 Order denying the Alliance's Motion for Reconsideration and Relief From Judgment. (ER 4, 3, 1; CR 57, 58, 74.)[1] This appeal is from a

---

[1] "ER" refers to the Alliance's Excerpts of Record and is followed by the relevant page number(s). "CR" refers to the Clerk's Record and is followed by pertinent docket number(s).

final judgment disposing of all claims in this case.

C. Timeliness of Appeal

The district court entered its judgment on March 12, 2008. (ER 3; CR 58.) The Alliance filed its Motion for Reconsideration and Relief From Judgment on March 21, 2008 under Federal Rules of Civil Procedure 59(e) and 60(b). (CR 60.) On April 10, 2008, the district court denied the Alliance's Motion for Reconsideration and Relief From Judgment. (ER 1; CR 74.) Pursuant to Federal Rules of Appellate Procedure 4(a)(4)(A)(iv) and 4(a)(4)(A)(vi), the Alliance filed a timely notice of appeal on April 29, 2008. (ER 14; CR 75.)

III. ISSUES PRESENTED ON APPEAL

A. Whether the district court erred in granting the State's Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(c) where there are no issues of disputed fact, and where California's "foster care maintenance payments" cover no more than 80% of the cost of (and the cost of providing) the basic necessities enumerated in the Child Welfare Act.

B. Whether the district court erred in denying the Alliance's Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(c) where there are no issues of disputed fact, and where California's "foster care maintenance payments" cover no more than 80% of the cost of (and the cost of providing) the basic necessities enumerated in the Child Welfare Act.

C. Whether the district court erred in concluding that the Child Welfare Act does not require the State's "foster care maintenance payments" to cover the actual costs of providing items enumerated in the Act.

D. Whether the district court erred in concluding that the State may take budgetary considerations into account in determining the amount of "foster care maintenance payments" under the Act.

E. Whether the district court erred in concluding that California is in substantial compliance with the Child Welfare Act where California's "foster care maintenance payments" cover no more than 80% of the cost of (and the cost of providing) the items set forth in the Child Welfare Act.

IV. STATEMENT OF THE CASE

On June 30, 2006, the Alliance filed its Complaint in the United States District Court for the Northern District of California. The Alliance's suit is brought under 42 U.S.C. § 1983 and seeks injunctive and declaratory relief against the State for failing to comply with the Child Welfare Act. (Compl., at ¶ 4; ER 78; CR 1.)

On July 16, 2007, the Alliance filed its Motion for Summary Judgment in this action. (CR 34.) On July 17, 2007, the State filed its Motion for Summary Judgment. (CR 37.) The Alliance and the State submitted a Joint Statement of Undisputed Facts regarding their cross motions for summary judgment on

September 4, 2007. (CR 40.) The parties filed an Amended Joint Statement of Undisputed Facts on September 12, 2007. (ER 64; CR 41.)

On September 24, 2007, the district court heard oral argument on the motions for summary judgment. (ER 42; CR 80.) On March 11, 2008, the district court issued an order granting the State's Motion for Summary Judgment and denying the Alliance's Motion for Summary Judgment. (ER 4; CR 57.) The district court entered judgment on March 12, 2008. (ER 3; CR 58.)

Following the district court's entry of judgment, the Alliance filed its Motion for Reconsideration and Relief from Judgment on March 21, 2008. (CR 60.) In its Motion for Reconsideration, the Alliance presented significant new evidence, which directly impacted and changed the facts that formed the basis of the district court's March 11, 2008 Order.

On April 9, 2008, the district court denied the Alliance's Motion for Reconsideration and Relief from Judgment. (ER 1; CR 74.) The Alliance subsequently filed its Notice of Appeal on April 29, 2008. (ER 14; CR 75.)

V. STATEMENT OF FACTS

This action arises from the State of California's failure to comply with the Child Welfare Act's express mandates. The Child Welfare Act requires participating states that receive federal funds to pay certain basic costs of providing foster care. California applies for and receives federal funds under the Act and is

therefore required to comply with its specific requirements. However, California, by its own admission, willfully fails to do so. The Child Welfare Act is the primary source of funding to pay for the costs of providing the care and supervision that these foster children need. Not only does California's underfunding jeopardize the viability of the group homes operated by non-profit foster care institutions, but, of much greater importance, it also threatens the welfare of the children who depend on these institutions to provide them the most basic necessities.

A. The Child Welfare Act

The Child Welfare Act, 42 U.S.C. §§ 670-679b, was enacted in 1980 to address the need to provide an appropriate setting for children who California and other states have made dependents or wards of the state. Recognizing the importance of helping these children, Congress created a cooperative program in which the federal government provides federal funding to assist the states in meeting the costs of providing the basic necessities enumerated in the Act. As with all federal programs, to ensure that federal funds are being properly used, the Child Welfare Act sets forth a series of requirements that states must satisfy to qualify for federal funding.

To become eligible for federal funding, a state must submit a plan for financial assistance to the Secretary of the United States Department of Health and

Human Services ("DHHS") for approval. 42 U.S.C. § 671(a). As a prerequisite to DHHS's approval, the submitting state must agree, among other conditions, to administer its foster care program pursuant to the Child Welfare Act, related regulations and policies. 42 U.S.C. § 671(a), (b). A state must also designate a state agency to administer or supervise the administration of the state plan and amend its approved plan by appropriate submission to DHHS whenever necessary to comply with alterations to the Child Welfare Act and/or federal regulations or policies. 42 U.S.C. § 671(a)(2); 45 C.F.R. § 1356.20(d)(1). Furthermore, to ensure the federal funds actually reach the intended beneficiaries, each participating state's plan must "provide for foster care maintenance payments in accordance with [42 U.S.C. § 672] and for adoption assistance in accordance with [42 U.S.C. § 673]." 42 U.S.C. § 671(a)(1).

In addition to specifying the features that each state plan must contain, the Child Welfare Act sets forth specific requirements that each participating state must follow when implementing its plan. Among these requirements, the Child Welfare Act commands that "[e]ach State with a plan approved . . . ***shall*** make foster care maintenance payments on behalf of each child who has been removed from the home of a relative . . . ." 42 U.S.C. § 672(a)(1) (emphasis added). The Child Welfare Act defines "foster care maintenance payments" as

> payments ***to cover the cost of (and the cost of providing)*** food, clothing, shelter, daily supervision, school supplies, a child's

> personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

42 U.S.C. § 675(A)(4) (emphasis added).

B. California's Plan Under The Child Welfare Act

Following the enactment of the Child Welfare Act, California, like most states, attempted to create a statutory scheme that complies with the Act's express requirements. California has designated the California Department of Social Services ("CDSS") as the state agency responsible for submitting California's plan to DHHS for approval. Cal. Welf. & Inst. Code §§ 11229, 11460(a), 11462(a).

California's plan states that "[f]oster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them." Cal. Welf. & Inst. Code § 11460(a). The phrase "care and supervision" is defined as "food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation." Cal. Welf. & Inst. Code § 11460(b).

To determine the amount of foster care maintenance payments for foster care group homes, California uses the Rate Classification Level System ("RCL"). Cal. Welf. & Inst. Code § 11462. Under the RCL, a group home is assigned to one of

fourteen levels based on the group home's number of "points." Cal. Welf. & Inst. Code §§ 11462(b), (e). The number of points assigned to a group home is based largely on (1) the number of "paid/awake" hours worked per child, per month, and (2) the qualifications of the staff. Cal. Welf. & Inst. Code § 11462(e). All of the group homes in the same RCL receive the same AFDC-FC payment rate based on the standardized schedule of rates. Cal. Welf. & Inst. Code § 11462(f). CDSS calculates a group home's number of points. Cal. Welf. & Inst. Code § 11462(e).

California law further requires that "the standardized schedule of rates shall be adjusted annually by an amount equal to the California Necessity Index ("CNI") computed pursuant to section 11453, subject to the availability of funds." Cal. Welf. & Inst. Code § 11462(g)(2). The CNI is a weighted average of increases in various costs of living for low-income consumers, including food, clothing, fuel, utilities, rent and transportation. *See, e.g.,* Cal. Welf. & Inst. Code § 11453.

C. The Alliance Sues The State For Failure To Comply With The Child Welfare Act

The Alliance is a non-profit association of private, non-profit agencies that provide adoption, foster care, group home and other services. At the time the lawsuit was originally filed in 2006, the Alliance had approximately 150 member agencies, with approximately 130 of these agencies operating one or more group home programs, which had a total licensed capacity of approximately 5,700

children and youth. (Compl., at ¶ 1(b); ER 77; CR 1.) These agencies rely on California's foster care maintenance payments required under the Child Welfare Act to pay their operating costs and provide basic necessities to the children in their group homes. (Compl., at ¶ 21; ER 82; CR 1.)

On June 30, 2006, the Alliance filed this action under 42 U.S.C. § 1983 against CDSS in the Northern District of California because the State of California has violated and continues to violate the commands of the Child Welfare Act. (ER 76; CR 1.) From State fiscal year 1990-1991 to 2005-2006 the costs of providing the basic necessities enumerated in the Child Welfare Act have increased by approximately 53%, yet foster care payments have only increased by 27%. (Compl., at ¶ 19; ER 81; CR 1.) As a result, there is a substantial gap between the amount of costs that foster care providers must expend to provide basic care to California's children and the payments these providers receive from the State under its system.

The deliberate underfunding of foster care maintenance payments has had catastrophic effects on foster care providers in California. Several members of the Alliance have already ceased operating their group homes or have reduced the capacity of their group home programs. (Compl., at ¶ 21; ER 82; CR 1.) To prevent the closure of more homes and to protect the rights of the innocent children, the Alliance initiated this lawsuit, seeking declaratory and injunctive

relief against the State of California to force it to comply with the Child Welfare Act's requirements. (Compl., at ¶¶ 23-30; ER 82-83; CR 1.)

On July 16, 2007, the Alliance filed its Motion for Summary Judgment. (CR 34.) On July 17, 2007, the State filed its Motion for Summary Judgment. (CR 37.) The Alliance asserted, among other things, that California violated, and continues to violate, federal law by failing to the cover the cost of (and the cost of providing) the enumerated items set forth in the Child Welfare Act. (CR 34.) In its cross-motion, the State acknowledged that it fails to do so. It argued, nonetheless, that California is compliant with the Child Welfare Act because the Act does not require states to pay the actual costs of providing the enumerated items. (Def.'s Mot. Summ. J. at p. 7; CR 37.) The State also argued that the Child Welfare Act permits states to take budgetary considerations into account in determining the amount of foster care maintenance payments. (Def.'s Mot. Summ. J. at p. 8; CR 37.)

In their Joint Statement of Undisputed Facts, the Alliance and the State stipulated, among other facts, that (1) California uses the CNI as an estimate for changes in the actual costs of providing the necessary, essential items set forth in the Child Welfare Act and to determine the percentage for annual cost-of-living adjustments (Am. Joint Stmt. Facts ("AJSUF") at ¶¶ 13, 14; ER 67-68; CR 41); (2) the initial standardized schedule of foster care rates for the 1990-1991 fiscal year

has increased by only 27%, from fiscal years 1990-1991 to 2006-2007 (AJSUF at ¶ 13; ER 67-68; CR 41); (3) from fiscal years 1990-1991 to 2006-2007, the increase in average actual costs that some group homes incur to care for and supervise children exceeds 27% (AJSUF at ¶ 15; ER 68; CR 41); (4) the CNI has increased from fiscal years 1990-1991 to 2006 to 2007 by approximately 59% (AJSUF at ¶ 16; ER 68; CR 41); and (5) the percentage of actual costs that group homes receive has diminished over time due, in part, to an increase in actual costs and "new" costs that group homes *must* incur to satisfy added federal, state and county requirements (AJSUF at ¶ 17; ER 68; CR 41).

The district court heard oral arguments on September 24, 2007, and on March 11, 2008 issued an order granting the State's Motion for Summary Judgment and denying the Alliance's Motion for Summary Judgment. (ER 4; CR 57.) Citing a footnote from *Missouri Child Care Ass'n v. Martin*, 241 F. Supp. 2d 1032, 1046 n.7 (W.D. Mo. 2003), the court found that the State "need only be in substantial compliance with the CWA." (Order Granting Mot. Summ. J. (Mar. 11, 2008) ("March 11, 2008 Order") at p. 6; ER 9; CR 57.) Since the initial payment rates that the State established in fiscal year 1990-1991 reflected the costs of group home programs, and since the current payment rates cover 80% of the current costs of the items specified in the Child Welfare Act, the district court held that California is "still substantially compliant" with the Child Welfare Act. [(March

11, 2008 Order at p. 7; ER 10; CR 57.)] The district court entered judgment on March 12, 2008. (ER 3; CR 58.)

Following the district court's entry of judgment, the Alliance filed its Motion for Reconsideration and Relief from Judgment and Motion for Leave to File a Motion for Reconsideration and Relief from Judgment on March 21, 2008 and March 24, 2008, respectively. (CR 60, 72.) In its Motion for Reconsideration, the Alliance presented significant new evidence establishing that the Governor of the State of California released a proposed budget for the 2008-2009 fiscal year that reduces the State's coverage of the costs of providing the essential, enumerated items in the Child Welfare Act from approximately 80% to no more than 70%. (Doug Johnson Declaration ("Johnson Decl."), Ex. A at 130, Ex. B at C-131; ER 34; CR 62.) The Alliance requested that the district court reconsider, based on the new evidence, whether California is substantially compliant with the commands of the Child Welfare Act. (CR 60.)

On April 9, 2008, the district court denied the Alliance's Motion for Leave to File a Motion for Reconsideration and Relief from Judgment. (ER 1; CR 74.) The Alliance filed its Notice of Appeal on April 29, 2008. (ER 14; CR 75.)

VI. SUMMARY OF THE ARGUMENT

The Child Welfare Act requires participating states to make foster care maintenance payments to group homes "*to cover the cost of (and costs of*

providing)" the most basic necessities such as food, clothing and shelter to children who have been taken out of their homes and made dependents or wards of the state. Even though the State of California applies for and receives federal funding under the Child Welfare Act, it deliberately underfunds and fails to make foster care maintenance payments that cover the cost of (and the cost of providing) these basic necessities. Indeed, the district court determined that the State covers a mere 80% of such costs. California does not dispute this finding. The State's deficient payments not only violate federal law, but they also threaten the well-being of California's most vulnerable children.

Notwithstanding these undisputed facts, the district court erroneously concluded that California "is in substantial compliance with the [Child Welfare Act]" and "federal law has not been violated." (March 11, 2008 Order at p. 8; ER 11; CR 57.) In reaching this result, the district court made a series of fundamental legal and interpretive errors.

First, the district court erroneously concluded that the Child Welfare Act does not require the State of California to make foster care maintenance payments which cover *all* of the costs of providing the basic necessities set forth in the Child Welfare Act, but that mere partial payments are sufficient. This holding contravenes well-established canons of statutory interpretation, the plain language and purpose of the Act and the DHHS' application of the statutory language.

Based on the plain language of the Act, it is clear that the State must cover all of the costs of (and the cost of providing) the items set forth in the Act.

Second, there is no legal or statutory support for the district court's determination that the State need only be "substantially compliant" with the Child Welfare Act. The district court simply plucked this standard from dictum set forth in a footnote in *Missouri Child Care Ass'n v. Martin*, 241 F. Supp. 2d 1032, 1046 n. 7 (W.D. Mo. 2003), which notably does not cite any legal authority for this proposition. This Court and numerous other courts interpreting the Child Welfare Act and similar federal statutes have held that mere substantial compliance with federal law is insufficient as a matter of law.

Third, the district court incorrectly held that the Child Welfare Act contains an exception that permits the State to take budgetary considerations into account in determining the amount of "foster care maintenance payments." The district court acknowledged that there is no "lack of funds" exception expressly set forth in the Child Welfare Act. Nevertheless, the district court implied and judicially constructed an exception based on Congress' failure to expressly prohibit states from taking budgetary considerations into account. This interpretation ignores this Court's well-established precedent that exceptions are not to be implied and cannot be judicially created, and conflicts with the longstanding rule that Congress would

not specify exemptions in one part of a statute and leave others to judicial creation. More fundamentally, this exception swallows the statute.

Fourth, even if this Court finds that the district court was correct in concluding that the State of California need only "substantially comply" with the Child Welfare Act, it is clear the district court erred in holding that the State of California satisfies this standard. Substantial compliance requires compliance with every reasonable objective of the statute. Here, the objective of the statute is to ***cover*** the cost of the items enumerated in the definition of "foster care maintenance payments." Since the statute does not do so, the State is not in substantial compliance with the Child Welfare Act.

Based on these errors, the district court erred in granting the State of California's Motion for Summary Judgment and denying the Alliance's Motion for Summary Judgment. The State's foster care maintenance payments do not cover, by a substantial percentage, the average *actual* costs of providing the enumerated items in the Child Welfare Act. Accordingly, the Alliance respectfully requests that the Court reverse the district court's Order and Judgment.

VII. ARGUMENT

A. The District Court Erred In Granting The State's Motion For Summary Judgment And Denying Alliance's Motion For Summary Judgment

1. Standard of Review

The court reviews *de novo* an order granting a motion for summary judgment. *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116, 1119 (9th Cir. 2008). In the course of that review, the court determines, "viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law." *Id.* (citing *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc)).

2. The District Court Misinterpreted The Child Welfare Act

In granting the State's Motion for Summary Judgment and denying the Alliance's Motion for Summary Judgment, the district court erroneously concluded that California "is in substantial compliance with the [Act]" and "federal law has not been violated." (March 11, 2008 Order at p. 8; ER 11; CR 57.) In reaching this conclusion, the district court made three fundamental legal and interpretive errors. First, the district court incorrectly concluded that the Child Welfare Act

does not require California to cover the "actual costs" of providing the essential items set forth in the Act.[2] Second, after disregarding the plain language of the Act, the district court, without any statutory basis, judicially constructed a "substantial compliance" test to determine whether California has violated federal law and concluded, erroneously, that the State met this standard. Finally, the district court incorrectly concluded that there is a "lack of funds" exception built into the Child Welfare Act because "the [Act] does not prohibit taking budgetary considerations into account." (March 11, 2008 Order at p. 7; ER 10; CR 57.)

---

[2] The Alliance's use of the term "actual costs" in its Motion for Summary Judgment and Opening Brief means the "entire costs" or "all costs" of providing the items enumerated in Section 675(A)(4) of the Child Welfare Act based on the CNI or other comparable and appropriate indexes. In other words, the State must make foster care maintenance payments sufficient to cover the costs of providing these items. The Alliance is not requesting that the State cover or reimburse all costs that a group home incurs that exceed the amount dictated by the CNI or other comparable and appropriate indexes. For example, if the CNI indicates that the cost to provide the enumerated items is $1,000 per child, the Alliance simply requests that the Court order the State to make foster care maintenance payments that cover the entire $1,000 for each qualifying child. If a foster care institution expends money in excess of $1,000 per child (e.g., $1,500), the State is not obligated to reimburse the excess amount (i.e., $500). In this case, the State does not dispute that its payments fall well below the cost of providing the enumerated items based on the CNI.

a. The Child Welfare Act Requires California to Cover Actual Costs

The only dispute in this case revolves around the amount of "foster care maintenance payments" that states are required to make under the Act. Specifically, this case involves California's refusal in twelve of the seventeen years since the RCL system was implemented to fund cost-of-living increases that, pursuant to the CNI, the State concedes are legitimate and reasonable expenses incurred by foster care providers. The State makes no argument that the costs at issue in this litigation were unwarranted, excessive, or in any other way unreasonable. Rather, the State merely contends that it is free under the Child Welfare Act to refuse to cover these legitimate and reasonable costs of providing foster care based solely on the State's spending priorities and budgetary considerations.

In holding that California is nonetheless in compliance with the Child Welfare Act, the district court concluded that "foster care maintenance payments" need not include actual or all the costs of (and the costs of providing) the items enumerated in the Act and that mere "substantial compliance" (i.e., partial payments) is sufficient to satisfy the State's obligations under the Act. (March 11, 2008 Order at p. 7-8; ER 10-11; CR 57.) This interpretation is fundamentally inconsistent with the plain language and purposes of the Child Welfare Act. Under

well-established canons of statutory interpretation, it is clear that "foster care maintenance payments" must "cover" all of the costs of providing the essential items set forth in Section 675(4)(A), not just some percentage of those costs.

"In interpreting a statute [the Court] first look[s] to the plain meaning of its text." *Paul Revere Ins. Group v. U.S.*, 500 F.3d 957, 962 (9th Cir. 2007) (citing *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 732 (9th Cir. 2007) ("Statutory interpretation begins with the plain meaning of the statute's language.")). Furthermore, "'unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.'" *Wilderness Soc'y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1060 (9th Cir. 2003) (en banc) (quoting *Perrin v. United States,* 444 U.S. 37, 42, 100 S. Ct. 311, 62 L.Ed.2d 199 (1979)). "It is also a fundamental canon that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Paul Revere Ins. Group*, 500 F.3d at 962 (internal quotations omitted); *see also Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) ("Under accepted canons of statutory interpretation, we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.")

The phrase "foster care maintenance payments" is defined in Section 675 as:

> payments ***to cover the cost of (and the cost of providing)*** food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

42 U.S.C. § 675(A)(4) (emphasis added). The definition of "foster care maintenance payments" is not ambiguous. The Act defines the term as "payments to ***cover*** the cost of (and the cost of providing)" the essential items set forth in the statute. 42 U.S.C. § 675. The plain meaning of this phrase is that states must make payments that cover ***all*** of the costs of providing the enumerated items. The common, ordinary definition of "cover" in the context of money payments or costs is an amount "enough to pay" or "sufficient to defray, meet or offset the cost." *See* Concise Oxford English Dictionary 330 (Catherine Soanes & Angus Stevenson, eds., 11th ed., Oxford Univ. Press 2004) ("(of money) ***be enough to pay*** (a cost): there are grants to cover the cost of materials for loft insulation.") (emphasis added).[3] There is no evidence that Congress intended anything other than the

---

[3] *See also* American Heritage Dictionary 421 (4th ed., Houghton Mifflin 1989) ("To compensate or make up for" or "To be sufficient to defray, ***meet, or offset the cost*** or charge of: *had enough funds to cover her check.*") (first emphasis added); Webster's Encyclopedic Unabridged Dictionary of the English Language 336 (4th ed., Gramercy Books 2000) ("To suffice to defray or meet (a charge, expense, etc.).")

common, ordinary meaning of this term. *Sherman v. U.S. Parole Com'n*, 502 F.3d 869, 874 (9th Cir. 2007) ("when Congress uses a term of art, such as 'warrant,' unless Congress affirmatively indicates otherwise, we presume Congress intended to incorporate the common definition of that term.") (citations and quotations omitted). Thus, the plain language compels the conclusion that Congress intended to require states to make "foster care maintenance payments" that include the entire cost of providing the basic necessities enumerated in Section 675(4)(A). *See Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 254, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992) ("When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.") (quotations omitted).

Significantly, the Department of Health and Human Services' Child Welfare Policy Manual (hereafter, "Manual") also supports this construction. The Manual answers a variety of questions and provides specific guidance to the states with respect to which costs are included within "foster care maintenance payments." For example, in response to a question as to whether "the resources of [a child of a minor parent will] affect his/her minor parent's eligibility for title IV-E foster care maintenance payments[,]" the Manual states unequivocally that the Child Welfare Act requires states to pay to a minor parent "***an amount necessary to cover the costs*** of maintenance of the son or daughter living in the same foster home or institution with such minor parent . . . . [I]t is the title IV-E eligibility of the minor

parent that allows the increased payment to include ***an amount to meet*** the son's or daughter's needs in that home." Child Welfare Policy Manual, Section 8.3 A.5(2) (emphasis added). The Manual also states that "[i]f a teen mother and her child are both in the same foster family home and each has been determined to be eligible for title IV-E . . . the State ***must*** include ***amounts necessary to cover the costs*** incurred on behalf of the child in the teen mother's title IV-E payment." Child Welfare Policy Manual, Section 8.3 A.5(3) (emphasis added). DHHS's interpretation is entitled to "a measure of respect" under established principles of administrative law. *See Federal Express Corp. v. Holowecki*, __ U.S. __, 128 S. Ct. 1147, 1156, 170 L. Ed. 2d 10 (2008) (holding that agency's policy statements, embodied in its compliance manual and internal directives, are at least "entitled to a 'measure of respect' under the less deferential *Skidmore* [*v. Swift & Co.*, 323 U.S. 134, 65 S. Ct. 161, 89 L . Ed. 124 (1944)] standard."); *Alaska Dept. of Environmental Conservation v. EPA*, 540 U.S. 461, 488, 124 S. Ct. 983, 157 L. Ed. 2d 967 (2004) (Cogent "'administrative interpretations . . . warrant respect.'")

Notwithstanding the plain language of the Section 675(4)(A) as well as the common usage of the terms contained therein and the agency's own authoritative interpretation, the district court determined that California is not required to pay actual or all costs, but that mere "substantial compliance" is sufficient to satisfy the commands of the Child Welfare Act. (March 11, 2008 Order at p. 7; ER 10; CR

57.) After acknowledging that foster care maintenance payments are required to include the costs of certain enumerated items, the district court noted that "[i]n the case of institutional providers . . . the statute goes on to state that 'such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the [the enumerated items.]'" (*Id.*) The district court then concluded: "Thus, though the statute mentions reasonable costs, it is silent about actual costs. Without explicit statutory authorization or any other evidence in support, the court cannot find the requisite statutory intent to provide payments of actual costs." (*Id.*)

There are several flaws in the district court's analysis. First, the district court outright ignored the first sentence of the Act requiring the State to "cover" -- i.e., pay -- *all* costs, not just some unspecified portion of the costs. Instead, the district court focused on the second sentence of the definition, which uses the phrase "reasonable costs" in relation to *administration* and *operation* costs for institutional care facilities. But Congress's inclusion of the term "reasonable" in requiring payment of administration and operation costs for institutional care does not change the meaning of the word "cover" in the first sentence. Nor does it alter the nature of the costs that must be "covered." Rather, it merely permits a state to decline to pay a separate category of costs -- administration or operation costs -- that it deems to be excessive or unreasonable.

Indeed, with the exception of certain travel expenses, Congress did not even include an express "reasonableness" limitation on the costs that must be "covered" under Section 675(4)(A). That is presumably because Congress viewed funding for the *actual* costs associated with the categories of costs identified in Section 675(4)(A) as routine. Thus, far from supporting the district court's ruling, the inclusion of a reasonableness limitation only for administrative and operating costs, if anything, supports the view that Congress intended no such limitation to the funding of the routine categories of costs required to be "covered" by Section 675(4)(A). *See Russello v. United States*, 464 U.S. 16, 22, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'"); *United States of America v. Carr*, 965 F.2d 176, 178 (7th Cir. 1992) ("Because Congress placed the limiting clause only in certain portions of the statute, we presume that the clause restricts the reach only of those portions."). If Congress had intended to create such a limitation it presumably would have done so expressly. As the Supreme Court in *Russello* held: "[w]e refrain from concluding here that the differing language in the two subsections has the same

meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship." *Russello*, 464 U.S. at 22, 104 S. Ct. at 300.[4]

Equally fundamental, the district court's reliance on the reasonableness limitation for administrative and operating costs is misguided because the State has conceded that the costs at issue were legitimate and reasonable. Indeed, they are based on the States own assessment of applicable cost-of-living expenses. The State is not refusing to fund these legitimate costs out of concerns that they are excessive. Rather, they are refusing to fund them based solely on the State's desire to use its resources to fund other spending priorities. While the State remains free to pursue whatever spending priorities it chooses so long as it declines federal funds under the Child Welfare Act, it may not accept those funds and then refuse to pay the costs mandated by the Act solely because it wishes to use its money to pursue other goals. Any other construction would render the required conditions for federal funding mere suggestions.

---

[4] Of course, such reasoning would not mean that the State is powerless to limit excessive spending, waste, or fraud by foster care providers. Among other things, the State's licensing authority grants it ample discretion to deny access to the program to providers that engage in such abuses. The State currently audits and can continue to audit group homes to determine whether group homes are incurring costs that fall outside of the program. (*See* Mot. Summ. J. Hr'g Tr. 17-18, Sept. 24, 2007; ER 58-58; CR 80.)

Accordingly, based on the plain language of the Child Welfare Act, foster care maintenance payments must be enough to cover the entire costs of providing the enumerated items. California, by its own admission, has failed to do so.

b. There Is No Legal Or Statutory Basis For The District Court's Substantial Compliance Test

After erroneously concluding that the State is not required to cover all costs, the district court held that the State is only required to "substantially comply" with the requirements of the statute -- a concept that is not contained anywhere in the language of the Child Welfare Act. In support of this nontextual standard, the district court cites to a footnote in *Missouri Child Care Ass'n v. Martin*, 241 F. Supp. 2d 1032, 1046 n.7 (W.D. Mo. 2003). The district court's reliance on *Martin* is misplaced. As discussed below, this Court and numerous other courts have held that states are required to strictly comply with federal law.

The *Martin* court, in a footnote and without citation to any authority whatsoever, stated that Missouri was only required to substantially comply with the Child Welfare Act in formulating the plan required under the Act, which the court ultimately determined Missouri had failed to do. *Id.* However, this statement is merely dictum because the *Martin* court specifically "decline[d] . . . to

determine if Missouri's reimbursement ***actually covers*** the cost of the allowable items." *Id.* at 1046 (emphasis added).

More importantly, the district court's ruling in *Martin* directly contravenes the Eighth Circuit Court of Appeals' decision in the same case. *See Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034 (8th Cir. 2002). In *Cross*, the court held that "[t]he [Child Welfare Act] ***requires*** the state to reimburse providers for specified expenses. ***The Act does not grant Missouri officials any discretion to deny providers these payments***: 'Each State with a plan approved under this part *shall make* foster care maintenance payments . . . .'" *Cross*, 294 F.3d at 1042 (quoting 42 U.S.C. § 672(a)) (first emphasis added). The court goes on to state that because Missouri had volunteered to participate in the program it had "agreed to abide by the legal requirements set forth in the [Child Welfare Act] . . . . [H]aving chosen to receive federal dollars, it is bound either to run its program in conformity with the [Child Welfare Act] or to forego the federal funds." *Id.* at 1042 n.10 (citing *Antrican ex rel. Antrican v. Odom*, 290 F.3d 178, 189-91 (4th Cir. 2002); *Gorrie v. Bowen*, 809 F.2d 508, 520 (8th Cir. 1987) ("The state voluntarily accepts the conditions imposed [upon states receiving federal funds] by Congress and, once it chooses to do so, the supremacy clause obliges it to comply with federal . . . requirements.").

Moreover, this Court and numerous other courts have reached the same conclusion with respect to similar federal statutes. In a case involving the implementation of the Aid to Families with Dependent Children (AFDC), the Food Stamp Act and Medicaid programs, this Court held that mere substantial compliance with the federal laws at issue was insufficient. *Withrow v. Concannon*, 942 F.2d 1385, 1389 (9th Cir. 1991).

In *Withrow*, the state of Oregon chose to participate in the AFDC, Food Stamp and Medicaid programs, which provide federal funding to deliver subsistence income, nutrition and medical care to eligible recipients. 42 U.S.C. § 601 et seq.; 42 U.S.C. § 1396a et seq.; 7 U.S.C. § 2011 et seq. As with the Child Welfare Act, "[a] state's participation is optional, but participating states must comply with federal requirements." *Withrow*, at 1386 (citing *King v. Smith*, 392 U.S. 309, 316, 88 S. Ct. 2128, 20 L. Ed. 2d 1118 (1968)). All of the federal laws at issue in *Withrow* require the state to provide hearings to applicants or recipients aggrieved by the state agency's actions within a certain time limit. *See, e.g.*, 45 C.F.R. § 205.10(a)(16)(1) ("Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for an [AFDC] hearing.").

The *Withrow* court concluded that despite language in the AFDC providing that federal funding may be terminated if the state has failed "substantially" to

comply with the federal hearing standards, "the standard for termination of federal funding, a virtual death sentence for a state's program, is [not] the appropriate one to define the rights of applicants and recipients of program benefits." 942 F.2d at 1387 (citing 42 U.S.C. § 604(a)(2)). This Court rejected the district court's holding that the agencies were only required to be in "substantial compliance" with the federal regulations because the "***language of the federal regulations is unequivocal***, and states that a decision **'shall'** or 'must' be made within the specified number of days." *Id.* at 1387 (emphasis added). This Court concluded that "[f]rom the standpoint of the applicants or recipients who are denied hearings and decisions within the time mandated by federal regulations, it is no comfort to be told that there is no federal remedy because the state is in 'substantial compliance' with the federal requirements." *Id.*; *see also Haskins v. Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986) (holding that the Food Stamp Act mandated strict compliance, requiring that the state "***comply[] with the Act as strictly as is humanly possible***.") (emphasis added).

The court in *Southside Welfare Rights Organization v. Stangler*, 156 F.R.D. 187 (W.D. Mo. 1993), also required "compl[iance] with the Food Stamp Act 'as strictly as is humanly possible' and [the] 'eliminat[ion of] all but the truly inevitable instances of noncompliance.'" *Id.* at 195 (quoting *Withrow*, 942 F.2d at 1388-89; *Haskins*, 794 F.2d at 1277). The court went on to hold that 93-95%

compliance with the provisions of the Food Stamp Act would be considered acceptable "as long as defendants continue good faith substantial efforts to achieve 100 percent compliance." *Id.*

Similarly, the court in *Robertson v. Jackson*, 766 F. Supp. 470 (E.D. Va. 1991), a case involving the implementation of the Food Stamp Act, concluded that taking as long as 60 days to process an application for food stamps when federal law requires no more than 30 days was "an intolerable, heartless and blatant disregard of the law" and that, as a result, "[t]housands of class members are currently deprived of the help they need and are entitled to under the law in their effort to feed themselves and their families." *Id.* at 473-74. The court went on to reject the contention that Virginia's Food Stamp program need only by brought into "substantial compliance" with the federal timeliness requirements: "The law require[d] *full* compliance absent what is hoped will be minimum human error. Lack of staff or funds is not legally excusable, and this Court will not consider these hurdles in formulating a decree that mandates full compliance with federal law." *Id.* at 475 (emphasis in original).

The case law is clear: the Child Welfare Act (as with the AFDC, Medicaid and the Food Stamps Act) requires states to comply strictly with federal law in the event that they agree to receive federal funding pursuant to the Act. The Child Welfare Act further requires that "[e]ach State with a plan approved . . . ***shall*** make

foster care maintenance payments on behalf of each child who has been removed from the home of a relative . . . ." 42 U.S.C. § 672(a)(1) (emphasis added). Numerous courts have interpreted similar language to that found in the AFDC and Food Stamp Act to require strict compliance. Clearly, the footnote in the *Martin* case cannot hold up against the weight of the numerous decisions to the contrary. The only possible exception to full and complete compliance provided in any of these cases is for inadvertent human error. In this case, however, there is no possibility of human error -- either the State pays the full foster care maintenance payments, or it does not. Since 100 percent compliance is possible, it must be enforced. California has refused to cover the costs for caring for foster children placed in group homes as a deliberate policy choice.

Children who are eligible for these payments are in dire need of assistance from the State and Federal government. Like the recipients who were denied hearings in *Withrow*, these children can find no comfort in "substantial compliance" with the State's obligation to provide for their basic necessities. The individuals and organizations eligible for foster care maintenance payments are no less deserving of actual, strict compliance than individuals who are eligible for food stamps.

For all of these reasons, defendants are required to strictly comply with the provisions of the Child Welfare Act and pay the actual costs of the items listed in

the definition of "foster care maintenance payments." Thus, the district court erred in holding that mere substantial compliance is sufficient to comply with federal law.

c. The Child Welfare Act Does Not Contain a Lack of Funds Exception

The third critical error in the district court's analysis is that it incorrectly carved out an exception to the Child Welfare Act that excuses California, or any state, from complying with the Child Welfare Act based on a claim that it has insufficient funds. (March 11, 2008 Order at p. 7-8; ER 10-11; CR 57.) Contrary to the district court's conclusion, there is no statutory basis for this judicially created "lack of funds" exception. Indeed, tacitly acknowledging that there is no textual support for a "lack of funds" exception, the district court relied heavily on the fact that "the [Child Welfare Act] does not prohibit taking budgetary considerations into account." (March 11, 2008 Order at p. 7; ER 10; CR 57.) However, that interpretation contravenes longstanding canons of statutory interpretation prohibiting implied exceptions, and this Court's precedent holding that a "lack of funds" is no excuse for failing to provide required payments.

"Established canons of statutory construction state that . . . 'exceptions are not to be implied. An exception cannot be created by construction.'" *Export Group v. Reef Industries, Inc.*, 54 F.3d 1466, 1473-74 (9th Cir. 1995) (citing

Norman J. Singer, 2A Sutherland Stat. Const. § 47.11 (5th ed. 1992)). "In addition, there is a presumption that Congress would not enumerate specific exemptions in [one section] . . . but leave the exemptions in another section of the same statute to judicial identification." *Export Group*, 54 F.3d at 1474 (citing Henry C. Black, Handbook of the Construction and Interpretation of the Laws §§ 27, 32 (2d ed. West 1911)).

In this case, the district court turns these rules of statutory construction on their heads. Indeed, the only support the district court identified for its extra-statutory "lack of funds" exception was the absence of an express prohibition in the Child Welfare Act against "taking budgetary considerations into account." (March 11, 2008 Order at p. 7; ER 10; CR 57.) As explained above, however, the plain terms of Section 675(4)(A) require the State to "cover" -- i.e., pay the full amount of -- all actual costs covered by the provision. California, by its own admission, has failed to do so here. The fact that it cites competing budgetary priorities as the basis for its neglect is of no moment.

The district court's "lack of funds" exception also conflicts with the longstanding rule that Congress would not enumerate certain exemptions in one section of a statute, but leave the exemptions in other sections to judicial creation. *Export Group*, 54 F.3d at 1474. Congress explicitly provides an exception to a state's full compliance with the Child Welfare Act where the Secretary of Health,

Education and Welfare authorizes a state to conduct a "demonstration project."[5] 42 U.S.C. § 1320a-9(b). Significantly, there is no similarly enumerated exception to a state's full compliance where a state claims that it does not have sufficient funds to comply with its obligations under the Child Welfare Act. Thus, because Congress enumerated specific exceptions to full compliance with the Child Welfare Act, it must be presumed that Congress' failure to enumerate a "lack of funds" exception was intentional.[6]

Moreover, in creating this "lack of funds" exception, the district court completely abandoned its own incorrect rules of construction. On the one hand, the district court held: "***Without explicit statutory authorization*** or any other evidence in support, the court cannot find the ***requisite statutory intent*** to provide payments of actual costs." (March 11, 2008 Order at p. 8; ER 11; CR 57)

---

[5]The Child Welfare Act authorizes Congress to appropriate grant funds for "special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare." 42 U.S.C. § 626(a)(1)(A).

[6] It is also noteworthy that the Child Welfare Act limits the authority of the waiver by expressly stating that "the Secretary may not waive . . . any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E." 42 U.S.C. §1320a-9(b)(2). This limitation to an already narrow exception shows that Congress deems the entitlements to qualified children and families to be an exceptionally important component of the overall plan.

(emphasis added). On the other hand, although there is no "explicit statutory authorization" in the Child Welfare Act for a "lack of funds" exception, the district court implied such an exception based on the mere fact that Congress "does not prohibit" the State of California from taking budgetary considerations into account. This reasoning is as illogical as it is internally inconsistent. Rather than mistakenly (and selectively) construing Congress's silence to excuse California's neglect of its funding obligations to foster care providers, the district court should have applied the plain language of the Child Welfare Act and required California to "cover" the actual costs set forth in Section 675(4)(A).

The district court sought support for its flawed reading of the Child Welfare Act in the California statutory scheme. Specifically, the court emphasized that "the lack of funds exception is in the same ***State*** statute that guarantees the CNI increases," and it faulted the Alliance for "argu[ing] that CNI increases are mandatory when the latter half of the very clause that provides for the increases allows budgetary considerations to make the increases discretionary." (March 11, 2008 Order at p. 7-8; ER 10-11; CR 57) (emphasis added). But the *California statute* (Cal. Welf. & Inst. Code § 11462(g)(2)) cannot create a "lack of funds" exception in the *federal* Child Welfare Act. It is the federal Act, not merely California's statute, that requires the state to "cover" the actual costs identified in Section 675(4)(A), including actual cost-of-living increases. That requirement

comes from the definition of "foster care maintenance payments" found in the Child Welfare Act. 42 U.S.C. § 672. The CNI is simply an agreed upon, objective method for determining part of the costs that must be paid under the Act. It is a proxy established in the California statutory scheme to estimate changes in the costs of providing care on an annual basis, in lieu of performing a new study each year of the average actual costs of group homes. Conversely, the judicially created "lack of funds" exception is not found anywhere in the Child Welfare Act. Neither the district court nor the State have pointed to anything in the Child Welfare Act's plain language that permits a state to pay foster care providers an amount less than that which is necessary, sufficient and reasonable to "cover" the costs of providing such care.

The district court also misapplied this Court's precedent. In *Blanco v. Anderson*, 39 F.3d 969, 970 (9th Cir. 1994), county residents brought an action for injunctive relief against the Director of DSS for approving weekday closings of county welfare offices. The district court granted the residents' request to review the welfare office's hours of operation, but declined to grant further relief, and the residents appealed. *Id.* at 970-71. On appeal, this Court rejected DSS's lack of resources argument and found that the welfare office's weekday closings violated the federal requirement of reasonable promptness. *Id.* at 971-72. This Court held: "***Lack of resources and lack of bad faith on the part of the agency officials [are]***

no excuse for failing to provide the plaintiffs their statutory entitlements." *Id.* at 973 (emphasis added) (alteration in original) (internal quotations omitted); *see also Orthopedic Hosp. v. Belshe*, 103 F.3d 1491, 1493 (9th Cir. 1997) ("To receive matching federal financial participation for such services, states must agree to comply with the applicable federal Medicaid law.").

The district court attempted to distinguish *Blanco,* reasoning that it is inapposite to the instant case because the Alliance "has not cited any emergency situation nor regulation . . . that prohibits the State from taking budgetary considerations into account." (March 11, 2008 Order at p. 7; ER 10; CR 57.) The district court's conclusion that *Blanco* requires an emergency situation in order to force the State to comply with federal law is incorrect. This Court in *Blanco* did not limit its holding to emergency situations. California may not simply ignore the commands of the Child Welfare Act simply because it claims there is no emergency. Nonetheless, the Alliance has demonstrated that California's deficient "foster care maintenance payments" have created an emergency situation. It is undisputed that California is not making foster care maintenance payments which cover the entire cost of providing the items mandated under the Child Welfare Act. (AJSUF at ¶¶ 13-16; ER 67-68; CR 41.) Absent such full payments, group homes will close and will not be able to provide the most basic necessities to the children who California has made dependents or wards of the state. (Compl., at ¶ 21; ER

82; CR 1.) Indeed, several members of the Alliance have already ceased operating or have reduced the capacity of their group home programs. (*Id.*)

Finally and most importantly, the district court's judicially created "lack of funds" exception will swallow the entire statute, rendering the Child Welfare Act nothing more than a mere aspiration. There can be no question that each state has budgetary constraints, and each state has special interest groups and other entities that lobby for limited funds. The children who rely on these funds do not have the political power or resources to lobby and compete for these funds. The evidence is indisputable: as California continues to underfund, more and more group homes will continue to close. As a result, the children with the greatest need for the State's resources, but with the least political power, will be the losers in the budgetary game.

Accordingly, the district court incorrectly held that California may take budgetary constraints into account in determining the amount of foster care maintenance payments. Thus, the district court erred in concluding the California's statutory scheme complies with federal law.

3. The District Court Erred In Concluding That California's Rate Classification System Complies With The Child Welfare Act

a. California Fails to Cover the Actual Costs of Providing the Enumerated Items in the Child Welfare Act

Having established that the district court erred in its interpretation and construction of the Child Welfare Act, it is clear that it also incorrectly concluded that the State of California is in compliance with the Child Welfare Act. Because California fails to make "foster care maintenance payments" to cover the cost of (and the cost of providing) the items enumerated in the Child Welfare Act, California has violated and continues to violate federal law.

In the Amended Joint Statement of Undisputed Facts, the Alliance and the State stipulated that from the 1990-1991 fiscal year to the 2006-2007 fiscal year, foster care rates have increased only 27%. (AJSUF at ¶ 13; ER 67-68; CR 41.) It is also undisputed that the increase in average actual costs that some group homes incur to care for and supervise children exceeds 27%. (AJSUF at ¶ 15; ER 68; CR 41.) In fact, the State also admits that the CNI from the 1990-1991 fiscal year to the 2006-2007 fiscal year has increased by approximately 59%. (AJSUF at ¶ 16; ER 68; CR 41.) As the district court correctly concluded, California only covers

approximately 80% of the costs of providing the basic necessities enumerated in the Child Welfare Act. (March 11, 2008 Order at p. 7; ER 10; CR 57.) Furthermore, if the Governor's proposed budget for the 2008-2009 fiscal year is enacted, California's payments will not receive a CNI-based increase and will be reduced by 10%. They will drop to approximately 70% of the actual costs of providing the enumerated items for the 2008-2009 fiscal year. (Johnson Decl., Ex. A at 130, Ex. B at C-131; ER 34; CR 62.) In sum, California's "foster care maintenance payments" do not come close to covering "the cost of (and the cost of providing)" the items enumerated in the Child Welfare Act.

Acknowledging that it does not pay actual costs, the State relied heavily in its Motion for Summary Judgment on the fact that DHHS has repeatedly approved California's plan. This reliance is misplaced. First, as the district court correctly found, DHHS approval, by itself, "is not dispositive." (March 11, 2008 Order at p. 5; ER 8; CR 57 (citing *Orthopedic Hosp. v. Belshe*, 103 F.3d 1491, 1496 (9th Cir. 1997)).

Second, California's plan only superficially appears to comply with the Child Welfare Act. While California's statutory scheme somewhat mirrors the language of the Child Welfare Act, it does not include the "cover the cost of (and the cost of providing)" language found in the federal law. *See* Cal. Welf. & Inst. Code § 11460(b). When the statute was originally enacted it provided that the

rates were "developed using 1985 calendar year costs and *reflect adjustments* to the costs for each fiscal year, starting with the 1986-87 fiscal year, *by the amount of the California Necessities Index*." *See* Cal. Wel. & Inst. Code § 11462(c) (emphasis added). In addition, the statute contemplates that "[b]eginning with the 2000-01 fiscal year, the standardized schedule of rates *shall be adjusted annually by an amount equal to the CNI* computed pursuant to Section 11453, subject to the availability of funds." Cal. Welf. & Inst. Code § 11462(g)(2) (emphasis added). Unfortunately, the State has failed to adjust the schedule of rates in an amount equal to the CNI, which, as a result, do not come close to covering the costs of providing the items listed in the Child Welfare Act.

Third, just because a state has a plan that fully complies (or appears to comply) with the Child Welfare Act's requirements does not mean, *ipso facto*, that the state is following or correctly implementing its plan. Indeed, the requirement that states make "foster care maintenance payments" is separate and apart from the requirement that states submit a plan for DHHS approval. The Child Welfare Act provides that "[e]ach State ***with a plan approved*** under this part ***shall make foster care maintenance payments*** on behalf of each child who has been removed from the home of a relative . . . ." 42 U.S.C. § 672(a)(1) (emphasis added). Thus, if a state has a plan approved but makes no "foster care maintenance payments," it is not in compliance with the Child Welfare Act. Similarly, as in this case, if a state

has a DHHS approved plan but does not make payments to cover the actual costs of providing the items specified in the Act, the State is not in compliance with the Child Welfare Act.

Finally, the *Martin* case does not compel a different result. The *Martin* court never reached a decision on whether Missouri was properly implementing its plan because it determined that Missouri was not taking into account the appropriate statutory criteria in setting its rates. 241 F. Supp. 2d at 1046. In fact, the *Martin* court suggested that the State would need to actually cover the costs of items enumerated in the Child Welfare Act once its plan complied with the statute: "The Court declines at this juncture to determine if Missouri's reimbursement actually covers the cost of the allowable items . . . ." *Id.* Similarly, in this case, while the State may have taken into account the appropriate statutory criteria when it set its rates in 1990-1991, its failure to increase payments to coincide with the increase in the average actual costs of group homes puts the State out of compliance with the Child Welfare Act.

Accordingly, because California's "foster care maintenance payments" do not cover the costs of providing the items enumerated in the Child Welfare Act, the district court erred in concluding that California's statutory scheme and deficient payments comply with federal law. Therefore, the Court should reverse the district

court's judgment granting the State's Motion for Summary Judgment and denying the Alliance's Motion for Summary Judgment.

b. The District Court Erred In Concluding That California Is In Substantial Compliance With The Child Welfare Act

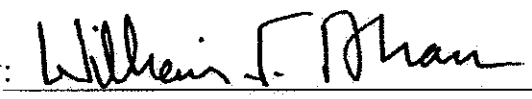
Even if this Court concludes that the district court was correct in applying a "substantial compliance" test, the district court erred in determining that California has satisfied this standard. The district court's holding that California is in substantial compliance is based on the finding that California provided "for at least 80% of the costs associated with the items enumerated in the [Child Welfare Act]." (March 11, 2008 Order at p. 7; ER 10; CR 57.) However, under established precedent, substantial compliance is defined as "actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted." *Marshall v. Warwick*, 155 F.3d 1027, 1031 (8th Cir. 1998) (applying South Dakota law). The court in *Southside Welfare Rights* determined that "substantial compliance" with the Food Stamp Act was achieved when the state was between 93-95% compliant "as long as defendants continue good faith substantial efforts to achieve 100 percent compliance." 156 F.R.D. at 195-196.

The purpose of the Child Welfare Act is to "cover" the costs of housing, clothing, food and other essentials for needy foster children. 42 U.S.C. §§ 670, 672, 675. This purpose can only be effectuated by full compliance with the Child Welfare Act -- not by 80% compliance. In coming to its conclusion, the district court provided no analysis of how it reached that result and offered no guidance regarding when the State might no longer be in substantial compliance, except to state that "over time, given a multitude of years with budgetary constraints, the standard rate schedule could become ***greatly out of synch*** with the costs of items enumerated in the [Child Welfare Act]." (March 11, 2008 Order at p. 6; ER 9; CR 57 (emphasis added).) Even if defendants were permitted to merely substantially comply with the Child Welfare Act, allowing the state's reimbursement of these costs to become "greatly out of synch" with the actual costs could not be considered substantial compliance under any definition. Ultimately, neither 80% compliance nor an undetermined point in the future when reimbursement costs become "greatly out of synch" with what foster care providers are paying constitutes substantial compliance under the law.

VIII. CONCLUSION

Based on the foregoing, the Alliance respectfully requests that the Court reverse the district court's ruling granting the State's Motion for Summary Judgment and denying the Alliance's Motion for Summary Judgment.

DATED: August 28, 2008 Bingham McCutchen LLP

By: 

William F. Abrams
Attorneys for Appellant
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES

STATEMENT OF RELATED CASES

To the knowledge of counsel, there are no related cases pending before this Court.

CERTIFICATE OF COMPLIANCE PURSUANT

TO FRAP 32(A)(7)(C) & CIRCUIT RULE 32-1

I certify that:

☑ 1. Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, the attached opening brief is

☑ Proportionately spaced, has a typeface of 14 points or more and contains 10,611 words (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words),

or is

☐ Monospaced, has 10.5 or fewer characters per inch and contains _____ words or _____ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words or 1,300 lines of text; reply briefs must not exceed 7,000 words or 650 lines of text).

☐ 2. The attached brief is not subject to the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because

☐ This brief complies with Fed. R. App. P. 32(a)(1)-(7) and is a principal brief of no more than 30 pages or a reply brief of no more than 15 pages;

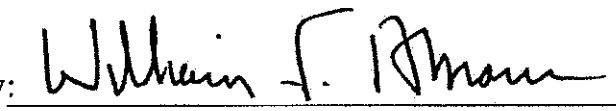
☐ This brief complies with a page or size-volume limitation established by separate court order dated _____ and is

☐ Proportionately spaced, has a typeface of 14 points or more and contains _____ words,

or is

☐ Monospaced, has 10.5 or fewer characters per inch and contains _____pages or_____ words or _____ lines of text.

DATED: August 28, 2008 Bingham McCutchen LLP

By: 

William F. Abrams
Attorneys for Appellant
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES

C.A. NO. 08-16267

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES, Appellant, v. CLIFF ALLENBY, Interim Director of the California Department of Social Services, in his official capacity; MARY AULT, Deputy Director of the Children and Family Services Division of the California Department of Social Services, in her official capacity, Respondents.	USDC Case No. 3:06-cv-04095-MHP

On Appeal From the United States District Court
for the Northern District of California
Honorable Judge Marilyn Hall Patel

ADDENDUM TO OPENING BRIEF PURSUANT TO CIRCUIT RULE 28-2.7

Bingham McCutchen LLP
William F. Abrams (SBN 88805)
Jennifer A. Lopez (SBN 232320)
Craig A. Taggart (SBN 239168)
Michael D. Mortenson (SBN 247758)
1900 University Avenue
East Palo Alto, CA 94303-2223
Telephone: 650.849.4400
Facsimile: 650.849.4800

Attorneys for Appellant
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES

TABLE OF STATUTES

Page

42 U.S.C.A. § 626

§ 626. Research, training, or demonstration projects

(a) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine--

(1) for grants by the Secretary--

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships described in section 628a of this title with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Payments; advances or reimbursements; installments; conditions

Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

(c) Child welfare traineeships

The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 626(a)(1)(C) of this title only if the application--

(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a "recipient") will enter into an agreement with the institution under which the recipient agrees--

(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the postsecondary education for which the traineeship was awarded;

(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in

regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

(2) provides assurances that the institution will--

(A) enter into agreements with child welfare agencies for onsite training of recipients;

(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.

42 U.S.C.A. § 670

§ 670. Congressional declaration of purpose; authorization of appropriations

For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A of this subchapter (as such plan was in effect on June 1, 1995) and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

42 U.S.C.A. § 671

§ 671. State plan for foster care and adoption assistance

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which--

(1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;

(2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this subchapter shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this subchapter, under subchapter XX of this chapter, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) subject to subsection (c) of this section, provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect;

except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will--

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B of this subchapter or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose

claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this subchapter, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) provides that--

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families--

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child,

reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has--

(I) committed murder (which would have been an offense under section 1111(a) of Title 18 , if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of Title 18 , if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as

a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)--

(i) a permanency hearing (as described in section 675(5)(C)), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements [FN1] may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A of this subchapter and plan approved under part D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color,

or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved,

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of Title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that--

(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of

competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and [FN2]

(B) subparagraph (A) shall not apply to a State plan if, on or before September 30, 2005, the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if, on or before such date, the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State; [FN3]

(C) provides that the State shall--

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases;

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under subchapter XIX) for any child who has

been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage--

(A) such coverage may be provided through 1 or more State medical assistance programs;

(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under subchapter XIX;

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under subchapter XIX, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1396a(a)(10)(A)(i)(I) of this title; and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program;

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children;

(23) provides that the State shall not--

(A) deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(B) fail to grant an opportunity for a fair hearing, as described in paragraph (12), to an individual whose allegation of a violation of subparagraph (A) of this paragraph is denied by the State or not acted upon by the State with reasonable promptness;

(24) include [FN4] a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child;

(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that--

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract--

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with

clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A); and

(27) provides that, with respect to any child in foster care under the responsibility of the State under this part or part B of this subchapter and without regard to whether foster care maintenance payments are made under section 672 of this title on behalf of the child, the State has in effect procedures for verifying the citizenship or immigration status of the child.

(b) Approval of plan by Secretary

The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(c) Use of child welfare records in State court proceedings

Subsection (a)(8) of this section shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B of this subchapter or this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.

[FN1] So in original. A comma probably should appear.

[FN2] So in original. The word "and" probably should not appear.

[FN3] So in original. The word "and" probably should appear after the semicolon.

[FN4] So in original. Probably should be "includes".

42 U.S.C.A. § 672

§ 672. Foster care maintenance payments program

(a) In general

(1) Eligibility

Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996) into foster care if--

(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

(2) Removal and foster care placement requirements

The removal and foster care placement of a child meet the requirements of this paragraph if--

(A) the removal and foster care placement are in accordance with--

(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 671(a)(15) of this title for a child have been made;

(B) the child's placement and care are the responsibility of--

(i) the State agency administering the State plan approved under section 671 of this title; or

(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

(C) the child has been placed in a foster family home or child-care institution.

(3) AFDC eligibility requirement

(A) In general

A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child--

(i) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) Resources determination

For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined

pursuant to section 602(a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of section 602(a)(7)(B) of this title).

(4) Eligibility of certain alien children

Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, if the child is an alien disqualified under section 1255a(h) of Title 8 or 1160(f) of Title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

(b) Additional qualifications

Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is--

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 675(4) of this title).

(c) "Foster family home" and "child-care institution" defined

For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term "child-care institution" means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Children removed from their homes pursuant to voluntary placement agreements

Notwithstanding any other provision of this subchapter, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a) of this section, only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 622(b)(8) of this title.

(e) Placements in best interest of child

No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as

described in subsection (a) of this section and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) "Voluntary placement" and "voluntary placement agreement" defined

For the purposes of this part and part B of this subchapter, (1) the term "voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term "voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) Revocation of voluntary placement agreement

In any case where--

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a) of this section, and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of

competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

(h) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect). For purposes of subchapter XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and is deemed to be a recipient of assistance under such part.

(2) For purposes of paragraph (1), a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.

(i) Administrative costs associated with otherwise eligible children not in licensed foster care settings

Expenditures by a State that would be considered administrative expenditures for purposes of section 674(a)(3) of this title if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution--

(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the

home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996), only for expenditures--

(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if--

(A) reasonable efforts are being made in accordance with section 671(a)(15) of this title to prevent the need for, or if necessary to pursue, removal of the child from the home; and

(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.

42 U.S.C.A. § 675

§ 675. Definitions

As used in this part or part B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) The health and education records of the child, including the most recent information available regarding--

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the

State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where--

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term "case review system" means a procedure for assuring that--

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent

with the best interest and special needs of the child, which--

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 6 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, of the State in which the child has been placed, or of a private agency under contract with either such State, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship,

(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12

months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; (ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child; [FN1]

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care

provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law; [FN1]

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless--

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671(a)(15)(B)(ii) of this title are required to be made with respect to the child; [FN1]

(F) a child shall be considered to have entered foster care on the earlier of--

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home; [FN1] and

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a proceeding solely on the basis of such notice and right to be heard.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term "legal guardian" means the caretaker in such a relationship.

[FN1] So in original. The semicolon probably should be a comma.

42 U.S.C.A. § 1320a-9

§ 1320a-9. Demonstration projects

(a) Authority to approve demonstration projects

(1) In general

The Secretary may authorize States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.

(2) Limitation

The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2003.

(3) Certain types of proposals required to be considered

(A) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address barriers that result in delays to adoptive placements for children in foster care.

(B) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address parental substance abuse problems that endanger children and result in the placement of children in foster care, including through the placement of children with their parents in residential treatment facilities (including residential treatment facilities for post-partum depression) that are specifically designed to serve parents and children together in order to promote family reunification and that can ensure the health and safety of the children in such placements.

(C) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to address kinship care.

(4) limitation on eligibility

The Secretary may not authorize a State to conduct a demonstration project under this section if the State fails to provide health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents.

(5) Requirement to consider effect of project on terms and conditions of certain court orders

In considering an application to conduct a demonstration project under this section that has been submitted by a State in which there is in effect a court order determining that the State's child welfare program has failed to comply with the provisions of part B or E of subchapter IV of this chapter, or with the Constitution of the United States, the Secretary shall take into consideration the effect of approving the proposed project on the terms and conditions of the court order related to the failure to comply.

(b) Waiver authority

The Secretary may waive compliance with any requirement of part B or E of subchapter IV of this chapter which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive--

(1) any provision of section 622(b)(8) of this title, or section 679 of this title; or

(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

(c) Treatment as program expenditures

For purposes of parts B and E of subchapter IV of this chapter, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

(d) Duration of demonstration

A demonstration project under this section may be conducted for not more than 5 years, unless in the judgment of the Secretary, the demonstration project should be allowed to continue.

(e) Application

Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes--

(1) a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);

(2) a statement of the period during which the proposed project would be conducted;

(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

(4) an estimate of the costs or savings of the proposed project;

(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

(6) a description of the proposed evaluation design; and

(7) such additional information as the Secretary may require.

(f) Evaluations; report

Each State authorized to conduct a demonstration project under this section shall--

(1) obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for--

(A) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

(B) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

(C) any other information that the Secretary may require; and

(2) provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.

(g) Cost neutrality

The Secretary may not authorize a State to conduct a demonstration project under this section unless the

Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of subchapter IV of this chapter if the project were not conducted.

45 C.F.R. 1356.20

§ 1356.20 State plan document and submission requirements.

(a) To be in compliance with the State plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a State must have a State plan approved by the Secretary that meets the requirements of this part, Part 1355 and section 471(a) of the Act. The title IV-E State plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the State.

(b) Failure by a State to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the State in complying with the State plan for title IV-E. Penalties as described in § 1355.40(e) of this chapter shall apply.

(c) If a State chooses to claim FFP for voluntary foster care placements, the State must meet the requirements of paragraph (a) of this section and section 102 of Pub.L. 96-272 , the Adoption Assistance and Child Welfare Act of 1980, as it amends section 472 of the Act.

(d) The following procedures for approval of State plans and amendments apply to the title IV-E program:

(1) The State plan consists of written documents furnished by the State to cover its program under Part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) Submittal. State plans and revisions of the plans are submitted first to the State governor or his designee for review and then to the regional office, ACYF. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) Review. Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(4) Action. Each Regional Administrator, ACF, has the authority to approve State plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval. The Regional Office, ACYF, formally notifies the State agency of the actions taken on State plans or revisions.

(5) Basis for approval. Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) Prompt approval of State plans. The determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the

date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period.

(7) Prompt approval of plan amendments. Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6(a) and (b) shall be applicable.

(8) Effective date. The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments.

(e) Once the title IV-E State plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0141. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid OMB control number.)

Cal. Welf. & Inst. Code § 11229

§ 11229. Department

"Department" means the State Department of Social Services.

Cal. Welf. & Inst. Code § 11453

§ 11453. Annual adjustments

(a) Except as provided in subdivision (c), the amounts set forth in Section 11452 and subdivision (a) of Section 11450 shall be adjusted annually by the department to reflect any increases or decreases in the cost of living. These adjustments shall become effective July 1 of each year, unless otherwise specified by the Legislature. For the 2000-01 fiscal year to the 2003-04 fiscal year, inclusive, these adjustments shall become effective October 1 of each year. The cost-of-living adjustment shall be calculated by the Department of Finance based on the changes in the California Necessities Index, which as used in this section means the weighted average changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as

published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change shall be determined for the 12-month period ending with the December preceding the year for which the cost-of-living adjustment will take effect, for each expenditure category specified in subdivision (a) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in subdivision (a) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current year by (2) the sum of the expenditure amounts as determined in subdivision (d) for the prior year.

(b) The overall adjustment factor determined by the preceding computation steps shall be multiplied by the schedules established pursuant to Section 11452 and subdivision (a) of Section 11450 as are in effect during the month of June preceding the fiscal year in which the

adjustments are to occur and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules which shall be filed with the Secretary of State.

(c)(1) No adjustment to the maximum aid payment set forth in subdivision (a) of Section 11450 shall be made under this section for the purpose of increasing the benefits under this chapter for the 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, and 1997-98 fiscal years, and through October 31, 1998, to reflect any change in the cost of living. For the 1998-99 fiscal year, the cost of living adjustment that would have been provided on July 1, 1998, pursuant to subdivision (a) shall be made on November 1, 1998. No adjustment to the maximum aid payment set forth in subdivision (a) of Section 11450 shall be made under this section for the purpose of increasing the benefits under this chapter for the 2005-06 and 2006-07 fiscal years to reflect any change in the cost-of-living. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05 , and no further reduction shall be made pursuant to that section.

(2) No adjustment to the minimum basic standard of adequate care set forth in Section 11452 shall be made under this section for the purpose of increasing the benefits under this chapter for the 1990-91 and 1991-92 fiscal years to reflect any change in the cost of living.

(3) In any fiscal year commencing with the 2000-01 fiscal year to the 2003-04 fiscal year, inclusive, when there is any increase in tax relief pursuant to the applicable paragraph of subdivision (a) of Section 10754 of the Revenue and Taxation Code , then the increase pursuant to subdivision (a) of this section shall occur. In any fiscal year commencing with the 2000-01 fiscal year to the 2003-04 fiscal year, inclusive, when there is no increase in tax relief pursuant to the applicable paragraph of subdivision (a) of Section 10754 of the Revenue and

Taxation Code , then any increase pursuant to subdivision (a) of this section shall be suspended.

(4) Notwithstanding paragraph (3), an adjustment to the maximum aid payments set forth in subdivision (a) of Section 11450 shall be made under this section for the 2002-03 fiscal year, but the adjustment shall become effective June 1, 2003.

(5) No adjustment to the maximum aid payment set forth in subdivision (a) of Section 11450 shall be made under this section for the purpose of increasing benefits under this chapter for the 2007-08 fiscal year.

(d) For the 2004-05 fiscal year, the adjustment to the maximum aid payment set forth in subdivision (a) shall be suspended for three months commencing on the first day of the first month following the effective date of the act adding this subdivision.

(e) For the 2008-09 fiscal year, the adjustment to the maximum aid payment set forth in subdivision (a) shall be effective October 1, 2008. For the 2009-10 fiscal year, the adjustment to the maximum aid payment set forth in subdivision (a) shall take effect on July 1, 2009.

(f) Adjustments for subsequent fiscal years pursuant to this section shall not include any adjustments for any fiscal year in which the cost of living was suspended pursuant to subdivision (c).

Cal. Welf. & Inst. Code § 11460

§ 11460. Foster care providers; payment rates

(a) Foster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them. The department is designated the single organizational unit whose duty it shall be to administer a state system for establishing rates in the AFDC-FC program. State functions shall be performed by the department or by delegation of the department to county welfare departments or Indian tribes that have entered into an agreement pursuant to Section 10553.1 .

(b) "Care and supervision" includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

(1) For a child placed in a group home, care and supervision shall also include reasonable administration and operational activities necessary to provide the items listed in this subdivision.

(2) For a child placed in a group home, care and supervision may also include reasonable activities performed by social workers employed by the group home provider which are not otherwise considered daily supervision or administration activities.

(c) It is the intent of the Legislature to establish the maximum level of state participation in out-of-state foster care group home program rates effective January 1, 1992.

(1) The department shall develop regulations that establish the method for determining the level of state participation for each out-of-state group home program. The department shall consider all of the following methods:

(A) A standardized system based on the level of care and services per child per month as detailed in Section 11462.

(B) A system which considers the actual allowable and reasonable costs of care and supervision incurred by the program.

(C) A system which considers the rate established by the host state.

(D) Any other appropriate methods as determined by the department.

(2) State reimbursement for the AFDC-FC group home rate to be paid to an out-of-state program on or after January 1, 1992, shall only be paid to programs which have done both of the following:

(A) Submitted a rate application to the department and received a determination of the level of state participation.

(i) The level of state participation shall not exceed the current fiscal year's standard rate for rate classification level 14.

(ii) The level of state participation shall not exceed the rate determined by the ratesetting authority of the state in which the facility is located.

(iii) The level of state participation shall not decrease for any child placed prior to January 1, 1992, who continues to be placed in the same out-of-state group home program.

(B) Agreed to comply with information requests, and program and fiscal audits as determined necessary by the department.

(3) State reimbursement for an AFDC-FC rate paid on or after January 1, 1993, shall only be paid to a group home organized and operated on a nonprofit basis.

(d) A foster care provider that accepts payments, following the effective date of this section, based on a rate established under this section, shall not receive rate increases or retroactive payments as the result of litigation challenging rates established prior to the effective date of this section. This shall apply regardless of whether a provider is a party to the litigation or a member of a class covered by the litigation.

(e) Nothing shall preclude a county from using a portion of its county funds to increase rates paid to family homes and foster family agencies within that county, and to make payments for specialized care increments, clothing allowances, or infant supplements to homes within that county, solely at that county's expense.

Cal. Welf. & Inst. Code § 11462

§ 11462. Group homes and public child care institutions; standardized schedule of rates

(a)(1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5 , shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400 . The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400 .

(3)(A) The department shall determine, consistent with the requirements of this chapter and other relevant requirements under law, the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department.

(B) The department shall adopt regulations to implement this paragraph. The adoption, amendment, repeal, or readoption of a regulation authorized by this paragraph is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code , and the department is hereby exempted from the requirement to describe specific facts showing the need for immediate action.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each RCL has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986-87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453 . The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1)(A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding

the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider, for purposes of determining the rate, the following records, unless the group home provider

makes the records available to the department during the fieldwork portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL

determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2 .

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not

the RCL for the program may change as a result of the change in staffing pattern.

(f)(1) The standardized schedule of rates for the 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 fiscal years is:

Rate Classification Level	Point Ranges	FY 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 Standard Rate
1	Under 60	$1,454
2	60- 89	1,835
3	90-119	2,210
4	120-149	2,589
5	150-179	2,966
6	180-209	3,344
7	210-239	3,723
8	240-269	4,102
9	270-299	4,479
10	300-329	4,858
11	330-359	5,234
12	360-389	5,613
13	390-419	5,994
14	420 & Up	6,371

(2)(A) For group home programs that receive AFDC-FC payments for services performed during the 2002-03,

2003-04, 2004-05, 2005 -06, 2006-07, and 2007-08 fiscal years, the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for the 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 Fiscal Years
1	Under 54
2	54- 81
3	82-110
4	111-138
5	139-167
6	168-195
7	196-224
8	225-253
9	254-281
10	282-310
11	311-338
12	339-367
13	368-395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002-03, 2003-04, 2004-05, 2005 -06, 2006-07, and 2007-08 fiscal years shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g)(1)(A) For the 1999-2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453 . The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000-01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453 , subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level (RCL) for the salaries, wages, and benefits for staff providing child care and supervision or performing social work

activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(4) Effective January 1, 2008, the amount included in the standard rate for each RCL for the wages for staff providing child care and supervision or performing social work activities, or both, shall be increased by 5 percent, and the amount included for the payroll taxes and other employer-paid benefits for these staff shall be increased from 20.325 percent to 24 percent. The standard rate for each RCL shall be recomputed using these adjusted amounts, and the resulting rates shall constitute the new standardized schedule of rates.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program that received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program that received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i)(1) The department shall not establish a rate for a new program of a new or existing provider, or for an existing program at a new location of an existing provider, unless the provider submits a letter of recommendation from the host county, the primary placing county, or a regional consortium of counties that includes all of the following:

(A) That the program is needed by that county.

(B) That the provider is capable of effectively and efficiently operating the program.

(C) That the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(D) That, if the letter of recommendation is not being issued by the host county, the primary placing county has notified the host county of its intention to issue the letter and the host county was given the opportunity 30 days to respond to this notification and to discuss options with the primary placing county.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602 , and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k)(1) For the purpose of this subdivision, "program change" means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that

does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998-99, 1999-2000, and 2000-01 fiscal years, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 2000, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3)(A) For the 1998-99, 1999-2000, and 2000-01 fiscal years, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The department determines that the new program or program change will result in a reduction of referrals to state hospitals during the 1998-99 fiscal year.

(l) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 of each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care that may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993-94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

Child Welfare Policy Manual Section 8.3 A.5(2)&(3)

8.3A.5 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Child of a minor parent

---

1. Please explain the requirements with respect to title IV-E eligibility and the case review system at section 475(5) of the Social Security Act (the Act) for a child and his/her minor parent in foster care. Specifically: Must the State have placement and care responsibility of both? Is the child considered to be in foster care even if the State does not have placement and care responsibility? May the child continue to receive IV-E if the minor parent runs away? May the State claim administrative costs for the child? Is the child eligible for medical assistance under title XIX and social services under title XX?

2. If the child of a minor parent, who is a title IV-E recipient, has resources, such as survivor benefits, how would the resources of the infant affect his/her minor parent's eligibility for title IV-E foster care maintenance payments?

3. Are both a teen mother and her child eligible for Federal financial participation under title IV-E if both are under the placement and care responsibility of the State and have been placed in the same foster family home? If so, would the minor child continue to be eligible for title IV-E if the court orders that the child be reunited with the teen mother?

---

1. Question: Please explain the requirements with respect to title IV-E eligibility and the case review system at section 475(5) of the Social Security Act (the Act) for a child and his/her minor parent in foster care. Specifically: Must the State have placement and care responsibility of both? Is the child considered to be in foster care even if

the State does not have placement and care responsibility? May the child continue to receive IV-E if the minor parent runs away? May the State claim administrative costs for the child? Is the child eligible for medical assistance under title XIX and social services under title XX? Show History

Answer: Section 475(4)(B) of the Act requires that foster care maintenance payments for a minor parent in foster care cover a child of such parent if the child is placed with the minor parent. Neither the statute nor regulations require the State to have placement and care responsibility for the child in order for such costs to be included in the minor parent's foster care maintenance payment. Good social work practice suggests that the minor parent's case plan include the needs of the child and that the child's needs and interests be addressed during the six-month periodic reviews and permanency hearings held on behalf of the minor parent. However, the State is not required to satisfy these requirements independently on behalf of the child because s/he is not under the State's responsibility for placement and care and, therefore, pursuant to Federal law and regulations, is not in foster care.

In cases where the State has placement and care responsibility for both the minor parent and the child, title IV-E eligibility would have to be determined individually for each. Likewise, if a minor parent leaves the foster home and does not take the child, the child's eligibility for foster care then would be based upon his or her individual circumstances. In addition, the State would have to obtain responsibility for placement and care of the child through either a voluntary placement agreement or a court order with the required judicial determinations. Once the child of a minor parent is in foster care, the requirements of the case review system at section 475(5) of the Act apply.

When a child is placed with his/her minor parent without placement and care responsibility by the State, no administrative costs may be claimed on her/his behalf because s/he is not eligible for nor a recipient of title IV-E foster care maintenance payments. The State is merely increasing the amount of the title IV-E foster care maintenance payment made on behalf of the eligible minor parent to accommodate the board and care of the child. In situations where the eligibility of the minor parent and his/her infant are determined separately and both are placed in foster care, the State may claim administrative costs for the child because s/he is eligible for and receiving title IV-E maintenance payments in her/his own right.

Section 472(h) of the Act makes clear that a child whose costs are covered by the title IV-E payment made with respect to the minor parent is a child with respect to whom foster care maintenance payments are made under title IV-E and is thus eligible for medical assistance and social services under titles XIX and XX.

- Source/Date: 06/09/04

- Legal and Related References: Social Security Act – sections 472 and 475 and Titles XIX and XX; 45 CFR 1356.21

2. Question: If the child of a minor parent, who is a title IV-E recipient, has resources, such as survivor benefits, how would the resources of the infant affect his/her minor parent's eligibility for title IV-E foster care maintenance payments?

Answer: Section 475 (4)(B) of the Social Security Act requires States to include in the foster care maintenance payment for a minor parent an amount necessary to cover the costs of maintenance of the son or daughter living in the same foster home or institution with such minor parent. Eligibility of the son or daughter under title IV-E is not a condition of the increased maintenance payment

on behalf of the minor parent. Rather, it is the title IV-E eligibility of the minor parent that allows the increased payment to include an amount to meet the son's or daughter's needs in that home.

- Source/Date: ACYF-CB-PIQ-91-02 (4/2/91)

- Legal and Related References: Social Security Act - sections 472 (h) and 475 (4)(B)

3. Question: Are both a teen mother and her child eligible for Federal financial participation under title IV-E if both are under the placement and care responsibility of the State and have been placed in the same foster family home? If so, would the minor child continue to be eligible for title IV-E if the court orders that the child be reunited with the teen mother?

Answer: If a teen mother and her child are both in the same foster family home and each has been determined to be eligible for title IV-E, the State can claim FFP under title IV-E foster care for both the teen mother and her child. This includes foster care maintenance payments and administrative costs. In this situation, both the child and mother have been determined eligible for title IV-E foster care, and placed in a licensed foster family home. The fact that the teen mother and her child are in the same foster home does not mean that they have been ?reunified? in the statutory sense, as the foster parent and not the teen parent, is responsible for the day-to-day care and supervision of the child.

If reunification of the child with the teen mother has occurred and the child is no longer under the responsibility of the State for placement and care, the child is no longer eligible for a title IV-E payment. (We use the term ?reunification? here to refer to situations in which a child is returned to the parent?s control and is no longer under the care or supervision of the State.) In such situations, the State must include amounts necessary to cover the costs incurred on behalf of the child in the teen

mother?s title IV-E payment. (See Section 475(4)(B)(ii) of the Act, 45 CFR 1356.21(j), and CWPM 8.3.A.5) However, once the child is no longer under the responsibility of the State for placement and care, the State cannot continue to claim administrative costs on his or her behalf since s/he is not eligible for, nor a recipient of, title IV-E foster care maintenance payments.

- Source/Date: 06/09/04

- Legal and Related References: Social Security Act – sections 472 and 475; 45 CFR 1356.21.

CERTIFICATE OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in Orange County, California at 600 Anton Boulevard, Costa Mesa, California 92626-1924. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business delivery, and they are deposited that same day in the ordinary course of business. On **August 28, 2008**, I served the attached:

(2copies) APPELLANT'S OPENING BRIEF

☑ (BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at Costa Mesa, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

Attorneys for Respondents:
Edmund G. Brown, Jr., Attorney General of the State of California
Douglas M. Press, Supervising Deputy Attorney General
George Prince, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5749
Facsimile: (415) 703-5480
Email: george.prince@doj.ca.gov

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on **August 28, 2008**, at Costa Mesa, California.

Lan H. Ly

CERTIFICATE OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in Orange County, California at 600 Anton Boulevard, Costa Mesa, California 92626-1924. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business delivery, and they are deposited that same day in the ordinary course of business. On **August 28, 2008**, I served the attached:

(Original and 15 copies) APPELLANT'S OPENING BRIEF

☑ by causing a true and correct copy of the above to be delivered by FedEx from Costa Mesa, California in sealed envelope(s) with all fees prepaid, addressed as follows:

Office of the Clerk
U.S. Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1518

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on **August 28, 2008**, at Costa Mesa, California.

Lan H. Ly