



CDSS

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ALL-COUNTY LETTER (ACL) NO. 10-XX

TO: ALL COUNTY WELFARE DIRECTORS  
ALL IHSS PROGRAM MANAGERS

SUBJECT: QUESTIONS AND ANSWERS REGARDING THE EXPANDED IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDER ENROLLMENT REQUIREMENTS

REFERENCES: ACL NO. 09-52, DATED OCTOBER 1, 2009; ACLs NO. 09-54 AND 09-63, DATED OCTOBER 28, 2009; ACL NO. 09-66, DATED OCTOBER 29, 2009; AND ACLs NO. 09-69 AND 09-70, DATED OCTOBER 31, 2009, AND, 09-78 DATED NOVEMBER 25, 2009

The above-referenced ACLs provided to counties information and instructions on the implementation of expanded IHSS provider enrollment requirements. These expanded requirements became effective November 1, 2009 as mandated by Assembly Bill, Fourth Extraordinary Legislative Session (ABX4) 4 (Chapter 4, Statutes of 2009), and ABX4 19 (Chapter 17, Statutes of 2009). This ACL clarifies and updates several issues related to the implementation of those requirements. This ACL and the policies detailed herein should be considered the most current and valid.

**CRIMINAL BACKGROUND CHECKS**

- Does Welfare and Institutions Code (W&IC) section 12305.81, which prohibits any individuals convicted of or incarcerated for a crime involving fraud against a government health care or supportive services program, or a crime of abuse of a child (Penal Code [PC] section 273a), elder or dependent adult (PC section 368), only apply to felony offenses?**

No. W&IC section 12305.81 applies to both felony and misdemeanor offenses. Hence, an individual who in the last 10 years has been convicted for or incarcerated following a conviction for those crimes specified in W&IC section 12305.81 shall not be eligible to be enrolled as a provider or to receive payment for providing supportive services in the IHSS program.

**REASON FOR THIS TRANSMITTAL**

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

## **2. Who pays for background checks?**

The W&IC section 12305.86(b) clearly states that criminal background checks are to be conducted at the provider/applicant provider's expense. W&IC section 12305.86(b), which was added by ABX4 19, supersedes earlier statute (W&IC 15660(d)(2)) in regards to the fees charged for the criminal background checks.

The fee waiver for an indigent individual to obtain a copy of his/her criminal history record referred to in W&IC section 12305.86(c)(3) applies only to those individuals found ineligible to be providers based on the results of information found through an initial criminal background check. An individual cannot use the fee waiver process to avoid the costs of the initial criminal background check.

## **3. Does the fingerprinting/criminal background review process and CORI review requirement place the county, Public Authority (PA) or Non-Profit Consortium (NPC) in the position of the employer of record?**

No. First, W&I Code section 12305.86 requires that the counties perform background checks of current and potential providers. If a county/PA/NPC chooses not to perform background checks, they do so in violation of statute.

Second, there is no statute that expressly or implicitly states that the county/PA/NPC becomes the "employer of record" either because they perform a provider background check or for any other reason. There are many instances in which a public agency performs a background check and in not one instance does this create an employment relationship between the subject and the agency (e.g. community care licensing, nursing/physician, state bar license).

Finally, the IHSS recipient is the employer for all purposes except where, by statute, another entity is specifically deemed the "employer." Notably, W&IC section 15660 (which grants DOJ the authority to perform the background checks at issue) specifically references the recipient as the employer. ("For purposes of this paragraph, 'employer' includes, but is not limited to, an in-home supportive services recipient.) W&IC section 12302.2, which obligates the state to make deductions from provider pay for income tax, disability benefits, and unemployment compensation, specifically refers to the recipient as the employer.

## **PROVIDER ENROLLMENT REQUIREMENTS**

### **4. What are the rules for "existing" vs. "new" providers?**

An existing provider is any provider who existed in the Legacy Case Management, Information and Payrolling System (CMIPS), in any status, from January 1, 2001 to October 31, 2009. These "existing providers" can take on new clients or return to active status and will have until June 30, 2010 to complete the new provider

enrollment process. The county should ensure that provider demographic information is current/updated. Recipients should complete the Recipient Designation of Provider form (SOC 426A) confirming their selection of the individual as their provider.

A new provider is any provider that does not currently exist in Legacy CMIPS. These “new” providers must complete the new provider enrollment process before their timesheets can be processed and a warrant issued.

**5. Are new providers eligible to receive retroactive pay for services they provide for recipients once they have completed all of the provider enrollment requirements?**

Yes. If an individual seeking to be a provider begins providing services for a recipient prior to completing all of the provider enrollment requirements, and he/she is ultimately determined to be eligible to be a provider, he/she would be eligible to receive retroactive payment for the services he/she provided. However, if the individual is ultimately found ineligible to be a provider due to criminal background information or for any other reason, he/she cannot receive payment from the IHSS program. The recipient will have to pay for services provided from his/her own pocket. For this reason, the California Department of Social Services (CDSS) strongly encourages counties/PAs/NPC to ensure that recipients fully understand the potential financial responsibility they accept by allowing individuals to provide services prior to completing all of the provider enrollment requirements. CDSS suggests that counties may provide this clarification at the same time that they provide direction to recipients on their responsibilities as employers, i.e., when recipients complete the Application for Social Services (SOC 295) and the Recipient/Employer Responsibility Checklist (SOC 332).

**6. Why is there no start date field on the SOC 426A?**

A start date field was intentionally not included on the SOC 426A when it was developed because CDSS felt that it might cause confusion for recipients completing the form; however, because counties have specifically requested that a start date field be added, CDSS will revise the form to include one when other revisions are needed and/or when time permits. In the interim, counties may obtain start date information necessary for input into CMIPS from another source, such as the Provider Enrollment form, SOC 426 (9/02) version which is to be used until a revised form is issued via ACL. Please refer to ACL 09-78 regarding the SOC 426.

**7. Are the counties required to retain copies of the Provider Enrollment Agreement (SOC 846) indefinitely?**

W&IC 12301.24(d) clearly states that counties shall indefinitely retain the SOC 846 in the provider’s file. Retaining the provider enrollment agreement form can serve as verification of a provider’s eligibility and his/her understanding of the IHSS

program rules and procedures which benefits both the provider and recipient. Counties may consider archiving these documents electronically or by other means. Statute does require that storing such documents be done in a manner that would not substantially alter their original form (Government Code section 12168.7).

**8. What identification must an individual present when submitting the SOC 426?**

A provider applicant must present one piece of government-issued picture ID along with a Social Security card or original official correspondence from the Social Security Administration (SSA) verifying his/her Social Security number (SSN). Please refer to ACL 09-52 for acceptable forms of identification.

**9. Can the Medi-Cal Eligibility Data System (MEDS) be used to verify the person's SSN if they do not have an original Social Security card or original official correspondence from the SSA?**

No. Because an individual seeking to become an IHSS provider would not necessarily be receiving Medi-Cal (or other assistance), information would not be available in MEDS so verifying their SSN by those means would not be possible. Provider applicants must present documentation in the form of a Social Security card or original official correspondence from the SSA.

**10. Since a United States (U.S.) passport meets the criteria for both identity and employment eligibility according to the Employment Eligibility Verification Form (I-9) instructions, can it also be used to satisfy both identification requirements for the SOC 426?**

Yes. A U.S. passport would suffice as it does establish both identity and employment authorization. However, it is always preferable to request and view a Social Security card or original official documentation from the SSA so that the SSN provided on the SOC 426 can be verified as correct.

**TRANSLATED MATERIALS**

**11. When will the translated provider enrollment forms and orientation materials be made available?**

The languages that currently meet the five percent statewide IHSS recipient population threshold are: Armenian, Chinese and Spanish. Camera-ready copies of the provider enrollment forms translated into these languages are available on the CDSS Translated Forms and Publications web page at [http://www.dss.cahwnet.gov/cdssweb/FormsandPu\\_274.htm](http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm).

In addition, translations of the Provider Orientation Guide and handouts in the threshold languages are now available on the new IHSS Provider Orientation page

of the CDSS Adult Programs web site at <http://www.cdss.ca.gov/agedblinddisabled/PG2082.htm>.

Pursuant to the Dymally-Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and state regulation (Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, section 115), counties are responsible for providing translation/interpretation services for to non-English speaking or limited English proficient populations.

Questions relating to these translated materials should be directed to the CDSS Language Services Unit at (916) 651-8876 or [LTS@dss.ca.gov](mailto:LTS@dss.ca.gov).

## **PROVIDER ORIENTATION**

### **12. When will written provider orientation materials be available?**

The initial distribution of the CD-ROM and the required handouts was mailed to the counties on October 20, 2009. A second distribution of the required handouts and the written Provider Guide was mailed on November 23, 2009.

Translations of the orientation materials in Spanish, Armenian and Chinese have been completed. See Question #12 above for information on where the translated documents can be accessed online. These materials were mailed to counties the second week of December 2009. Translation of the Provider Orientation CD-ROM has been completed and they were mailed to counties the week of January 11, 2010.

### **13. When should the county require the provider to view the CD versus the written Provider Orientation Guide?**

Existing providers have the option of reviewing the Provider Orientation Guide or CD-ROM, whichever they prefer. Use of the written materials is not dependent on whether or not the provider has the means (computer) to view the CD-ROM.

### **14. Are existing providers required to attend an on-site orientation session?**

No. Existing providers are not required to attend an on-site orientation session. The options enumerated in ACL 09-54 address the options available to these providers.

### **15. When will the orientation materials include the final list of crimes that would disqualify a provider?**

Based on the ruling of the Alameda County Superior Court in the Beckwith, et al. v. Wagner court case, the crimes that would make an individual ineligible to be a provider in the IHSS program are limited to a conviction (or incarceration following a

conviction) within the last 10 years for those crimes specifically enumerated in W&IC 12305.81: 1) fraud against a governmental health care or supportive services program; 2) abuse of a child (PC section 273a); or 3) abuse of an elder or dependent adult (PC section 368). This change will be incorporated into the provider orientation training curriculum at the next revision of the materials.

**16. Is CDSS going to provide the orientation on DVD, which seems more readily useable by counties and/or providers?**

The provider orientation training covers detailed information and instruction and as determined best suited to a power-point presentation format. As a result, the format dictated our selection of the CD-ROM. We plan on revising the training materials next year and will work with our contractor, California State University, Sacramento, to adapt the format to DVD at that time.

**17. Can counties present other information that new providers would need to know about the IHSS during the orientation?**

Yes. As stated in ACL 09-54, counties are required to use the materials developed by CDSS, but they may supplement the orientation with county-specific information and/or directions.

**POST OFFICE (P.O.) BOXES**

**18. Why does the SOC 426 not contain a field for the provider to enter a P.O. Box as a mailing address?**

A mailing address field was intentionally omitted from the SOC 426 because W&IC section 12305.85(a) requires that a current or prospective provider supply his/her current physical address, rather than a P.O. Box address, when completing the SOC 426. However, because counties have specifically requested that a mailing address field be added to the form, CDSS will revise the form to include one when other revisions are required and/or when time permits. Counties/PAs/NPC must review all SOC 426s accepted to ensure that the applicant has provided a physical address, and that the physical address is designated as the mailing address unless a request to use a P.O. Box has been submitted by the provider and approved by the county/PA/NPC.

**19. How should counties implement the exception in the law allowing a provider to use a P.O. Box address?**

W&IC section 12305.85(b) allows a provider to have his/her paycheck mailed to a P.O. Box upon the county's approval of a written or oral request from the provider. ABX4 19 requires that CDSS consult with stakeholders on the implementation of W&IC section 12305.85. CDSS anticipates convening a stakeholder group to provide consultation on this issue within the next few months. In the interim,

counties/PA/NPC may approve a provider's request to have his/her paycheck mailed to a P.O. Box only under those circumstances in which the U.S. Postal Service (USPS) does not provide mail delivery to the provider's physical address. The reasons why the USPS may not provide mail delivery to an address include the following:

- 1) The residence does not meet the guidelines for city delivery, rural delivery, curbside delivery, or central point delivery. For example, the residence is located in a rural area that has been determined by local postal managers not to qualify for a rural route because roads are not public, well-maintained and/or passable year round, or the average distance between residences or businesses is greater than one mile.
- 2) The residence is located in an area that has frequent inclement weather and/or road conditions that obstruct regular delivery.
- 3) The residence does not have a mailbox that meets USPS standards.
- 4) The USPS will not deliver to the residence due to the presence of a threatening dog or other carrier safety concern.

The county/PA/NPC should file a copy of the written request or documentation of the oral request in the case file with a notation showing the name of the staff person approving the request and the date approved.

**20. The CMIPS instructions for entering a P.O. Box require a forced manual edit of the provider screen which requires additional steps. Are the forced manual edit and extra steps necessary?**

Yes. At this time, system functionality necessitates that the forced edit be used to meet the new residential address and mailing requirements discussed in the previous question and response. This programming ensures that a county worker examines this requirement while still allowing counties the option of overriding the restriction on mailing checks to P.O. boxes, if the county determines that the provider meets the county's policies and/or exemption criteria.

## **PROVIDER APPEALS**

**21. Is there a new form counties will be required to use for appeals?**

No. CDSS developed a form that Provider Enrollment Appeals Unit (PEAU) staff will use to request the criminal conviction code section(s) and conviction date(s) used by counties as the basis for declining to enroll a prospective provider or to find a provider ineligible. The form is intended to simplify the transmission of this information from the county to the state. However, counties will not be mandated to use the CDSS form; they may use their own locally-developed form for this purpose if they prefer. Counties/PAs/NPC will receive a copy of the form along with each letter from the PEAU informing them that an appeal has been filed.

## **CMIPS ISSUES**

- 22. Does the input of a termination reason code on the CMIPS Provider Enrollment screen pose any county liability in terms of violation of confidentiality of CORI received from DOJ?**

Based upon information received from DOJ, the county can provide the reason for ineligibility/termination into CMIPS and it would not violate the confidentiality of the CORI. DOJ indicated that it is acceptable for CMIPS to be updated with information that indicates that an individual is not eligible as a result of information from the criminal background check.

- 23. CMIPS is a point-in-time system; it does not track provider enrollment process. In actuality, will the new provider enrollment screens only be completed when the provider has completed the enrollment process and is either eligible or ineligible for payment?**

The ENRL screen can be accessed at any time using the provider's Social Security Number. Since it is unlikely that most providers will complete the entire enrollment process at one time, the screen was designed to allow counties to check off the necessary items as they are completed. However, be aware that the system will not allow a change in the provider's status (to eligible) on the PELG screen until the enrollment process has been completed.

- 24. Does the ENRL enrollment status update to the PELG screen when the status is changed from pending to eligible?**

No. Status on the PELG screen does not automatically change to "E" once the ENRL status is completed. More than one action must take place before the status on the PELG screen can be changed from "P" to "E." The system requires both the ENRL enrollment process to be completed AND the SSNV field on the PELG screen to be verified in "V" before the PELG status can be changed to "E."

- 25. Will the Informing Notices to providers link to the new provider enrollment screen so that notices/letters to providers can be generated automatically as they are currently when counties make changes to client eligibility and NOAs are generated?**

No. As stated in ACL 09-66, page three, counties will be responsible for generating and mailing provider enrollment eligibility notification letters.

**26. How will county staff record the provider ineligibility based on a conviction received as a result of the background check?**

The county staff will enter the ENRL screen in either “A” (add) or “C” (change) mode. In the Enrollment Status field they will enter “I” (ineligible) and enter Termination Reason Code 11-Child Abuse/Elder Abuse/Fraud Conviction. Please note that Reason Codes 03-Fraud Conviction, 04-Child Abuse Conviction, and 05-Elder/Dependent Adult Abuse Conviction have been disabled and combined into Reason Code 11-Child Abuse/Elder Abuse/=Fraud Conviction.

**27. What is the SSN verification process and how often are the results posted on provider records?**

The SSN verification process is a batch process that is performed twice a week by the CMIPS vendor. The new provider records are sent to the SSA for verification. The results of each batch will be posted to each provider record within 3 business days of when the batch was run. (The batch is customarily run on Tuesdays and Fridays, but holidays may change this schedule.) If the SSN is correct and has been verified it will be followed by a “V” on the H3 line of the PELG screen. If the SSN does not match the SSA records the provider will be included on the SSN Verification Report to be resolved by county staff. A new provider is not eligible to be paid until their SSN is in “V” status.

**APPLICATION FOR SOCIAL SERVICES (SOC 295)**

**28. Why has CDSS included additional language on the revised SOC 295 which seems to go beyond what is required by ABX4 4?**

The SOC 295 was revised to meet statutory requirements. The revised SOC 295 includes language which informs IHSS applicants of some key program aspects and recipient responsibilities, including:

- The basic responsibilities of IHSS recipients as the employer of their provider of IHSS service;
- The new requirements individuals must meet to be paid as IHSS providers; and
- New program integrity and fraud detection and prevention activities.

**29. ACL 09-63 indicates that the application form SOC 295 will be further updated and an ACL “issued with new requirements as they are implemented.” Does this mean that these instructions are not final?**

Final ACL 09-63 was released with instructions to use the revised SOC 295. A sample was attached and the new form is posted on CDSS’ Forms and Publications website ([http://www.dss.cahwnet.gov/cdssweb/FormsandPu\\_271.htm](http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm)). The statement regarding the application being further updated was included simply to

inform counties that this form will be revised again as other requirements, i.e., recipient fingerprinting and timecard fingerprinting are implemented at a later date.

- 30. The application states, “To promote program integrity, I may be subject to unannounced visits to my home and that I or my provider(s) may receive letters identifying program requirement concerns” from DHCS, CDSS, and/or the county. This statement does not specify why such visits might occur. Aren’t these visits and letters to be in a more targeted fashion and per protocols that are still to be developed per AB X4 19?**

This reference correctly conveys that recipients/providers may be subject to an unannounced home visit. It would be both premature and counterproductive to indicate which cases or case patterns would be targeted for review and/or unannounced home visits. Additionally, the protocols still must be developed with input from the county. County staff may provide clarification to recipients and providers as needed. Again, this form will be further updated as new program requirements become effective and additional experience is gained with implementation of these new program requirements.

### **PROVIDER I-9 POLICIES**

- 31. Are counties/PAs/NPC required to obtain and retain a copy of form 1-9? And, if so, how should the signed form be maintained?**

No. Completing the form I-9 is a requirement of the U. S. Citizenship and Immigration Services (USCIS). The I-9 instructions state that the form is not filed with the USCIS; it must be retained by the employer, which in the case of IHSS would be the recipient. However, as stated in ACL 09-69, some counties/PAs/NPC have made it a practice to retain these forms to assist their recipients. Counties/PAs/NPC may continue to do so provided that they are filed in a secure and confidential manner, such as in the IHSS provider’s file or in a specific I-9 file. Additionally, counties/PAs/NPC may consider archiving the documents electronically or by other means. State law specifies that storing such documents shall be accomplished in a manner that would not substantially alter its original form (Government Code section 12168.7) and federal regulations permit that Form I-9 may be signed and retained electronically (CFR 8, Section 274a.2).

### **INTER-COUNTY TRANSFERS**

- 32. What is the process for when a recipient moves from one county to another and begins receiving services from a new provider and the originating county continues to pay the case until the transfer is completed? Can the originating county pay the case upon acknowledgement from the new county that the new provider is an eligible and enrolled provider in the new county?**

Yes. In accordance with existing regulations for the inter-county transfer process, the originating county has the responsibility of continuing payment to the new provider, upon acknowledgement from the receiving county that the new provider is an eligible provider. The originating (transferring) county is responsible for authorizing and funding services until the transfer period expires, at which time the receiving county becomes responsible. The receiving county has the responsibility of assisting the recipient in obtaining an existing enrolled provider or ensuring the recipient's new provider has completed the provider enrollment requirements.

Questions or requests for clarification on policies included in this ACL should be directed to appropriate Bureau within the Adult Programs Branch, as follows:

- Criminal Background Check, Provider Enrollment Requirements, Application for Social Services, or Provider I-9 Policies .....Policy Bureau at (916) 229-4000
- Provider Orientation, P.O. Boxes, or Inter-County Transfers .....Operations & Quality Assurance Bureau at (916) 229-3494
- CMIPS Issues .....Fiscal, Administrative & Systems Bureau at (916) 229-4002
- Provider Appeals.....Litigation & Appeals Bureau at (916) 229-4016

Sincerely,

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