



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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EDMUND G. BROWN JR.
GOVERNOR

January 5, 2015

ALL-COUNTY INFORMATION NO. I-73-14

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM MANAGERS

SUBJECT: INFORMATION REGARDING FEDERAL COURT ORDER IMPACTING THE IMPLEMENTATION OF THE FEDERAL DEPARTMENT OF LABOR REGULATIONS PERTAINING TO THE PAYMENT OF OVERTIME COMPENSATION AND OTHER COMPENSABLE ACTIVITIES AND TO RELATED PROVISIONS OF SENATE BILLS 855 AND 873 (CHAPTERS 29 AND 685, STATUTES OF 2014) FOR THE IHSS AND WAIVER PERSONAL CARE SERVICES PROGRAMS

This All-County Information Notice is to inform counties of the two recent court orders issued by Judge Richard Leon of the United States District Court, District of Columbia, which impact the implementation of regulations adopted by the U.S. Department of Labor (DOL) pertaining to the payment of overtime compensation and other compensable activities for In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) providers that were to be effective January 1, 2015.

The first court order, dated December 22, 2014, vacated the DOL rule which precluded third-party employers from claiming applicable wage and overtime exemptions for services provided by live-in providers and employees performing companionship services. The second court order, dated December 31, 2014, enjoined the implementation of the revised definition of companionship services until January 15, 2015. However, a court hearing regarding the temporary injunction is calendared for January 9, 2015 wherein further information may be ascertained regarding the federal regulations at issue.

Based on the above-referenced court orders, CDSS Director Will Lightbourne notified County Welfare Directors on December 31, 2014, that the implementation of the new FLSA regulations and the key provisions of Senate Bills 855 and 873 will be delayed until further court clarification.

All county IHSS offices and county public authorities should continue to operate under the requirements and regulations for payment of wages that were in effect on December 31, 2014. CDSS is continuing to move forward with the new timesheet format, but CMIPS II programming will not process payments for overtime or travel time until further clarification is ascertained based on the court decisions.

In those instances in which counties have conducted assessments that included wait time adjustments for medical accompaniment and those adjustments were entered into CMIPS II, counties will need to ensure that these adjustments are removed from CMIPS II with utmost expediency. However, counties should retain this information within the IHSS recipient's case file for future reference.

An information notice is currently in development to inform all IHSS providers and recipients of this delay. Mailing of the notices will begin this week to all IHSS providers and recipients. Please see attachment.

Depending on future court rulings, CDSS will issue further guidance to the counties via a Program Manager Letter, All-County Information Notice, or All-County Letter.

If you have any questions regarding this information, please call the Adult Programs Policy and Quality Assurance Branch, Policy and Operations Bureau, Provider Policy and Adult Protective Services Unit, at (916) 651-5350.

Sincerely,

Original Document Signed By Hafida Habek, acting for:

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachment

C: CWDA
CAPA

IMPORTANT NOTICE TO ALL IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM RECIPIENTS AND PROVIDERS

Dear IHSS Recipients and IHSS Providers,

On Wednesday, December 31, 2014 the US District Court in Washington, D.C. temporarily stopped the federal overtime pay requirements for home care workers which was due to go into effect January 1, 2015.

This means that:

- The IHSS program in California will **not** be implementing payments for overtime, travel time, or wait time for providers of services at this time, and
- The “hours cap” of 61 hours per week for each provider will **not** go into effect at this time.

Timecards will be issued in time for the January 15th payroll, but all authorized hours worked will be paid at straight-time (the locally bargained hourly wage) only, and travel and wait time will not be paid. **This means providers will be paid the same way they were in 2014 until further notice.**

The IHSS program will notify you if or when there are any further changes.