



The 2019 Legal Guide to Child Care Subsidies in California **Chapter 2: CalWORKs Child Care Subsidies, Stage 1**

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2.1 INTRODUCTION

The CalWORKs Child Care Program is California’s promise to make available free or affordable child care to current and former CalWORKs participants. The law guarantees subsidized child care to every person receiving CalWORKs cash assistance who needs it in order to participate in welfare-to-work activities or work.¹ CalWORKs also makes subsidized child care available to former CalWORKs grantees, as long as they need it and meet specified eligibility requirements.²

CalWORKs child care is divided into three stages: Stage 1 is administered by the state Department of Social Services (DSS), with county welfare departments administering at the local level; Stages 2 and 3 are administered by the California Department of Education (CDE), which contracts with Alternative Payment Programs to run the programs. As families move from receiving CalWORKs cash assistance to employment, they are supposed to seamlessly transition between the three stages of CalWORKs child care, so long as they remain eligible.³

On the local level, county welfare departments (CWDs) either run Stage 1 themselves or contract with Alternative Payment Programs to do so.⁴ Regardless of which option a county chooses, the DSS rules apply.⁵

¹ CAL. WELF. & INST. CODE § 11323.2(a)(1); CAL. EDUC. CODE § 8350.5; CAL. DEP’T OF SOC. SERVS., MANUAL OF POLICIES & PROCEDURES [hereafter “MPP”] § 47-220.1 (“Current CalWORKs recipients are eligible to receive CalWORKs child care because the participant receives CalWORKs cash assistance.”).

² CAL. EDUC. CODE § 8350(a); MPP § 47-101.2.

³ CAL. EDUC. CODE § 8350(a) (“It is the intent of the Legislature . . . to ensure that recipients of [CalWORKs] aid . . . and former recipients who have left aid for employment, are connected as soon as possible to local child care resources, make stable child care arrangements, and continue to receive subsidized child care services after they no longer receive aid as long as they require those services and meet the eligibility requirements . . .”).

⁴ CAL. EDUC. CODE § 8351(a), (e); MPP §§ 47-101.

⁵ Cal. Welf. & Inst. Code §§ 11323.2, 11323.3. The regulations governing CalWORKs Stage 1 are generally found in the DSS Manual of Policies and Procedures §§ 47-100 through 47-440, pursuant to provisions of the Welfare & Institutions Code §§ 11320 et seq.. Due to the close relationship between CalWORKs Stage 1 and Stages 2 and 3, and the historical role CDE has played in the administration of child care, relevant

PRACTICE TIP: It is very helpful for advocates to learn which local agencies administer the different stages of CalWORKs child care in their counties and, if possible, to establish relationships with child care subsidy administrators in the county welfare offices and Alternative Payment Programs serving their counties.

Counties have a great deal of flexibility in establishing certain CalWORKs Stage 1 child care policies. As a result, the actual operation of the program varies from county to county. For example, each county has its own definition of “stability” that it uses to determine when a case transitions from Stage 1 to Stage 2, with the length of time varying from a few days, six months, or until the parent⁶ is no longer receiving CalWORKs cash assistance or grants. However, statewide rules guarantee certain rights to all Stage 1 participants in all counties. These include the right to:

- be informed in writing about the availability of paid child care⁷
- claim good cause for not participating in a mandatory activity when needed child care is not provided or available,⁸
- uninterrupted child care when moving from one county to another⁹
- uninterrupted child care during the transfer from Stage 1 to Stage 2 child care,¹⁰ and
- appeal the denial, termination or reduction of child care, and have a hearing.¹¹

Stage 1 child care is available to CalWORKs participants who work or participate in welfare-to-work activities, whether because they are required to participate, or they are participating as a volunteer. It is also available for activities prior to entering into a welfare-to-work plan, such as orientation, assessment and job search. Stage 1 is also

rules are also located in the California Education Code § 8350 et seq., and in CDE regulations found in California Code of Regulations, Title 5, §§18400 *et seq.*

⁶ The term “parent” is used in this manual to refer to a parent, guardian, or other adult with responsibility for a child.

⁷ CAL. WELF. & INST. CODE § 11323.3(b); MPP §§ 47-301.1–.24. “Counties shall inform clients of the availability of child care subsidies.” MPP § 47-301.1. The informing notice shall be given at application, annual redetermination, the signing of the original or amended WTW plan, and whenever the client requests it. MPP §§ 47-301.23–.24.

⁸ CAL. WELF. & INST. CODE §§ 11323.2(a), 11320.3(f), MPP § 42-713.23.

⁹ MPP § 47-310; CAL. DEP’T OF SOC. SERVS., ALL COUNTY INFORMATION NOTICE NO. I-19-17, at 6 (Apr. 12, 2017), http://www.cdss.ca.gov/Portals/9/ACIN/2017/I-19_17.pdf.

¹⁰ MPP § 47-301.5.

¹¹ See Chapter 7 on Hearings and Appeals for further information.

available to certain sanctioned individuals,¹² and former CalWORKs participants if child care is unavailable in Stage 2 due to insufficient funding or for other reasons.¹³

Participants have a right to choose from a broad range of child care providers, including licensed centers, licensed family child care providers, and Family, Friend and Neighbor care providers (also called “license-exempt”). Some of those Family, Friend, and Neighbor care providers must still register with Trustline, California’s background check system, and certain close relatives -- grandparents, aunts and uncles of the child -- are exempt from both licensing and Trustline requirements.¹⁴

Parents may be eligible for transfer from Stage 1 to Stage 2 child care while they are still receiving CalWORKs cash assistance, and for Stage 2 up to two years after they last received cash assistance or a diversion payment.¹⁵ The county or Stage 1 contractor determines when a family receiving Stage 1 child care is “stable” and therefore ready to be transferred to the Stage 2 program. DSS and CDE procedures are supposed to ensure that a family is seamlessly transferred, and that there is no disruption in child care due to the transfer process.¹⁶

Because Stage 2 is a time-limited benefit, the seamless transition to Stage 3 is essential for families who still need affordable child care. Stage 3 is only available for families that have been receiving Stage 1 or 2 child care during the two years after leaving CalWORKs cash assistance,¹⁷ and thus have “timed out” of Stage 2 child care. See Chapter 3 for more information on CalWORKs Stages 2 and 3.

2.2 ELIGIBILITY FOR STAGE 1

2.2.1 Stage 1 Is an Entitlement: Eligibility Requirements

¹² MPP § 47-220.32; CAL. DEP’T OF SOC. SERVS., ALL COUNTY LETTER [hereafter ACL] 15-53 (June 10, 2015), <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-53.pdf>.

¹³ CAL. EDUC. CODE § 8351(a)-(c); MPP §§ 47-101 *et seq.*. The *parent’s* current or former receipt of CalWORKs cash assistance or grants – not the child’s – determines eligibility for CalWORKs child care. MPP § 47-101.2; *see generally* MPP §§ 47-201 through 47-230.

¹⁴ CAL. EDUC. CODE §§ 8208.1, 8216, 8225 (child care exempt from licensure is a valid parental choice), 8352(a), 8357(a) (CalWORKs child care arrangements may include both licensed and license-exempt care (Family, Friend and Neighbor care)); CAL. CODE REGS. tit. 5, § 18411(a) (family right to select provider in Stage 2); CAL. CODE REGS. tit. 5, § 18426(a) (family right to select provider in Stage 3); MPP § 47-260.3 (parental right to choice in selecting providers in Stage 1 child care program).

¹⁵ CAL. EDUC. CODE § 8353. For diversion, see MPP § 81-200.

¹⁶ CAL. EDUC. CODE § 8350 (b); MPP 47-301.5; CAL. DEP’T OF SOC. SERVS., ALL COUNTY INFORMATION NOTICE NO. I-19-17, at 6 (Apr. 12, 2017), http://www.cdss.ca.gov/Portals/9/ACIN/2017/I-19_17.pdf.

¹⁷ CAL. EDUC. CODE § 8354.

To receive CalWORKs Stage 1, families must meet three basic eligibility requirements: (1) the parent(s) must be receiving or have received CalWORKs cash assistance or grants (for former CalWORKs cash assistance or grant participants, family income must be below a specified level); (2) the children must meet age and relationship requirements, (3) the adults must need child care in order to work, attend mandated activities, or participate in county-approved welfare-to-work activities, such as education or training. Some families may qualify for exemptions from these eligibility requirements, as discussed later in this chapter.

Families that meet all the eligibility criteria have a legal “entitlement” to Stage 1 child care.¹⁸ An entitlement is a “right to benefits, income or property which may not be abridged without due process.”¹⁹ When a person has a “property interest” or entitlement to the benefit, the Fourteenth Amendment of the United States Constitution and Article 1, Section 7 of the California Constitution guarantee procedural due process, such as a right to adequate and timely notice and a right to appeal before the government can take the benefit away.²⁰ Although a CalWORKs family that meets all the eligibility factors is entitled to Stage 1 child care, many families don’t know that they are entitled to it, or can’t navigate the process to get it. As a result, less than 30% of all eligible families receive Stage 1 child care.²¹

2.2.2 Families Currently or Formerly Receiving CalWORKs Cash Assistance or Grants

Only families with very low income and assets are eligible for CalWORKs cash assistance.²² Stage 1 child care is available to families who are currently receiving CalWORKs cash assistance or grants, and those who formerly received CalWORKs cash assistance or grants, and meet one of the following situations:

¹⁸ CAL. WELF. & INST. CODE § 11323.2(a) (“Necessary supportive services shall be available to every participant in order to participate in the program activity to which he or she is assigned or to accept employment or the participant shall have good cause for not participating under subdivision (f) of Section 11320.3.”). See also CAL. WELF. & INST. CODE § 11325.23(d) (“Supportive services reimbursement shall be provided for any participant in a self-initiated training or education program approved under this subdivision.”); MPP § 47-220.2 (“Child care shall be paid for every client when the following conditions are met.”).

¹⁹ *Entitlement*, BLACK’S LAW DICTIONARY (5th ed. 1983).

²⁰ *Goldberg v. Kelly*, 397 U.S. 254 (1970) (an interest protected by the due process clause contained in the U.S. Constitution exists when the rules governing a benefit program restrict the decision makers’ discretion such that the recipient has a reasonable expectation of continuing to receive the benefits).

²¹ The statewide Stage 1 and Stage 2 child care utilization rate for families participating in a CalWORKs Welfare-to-Work program or working who have age-eligible children was 28 percent in FY 2016-17. CAL. DEP’T OF SOC. SERVS., CALWORKS ANNUAL SUMMARY FEBRUARY 2018, at 120, http://www.cdss.ca.gov/Portals/9/CalWORKs/CW%20Annual%20Summary_January%202018%20Final%2003.28.18.pdf?ver=2018-04-02-093852-433 (last visited Feb. 20, 2019).

²² CAL. WELF. & INST. CODE §§ 11450.12, 11452, 11453(a); MPP §§ 44-207.11, 44-207.2.

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- They are working;
- They are attending a county welfare department-approved education or training program;
- They are attending a “job readiness” program, including mental health, substance abuse or domestic violence counseling;
- They are teens participating in Cal-Learn;
- They are eligible for CalWORKs cash assistance or grants but choose to accept diversion services instead; or
- They had been receiving cash assistance within the last 24 months and need child care to retain employment or other approved activity. For those *formerly* receiving CalWORKs cash assistance or grants, they will usually be enrolled in Stage 2. Whether enrolled in Stage 1 or 2, eligibility rules are different for *former* recipients.

Parents who receive CalWORKs cash assistance are automatically eligible for Stage 1 child care if they need child care to participate in welfare-to-work activities or are working; no separate income eligibility determination is made.²³

Families in which the parent is no longer receiving cash assistance for themselves may remain on Stage 1 for up to 24 months after their CalWORKs cash assistance or grant case closed, if child care is not available in Stage 2 or 3. The family’s adjusted monthly income must be at or below 85 percent of current State Median Income to remain eligible for CalWORKs child care.²⁴ In addition, if everyone in the household is no longer receiving CalWORKs cash assistance or grants, they may have to pay a family fee, based on their income.²⁵

- Parents who have been sanctioned for failure to participate in welfare-to-work requirements, or those who have exceeded their 48-month time limit on CalWORKs cash assistance or grants,²⁶ are considered former recipients. These families still qualify for CalWORKs child care, but they must meet income eligibility guidelines. That is because they are considered former recipients, even though their children are still receiving CalWORKs cash assistance or grants. Most former recipient families are transitioned to CalWORKs Stage 2, but occasionally some continue to receive Stage 1 services due to problems with the transition to Stage 2.

²³ CAL. EDUC. CODE § 8351; CAL. WELF. & INST. CODE §§ 11323.2(a)(1), 11325.23(d); MPP § 47-220.1-.2.

²⁴ CAL. EDUC. CODE § 8263.1(b); MPP §§ 47-230.1.

²⁵ CAL. DEP’T OF SOC. SERVS., ACL 18-120 (2018), <http://www.cdss.ca.gov/Portals/9/ACL/2018/18-120.pdf?ver=2018-09-26-093308-293> (instructing CWD’s to use the 2018 family fee schedule contained in CDE Management Bulletin 18-03 (2018), <https://www.cde.ca.gov/sp/cd/ci/mb1803.asp>).

²⁶ CAL. WELF. & INST. CODE § 11454(a).

- Parents who are ineligible for CalWORKs assistance, or who have not received CalWORKs assistance for themselves in the last 24 months, are ineligible for CalWORKs child care, even if their children receive CalWORKs cash assistance or grant. Parents may be ineligible due to such factors as immigration status,²⁷ receiving SSI, or they have used up their 48 month time limit on aid more than 24 months ago.²⁸

See Chapter 3 for more information about income eligibility requirements and the State Median Income standard that applies to individuals who formerly received CalWORKs.

2.2.3 Children's Eligibility

A child's eligibility for CalWORKs Stage 1 child care is determined by age and relationship to the Assistance Unit (AU).

2.2.3.1 Child's Age²⁹

The child must be:

- 10 years old or younger; or
- 11 and 12 year olds, *to the extent funds are available*³⁰; or
- 11 years old or older and under court supervision; or
- 11 years old or older (up to 21) and mentally or physically unable to care for themselves (i.e., has a disability, or exceptional needs).³¹

The state's preferred child care placement for children 11 and 12 years old is in an afterschool program (because they are generally less expensive), but alternate care can be selected if the afterschool program does not meet the needs of the child or the family. Reasons the program may not meet the family or child's needs may include that the program does not provide services during the time of day or time of year the parent needs child care, the program is too geographically distant, or any other reason that makes such care inappropriate for the child or burdensome on the family. Since 2014, the parent no longer needs to certify the reasons why the before or after school program is unsuitable.³²

²⁷ MPP § 42-431.

²⁸ MPP § 42-430.

²⁹ CAL. WELF. & INST. CODE §§ 11323.2(a)(1)(A)–(B); MPP §§ 47-201.2-.3.

³⁰ Since 2012, all counties have had sufficient funds to pay for 11 and 12 year olds.

³¹ CAL. WELF. & INST. CODE § 11323.2(a)(1)(A); MPP §§ 47-201.31-.311.

³² CAL. EDUC. CODE §§ 8263.4(a)-(e)

This preference also doesn't apply to 11- or 12-year-old children with exceptional needs who have an Individual Education Plan (IEP).³³ Children who require supervision because they are physically or mentally incapable of caring for themselves due to a disability, a child with exceptional needs who has an active Individual Education Plan, or a child under court supervision may receive CalWORKs child care beyond the age of 12, potentially up to 21 years of age.³⁴

2.2.3.2 Child's Relationship to the Assistance Unit³⁵

An eligible child:

- Is a member of the Assistance Unit ("AU");³⁶
- Would be a member of the AU but for the receipt of foster care or SSI/SSP;
- Is a child of a Cal-Learn participant (even if not in the AU);
- Is the member of a family where the former CalWORKs client has become employed; or
- Is not a member of the AU, but the parent or guardian requesting Stage 1 assistance for child care is responsible for supporting the child and needs care for this child in order to work or participate in an approved welfare-to-work activity.³⁷ Children who are not in the AU are discussed in greater detail below.

2.2.3.3 Children Who Receive SSI or Foster Care Assistance; Other Children Not in the Assistance Unit

If a family meets the CalWORKs eligibility requirements but the child is excluded from the AU because they receive SSI or foster care assistance, the parent receiving CalWORKs is nevertheless entitled to CalWORKs Stage 1 child care for that child if child

³³ CAL. EDUC. CODE § 8263.4(e) (clarifying that the state's preferred placement of 11 and 12 year olds in afterschool programs does not apply to children with an IEP). . . CAL. DEP'T OF EDUC., MANAGEMENT BULLETIN 14-13 (2014), <https://www.cde.ca.gov/sp/cd/ci/mb1413.asp>. Repealed the requirement that the parent certify the reasons for the unsuitability of the afterschool program

³⁴ CAL. WELF. & INST. CODE § 11323.2(a)(1)(A);; MPP §§ 47-201.22–.23. CWDs/Alternative Payment Programs will verify a child as disabled for this purpose if the child receives SSI/SSP or has a written statement from a physician or psychologist. Note that the requirements for determining that a child has exceptional needs for purposes of CalWORKs Stages 2 and 3, and for non-CalWORKs child care, are far more stringent. CAL. EDUC. CODE § 8208(l)(2) ("Children 3 to 21 years of age, inclusive, who have been determined to be eligible for special education and related services . . . [t]hese children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting.").

³⁵ MPP § 47-201.1.

³⁶ An AU is a group of related individuals living in the same home who have been determined eligible for CalWORKs cash assistance. MPP § 47-110(a)(2).

³⁷ CAL. WELF. & INST. CODE § 11323.2(a)(1)(A); MPP § 47-201.1.

care is needed to enable the participant to work or engage in an approved activity.³⁸ Similarly, a CalWORKs parent with a child who is eligible but not in the AU for a variety of reasons (e.g., the child is an undocumented immigrant, is the half or step sibling receiving child support who opts out of the unit, or is not the child of the participant receiving CalWORKs) is eligible for Stage 1 assistance for child care for the non-AU child so long as the participant is responsible for supporting the child, and the lack of child care would result in the participant not being able to engage in employment or other approved activities.³⁹

EXAMPLES FROM THE DSS MANUAL OF POLICIES & PROCEDURES⁴⁰

Example 1: A single parent requests CalWORKs Stage 1 child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in [MPP] Section 47-201.123, that is, children whom the client is responsible to support [i.e., ensure their safety while the client is engaged in welfare-to-work activities].

Example 2: A single parent requests CalWORKs Stage 1 child care both for her children and the children of her unaided unmarried boyfriend living in the home. The unmarried boyfriend is employed. He is unable to provide care for his children during his hours of employment. In this case the boyfriend's children do not meet the requirement in [MPP] Section 47-201.123, that is, children whom the client is responsible to support [i.e., ensure their safety while the client is engaged in welfare-to-work activities].

2.2.4 Parent Eligibility

2.2.4.1 Working or Participating in a Welfare-to-Work Activity

Parents or guardians must “need” child care to receive a Stage 1 subsidy. In other words, there must be portions of the day during which they are engaged in activities so they are unable to provide care and supervision to their children. In addition, there must be no other parent, legal guardian, or adult member of the AU

³⁸ CAL. WELF. & INST. CODE § 11323.2(a)(1)(D); MPP § 47-201.11.

³⁹ MPP § 47-201.12.

⁴⁰ MPP §§ 47-201.124-.125.

living in the home who is able and available to provide care.⁴¹ So, in a two-parent assistance unit, the second parent would have to document the activities or disability that renders them unavailable to provide care.⁴²

All participants receiving CalWORKs are entitled to child care if it is necessary to enable them to work or to participate in CalWORKs welfare-to-work activities, *whether their participation in these activities is required or voluntary, and even if sanctioned*.⁴³ Individuals receiving CalWORKs who are exempt from welfare-to-work participation requirements can volunteer⁴⁴ to participate and are entitled to supportive services, including child care, so that they can voluntarily participate.⁴⁵ See the section on entitlement, above, and the section on exemptions, below. Naturally, families who meet the need criterion for CalWORKs child care must still meet all other eligibility requirements, such as income eligibility.

2.2.4.2 Parents Receiving CalWORKs Cash Assistance

Families receiving CalWORKs cash assistance may receive child care subsidies covering hours in which parents:

- Participate in assigned or approved welfare-to-work activities, including seeking employment;⁴⁶
- Participate in orientation, assessment, meetings with workers, job search, self-initiated education and training programs (SIPs), and any other assigned or approved CalWORKs activities, including participation in mental health, domestic violence; or substance abuse services;⁴⁷
- Work in paid employment, unsubsidized by the county, regardless of whether they have an approved welfare-to-work plan, and even if they are currently under a sanction because they are not working the required minimum number of hours per week.⁴⁸
- Commute time between the child care provider and activity or job.⁴⁹
- Homework (study) time of two hours per hour of class time.⁵⁰

⁴¹ MPP § 47-220.22.

⁴² MPP § 47-220.4.

⁴³ CAL. WELF. & INST. CODE § 11323.2(a)(1); MPP §§ 47-220, 47-220.32, 42-750.111.

⁴⁴ Voluntary participants may choose to participate for fewer hours than mandatory participants. CAL. WELF. & INST. CODE § 11320.3(c); MPP § 42-712.5.

⁴⁵ CAL. WELF. & INST. CODE § 11323.2(a)(1); MPP §§ 42-750.11, 47-220.213.

⁴⁶ MPP §§ 47-220.21-230.12.

⁴⁷ CAL. WELF. & INST. CODE § 11325.23(d); MPP §§ 42-750.114, 47-220.213. Parents may engage in these activities outside of their approved CalWORKs WTW plan, but if these are not approved activities, there is no eligibility for child care services for the time when the parent is participating in these activities.

⁴⁸ MPP §§ 47-220.32.

⁴⁹ MPP §§ 47-110(c)(5), 47-401.43.

- Voluntarily engage in work or welfare-to-work activities, if the parent(s) is exempt from requirements to participate in welfare-to-work activities.⁵¹

The exact number of required hours of participation, and the type of allowable activity depends on whether you are part of a one or two-parent assistance unit, the age of your child(ren) and whether you are still within your 24 month welfare-to-work time clock, or that period has ended. For further details on the required hours and type of activities (core vs. non-core) of welfare-to-work participation for each family situation, please refer to the DSS rules starting at MPP § 42-701 *et seq.*⁵²

Self-Initiated Education and Training Program (SIP) Participants: A SIP is a self-initiated education or training program that an individual receiving CalWORKs enrolls in *before* they are required to participate in a welfare-to-work activity.⁵³ SIP participants are eligible for Stage 1.⁵⁴ Statewide, there are very few CalWORKs parents with an approved SIP. A recipient in an approved SIP is eligible for up to 30 days of retroactive payments of Stage 1 child care services beginning from the date the recipient requested child care and services were provided.⁵⁵ A SIP participant is also entitled to ongoing Stage 1 child care, including for class time and commute time. Effective July 1, 2019, SIP participants will also qualify for homework time of one hour per hour of class time.⁵⁶

Parents Who Are Working: When a parent who receives CalWORKs cash assistance is working, and the family is otherwise eligible for Stage 1, the parent need not meet any special requirements, and does not need an approved welfare-to-work plan in order to get child care.⁵⁷ They can ask their worker for child care verbally, or in writing. They are entitled to child care for their hours of work, as well as travel time to and from the job and child care location.

⁵⁰ Study time is covered in CDE regulations, CAL. CODE REGS. tit. 5, § 18087(k)(2), and in MPP § 42-716.6. These allow two hours per week per academic unit in which the parent is enrolled, including study time for on-line and televised courses through an accredited institution. On a case-by case basis, and as may be confirmed by the class instructor, up to one additional hour per academic unit may be authorized. CAL. CODE REGS. tit. 5, § 18087(k)(2)

(B); MPP § 42-716.6. Study time for participants in a Self-Initiated Program (SIP) is one hour for every hour of class time. CAL. DEP'T OF SOC. SERVS., ACL 18-115 (2018), <http://www.cdss.ca.gov/Portals/9/ACL/2018/18-115.pdf>.

⁵¹ MPP §§ 47-220.213 -230.12.

⁵² See specifically, MPP §§ 42-711 to 42-714.

⁵³ CAL. WELF. & INST. CODE § 11320.3(e); MPP § 42-711.541.

⁵⁴ CAL. WELF. & INST. CODE § 11325.23(d); MPP § 47-220.213.

⁵⁵ CAL. DEP'T OF SOC. SERVS., ACL 08-36 (2008),

<http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-36.pdf> (Camacho v. Allenby Lawsuit).

⁵⁶ CAL. DEP'T OF SOC. SERVS., ACL 18-115 (2018), <http://www.cdss.ca.gov/Portals/9/ACL/2018/18-115.pdf>.

⁵⁷ MPP § 47-220.211.

Parents Who Are Exempt Volunteers: Parents who are exempt from the requirement to engage in welfare-to-work activities (for a variety of reasons, including disability, having the young child exemption, etc.)⁵⁸ may choose to voluntarily participate in welfare-to-work activities. Parents who volunteer are entitled to receive Stage 1 child care for the number of hours they engage in approved activities,⁵⁹ so long as there is not another adult available with responsibility to care for the children.⁶⁰ To be responsible to care for the children, it must be a parent, legal guardian of the child, or adult member of the AU who is living in the home.⁶¹

Two-Parent Families: As mentioned above, in order to be eligible for child care, there must be no parent, legal guardian, or adult member of the assistance unit living in the home who is able and available to provide care. For two-parent families to be eligible for child care, the second parent must work, participate in welfare-to-work activities, volunteer or participate in other county-approved activities, or otherwise provide evidence of being unavailable or unable to provide care for the children.⁶²

Sanctioned Families: Parents who are sanctioned but continue to work, engage in training, or seek work are eligible for Stage 1 child care as former recipients.⁶³ A sanctioned parent may also be eligible for Stage 2 child care.⁶⁴ See Chapter 3 for more information on Stage 2 child care. Numerous families are sanctioned for alleged non-participation in welfare-to-work activities. If the reason for parents' non-participation is that child care is unavailable, such sanctions are inappropriate. See the section below on unavailability of child care as good cause for non-participation in welfare-to-work activities. Stage 1 child care should also be provided to a sanctioned individual during the process of curing a sanction and when the sanctioned client is participating in any pre-welfare-to-work plan activities.⁶⁵ These families also cannot be required to pay a child care "family fee." See Chapter 6 for an explanation of family fees.

Families in Which the Parents Are Ineligible for CalWORKs Cash Assistance: Stage 1 child care is available ONLY when the adults themselves are CalWORKs cash assistance recipients or former recipients. In other words, parents or guardians who have never received CalWORKs cash assistance for *themselves* are *ineligible* for CalWORKs child

⁵⁸ CAL. WELF. & INST. CODE § 11320.3.

⁵⁹ MPP § 47-220.213.

⁶⁰ MPP § 47-220.22.

⁶¹ MPP § 47-220.22.

⁶² MPP § 47-220.4.

⁶³ MPP §§ 47-220.3–.32.; CAL. CODE REGS. tit. 5, § 18400(f).

⁶⁴ CAL. CODE REGS. tit. 5, §§ 18400(f), 18406(a)(3)(B).

⁶⁵ CAL. DEP'T OF SOC. SERVS., ACL 15-53 (2015),

<http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-53.pdf>.

care. Some families receive CalWORKs cash assistance only for the children.⁶⁶ The adults are not included in the grant because the parents are restricted from receiving cash assistance due to their status (e.g., immigration or SSI recipient), or because the adults are non-needy caretaker relatives. These families are ineligible for all stages of CalWORKs child care.⁶⁷ Consult the Western Center on Law and Poverty's CalWORKs manual, available at <http://www.wclp.org>, for more information about parent eligibility requirements for CalWORKs cash assistance.

2.2.4.3 Immigrant Parents' Eligibility for Stage 1 Child Care

The immigration status of an adult is a factor in determining eligibility for CalWORKs cash assistance. The immigrant eligibility requirements that apply to CalWORKs cash assistance also apply to CalWORKs child care. Parents who lack the immigration status necessary to receive CalWORKs cash assistance for themselves do not qualify for CalWORKs child care subsidies, even if their children receive cash assistance. If, however, an immigrant adult is eligible for CalWORKs cash assistance or grants, work supports including child care are available. Immigrant parents who currently receive CalWORKs cash assistance for themselves or have received it in the past are eligible for CalWORKs child care so long as the parent is working or participating in welfare-to-work activities and meeting other eligibility requirements.⁶⁸ Some parents may not yet have a documented immigration status, yet may nevertheless be eligible for CalWORKs cash assistance or grant, and thus for Stage 1 child care. These include VAWA petitioners and U and T visa applicants. A detailed discussion of CalWORKs immigration status requirements is beyond the scope of this manual; consult the Western Center on Law and Poverty manual on CalWORKs, available at <http://www.wclp.org>, for further information.

The immigration status of the child(ren) is irrelevant in determining CalWORKs child care eligibility, since CalWORKs child care is considered a work support for the adult recipients (who must prove their immigration status in order to receive CalWORKs cash assistance or grants), rather than viewed as a benefit for the child.⁶⁹ For example, a parent with two children receives CalWORKs cash assistance for themselves and one child. The other child is not eligible for CalWORKs cash assistance or grants because of

⁶⁶ These "child-only" cases should not be confused with "safety net" cases, in which the parent is a prior cash assistance recipient.

⁶⁷ MPP §§ 47-110(c)(4), 47-220.1-2.

⁶⁸ MPP §§ 47-220.1, 47-220.332 (Stage 1); CAL. CODE REGS. tit. 5, §§ 18406(a)(3)(A), (B) (to be eligible for Stage 2, a parent or guardian must receive CalWORKs cash assistance or have received it within the last 2 years in order to be eligible); CAL. CODE REGS. tit. 5, §§ 18421(a)(3)(A), (B) (to be eligible for Stage 3, a parent or guardian must have timed out of Stage 2, or received Diversion).

⁶⁹ CAL. WELF. & INST. CODE § 11323.2(a)(1); MPP § 47-201.12.

their immigration status. The recipient parent is eligible for CalWORKs child care for *both* children in order to work or participate in welfare-to-work activities.

2.2.4.4 Former CalWORKs Families

The law contemplates that families move from Stage 1 child care to Stage 2 child care as soon as they are “stable,” and while on CalWORKs cash assistance or grants. However, counties may decide to keep families on Stage 1 child care throughout their time on CalWORKs cash assistance or grants. Families in which the parents previously received cash assistance may continue to access Stage 1 child care if they meet income, work participation, and other eligibility requirements described above.⁷⁰ This includes parents who have been sanctioned or have exceeded the 48-month time limit on receipt of cash assistance, and so are no longer receiving CalWORKs cash assistance or grants for themselves.⁷¹ Usually, families have transitioned to CalWORKs Stage 2 by the time they leave CalWORKs cash assistance or grants, but they can continue to receive Stage 1 child care for up to 24 months post CalWORKs cash assistance or grants if funding for child care services is unavailable in Stage 2.⁷² In some counties, participants who formerly received CalWORKs may receive a Stage 1 child care subsidy simply because the county has not yet transferred them to Stage 2, or because the families have chosen to have care provided in their own homes and Stage 1 rules more easily accommodate this type of care arrangement.

2.2.4.5 Exemptions for Parents

From the inception of the CalWORKs program, certain adults receiving CalWORKs assistance have been determined exempt from the requirement to participate in welfare-to-work activities. These include parents with disabilities lasting at least 30 days, teens under 16, or up to 19 years old and attending school, and parents caring for infants or very young children, or because caring for an ill or incapacitated household member.⁷³

2.2.4.5.1 Once in a Lifetime Young Child Exemption

The current young child exemption is a once in a lifetime exemption. A parent or other relative who “has primary responsibility for providing care to one child from birth to 23 months, inclusive” is eligible for a full exemption one time during the parent’s lifetime. During this exemption period, the parent won’t have to do welfare-to-work

⁷⁰ MPP §§ 47-220.2-.213, 47-230.12.

⁷¹ MPP §§ 47-220.3-.32.

⁷² CAL. EDUC. CODE § 8351(b); MPP § 47-230.11.

⁷³ CAL. WELF. & INST. CODE § 11320.3(b); MPP § 42-712.4

activities.⁷⁴ Even though the parent keeps getting CalWORKs, those months won't count as part of the 48-month lifetime limit. In two-parent households, only one parent can be granted this "young child" exemption; the other parent is required to continue to participate in welfare-to-work activities and may receive necessary supportive services (other than child care).⁷⁵

Many county welfare workers automatically assume that a parent with a child ages 0 to 23 months wants to use their exemption from both welfare-to-work and the time limit. It is important that clients know what their options are and can choose whether to use this one-time exemption. If they do choose the exemption, they are still eligible for child care for the hours that they work, attend school or training, or participate in any approved welfare-to-work activity. Using this exemption does not affect eligibility for any of the other exemptions from welfare-to-work.

2.2.4.5.2 Infant Exemption from Welfare-to-Work Participation

The *infant* exemption is different from the once in a lifetime young child exemption, discussed above.

The *infant* exemption relieves parents who have primary responsibility for the care of an infant from the requirement to participate in welfare-to-work activities for a limited amount of time.⁷⁶ The state regulation allows parents of children younger than six months of age to receive this exemption.⁷⁷ Counties, however, have discretion to extend the six month age limit to as much as 12 months after the birth or adoption of a child, or to reduce it to as little as 12 weeks.⁷⁸ In setting a countywide policy, the county may consider the availability of child care, the local labor market conditions or other factors as determined by the county.⁷⁹ The criteria for making this decision should be put in writing.⁸⁰ If the parent has already received the once in a lifetime exemption, upon the birth or adoption of any subsequent children, a parent is still eligible for the county *infant* exemption for 12 weeks,⁸¹ but counties can establish criteria for extending this period to six months on a case-by-case basis, based upon county guidelines.⁸² In a

⁷⁴ CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(iv).

⁷⁵ MPP § 42-712.473;

⁷⁶ CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(i); MPP § 42-712.47.

⁷⁷ CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(i); MPP § 42-712.47.

⁷⁸ CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(i); MPP § 42-712.471(b).

⁷⁹ CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(iii), MPP § 42-712.471(b)(1)(A).

⁸⁰ MPP § 11-501.3.

⁸¹ CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(ii); MPP §§ 42-712.471-.472.

⁸² CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(ii); MPP § 42-712.472(a).

two-parent family eligible for CalWORKs cash assistance or grants due to the unemployment of the principal wage earner, the infant exemption applies to only one parent.⁸³

2.2.4.5.3 Infant Exemption and One Time Young Child Exemption Are Options for Parents, Not Requirements

The law does not require parents receiving CalWORKs to stay home with their infants or very young children rather than working; it merely makes doing so an option. Some parents choose to stay home with their infants because they believe their time is best spent caring for their very young children. These parents are not eligible for child care assistance for *any* of their children, since receipt of Stage 1 child care is conditioned on participation in welfare-to-work activities. But for many parents, returning to work activities quickly is advantageous since every month a participant receives an *infant* welfare-to-work exemption counts against their 48-month lifetime limit on the receipt of CalWORKs cash assistance.⁸⁴ A parent with an infant exemption can choose to be an exempt volunteer; as such, they can voluntarily work or engage in welfare-to-work activities for less than the required 32 hours and receive child care for the hours they participate and for reasonable travel time.⁸⁵

2.2.4.6 Disputes Over Welfare-to-Work Participation

The most common child care eligibility disputes arise not over the child care itself, but rather when the participant and the county welfare department disagree about whether the participant is meeting the requirements of her welfare-to-work plan. For example, suppose a participant receives child care for her 32 hours per week of required activity (work). The employer reduces their hours to 20 hours per week. The participant is required to inform both the county welfare department caseworker and the child care worker about the change in work hours.⁸⁶ Because the participant may no longer meet the CalWORKs hourly participation requirement,⁸⁷ the county worker may incorrectly terminate *all* of the child care, jeopardizing the participant's ability to continue to work at all. County welfare departments are required to continue to provide participants with necessary child care, both while the participant is undergoing an appeal of the termination of child care, and the decision to impose a sanction. Even if a

⁸³ MPP § 42-712.473.

⁸⁴ CAL. WELF. & INST. CODE § 11320.3(b)(6)(A)(i), (ii); MPP § 42-712.47

⁸⁵ CAL. WELF. & INST. CODE § 11323.2(a)(1); MPP §§ 42-750.11, 47-220.213.

⁸⁶ CAL. CODE REGS. tit. 5, §§ 18102, 18410(a), 18425(a).

⁸⁷ CAL. WELF. & INST. CODE § 11322.8(a).

sanction is imposed, child care should be continued for the remaining hours of work or approved activity.⁸⁸

Participants are entitled to receive child care and other supportive services, such as transportation, necessary for their welfare-to-work activities.⁸⁹ If it appears to the CWD that the participant is not fulfilling all of the assigned hours of the welfare-to-work program, the CWD should continue to pay for child care for the portion of welfare-to-work activities in which the parent is still participating while they undergo the good cause/compliance/sanction process.⁹⁰ If the participant refuses to enter into a compliance plan and a sanction is imposed for failure to fully meet their welfare-to-work plan, the parent should continue to receive subsidized child care as a “former recipient” for the hours they are working, engaged in training, or seeking work.⁹¹ CalWORKs participants also have the option of appealing a finding of “no good cause” or the imposition of a sanction. Participants should continue to receive their current level of assistance for child care while appealing the reduction or termination of child care assistance. However, this frequently does not happen because supportive services *other than* child care are not covered as “Aid Paid Pending” when recipients request a hearing on their potential sanction status,⁹² CWDs either fail to distinguish child care from other supportive services or fail to send Notices of Action that allow participants to request continuation of their child care services. See Western Center on Law and Poverty’s CalWORKs Manual.

Whenever a participant’s child care subsidy is reduced or terminated, they are entitled to a Notice of Action regarding the reduction or termination,⁹³ and to continued child care paid pending a hearing if requested in time.⁹⁴ Advocates should help participants file for an administrative hearing as soon as possible. See, Chapter 7.

2.2.4.6.1 Unavailability of Child Care Is Good Cause for Non-Participation in Welfare-to-Work Activities

CalWORKs participants are excused from participation in welfare-to-work activities when the CWD determines that “good cause” exists.⁹⁵ Good cause for non-

⁸⁸ MPP § 47-220.32.

⁸⁹ CAL. WELF. & INST. CODE § 11323.2(a).

⁹⁰ CAL. DEP’T OF SOC. SERVS., ACL 03-59 (2003),
<http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl03/pdf/03-59.pdf>.

⁹¹ MPP §§ 47-220.32; CAL. DEP’T OF SOC. SERVS., ACL 15-53 (2015),
<http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-53.pdf>.

⁹² MPP §§ 22-072.5; 42-721.511(c).

⁹³ MPP § 22-001(a)(1).

⁹⁴ MPP § 47-420.32.

⁹⁵ CAL. WELF. & INST. CODE § 11320.3(f); MPP § 42-713.1.

participation includes a lack of necessary supportive services, such as child care.⁹⁶
Claiming good cause is essential to avoiding the parent being sanctioned.

2.2.4.6.2 Unavailability of Appropriate Child Care

From the time the CalWORKs program was created in 1998, the law has included a “good cause” provision excusing parents from participation in welfare-to-work activities if child care was not *reasonably available* during their hours of work or training, or if their child care arrangements had broken down or been interrupted.⁹⁷

CalWORKs regulations state that child care is *reasonably available* when:

- At least one appropriate, suitable, and affordable child care arrangement is commonly available⁹⁸ in the participant's community;
- Child care is available during the hours when the parent is required to participate in county-approved activities or employment; and
- Available child care is a reasonable distance from the participant's home or place of work.⁹⁹

Note that CalWORKs regulations require that only one appropriate, suitable, and affordable child care arrangement be available in the participant’s community.¹⁰⁰
Appropriate care includes both licensed and Family, Friend, and Neighbor care.

Any month a parent uses the good cause exemption because child care is unavailable will still count against their 48-month lifetime limit on CalWORKs cash assistance or grants.¹⁰¹ Advocates should ensure parents are aware of this when they decide to use this exemption. For this and other reasons, many parents do not request a good cause finding and accept less than ideal care arrangements in order to quickly engage in welfare-to-work activities to maximize their efforts to become self-supporting during their limited time on aid.

⁹⁶ CAL. WELF. & INST. CODE § 11320.3(f); MPP § 42-713.21.

⁹⁷ CAL. WELF. & INST. CODE § 11320.3(f)(3); MPP § 42-713.23.

⁹⁸ Participants and CWDs/Alternative Payment Programs have wrestled over the meaning of “commonly available” and whether good cause should be granted when the child care that is “available” in the community is unacceptable to the parent due to language, discipline, or religious differences. Contact the Child Care Law Center for more information.

⁹⁹ CAL. WELF. & INST. CODE § 11320.3(f)(3); MPP § 42-713.25.

¹⁰⁰ CAL. WELF. & INST. CODE § 11320.3(f)(3); MPP § 42-713.25.

¹⁰¹ See CAL. WELF. & INST. CODE § 11454.5, which lists the exemptions from the time limit, and which does not include lack of suitable child care..

Good cause for non-participation also exists if no suitable child care is available for a child with special needs and the individual receiving CalWORKs must provide care for the child.¹⁰² However, obtaining a good cause reason to not participate in welfare to work is not necessarily the best solution for all families of children with disabilities. Many parents of children with disabilities want to work and believe their children would benefit from participating in inclusive child care. State and federal laws require reasonable accommodations in child care settings for children with disabilities.¹⁰³ Parents of children with disabilities should have an opportunity to participate in welfare-to-work activities if they wish to, and their children should have an opportunity to participate in the full range of child care settings. See the Child Care Law Center’s online resources, available at www.childcarelaw.org, for information about child care and disability law.¹⁰⁴

2.2.4.6.3 Advocacy Strategies

In the early days of CalWORKs, many advocates viewed the child care “good cause” provision as a valuable tool for ensuring that parents were not pressured to place their children in unsafe or undesirable care settings. For a variety of reasons, good cause claims based on lack of appropriate child care have rarely been used and have not provided the intended level of protection for parents. Nevertheless, it remains an important option for parents, and advocates can assist parents to obtain good cause when appropriate care is not available.

A family may claim good cause for non-participation in a CalWORKs welfare-to-work activity due to the unavailability of appropriate child care where:

- An authorization has been issued, but no child care is *available* because the client can’t find an actual provider willing to accept the voucher or meet the specific hours of the child care authorization;¹⁰⁵
- Distance from the parent’s home or worksite;¹⁰⁶
- Appropriateness of care, including reliability, stability, availability when needed (including when timelines for participation in a welfare-to-work

¹⁰² CAL. WELF. & INST. CODE § 11320.3(f)(3); MPP § 42-713.24.

¹⁰³ 42 U.S.C. §§ 12102 (definitions of disability); CAL. CIV. CODE § 51(b) (Unruh Civil Rights Act).

¹⁰⁴ Available at <http://childcarelaw.org/resources/equal-access/>.

¹⁰⁵ MPP § 42-713.23-25.

¹⁰⁶ MPP § 47-110(c)(5) (“Commuter hours” means the time it takes for the client to travel from the child care provider to the activity or activities for which child care is being provided and from there back to the child care provider.”). See *generally*, CAL. WELF. & INST. CODE §§ 11320.3(f)(1) (lack of necessary supportive services is good cause), 11323.2(a)(3) (transportation is a necessary supportive service and shall be provided).

activity are short), and the provider's approach to communication, instruction, discipline, or other issues;¹⁰⁷

- Whether the care meets health and safety requirements and/or the child's special needs/disability, is culturally/linguistically appropriate, is developmentally appropriate for the age of the child, and addresses parent concerns regarding the care setting (e.g., licensed v. Family, Friend, and Neighbor care).

These arguments are based in the regulations and in parents' right to "parental choice" in selecting the type of child care provider they prefer.¹⁰⁸

2.3 APPLYING FOR STAGE 1 CHILD CARE

This section gives basic background information about the right to notification of the availability of Stage 1 child care, a restriction on retroactive child care payments, and the application process.

2.3.1 Right to Notification

Individuals receiving CalWORKs have the right to be notified that child care subsidies are available as a supportive service when they engage in work or welfare-to-work activities.¹⁰⁹ The child care notification should occur whenever the parent:

- Applies for CalWORKs cash assistance;
- Participates in an annual redetermination; or
- Signs an original or amended welfare-to-work plan.¹¹⁰

2.3.1.1 Finding a Child Care Provider for a Stage 1 Family

¹⁰⁷ State and federal laws have strong protections for parental choice. *See* 42 U.S.C. § 9858c (c)(2)(A); 45 C.F.R. §§ 98.16(j), 98.16(x), 98.30(e)(1); CAL. EDUC. CODE §§ 8208.1, 8216, 8225, 8357(a); CAL. CODE REGS. tit. 5, § 18411(a), 18426(a); MPP § 47-260.3.

¹⁰⁸ 42 U.S.C. § 9858c(c)(2)(A); 45 C.F.R. §§ 98.16(j), 98.16(x), 98.30(e)(1); CAL. EDUC. CODE §§ 8208.1, 8216, 8225, 8357(a); MPP § 47-260.3.

¹⁰⁹ CAL. WELF. & INST. CODE § 11323.3; MPP §§ 40-107, 40-181.1, 42-711.522(b), 42-711.64; 47-301 ("Counties shall inform clients of the availability of child care subsidies. Counties shall ensure that clients have access to child care subsidies whenever the need for child care occurs as a result of employment or participation in any county-approved activities."). Although these child care regulations do not explicitly require that the informing notice be linguistically appropriate for the participant, there is a strong argument that the CalWORKs regulations addressing language capacity for notices apply to child care notices as well.

¹¹⁰ MPP §§ 42-711.522(b)(1) ; 47-301.2.

Most families receiving CalWORKs cash assistance are required to work or engage in welfare-to-work activities. The CalWORKs program is structured so that parents must attend orientation and begin to participate in activities very quickly. Parents often have frequent transitions between activities, and must be available to take advantage of a work or training opportunity. For these reasons, parents are often under pressure to figure out their child care needs and quickly find an appropriate provider.

Child Care Resource and Referral (R&R) agencies contract with CDE to provide child care-related services in a particular county or region. R&R services include information and referrals to all parents, training and assistance to providers, and coordination of community resources for both parents and providers.¹¹¹ R&Rs can be excellent resources for any family that needs help in finding a child care provider. See Chapter 1 for additional information on R&R programs.

County welfare departments are required to assist CalWORKs families in finding child care by referring them to the local R&R "as soon as appropriate."¹¹² Some R&Rs co-locate with welfare departments in order to provide services efficiently. Although the law does not define "as soon as appropriate," a parent may immediately need child care in order to participate in all aspects of the CalWORKs program, including brief or initial assignments such as orientation, assessment, and job club. Therefore, the CWD's referral of parents to the R&R for assistance in locating child care generally should happen very early in the process of welfare-to-work participation.

ADVOCACY TIP: Sometimes CalWORKs participants are pressured to find child care in a very short period of time. Advocates should explain to parents that they have a choice of child care, and the importance of choosing child care that is appropriate for their children and family. If a parent cannot find appropriate child care within that short timeframe, they can ask to be granted good cause not to participate based on unavailability of child care (as discussed above), and request a state hearing if the request is denied (see Chapter 7).

Mildly Ill Children: Once a parent has found appropriate child care, it is not uncommon for problems with care to arise when the child is ill. Many providers have clear rules prohibiting parents from bringing a child who is ill to child care. In Stage 1, at county option, an alternate provider (i.e., a provider who will stay in the home with a sick child) used on days when the child is ill may be paid with a child care subsidy, so

¹¹¹ CAL. EDUC. CODE § 8208(x).

¹¹² CAL. EDUC. CODE § 8352(a).

long as the alternate provider is licensed or has completed TrustLine registration.¹¹³ Counties that exercise this option provide an important service to parents. The rules also permit the regular child care provider to be paid even though the child is absent due to illness or other excused absence.¹¹⁴

2.3.2 30-Day Retroactive Child Care Payment Restriction

Parents must be notified of the availability of a Stage 1 child care subsidy through an informing notice that states a subsidy is available. The notice must also warn parents that retroactive payment for any child care already provided to the family is available only for 30 days; that is, the CWD will pay for a maximum of 30 days of care that was provided before the parent made a request for subsidized child care.¹¹⁵ The 30-day limit starts running as of the date the county provides written notification.¹¹⁶

To ensure that Stage 1 pays for all the child care services a family receives, it is very important for a parent to request a Stage 1 subsidy no more than 30 days after starting to receive child care services from any provider.¹¹⁷ Although the parent's request for subsidized child care may be oral or written,¹¹⁸ it is always a good idea to communicate in writing about any CalWORKs assistance for child care, including Stage 1 child care.

ADVOCACY TIP: Sometimes a child care provider starts caring for children before the parent's Stage 1 subsidy has been approved, which can result in payment disputes between the parent and provider. It is therefore important for the family to request a child care subsidy immediately (at most, 30 days after the child care services begin) and for the family and the provider to work closely together to submit all necessary paperwork in a timely fashion. It is also a good idea to keep copies of all paperwork.

2.3.2.1 Payment Restrictions for Families Using Provider Who Must Register with TrustLine

Parents must also be informed that Family, Friend, and Neighbor care providers serving CalWORKs Stage 1 families are not eligible to be paid until their TrustLine

¹¹³ MPP § 47-401.44. See below for more information about TrustLine.

¹¹⁴ MPP §§ 47-401.44-.45, 47-401.451-452.

¹¹⁵ MPP § 47-301.

¹¹⁶ MPP § 47-430.2

¹¹⁷ CAL. WELF. & INST. CODE § 11323.3; MPP § 47-301.

¹¹⁸ MPP §§ 47-120.11-.12.

registration process (criminal history and child abuse registry background check) has been completed, *no matter how long the registration process takes*.¹¹⁹ Although most Family, Friend, and Neighbor care providers become registered fairly quickly, in some cases the need to request an exemption and bureaucratic delays can greatly slow the registration process.

The informing notice must also notify parents that, once the provider has successfully completed registration, the provider is eligible for a maximum retroactive payment of up to 120 days from the date child care services were requested and services were provided.¹²⁰ If the registration process has taken longer than 120 days, the family will be responsible for paying the provider for the additional time. Also, if the provider is not successful in getting registered, the CWD will *not pay for any services provided* and the CalWORKs family will be responsible for paying out-of-pocket for the child care services. Each time a family changes child care providers and selects a Family, Friend, and Neighbor care provider, the family's new Family, Friend, and Neighbor care provider will have to undergo TrustLine registration unless the new provider has previously registered with TrustLine, or is a grandparent, aunt or uncle and thus exempt from the TrustLine registration requirement. See Chapter 5 for more information regarding child care providers.

Licensed child care and child care exempt from licensure are valid parental choices of care for all clients of the Stage 1 Child Care program. A SSN may not be required to issue payment to a Family, Friend, and Neighbor care provider; an ITIN is sufficient. However, if subject to trustline, a SSN is then required for Trustline.

Read together with the 30-day limit on retroactive payments from the date of request, there are two ways in which a parent could be held financially responsible for payment to the child care provider. For example, a parent could begin receiving child care services on July 15 and request services from the county welfare department on August 1. The provider could begin the TrustLine registration process right away (August 1). If the provider is registered with TrustLine on October 31, the provider can be paid by CalWORKs Stage 1 for the care from August 1 through October 31, because fewer than 120 days have passed from the date services were requested, and also for the care provided from July 15 through July 31. If the TrustLine registration is not completed until the end of December, then CalWORKs Stage 1 will only pay for the first 120 days, and the parent will be responsible for paying the difference. CalWORKs Stage 1 would then pay beginning in January. If the Trustline registration is denied, CalWORKs Stage 1 will not pay the provider for the care already given.

¹¹⁹ MPP §§ 47-260.14, 47-260.3, 47-301.22(a), 47-601, 47-620.2, 47-630; CAL. DEP'T OF SOC. SERVS., ACL 08-04 (2008), <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-04.pdf>.

¹²⁰ MPP § 47-301.22(b).

2.3.3 Applying for Stage 1 Child Care and Timeline for Approval

The county welfare department should assist a family receiving CalWORKs cash assistance in applying for Stage 1 child care as soon as the CWD knows the family is attending CWD activities (such as orientation or assessment), working or in a welfare-to-work required appointment or activity, or as soon as the family requests this type of supportive service.¹²¹ Applications should be submitted either to the CWD or to the local Alternative Payment Program, depending on the particular county's procedure.

Stage 1 child care applications require a significant amount of documentation from both the parent and provider, including written employment verification with schedule of hours, confirmation of training and education programs and their hours, children's school schedules, providers' health and safety certifications, provider payment rate sheets, and many other documents.¹²² It is frequently difficult for families to obtain and compile all of the necessary documentation in a timely manner, which can result in delay or denial of assistance for child care for eligible parents, or in less than full payment to providers. If the CWD/Alternative Payment Program has not received all of the required information from the parent within 30 days of the application date, the request for subsidized child care can be denied.¹²³ Although the regulations require CWDs/Alternative Payment Programs to assist parents, as needed, in obtaining and submitting the information necessary to determine eligibility,¹²⁴ the level of assistance required is not specified in the regulations. As with other aspects of subsidy administration, there is great variation in the extent to which CWDs/Alternative Payment Programs fulfill their responsibility to assist applicants for Stage 1 child care.

A delay of days or weeks in approval of child care subsidy applications can seriously affect parents' ability to begin work, training or a welfare-to-work activity, and to enroll their children in care. This problem can be particularly acute for CalWORKs families who are applying for Stage 1. If they have a job offer pending or are expected to begin a welfare-to-work activity with very short notice, they need immediate approval of their request for a child care subsidy. State law requires the CWD/Alternative Payment Program to approve Stage 1 child care subsidies within ten calendar days of

¹²¹ CAL. WELF. & INST. CODE § 11323.2 (child care is a supportive service); CAL. EDUC. CODE § 8352 (requiring referral to Resource & Referral agency as soon as appropriate in order to find a child care provider). Also see information in the text above on the retroactive child care payment restrictions for CalWORKs Stage 1.

¹²² MPP §§ 47-120-120.2, 47-260, 47-320.2 (specifying what information parents must provide and county worker process to receive Stage 1 child care).

¹²³ MPP § 47-120.311.

¹²⁴ MPP § 47-120.23.

receipt of all of the required parent and provider information.¹²⁵ Obviously, it is disadvantageous to a participant who has a job offer or a training/education opportunity to lose that option due to a failure by a CWD/Alternative Payment Program to provide timely approval of assistance for child care, because their 48-month clock for time on CalWORKs aid continues to tick. With some CWDs/Alternative Payment Programs, families and advocates may need to be extremely persistent, going up the chain of command at the subsidy agency in order to ensure that applications are approved in a timely manner, and for all of the needed hours, once the necessary documentation has been submitted.¹²⁶

DSS, CDE, and the CWDs/Alternative Payment Programs place great emphasis on documentation for verification of eligibility for child care subsidies. One reason is the perception (especially among some public officials and the media) that there is excessive fraud in subsidized child care programs.¹²⁷ Documentation is seen as one of the primary means of preventing fraud and overpayments. Advocates can play an important role in assisting families to meet documentation requirements, ensuring that all CWDs/Alternative Payment Programs are fulfilling their duty to assist parents in obtaining necessary information, and working with their local CWDs/Alternative Payment Programs to reduce excessive documentation requirements.¹²⁸

2.3.3.1 Intercounty Transfer of Stage 1 Child Care Subsidy

When a CalWORKs family moves from one county to another, the CWD/Alternative Payment Program from which the CalWORKs Stage 1 participant is moving must inform the participant in writing of their responsibility to apply for child care in the new county.¹²⁹ The CWD/Alternative Payment Program of origin must also

¹²⁵ MPP § 47-120.31.

¹²⁶ Many legal services programs have worked with their CWDs and Alternative Payment Programs to develop procedures for going up the chain of command when their clients have problems with the Stage 1 application process. It is helpful for advocates to have a formal or informal process in place to assist parents with quickly and effectively completing the subsidy application process.

¹²⁷ The Child Care Law Center has addressed this issue in a variety of settings. There is very limited reliable data on the level of fraud within subsidized child care in California. The federal Government Accountability Office released a child care subsidy fraud investigation report in 2010, which uncovered fraudulent practices in 5 other states. However, these states have practices that differ from California's and the Government Accountability Office concluded that the findings could not be extrapolated. The available California data appears to confirm there is a relatively low level of child care subsidy fraud and the documented cases of significant fraud often involve individuals with access to CWD/Alternative Payment Program systems.

¹²⁸ Los Angeles County DPSS, the 13 Los Angeles Alternative Payment Programs, and legal services advocates have been engaged in an ongoing effort to improve the Stage 1 application process, and have developed several useful tools. For more information, contact Child Care Law Center.

¹²⁹ MPP § 47-310.11.

provide the participant with information on each county's payment responsibilities in order to avoid a break in child care services.¹³⁰

The CWD/Alternative Payment Program in the second county is required to establish a child care case as soon as the participant applies for and meets the child care eligibility requirements as either a current or former CalWORKs participant.¹³¹ If the CWD/Alternative Payment Program administering Stage 1 in the receiving county determines that the participant is eligible for Stage 2 or 3 child care rather than Stage 1, that agency is required to refer the child care case to the responsible Stage 2 agency, and to provide the parents with Stage 1 child care in the interim.¹³² There should be no delay in child care payments so long as the second county receives the necessary provider payment information from the CalWORKs family, regardless of whether the family is maintaining or changing child care providers, and no matter whether the family is currently receiving CalWORKs cash assistance or grants.¹³³ Although the regulations appear to be clear on the transfer process and CWD/Alternative Payment Program responsibilities, some families nevertheless experience difficulties with intercounty transfers and benefit from advocates' assistance.

2.3.4 Transitioning from Stage 1 to Stage 2

County Welfare Departments must move families from Stage 1 to Stage 2 "as quickly as possible" once their welfare-to-work activity and need for child care are "stable." There is a presumption that families' child care needs should be stable within six months.¹³⁴ The emphasis on a quick transition from Stage 1 to Stage 2 reflects the legislative desire that, as soon as possible, CalWORKs child care recipients will receive their child care in the same manner as other working families who seek subsidized child care.¹³⁵

State law delegates to the CWD's the authority to define "stability" when a family is ready to transition from Stage 1. Regulations set a six-month limit on receipt of Stage 1 assistance for child care,¹³⁶ but allow CWDs/Alternative Payment Programs to decide whether a family is "stable" for purposes of transitioning to Stage 2, and to extend this time period if the family's situation is "too unstable" or if there is insufficient funding in Stage 2 or 3.¹³⁷ In practice, many counties depart from the six month

¹³⁰ MPP §§ 47-310.11, -310.3.

¹³¹ MPP § 47-310.21.

¹³² MPP § 47-310.22-.23.

¹³³ MPP § 47-310.3.

¹³⁴ MPP § 47-301.51.

¹³⁵ CAL. EDUC. CODE § 8350.

¹³⁶ CAL. EDUC. CODE § 8351(b); MPP § 47-301.51.

¹³⁷ CAL. EDUC. CODE § 8351(b); MPP § 47-301.52.

presumption of stability, routinely making it shorter or longer.¹³⁸ Some CWDs/Alternative Payment Programs define stability to move families to Stage 2 as soon as the parent is working. Other counties transition families after three months on cash assistance, no matter what activity the parent is engaged in, and others transition families to Stage 2 only after families leave cash assistance.

There are advantages for families transitioning to Stage 2, including greater flexibility with respect to some requirements, and a longer child care authorization and child care eligibility care under the 12 month eligibility rule that applies in the Stage 2 and Stage 3 child care programs. With 12 month eligibility, parents need to worry much less about whether their care will be reduced or discontinued due to a change in their work or school schedule.

There is a major advantage to remaining in Stage 1 if the parent is using a Family, Friend, and Neighbor care provider to care for the child in the child's home, which is allowed under Stage 1 rules but not under Stage 2 rules, in order to maintain continuity of care for the child.¹³⁹

Regardless of when the family's child care is transferred from Stage 1 to Stage 2, state law obligates county welfare departments to manage the transition from Stage 1 to Stage 2 so that families experience no break in child care due to the transfer process.¹⁴⁰ To help ensure that Stage 1 to Stage 2 transitions are seamless, DSS has issued instructions in an All County Information Notice and CDE has issued a corresponding Management Bulletin.¹⁴¹ Each of these reiterate transfer requirements and procedures, and detail each agency's responsibilities, making clear that the respective agencies handle the data needed for transfer: the parent is not required to provide or certify any information for the transfer to take place. Once all the needed information is received from the CWD or Stage 1 contactor, the family is automatically enrolled in Stage 2.

See Chapter 3 for information about Stages 2 and 3.

¹³⁸ MPP § 47-101.7.

¹³⁹ MPP § 47-301.51-.52.

¹⁴⁰ CAL. WELF. & INST. CODE §11323.8; MPP §§ 47-101.5, -301.5.

¹⁴¹ MPP § 47-301.5; CAL. DEP'T OF SOC. SERVS., ALL COUNTY INFORMATION NOTICE NO. I-19-17, at 6 (Apr. 12, 2017), http://www.cdss.ca.gov/Portals/9/ACIN/2017/I-19_17.pdf; CAL. DEPT. OF EDUC., MANAGEMENT BULLETIN 18-05 (2018), <https://www.cde.ca.gov/sp/cd/ci/mb1805.asp>.

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This chapter is part of the following series:

The 2019 Legal Guide to Child Care Subsidies in California

- Chapter 1 - Overview of Child Care Subsidy Administration and Categories
- Chapter 2 - CalWORKs Child Care Subsidies, Stage 1
- Chapter 3 – California Department of Education Child Care Subsidies

Chapters covering payment procedures and other topics are underway. Please email us at info@childcarelaw.org if you do not find the answer you need here.