



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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GOVERNOR

January 21, 2016

ALL-COUNTY LETTER NO. 16-07

REASON FOR THIS TRANSMITTAL
<input type="checkbox"/> State Law Change
<input type="checkbox"/> Federal Law or Regulation Change
<input type="checkbox"/> Court Order
<input type="checkbox"/> Clarification Requested by One or More Counties
<input checked="" type="checkbox"/> Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
IHSS PROGRAM MANAGERS

SUBJECT: EXEMPTION TO PROVISIONS OF SENATE BILLS 855 AND 873 (CHAPTERS 29 AND 685, STATUTES OF 2014) RELATING TO THE IN- HOME SUPPORTIVE SERVICES (IHSS) AND WAIVER PERSONAL CARE SERVICES (WPCS) PROGRAMS FOR FAMILY LIVE-IN CARE PROVIDERS

REFERENCE: [ACL 15-97 \(DECEMBER 1, 2015\)](#); [ACL 16-01 \(January 7, 2016\)](#);
SENATE BILLS 855 AND 873

This All-County Letter (ACL) provides counties with information for implementing exemptions to the provisions of Senate Bill (SB) 855 and SB 873 that established limits on the number of authorized hours a provider in the IHSS and WPCS programs are permitted to work in a workweek. This ACL also transmits the new informational notices and the exemption form for the implementation of the overtime exemption for live-in family care providers.

BACKGROUND

As of February 1, 2016, CDSS will implement the provisions of SB 855 and SB 873 that among other items, established limits on the number of authorized hours providers in the IHSS and WPCS programs are permitted to work in a workweek. Information and instructions for implementing policies requiring that IHSS and WPCS providers receive compensation for overtime, travel time and wait time have been provided to counties via ACL 16-01. The workweek requirements and restrictions will be implemented on February 1, 2016, and providers who unintentionally commit errors on timecards will be contacted by county staff to discuss the circumstances in which providers exceeded the overtime and travel time limits, and to assist them in making adjustments to workweek schedules to prevent any further occurrences. Formal action on violations of the workweek and overtime requirements and restrictions will commence May 1, 2016.

As required under state statutes, the maximum number of hours an IHSS/WPCS provider may work in a workweek for all the time he/she works for two or more recipients combined is 66 hours. To ensure continuity of care and to allow IHSS recipients to remain safely in their homes, the California Department of Social Services (CDSS) has established two exemptions for limited, specific circumstances that allow the maximum weekly hours to be exceeded.

EXEMPTION 1: LIVE-IN FAMILY CARE PROVIDERS

IHSS providers who meet the following requirements on or before January 31, 2016 may provide services to two or more live-in family member recipients and work up to 12 hours per day, or 90 hours per workweek, not to exceed 360 hours per month:

1. The IHSS provider must work for two or more IHSS recipients; and
2. The IHSS provider lives in the same home as all the IHSS recipients for whom he/she provides services; and
3. The IHSS provider is related to all the IHSS recipients for whom he/she provides services, as his/her parent, adoptive parent, step-parent, grandparent or legal guardian.

Recipients whose providers qualify for this exemption and work the maximum monthly 360 hours must hire additional IHSS providers as necessary to provide any remaining authorized IHSS. Further, state regulations (California Department of Social Services Manual of Policies and Procedures (MPP) § 30-763.44 to .457), pertaining to minor recipients living in a two-parent household remain applicable; hence, both parents continue to have a duty pursuant to the Family Code § 3910, which will exclude the other parent in the home from providing IHSS. However, a non-parent provider may be able to provide IHSS for any remaining hours that cannot be provided by the parent provider who has been limited to 360 hours. For example, in a two-parent household case where the mother provides IHSS for her two disabled children, each receiving 283 IHSS hours, and the father who is unavailable due to full-time employment, the recipient(s) would be allowed to have a non-parent provider provide the remaining authorized IHSS hours, because the mother reached the maximum hours of 360 allowed under the live-in family care provider exemption.

In order to ensure appropriate application of this exemption, the provider's relationship to his/her recipients and place of residence will be verified at the time of the recipient's reassessment for services.

No exemptions to overtime requirements for IHSS live-in family care providers shall be granted for any provider who does not meet the criteria prior to February 1, 2016.

Counties are responsible for informing all recipients and providers (current or applicant) of the requirements of the workweek and overtime limitations to ensure that they establish a work schedule that adheres to program requirements. This responsibility extends to any current provider and applicant provider who is a parent, adoptive parent, step parent, grandparent, or legal guardian and who does not meet the criteria on or before January 31, 2016.

EXEMPTION 2: EXTRAORDINARY CIRCUMSTANCES

The CDSS is developing a temporary exemption to allow an IHSS/WPCS provider to work beyond the recipient's maximum weekly hours or beyond the 66 hour limitation for two or more IHSS recipients where there are extraordinary circumstances which places the recipient(s) at imminent risk of out-of-home institutionalized care. (One example of extraordinary circumstances is where no other caregiver speaking the same language can be identified in the local labor market). Such exemptions will only be granted on a case-by-case basis. The CDSS will be working with counties and other stakeholders to refine the criteria and requirements. A forthcoming ACL will provide information addressing the development of the policy and procedures.

The Department of Health Care Services (DHCS) will be advising about an additional exemption for WPCS provider and consumers, which will also be forthcoming. DHCS and CDSS will be coordinating the exemption policies to ensure those that are applicable to IHSS will apply to WPCS program recipients.

The CDSS has developed informational provider and recipient notices, (TEMP 3007 and TEMP 3008) and stakeholders have been afforded the opportunity to review these notices prior to the release. The informational notices will be sent by CDSS to the IHSS providers and recipients who have been identified in the Case Management, Information, and Pay-rolling System (CMIPS) II and who meet the criteria listed above for Exemption 1. CDSS will begin mailing these notices January 25, 2016. The IHSS provider informational notice instructs the provider to complete the IHSS Program Live-In Family Care Provider Overtime Exemption form (SOC 2279) and to return it by April 1, 2016 to CDSS at 744 P Street, M.S. 9-9-04, Sacramento, CA 95814 in order to qualify for the exemption in May. Providers and recipients are directed to contact CDSS for questions regarding the exemption.

Modifications to the CMIPS II will be made to include an indicator to identify those providers who are approved for Exemption 1 for the Live-in Family Care Provider and may work beyond the weekly 66-hour limitation for two or more family members. Following the entry into the system, a letter approving or denying the exemption will be sent to both the provider and recipient. Counties will be provided with the list of the

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IHSS providers who have been approved for the Live-in Family Care Provider exemption and the IHSS recipients for whom they provide IHSS.

New and Revised Forms and Notices

Counties should begin using the new and revised forms as of the date of this ACL. The new and revised forms, which are designated as “Required – No Substitutes Permitted,” are available in camera-ready format on the [CDSS Forms/Brochures](#) webpage.

Upon completion of translations, CDSS will post Armenian, Chinese and Spanish versions of the forms on the [Translated Forms and Publications](#) webpage.

The designated Forms Coordinator for your county must distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited-English proficient populations, as required by the Dymally-Alatorre Bilingual Services Act (California Government Code section 7290 et seq.) and by state regulation (CDSS Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, section 115).

Questions about accessing the forms may be directed to the Forms Management Unit at fmudss@dss.ca.gov. Questions about translations may be directed to the Language Services Unit at LTS@dss.ca.gov.

Questions or requests for clarification regarding the information in this letter should be directed to the Policy and Operations Bureau, Adult Programs Division at (916) 651-5350.

Sincerely,

Original Document Signed by

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachments

c: CWDA