

DEPARTMENT OF SOCIAL SERVICES

744 P Street, MS 19-96, Sacramento, CA 95814



September 30, 2004

ALL-COUNTY INFORMATION NOTICE NO. I-69-04

TO: ALL COUNTY WELFARE DIRECTORS ALL IHSS
PROGRAM MANAGERS

REASON FOR THIS TRANSMITTAL

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

SUBJECT: IN-HOME SUPPORTIVE SERVICES/PERSONAL CARE SERVICES PROGRAM (IHSS/PCSP) QUALITY ASSURANCE (QA) AND PROGRAM INTEGRITY PROVISIONS OF THE FISCAL YEAR (FY) 2004/05 HEALTH AND HUMAN SERVICES' BUDGET TRAILER BILL SENATE BILL (SB) 1104

This All-County Information Notice (ACIN) provides information regarding the In-Home Supportive Services/Personal Care Services Program (IHSS/PCSP) Quality Assurance (QA) and program integrity provisions of the Fiscal Year (FY) 2004/05 health and human services' budget trailer bill Senate Bill (SB) 1104.

BACKGROUND

The California Department of Social Services (CDSS) proposed an IHSS/PCSP QA Initiative as an element of the Governor's 2004/05 State Budget. The proposal outlined a number of enhanced activities to be performed by CDSS, the counties, and the California Department of Health Services (DHS) to improve the quality of IHSS/PCSP service need assessments, enhance program integrity, and detect and prevent program fraud and abuse. The proposal requested: (1) State and county staffing augmentations specifically for QA activities, (2) funding to establish an ongoing State training component for IHSS/PCSP workers, and (3) funding for specified systems changes tied to QA and program integrity improvements.

The CDSS QA proposal was adopted by the Administration. Funding for new State and county QA staff, the IHSS/PCSP training program, and systems changes was included in the FY 2004/05 Budget Act along with projected program savings expected as a result of the program improvements.

IHSS/PCSP QA INITIATIVE TRAILER BILL DETAILS

The FY 2004/05 trailer bill amended the following existing statutes:

California Welfare and Institutions Code (WIC) Section 12301.1

Summary: Each individual county has the discretion to authorize exceptions to the established standard 12-month time interval for IHSS/PCSP service need reassessment under certain conditions.

- Requires that counties reassess any time the recipient requests an adjustment in authorized hours, or when there are other indications or expectations of a change in circumstances affecting a recipient's need for services.
- Allows, at individual county option, reassessment at an interval greater than 12 months but not longer than 18 months on a case-by-case basis if specified conditions are met that indicate that a stable situation exists in the case. The conditions are:
 - The recipient has had at least one reassessment since the initial program intake assessment;
 - The recipient's living arrangement has not changed since the last annual reassessment and the recipient lives with others or has regular meaningful contact with other people other than the recipient's IHSS/PCSP provider;
 - The recipient or, if a minor his or her parent or legal guardian, or if incompetent his or her conservator, is able to satisfactorily direct the recipient's care;
 - There has been no known change in the recipient's supportive service needs within the previous 24 months;
 - No reports have been made to and there has been no involvement of Adult Protective Services agencies since the county last assessed the recipient;
 - The recipient has had the same provider(s) for six months;
 - The recipient has not reported a change in his or her need for supportive services that requires a reassessment;
 - The recipient has not been hospitalized within the last three months.
- Provides that If some, but not all, of the specified conditions are met, the county may consider other factors in determining whether an extended assessment interval is appropriate, including, but not limited to, involvement of a social

worker, case manager, or other similar representative from another human services agency, such as a regional center or county mental health program, in the care of the recipient, or communications or other instructions from a physician or other licensed health care professional that the recipient's medical condition is unlikely to change.

- Authorizes reassessment at an interval of less than 12 months where the county worker has information indicating that a recipient's need for services is expected to decrease in less than 12 months.
- Authorizes CDSS to implement the new provisions by All-County Letter (ACL) until emergency regulations are issued.
- Requires CDSS to issue emergency regulations by 9/30/05. Emergency regulations are in effect for 180 days. If regulations are not going to be filed by 9/30/05 requires CDSS to notify the Joint Legislative Budget Committee.
- Requires adoption of regulations no later than and sunsets the implementing ACL on 6/30/06.
- Requires CDSS to obtain input from counties and program stakeholders while developing the regulations and ACLs.

Note: Pursuant to WIC Section 12317.2 added by the 2004/05 Health and Human Services' Trailer Bill, in the event of a conflict between WIC Section 12301.1 as amended or any provisions in Part 3 with certain exceptions and the IHSS Plus Waiver authorized by WIC Section 14132.952, the IHSS Plus Waiver requirements will control for services covered by the Waiver once the Waiver is operational.

1. **WIC Section 12301.2**

Summary: Requires CDSS to develop and implement statewide hourly IHSS/PCSP task guidelines and instructions to provide counties with a standard tool for assessing service needs and authorizing service hours. Requires counties to use the statewide guidelines when conducting an individual assessment or reassessment of an individual's need for services. The guidelines are to include criteria to assist county social workers to determine when an individual's service need falls outside an established normal range of time

- Requires CDSS to work with the counties to develop the guidelines and to obtain input from program stakeholders while developing the guidelines.
- Requires that the following be among the factors considered in developing the guidelines:

- Adherence to universal precautions, i.e., safe handling of blood and bodily fluids;
 - Existing utilization patterns;
 - Outcomes associated with different levels of utilization;
 - The need to avoid cost-shifting to other government program services.
- Authorizes CDSS to seek advice from health professionals such as public health nurses or physical or occupational therapists during the development of the guidelines.
 - Subject to the existing 195 and 283 hour service limits, requires counties to authorize services in amounts outside of a range of time provided in the guidelines when warranted based on the client's individual assessment.
 - Requires counties to document in the case file the need for services outside the guidelines.
 - Requires implementing regulations by 6/30/06.
 - Replaces existing law governing the use of time for task guidelines.

The FY 2004/05 trailer bill added the following new statutes:

2. WIC Section 12301.21

Summary: Requires CDSS to develop a standardized, statewide medical certification form for IHSS Protective Supervision services. The purpose of the form is to obtain certification by a physician or other appropriate medical professional as determined by the CDSS of a person's need for protective supervision.

- Requires CDSS to work in consultation with the counties to develop the form and to obtain input from program stakeholders while developing the form.
- Requires counties to request that the applicant complete and return the form at the time of initial assessment if Protective Supervision services are requested.
- Requires counties to determine the need to request the form at reassessment.
- Specifies that the certification of the need for Protective Supervision is not, in and of itself, determinative of a need for Protective Supervision, i.e., the absence of the form alone does not make the recipient automatically ineligible for Protective Supervision and the presence of a certification alone does not make the recipient automatically eligible. A certification form submitted by the recipient is to be treated as one indicator of the recipient's need for Protective Supervision. If the

county does not receive a completed certification form from the recipient, the county is to make its determination of need based on the other available evidence.

- Requires CDSS to issue emergency regulations by 9/30/05. Emergency regulations are in effect for 180 days. If regulations are not going to be filed by 9/30/05 requires notification to the Joint Legislative Budget Committee.
- Requires regulations be adopted by and sunsets the implementing ACL on 6/30/6.
- Requires CDSS to obtain input from the counties and program stakeholders while developing any implementing regulations.

3. **WIC Section 12305.7**

Summary: Establishes requirements for State-level IHSS/PCSP QA and program integrity functions.

- Requires CDSS, in consultation with DHS and the counties, to design and conduct an annual IHSS/PCSP payment error rate study beginning in the 04/05 FY to provide baseline data for prioritizing and directing QA and program integrity efforts at the State and county levels.
- Requires CDSS and DHS to conduct automated data matches between IHSS/PCSP paid hours data and Medi-Cal claims payment data to identify potential service overlap, duplication, and third-party liability among other things.
 - Requires CDSS to work with the counties to determine, define, and issue instructions to the counties describing the roles and responsibilities of the CDSS, the DHS, and the counties for resolving data match discrepancies requiring follow-up, defining the necessary actions that will be taken to resolve them, and the process for exchange of information pertaining to the findings and disposition of data match discrepancies.
- Requires CDSS to develop methods for verifying recipient receipt of services and work with the counties to determine, define, and issue instructions describing the roles and responsibilities of the Department and the county welfare departments for evaluating and responding to identified problems and discrepancies.
 - Requires CDSS to get input from counties and other stakeholders when developing the methods for verifying recipient receipt of services.
- Requires CDSS to make available on its website specified information regarding IHSS/PCSP including IHSS/PCSP QA and program integrity regulations, ACLs, program forms, IHSS/PCSP training and materials developed to implement the Trailer Bill's IHSS/PCSP program QA and program integrity provisions. Requires

CDSS to notify program stakeholders of the availability of the information on the CDSS website.

- Requires CDSS to notify IHSS/PCSP providers, recipients, and the general public about the toll-free Medi-Cal hotline and website for reporting suspected fraud and abuse.

- Requires CDSS to work in consultation with the counties to develop a statewide training program for county IHSS/PCSP workers, managers, QA staff, State hearing officers, and Public Authority or Non-Profit Consortium staff on the IHSS/PCSP Uniformity System and other elements of IHSS/PCSP QA and program integrity as they are developed. Requires CDSS to obtain input from program stakeholders while developing the training. Specifically:
 - Authorizes CDSS to obtain a contractor to assist in developing and to conduct the training.

 - Requires that the design of the training afford reasonable flexibility to counties to use their preferred modalities arranging the training.

- Requires CDSS to monitor county IHSS/PCSP QA programs. This may include on-site visits.
 - Requires CDSS to work with the counties to develop protocols and procedures for monitoring county QA programs and protocols and procedures under which the Department will report its monitoring findings to a county, disagreements over the findings will be resolved, to the extent possible, and the county, DHS and CDSS will follow-up on the findings.

- Requires CDSS to conduct a review of IHSS/PCSP regulations in effect on the date of enactment of this section and revise the regulations as necessary to conform to the changes in statute that have occurred since the regulations were initially promulgated and to conform to federally authorized program changes, such as the federal waiver.

4. WIC Section 12305.71

Summary: Requires each county to establish a dedicated, specialized IHSS/PCSP QA function or unit and specifies activities the function is to perform.

- Requires the counties to perform routine, scheduled reviews of supportive services cases to ensure that caseworkers appropriately apply the IHSS/PCSP uniformity system and other IHSS/PCSP rules and policies for assessing recipients' need for services to the end that there are accurate assessments of needs and hours. Authorizes counties to consult with State QA staff for technical assistance.

- Requires CDSS and the counties to develop policies, procedures, implementation timelines, and instructions under which the county QA function will perform the following specified QA activities:
 - Receive, resolve, and respond appropriately to claims data matches discrepancies or other State-level QA and program integrity information that indicates potential overpayments to providers or recipients or third party liability for supportive services.
 - Implement procedures to identify potential sources of third party liability for IHSS/PCSP services.
 - Monitor the delivery of supportive services in the county to detect and prevent potential fraud by providers, recipients, and others and maximize the recovery of overpayments from providers or recipients.
 - Inform IHSS/PCSP providers and recipients and the general public that suspected fraud in the provision or receipt of supportive services can be reported using of the toll-free Medi-Cal fraud hotline and website.
- Requires each county to develop a schedule beginning with July 1, 2005, under which county QA staff will periodically perform targeted IHSS/PCSP QA studies.
- Provides that, in accordance with protocols developed by the CDSS and county welfare departments, county QA staff will conduct joint case review activities with State QA staff, including random post-payment paid claims reviews to ensure that payments to providers were valid and were associated with existing program recipients; identify, refer to, and work with appropriate agencies in investigation, administrative action, or prosecution of instances of fraud in the provision of supportive services.
 - Requires that protocols take into account the relative priority of the activities required of county IHSS/PCSP QA functions and available resources.

5. WIC Section 12305.72

Summary: Requires CDSS to convene periodic meetings with counties and program stakeholders to provide information about and get input on the IHSS/PCSP QA and program integrity activities required by the budget trailer bill.

- Requires that topics addressed in the meetings include, but not be limited to:
 - Implementation of variable assessment intervals;
 - Development and implementation of statewide IHSS/PCSP hourly task guidelines;

- Development and implementation of the standardized Protective Supervision medical certification form;
- The development and implementation of a standardized training curriculum, training materials, and work aids for an ongoing, statewide training program for county workers, managers, quality assurance staff, state hearing officers, and public authority or nonprofit consortium staff on the supportive services uniformity system, (and the application of variable assessment intervals, statewide hourly task guidelines, and the protective supervision medical certification form.
- The development and implementation of approaches to verifying recipient receipt of services;
- Alternatives to requiring that a full reassessment be completed in order to authorize a temporary increase in supportive services hours following the discharge of a recipient from a medical facility.;

6. WIC Section 12305.8

Summary: Defines fraud and overpayment for purposes of IHSS.

- For purposes of IHSS defines ‘fraud’ as the intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or State law.
- For purposes of IHSS defines ‘overpayment’ as the amount paid by the department or the Department of Health Services to a provider or recipient, which is in excess of the amount for services authorized or furnished pursuant to this article.
- Defines IHSS as “health care benefits” for purposes of section 550(a) of the California Penal Code under which it is unlawful to, among other things, knowingly make or cause to be made, or aid, abet, solicit, or conspire with any person to knowingly make or cause to be made, any false or fraudulent claim for payment of a health care benefit.

7. WIC Section 12305.81

Summary: Establishes IHSS/PCSP provider participation exclusions and requires that an IHSS/PCSP provider enrollment form be developed and used.

- Establishes in the IHSS/PCSP program specified criteria required in federal Medicaid law under which individuals are ineligible to receive payment for supportive services and are, therefore, excluded from participating as IHSS/PCSP providers. Specifically:

- Requires the exclusion from IHSS/PCSP provider participation for a period of ten years beginning either following a conviction, or incarceration for a conviction, for a crime of fraud in specified government health care or supportive services programs, (specifically, Medicaid, Medicare, Maternal and Child Health Services, Social Services Block Grant, or the Childrens Health Insurance Program).
- Requires the exclusion from IHSS/PCSP provider participation for a period of ten years beginning either following a conviction, or incarceration for a conviction, for a crime under Penal Code Sections 273a(a) or 368 or similar violations in another jurisdiction. (See attached for this statutory language.)
- Requires CDSS and DHS to develop an IHSS/PCSP provider enrollment form that each person seeking to be an IHSS/PCSP provider must complete, sign under penalty of perjury, and submit to the county. Requires the enrollment form to:
 - Inform the applicant that they are not eligible to enroll as a provider if they have a conviction in the last ten years for one of the specified crimes and require that the applicant certify to that they do not have such a conviction.
 - Require that the provider applicant agree to repay any overpayment and that an overpayment amount may be deducted from subsequent provider payments to applicant.
 - Include the text of subdivision (a) of Penal Code Section 273a and Penal Code Section 368 on the provider enrollment form.
- Requires a Public Authority (PA) and Non-Profit Consortium (NPC) to exclude an IHSS/PCSP provider from their registry when they are notified by the Department or DHS that the provider is ineligible.
- Requires PAs and NPCs that determine that an IHSS/PCSP registry provider is ineligible to report that finding to the Department.

8. WIC Section 12305.82

Summary: Establishes the authority and process for detecting, investigating, and preventing fraud and abuse in the IHSS program.

- Authorizes DHS to investigate fraud and abuse in the IHSS residual program.
- Requires counties to refer suspected IHSS fraud or abuse to DHS for investigation.

- Provides for CDSS, DHS, and county QA staff to work together as appropriate to detect and prevent IHSS fraud and abuse in accordance with State and federal law including appropriate due process requirements.
- Requires DHS to notify the Department, the counties, and the PA or NPC when DHS has reliable evidence that an IHSS/PCSP provider has engaged in fraud in connection with IHSS/PCSP.

9. WIC Section 12305.83

Summary: Establishes the authority and allowable methods to recover overpayments made to IHSS providers.

- Establishes that overpayments to IHSS residual program providers can be recovered by CDSS or the county by:
 1. Offset to any payments due to the provider, or
 2. A repayment agreement, or
 3. Civil court action,

If:

 - The overpayment is a “debt due and owing” as defined in Medi-Cal law (WIC Section 14043.1¹) and,
 - Recovery of the overpayment, and the methodology chosen, is permissible under existing labor laws,
- Requires CDSS, in consultation with the counties and stakeholders, to identify, define, and develop policies, procedures, and applicable due process requirements under which overpayments to supportive services providers will be identified and recovered.
- Requires counties to recover an overpayment to an IHSS/PCSP provider by offsetting future provider payments, executing a repayment agreement with the provider or by court action.
- Provides that entire amount of an overpayment can be recovered by offset to a future provider payment when the overpayment is due to fraud.

¹ WIC Section 14043.1 defines, “debt due and owing”, to mean “60 days have passed since a notice or demand for repayment of an overpayment or other amount resulting from an audit or examination, for a penalty assessment, or for any other amount due the department was sent to the provider, regardless of whether the provider is an institutional provider or a noninstitutional provider and regardless of whether an appeal is pending”.

- Establishes limits on the amounts that can be recovered from each provider payment when the overpayment is due to an error. Specifically the amount that can be withheld to recover an overpayment is:
 - The amounts provided for in a repayment agreement negotiated with the provider; or
 - No more that 5% of each warrant, for errors caused by the government and no more than 10% of each warrant, for errors resulting for any other reason, until the full or negotiated amount is recovered.
- When the overpayment is due to fraud, requires the county to take all appropriate actions to suspend or exclude the provider as an enrolled provider and to prevent in the future any further payment of state or federal funds to the provider for up to 10 years following the fraud conviction.

IMPLEMENTATION

CDSS will enter into discussions with counties and stakeholders regarding the process to be utilized in implementing the Quality Assurance Initiative.

Counties are directed to County Fiscal Letter No. 04/05-16 regarding the fiscal year 2004/05 IHSS county administrative allocation. These allocations include a specific component for the counties' cost of hiring county quality assurance to implement and conduct the legally required county IHSS/PCSP quality assurance and program integrity functions described in this letter and work with State staff on developing statewide assessment guidelines, social worker training on the IHSS/PCSP assessment process and other related projects with the goals of improving and streamlining the service needs assessment process and reducing the cost of the IHSS program.

It is requested that questions regarding this letter or the Trailer Bill be sent in writing to:

Marie Vann Beckman
744 P Street, MS 19-96
Sacramento, California 95814

Questions will be compiled and, as necessary, the Department will issue a subsequent Question and Answer All-County Information Notice to the counties.

Sincerely,

Original Signed By
Joseph M. Carlin on 9/30/04
JOSEPH M. CARLIN
Acting Deputy Director
Disability and Adult Programs Division

Attachment

ATTACHMENT

California Penal Code, Subdivision 273a(a)

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

California Penal Code Section 368

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars (\$400); and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars (\$400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information

of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, goods, services, or real or personal property taken or obtained is of a value exceeding four hundred dollars (\$400), and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding four hundred dollars (\$400).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, "elder" means any person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

"Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.