



State of California—Health and Human Services Agency



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GOVERNOR



June 22, 2018

ALL COUNTY LETTER (ACL) NO. 18-60
MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES (MHSUDS)
INFORMATION NOTICE NO. 18-027

TO: ALL ADOPTION REGIONAL OFFICES
ALL CHIEF PROBATION OFFICERS
ALL COUNTY ADOPTION AGENCIES
ALL COUNTY WELFARE DIRECTORS
ALL FOSTER FAMILY AGENCIES
ALL GROUP HOME PROVIDERS
ALL TITLE IV-E AGREEMENT TRIBES
COUNTY BEHAVIORAL HEALTH PROGRAM DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS
ASSOCIATION OF CALIFORNIA
COUNTY WELFARE DIRECTORS ASSOCIATION OF CALIFORNIA
CHIEF PROBATION OFFICERS OF CALIFORNIA
CALIFORNIA STATE ASSOCIATION OF COUNTIES
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
CALIFORNIA OPIOID MAINTENANCE PROVIDERS

SUBJECT: PRESUMPTIVE TRANSFER POLICY GUIDANCE

REFERENCE: [ALL COUNTY LETTER \(ACL\) NO. 16-84/MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES \(MHSUDS\) INFORMATION NOTICE \(IN\) NO. 16-049](#)
[ACL 17-77/MHSUDS IN 17-032](#)

This California Department of Social Services (CDSS) All County Letter (ACL) and Department of Health Care Services (DHCS) Mental Health and Substance Use Disorder Services (MHSUDS) Information Notice (IN) provides clarification and

guidance to county Mental Health Plans (MHPs), county probation agencies, and child welfare agencies regarding implementation of presumptive transfer of specialty mental health services (SMHS) for children, youth, and non-minor dependents (NMD) in foster care. This ACL/IN also provides as attachments presumptive transfer procedural flowcharts and notification form templates.

BACKGROUND

Assembly Bill (AB) 1299 (Ridley-Thomas, Chapter 603, Statutes of 2016) established presumptive transfer. Presumptive transfer means a prompt transfer of the responsibility for providing or arranging and paying for SMHS from the county of original jurisdiction to the county in which the foster child or youth resides. Presumptive transfer is intended to provide children and youth in foster care who are placed outside their counties of original jurisdiction timely access to SMHS, consistent with their individual strengths and needs, and Medicaid Early and Periodic Screening Diagnostic and Treatment requirements.

Children and youth removed from the home and care of their parents and placed in protective custody, or foster care, are legal dependents or wards of the juvenile court in the county where the removal occurred. The county that establishes dependency or wardship of a child or youth is the county of original jurisdiction, and is referred to as the “county of original jurisdiction” for the purposes of presumptive transfer.

CDSS and DHCS issued ACL 17-77/MHSUDS IN 17-032 on July 14, 2017, which established initial policy guidance regarding presumptive transfer, including the role of Child and Family Teams (CFT) in presumptive transfer. The ACL/IN indicated the Departments would issue further policy guidance regarding expedited transfers, informing notices, and other implementation tools.

EXPEDITED TRANSFERS

California Welfare and Institutions (W&I) Code Section 14717.1(b)(2)(F) requires a procedure for expedited transfers within 48-hours of placement of the foster child or youth outside of the county of original jurisdiction. The procedural steps for presumptive transfer described in ACL 17-77/MHSUDS IN 17-032 operationalize the presumptive transfer of the responsibility for the provision, arrangement, and payment of SMHS immediately upon placement. In situations when a foster child or youth is in imminent danger to themselves or others or experiencing an emergency psychiatric condition, MHPs must provide SMHS immediately, and without prior authorization.

There may be instances when a child or youth must be moved to a new placement outside of the county of original jurisdiction for his or her safety and a CFT meeting is unable to be convened prior to placement. In these instances, the county placing agency must immediately contact the MHP in the county of residence to notify the MHP of the placement and the need to provide or arrange and pay for SMHS to meet the needs of the child or youth. Counties may use the presumptive transfer county points of contact list on this webpage: <http://www.cdss.ca.gov/County-Offices> to assist with the expedited transfer of SMHS.

DHCS and CDSS will continue to collaborate with stakeholders to determine if there is a situation or context that will necessitate changes to this guidance regarding expedited transfer.

PROCEDURAL FLOWCHARTS

The attached procedural flowcharts (Attachments A and B) address presumptive transfer in situations in which a waiver of presumptive transfer (waiver) is not requested and in situations in which a waiver is requested. The flowcharts depict procedural and notification timeframes, and the parties that must be notified at various points of time during presumptive transfer and the placement process. In conjunction with previously established policy guidance, the flowcharts provide visual guides intended to assist local systems with implementing presumptive transfer and develop their own process mapping.

Condition C

As described in ACL 17-77/MHSUDS IN 17-032, Condition C applies to any foster child or youth who resides in a county other than the county of original jurisdiction after June 30, 2017, who continues to reside outside of the county of original jurisdiction after December 31, 2017, and for whom the responsibility to provide or arrange, and pay for SMHS, has not transferred to the county of residence. Under Condition C, placing agencies are required to complete notification responsibilities regarding conditions of presumptive transfer, waiver requests, and waiver determinations 10-days prior to the foster child or youth's next scheduled status review held after December 31, 2017. Status review hearings are conducted pursuant to W&I Code Section 366 and/or W&I Code Section 727.2(c). The processes applicable to Conditions C are depicted in the flowcharts.

OUT OF COUNTY PLACEMENT NOTIFICATION REQUIREMENTS

Placing agencies are responsible for informing the following individuals or parties about presumptive transfer requirements, a description of the exceptions, and the right to request a waiver: the foster child or youth in care, the foster child or youth's attorney, the person or agency responsible for making mental health care decisions

on behalf of the foster child or youth, and the assigned social worker and/or juvenile probation officer. Attachment C provides a template informing notice that placing agencies may use for this purpose. The placing agency should document these notifications in the child or youth's case file. This documentation may include, but is not limited to, copies of signed forms, copies of CFT meeting agendas and meeting notes that document presumptive transfer discussions, and narrative case plan notes. Placing agencies must also notify the CFT coordinator or all members of the CFT; this notification may be written and/or verbal.

In addition to and separate from the informing requirements described above, pursuant to W&I Code Section 361.2(h) and [ACL 17-81](#), any time the decision to place a dependent foster child or youth in a county other than his or her county of original jurisdiction, county placing agencies are required to provide, at least 14 days prior to the date of placement, written notification to the child or youth's parent or legal guardian, the child or youth's attorney, and the child, if the child is 10 years of age or older, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. Documentation of this notification must be included in the child or youth's case file.

For children and youth who are not receiving SMHS, placing agencies must still notify the MHP in the county of residence. These notification requirements can be met by completing the forms included as Attachments C and D, or similar forms.

As described in ACL 17-77/MHSUDS IN 17-032, a waiver request must be made to the placing agency within seven calendar days of the placing agency's determination to place a child, youth, or NMD out of county. The date of the county's presumptive transfer informing notice starts the seven day time period for waiver requests.

Each time a child is placed outside of the county of original jurisdiction, presumptive transfer and the waiver process apply. In the event that a child's placement status changes and the child is placed back within the county of original jurisdiction, the placing agency in the county of original jurisdiction must notify the MHP in the former county of residence as well as the MHP in the county of original jurisdiction that the responsibility for providing or arranging for the provision of SMHS is returning to the county of original jurisdiction. This notification should be made through each county MHPs designated presumptive transfer single point of contact.

County placing agencies may align or coordinate their existing policies and processes, including the use of locally developed forms, to ensure the notification requirements described above are met.

NOTIFICATION TEMPLATES

The following attached templates contain the required information for the placing agency to inform parties regarding presumptive transfer and the circumstance surrounding a waiver:

- Presumptive Transfer Informing Notice (Attachment C);
- Notice of Presumptive Transfer of SMHS for Foster Child or Youth Placed Out of County (Attachment D).
- Presumptive Transfer Waiver Request Form (Attachment E); and
- Presumptive Transfer Waiver Determination Notification (Attachment F).

Placing agencies are not mandated to use the attached templates, however, they are encouraged to use or adapt them for local use as they contain all the necessary data elements for the intended notice. The attached templates are not intended to limit what a local system can design or use for the purposes of notifying parties involved in presumptive transfer.

CHILD AND FAMILY TEAM PROCESS

A CFT is a group of individuals that includes, at a minimum, the child or youth, family members, providers, natural community supports, and other individuals identified by the family who are invested in the child, youth, and family's success. Team members also include representatives from the placing agency, the MHP, or its contracted providers, and any other formal systems supporting the child, youth, or family.

The CFT process drives case planning for children and youth involved in the child welfare and probation systems. The CFT process is also vital to effective care coordination when children and youth are also receiving SMHS. Since every child and youth in foster care is required to have a CFT, CDSS and DHCS strongly encourage county placing agencies, MHPs or their contracted providers, and community provider organizations to actively participate in an inclusive CFT process. Social workers and probation officers are required to consult with the CFT when discussing placement needs, services and supports to youth and families, and when developing a case plan for a child or youth.

PRESUMPTIVE TRANSFER AND THE CHILD AND FAMILY TEAM PROCESS

Presumptive transfer must be discussed by the CFT in situations in which a child or youth is to be placed outside the county of original jurisdiction. The use of an effective CFT process is especially important when an out of county placement is being considered, and is the primary vehicle for coordinating care. The CFT process can help families develop and maintain respectful, trusting relationships that can, over time, lead to greater stability and improved outcomes. In the context of presumptive transfer, the CFT process informs placement decisions, as well as the child or youth's foster care case plan, and mental health treatment plan. If an out of county placement occurs and SMHS are presumptively transferred to the county of residence, the SMHS provider(s) from the county of residence MHP becomes part of the child or youth's CFT.

The child welfare agency or probation department that maintains jurisdiction of the foster care case must ensure a CFT exists for the child or youth in foster care and is responsible for convening the CFT meetings regardless of the county of residence or the MHP responsible for providing SMHS. The county of original jurisdiction child welfare or probation agency responsible for placement must collaborate with the county of residence MHP, and the MHPs contract providers if applicable, to ensure a CFT exists and meetings occur.

The placing agency and all involved entities must coordinate to ensure that there is a single CFT for each child or youth and his or her family. CFT membership is intentionally flexible and dynamic, so team participants will continue to change as needs and strengths change. Counties are encouraged to consider agreements and relationships established through the CFT process as a way to address questions, discuss concerns, develop resources, and solicit the input of other team members. When children, youth, and families give input and see their ideas reflected in the decisions and plans being implemented, they are more likely to reach a positive result.

An effective CFT process allows the child or youth and families to actively participate in case planning, and may over time lead to an increase in positive outcomes, including improvements in placement stability. The CFT process represents an opportunity to mitigate the negative impacts a change in placement can have on a foster child or youth and his or her family. The CFT strives for permanency with the foster child or youth's own family or other resource families. As such, the CFT should develop a plan for the foster child or youth to return to his or her community with clear milestones, goals, and timelines, when appropriate. The plan should consider the desired outcomes for the foster child or youth,

including keeping the foster child or youth connected to relationships in the county of original jurisdiction if and when appropriate.

EXCEPTIONS TO PRESUMPTIVE TRANSFER AND WAIVER DETERMINATIONS

While presumptive transfer is intended to ensure the timely provision of SMHS to foster children and youth placed outside of the county of original jurisdiction by promptly transferring the responsibility for the provision, arrangement, and payment of SMHS to the county of residence, there are instances when the responsibility for SMHS should remain with the county of original jurisdiction. Consequently, a set of exceptions to presumptive transfer are specified in W&I Code Section 14717.1(d)(5)(A-D) and described in ACL 17-77/MHSUDS IN 17-032.

On a case-by-case basis, presumptive transfer may be waived. The responsibility for providing SMHS remains with the county of original jurisdiction when it is determined an exception exists and that the presumptive transfer waiver is appropriate pursuant to the established conditions of and exceptions to presumptive transfer. When an exception to presumptive transfer exists, waiver determinations are made by the placing agency of the county of original jurisdiction, in consultation with the CFT members.

Waiver Determinations Roles and Responsibilities

The procedures and timeframes for waiver determinations are established in ACL 17-77/MHSUDS IN 17-032. Presumptive transfer can be waived based on a case-specific determination that an exception to presumptive transfer applies. Even if one of the exceptions is determined to apply, a waiver is contingent upon the MHP in the county of original jurisdiction demonstrating it has an existing contract with a specialty mental health care provider, or the ability to enter into a contract within 30 days of the placing agency's waiver decision, and the ability to deliver timely SMHS directly to the foster child.

The individuals and agencies able to request a waiver of presumptive transfer are defined in W&I Code, Section 14717.1(d)(2) and clarified in ACL 17-77/MHSUDS IN 17-032. Placing agencies may not consider requests to waive presumptive transfer from individuals or agencies other than those defined in statute and clarified in ACL 17-77/MHSUDS IN 17-032. Placing agencies, in consultation with the CFT, are responsible for determining if a waiver of presumptive transfer is appropriate. A waiver request places a hold on the transfer of responsibility for SMHS until such time that the placing agency in the county of original jurisdiction has made a determination that the waiver meets the required conditions and is in the best interest of the child or youth. In this situation, the county of original jurisdiction is responsible for continuing to provide, or arrange for the provision of,

and pay for SMHS to the child or youth without interruption until the placing agency makes a determination regarding the waiver.

Waiver Determinations and the Child and Family Team

When determining if a waiver of presumptive transfer is appropriate, placing agencies are required to consult with the foster child or youth, his or her parent, the CFT, and other professionals who serve the child or youth, as appropriate. As counties and local providers face questions and concerns related to presumptive transfer for individual children and families, the CFT process is the primary vehicle for finding solutions. The CFT process is intended to give children and families an opportunity to provide meaningful input into their case plans, including placement decisions, and other services in addition to SMHS, such as substance use disorder treatment, educational supports, and health care services.

Short-Term Residential Therapeutic Program Placements and Waiver Determinations

A Short-Term Residential Therapeutic Program (STRTP) is a new type of licensed congregate care facility that provides intensive services, including SMHS, to children and youth. Placement in an STRTP is an example of a situation that would potentially qualify as an exception to presumptive transfer. Placements in STRTPs are intended to be short-term, with the child or youth returning to a home-based setting after treatment.

If a child or youth is placed in an STRTP with a case plan indicating that the duration of his or her stay is expected to last less than six months, and the child or youth will return to the county of original jurisdiction after the STRTP placement, this placement meets the criteria of an exception to presumptive transfer under W&I Code Section 14717.1(d)(5)(C). If the placing agency determines that a waiver of presumptive transfer for a child or youth placed in an STRTP is in the best interest of the child or youth and the contract requirements for approving a waiver are met,¹ the existing waiver process (including notification requirements) must still be completed as described in ACL 17-77/MHSUDS IN 17-032. If a child or youth placed in an STRTP, whose stay was expected to last less than six months, stays longer than six months, the CFT should discuss whether the waiver should continue. The decision to continue the waiver in this case is based on an exception

¹ Pursuant to W&I Code Section 14717.1(d)(6), a waiver processed based on an exception to presumptive transfer shall be contingent upon the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into a contract within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the foster child.

to presumptive transfer other than the expectation that the placement will last less than six months.

Presumptive transfer waiver decisions are made on a case-by-case basis, and only when an exception to presumptive transfer exists.² Therefore, providers may not make waivers, or the absence of waivers, a general condition of accepting placements. MHPs may not compel providers, including STRTPs, to make waivers a general condition of accepting placements.

REQUESTING A HEARING

As established in ACL 17-77/MHSUDS IN 17-032, the individual who requested a waiver, or any party to the case who disagrees with a determination made by the placing agency may request judicial review prior to the county's determination becoming final. Authorized individuals may request judicial review within seven calendar days of being notified of the placing agency's determination. The court has up to five court days to set a hearing on the matter, and until such time, presumptive transfer is on hold. However, delivery of existing SMHS to the child or youth must continue without interruption, and be provided or arranged for, and paid for by the MHP in the county of original jurisdiction.

Placing agencies are required to provide the court with information³ related to a request to waive presumptive transfer that includes a description of the process followed by the placing agency, the CFT, and others in making its determination on the waiver. The placing agency shall ensure that all parties are informed and included in determinations related to presumptive transfer through the CFT process.

ADDITIONAL POLICY GUIDANCE AND CLARIFICATION

The following information provides policy guidance and clarification on several items and questions identified by stakeholders during the early stages of presumptive transfer implementation.

Senate Bill 785 Service Authorization Requests

Senate Bill (SB) 785 (Steinberg, Chapter 469, Statutes of 2007) established, among other provisions, SMHS authorization requirements for foster children and youth, and children and youth in the Kinship Guardianship Assistance Program (Kin-GAP) and Adoption Assistance Program (AAP). Although the statutory sections included in the originally enacted version of SB 785 have been amended

² W&I Code Section 14717.1(d).

³ Information to be provided to the court will be further clarified in a forthcoming CDSS All County Information Notice.

over time, none of these amendments changed any of the original provisions of SB 785. Furthermore, the original provisions of SB 785 did not change as a result of AB 1299.

The provisions of SB 785, including its Service Authorization Request (SAR) provisions, are no longer necessary or required for foster children or youth under the conditions of presumptive transfer, or under a waiver of presumptive transfer.

Children and youth who receive assistance under Kin-GAP are no longer dependents of the court. They are not in foster care, not subject to court supervision, and are therefore not subject to the provisions of AB 1299 (W&I Code § 14717.1). For children and youth who receive assistance under Kin-GAP, the county of original jurisdiction continues to retain responsibility for authorizing and reauthorizing SMHS under the provisions of SB 785 (W&I Code §11376).

Similarly, children and youth whose adoptions are finalized and who receive assistance under the AAP are no longer dependents of the court. They are not in foster care, not subject to court supervision, and, as such, are not subject to the provisions of AB 1299 (W&I Code §14717.1). This means that the MHP in the county of residence of the child or youth's adoptive parents is responsible for providing SMHS and the MHP of the county of original jurisdiction retains responsibility for authorizing and reauthorizing of SMHS under the provisions of SB 785 (W&I Code §16125).

Medi-Cal Eligibility Data System

DHCS and CDSS recognize the need for parties involved in presumptive transfer to promptly determine and verify if a foster child or youth's SMHS have been presumptively transferred to the county of residence. DHCS and CDSS continue to consider using an indicator, screen, or other field in the Medi-Cal Eligibility Data System (MEDS) for this purpose.

There are limitations with using MEDS for this purpose, such as updates to MEDS are not displayed in "real-time," access to MEDS is limited to designated personnel, thereby excluding many agencies and individuals that need to access this information, and MEDS changes are long-term solutions due to the time they take to complete.

The possibility of future updates to MEDS, while helpful for those with access to MEDS, should not detract from the importance of the CFT as the primary mechanism for communicating the needs of the foster child or youth and the conditions of presumptive transfer. Since not all agencies involved in the CFT have

access to the same information regarding the foster child or youth, notifications by placing agencies regarding a foster child or youth's out of county placement, information sharing, and coordination of care through the CFT are critical.

While viewing in MEDS a residence address in a county other than the county of original jurisdiction alone cannot conclusively verify presumptive transfer, it can be used in addition to the information CFT members have, to confirm that the foster child or youth has been placed outside of the county of original jurisdiction. The placing agency will also inform the MHPs in both the county of original jurisdiction and the county of residence of the presumptive transfer, or approved waiver within three business days of the placement decision.

Specialty Mental Health Services Provided by Multiple Mental Health Plans

When a foster child or youth's SMHS are presumptively transferred to the county of residence, it is not intended for both MHPs to provide SMHS to the foster child or youth during the course of the placement.

However, there are times a foster child or youth is placed outside of the county of original jurisdiction, when it may be appropriate for the MHP in the county of original jurisdiction to provide SMHS while the MHP in the county of residence is also providing or arranging, and paying for SMHS provided to the foster child or youth placed in their county. For example:

- When the SMHS provider(s) in the county of original jurisdiction has an established relationship with the child or youth and his or her family members, the provider(s) may continue to provide SMHS throughout the transition of the child or youth to the new SMHS provider(s) in the county of residence. During the transition these SMHS are paid for by the MHP in the county of original jurisdiction; or
- When the SMHS provider(s) has an established relationship with a child or youth's significant support person (e.g. parent, family member) and the provider(s) will continue to be involved in the child or youth's life during and after the out of county placement, the provider may continue to provide collateral services to the foster child or youth's significant support person during a transition period until this relationship can be transferred to a new SMHS provider, or until this service is no longer needed. In this example, the MHP in the county of residence is responsible for providing or arranging, and paying for the ongoing SMHS.

In both examples above the services provided to a parent or family member of a foster child or youth placed outside of the county of original jurisdiction must be

clearly linked to the child's mental health needs, goals, coordinated through the CFT, and documented in the client plan. Collateral service activities provided to a child or youth's significant support person may occur on the same day that the foster child or youth receives SMHS provided by the county of residence.

Psychiatric Inpatient Hospitalization

Presumptive transfer does not distinguish between inpatient and outpatient SMHS with regard to the transfer of the responsibility to arrange, provide, and pay for SMHS from the county of original jurisdiction to the county of residence. Regarding psychiatric inpatient hospital services, the applicability of presumptive transfer depends on the specific scenario, as described below:

1. A foster child or youth that resides in the county of original jurisdiction receives psychiatric hospital inpatient services in a county outside of the county of original jurisdiction.
Presumptive transfer does not apply in this scenario because psychiatric inpatient hospitalizations are not considered foster care placements and the foster child or youth will return to the county of original jurisdiction following the psychiatric inpatient hospital stay. The county of original jurisdiction retains responsibility for the provision of and payment for the psychiatric inpatient hospitalization.
2. A foster child or youth that resides outside the county of original jurisdiction, but is waived from presumptive transfer, receives psychiatric hospital inpatient services.
Due to the waiver, presumptive transfer does not apply in this scenario and the county of original jurisdiction retains responsibility for the provision of and payment for the psychiatric inpatient hospitalization, regardless of the county in which the hospitalization occurs.
3. SMHS for a foster child or youth that resides outside the county of original jurisdiction are presumptively transferred to the county of residence and the foster child or youth receives psychiatric inpatient hospital services outside of the county of residence.
Since SMHS for this foster child or youth have been presumptively transferred, the county of residence is responsible for the provision of, and payment for psychiatric inpatient hospitalization regardless of the county in which the hospitalization occurs.

Substance Use Disorder Treatment Services

The responsibility for the Drug Medi-Cal benefit for substance use disorder treatment services did not change as a result of AB 1299. Presumptive transfer, as defined in statute, only applies to the transfer of the responsibility for the provision,

arrangement, and payment of SMHS to the MHP in the foster child or youth's county of residence. Therefore, responsibility for the Drug Medi-Cal benefit remains with the county of original jurisdiction, even if the responsibility for the provision of, and payment for, SMHS has transferred to the foster child or youth's county of residence. This is the case even if the county of residence is a Drug Medi-Cal Organized Delivery System county. In this situation, counties are expected to work together to establish an agreed-upon arrangement for the provision of necessary substance use disorder services for the foster child or youth placed outside the county of original jurisdiction.

Questions regarding the CFT process and/or placing agency responsibilities may be directed to the CDSS Integrated Services Unit, at (916) 651-6600, or via email at CWScoordination@dss.ca.gov. Questions regarding authorization and payment of SMHS may be directed to the DHCS Mental Health Services Division County Support Unit Liaison for your county. A current list of county assignments can be found at: <http://www.dhcs.ca.gov/services/MH/Pages/CountySupportUnit.aspx>.

Sincerely,

Original signed by

BRENDA GREALISH
Acting Deputy Director
Mental Health and Substance Use
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Original signed by

GREGORY E. ROSE, MSW
Deputy Director
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California Department of Social Services

ATTACHMENTS