# Children's Advocacy Institute



October 16, 2002

*Via U.S. Mail and Facsimile (916) 654-3286*

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814

Re: Comment Regarding DSS' Proposed Rulemaking for CalWORKs 180-Day Family Reunification Extension (ORD #0602-12)

Dear Mr. Velasquez:

The Children's Advocacy Institute (CAI), located at the University of San Diego School of Law, seeks to improve the health, safety, and well-being of California's children. CAI advocates in the legislature to make laws, in the courts to interpret laws, before administrative agencies to implement laws, and before the public to educate and build support for laws to improve the status of children statewide and nationwide. CAI educates policymakers about children's needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury.

Although CAI supports the proposed regulation substantively, we are concerned that certain language in sections 42-711.512 and 82-812.681 is inconsistent, does not accurately reflect the language in section 11203 of the Welfare and Institutions Code, and could be construed arbitrarily by counties if not corrected.

Section 42-711.512 states "[a] county **may** provide a sanctioned individual with welfare-to-work activities and services, if the individual is considered a reunification parent pursuant to the temporary absence/family reunification provisions of Section 82-812.68, and *the county determines that such services are necessary for family reunification*" (emphasis added). Section 82-812.681 states "[c]hildren removed from the home and receiving out-of-home care **may** be considered to be temporarily absent for a period of up to 180-consecutive days and the parent or parents remaining in the home will be eligible for CalWORKs services when...(c) *[t]he county has determined that provision of CalWORKs services is necessary for family reunification*" (emphasis added).

The first problem with the specified language is that by using the word "may" at the beginning of these sections, DSS implies that the county has complete discretion as to whether to provide the identified services. This is inconsistent with section 11203(b) of the Welfare and Institutions Code, which uses the following mandatory language:

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"[t]he parent or parents **shall** be considered living with the needy child or need children for a period of up to 180 consecutive days of the needy child's or children's absence from the family assistance unit and the parent or parents **shall** be eligible for services under this chapter including services funded under Sections 15204.2 and 15204.8 **if all the following conditions are met**:
(A) The child has been removed from the parent or parents and placed in out-of-home care;
(B) When the child was removed from the parent or parents, the family was receiving aid under this section;
(C) The county has determined that the provision of services under this chapter including services funded under Sections 15204.2 and 15204.8, is necessary for reunification."

The second problem with the language of sections 42-711.512 and 82-812.681(c) is the provisions do not indicate how counties will make the determination that services are necessary for reunification. What elements are counties supposed to consider when determining whether services are necessary for family reunification? Since parents must have a court-ordered reunification plan in order to obtain these services (see section 82-812.682), do the counties give deference to the court's determination on this issue? On the other hand, if the elements or standards for making a determination of what is necessary for family reunification do exist, they should be clearly referenced in these sections.

CAI is concerned that the regulation, as drafted, could be applied arbitrarily by counties due to its lack of specificity. Also, if a reunification parent meets the criteria, but does not receive services, there does not appear to be any mechanism to appeal or challenge the county's determination. Further clarity of the language referenced above will likely ensure that this regulation is implemented fairly and consistently by the counties.

One procedural issue is also of concern to CAI. Welfare and Institutions Code section 11369 apparently provides the Department of Social Services with the authority to develop regulations on an emergency basis. Thus, by statute, DSS can utilize the emergency rulemaking procedures of the Administrative Procedure Act (Chapter 3.5, Part 1, Division 3, Title 2 of the Government Code, commencing with section 11340) without having to show individual need for emergency rulemaking, as the APA clearly mandates. (See, e.g., Government Code section 11346.1(b) (stating "[a]ny finding of an emergency shall include a description of the *specific facts showing the need for immediate action*") (emphasis added)).

This statutory authority is problematic because it virtually guarantees that no public comment or input will effect the regulation, because of its deemed emergency status, which is contrary to the intent and spirit of the APA. Proposed rulemaking through the normal channels allows greater time and opportunity for public feedback before the rule is approved. As advocates for children, it becomes increasingly difficult to have an impact on rulemaking affecting children when the opportunity to provide public input is so severely diminished.

We appreciate the opportunity to submit our concerns and look forward to a response.

Sincerely,

ROBERT C. FELLMETH
Executive Director of CAI

DEBRA L. BACK
Attorney for CAI