



CDSS

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ALL-COUNTY LETTER NO: \*\*-\*\*

REASON FOR THIS TRANSMITTAL

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

# DRAFT

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

SUBJECT: RELEASE OF IN-HOME SUPPORTIVE SERVICES (IHSS) CASE RECORDS TO APPLICANT/RECIPIENT OR AUTHORIZED REPRESENTATIVE

REFERENCE: MANUAL OF POLICIES AND PROCEDURES (MPP) SECTIONS 19-005.1, 19-005.2, 19-005.4, 19-006, 19-008, 20-005, 20-007, 20-300.23, 20-352.1, 21-115, 22-051, 22-073.232(c), 22-201.5(a)(9), 22-300.23, 22-305.5(i), 22-352.1, 23-400.2, 30-009.26; WELFARE AND INSTITUTIONS CODE (WIC) SECTIONS 10850 and 10850.2; HEALTH AND SAFETY CODE (HSC) SECTIONS 123110, and 123115; EVIDENCE CODE (EC) SECTION 1040.

The purpose of this letter is to remind county IHSS programs of statutory and regulatory requirements as well as current California Department of Social Services (CDSS) policies that govern the authority of an applicant or recipient to inspect his or her case record.

## I. APPLICANT/RECIPIENT CASE RECORDS

Pursuant to MPP 30-009.26, counties are required to maintain a case record for each applicant and recipient that establishes eligibility and a need for services. The case record must also include, but is not limited to, an IHSS application, a determination of

need for IHSS, IHSS assessment(s), and an explanation regarding termination of services, if applicable.

A case record may also include documents and information pertaining to case management, as well as information received from external sources, such as medical information, employment information, financial information and court orders.

The purpose of public assistance and social service records is to evidence eligibility and delivery of public social services. The applicant's or recipient's case record should only contain facts relevant to his or her case. (MPP 19-008)

#### General Applicant//Recipient Access to Inspect His or Her Own Case Record

In general, an applicant's/recipient's applicant/recipient case record is confidential and not open to examination for any purpose not directly connected with the administration of the program. The exceptions to this general rule are very limited and are specified in statutes and regulations. In the limited circumstances when some portion of a case record may be inspected, counties must still ensure that confidential and privileged information is not disclosed.

Welfare and Institutions Codes (WIC) section 14100.2(a) states, in part, "...all types of information, whether written or oral, concerning a person, made or kept by any public officer or agency in connection with the administration of any provision of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520) and for which a grant-in-aid is received by this state from the United States government pursuant to Title XIX of the Social Security Act shall be confidential, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program...."

WIC section 10850(a) states, "except as otherwise provided in this section, all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of that program."

WIC Section 10850.2 provides an exception to this general rule when an applicant/recipient desires to inspect his or her own case record:

"Notwithstanding the provisions of Section 10850, factual information relating to eligibility provided solely by the public assistance recipient contained in applications and records made or kept by any public officer or agency in connection with the administration of any public assistance program shall be open for inspection by the recipient to which the information relates and by any other person authorized in writing by such recipient."

MPP Section 19-005.4 provides that an applicant/recipient “may inspect the case records including the entire case narrative relating to the applicant or recipient which are held by DSS, DHS or any agency supervised by DSS with the following exceptions listed in Section 19-006.” MPP Section 19-006 prohibits disclosure of privileged information as defined by the Evidence Code, which includes documents covered by the attorney-applicant/recipient privilege and the identity of an informer, among others. However, where the case record includes the applicant/recipient’s own medical records, the applicant/recipient is the holder of the privilege, so the privilege does not prevent an applicant/recipient from inspecting them.

#### General Access to Inspect a Case Record by a Person Authorized by the Applicant/recipient

In general, non-privileged, non-confidential documents in a case record may only be inspected by the applicant/recipient who is the subject of the case record. However, other persons or groups, on behalf of the applicant/recipient, may have authorization to inspect the same documents that the applicant/recipient has authorization to inspect. Specifically, an applicant/recipient may provide written authorization for another person or group—an authorized representative (AR)—to inspect the applicant/recipient’s case record. (MPP Section 19-005.2.) An AR may be anyone the applicant/recipient chooses, including legal counsel hired and retained by the applicant/recipient to represent the applicant/recipient’s interests. For purposes of this letter, any reference to “applicant/recipient” also includes the applicant/recipient’s AR. **NOTE: The AR authorized to inspect an applicant/recipient’s case record may or may not be the same person acting as the AR for purposes of representing the applicant/recipient at an administrative hearing.**

In addition to access by an applicant/recipient’s AR, a parent or guardian of a minor is generally authorized to inspect documents in a case record that pertain to a minor with some exceptions, such as when a health care provider determines that inspection of a document retained by the county would have a detrimental effect on the provider’s professional relationship with the minor patient or the minor’s physical safety or psychological well-being (Health and Safety Code Section 123115(a)(2)).

A written authorization for an AR to inspect documents in the applicant/recipient’s case record must include the name of the AR and must be signed and dated by the applicant/recipient. (MPP Section 19-005.21.)

Once written authorization is provided, the AR is then authorized to inspect the same non-privileged, non-confidential documents that the applicant/recipient would be authorized to inspect. The written authorization shall expire one year from the date on the signed document unless the applicant/recipient expressly limits access by the authorized representative to a shorter period or informs the county that the authorization has been revoked. (MPP Section 19-005.21.) If the written authorization to inspect an

applicant/recipient's case record pertains to a pending appeal or fair hearing (state administrative hearing), the time period, unless explicitly limited or revoked by the applicant/recipient, shall extend to the final disposition of the issue involved in the fair hearing or, where applicable by the courts. (MPP Section 19-005.21.)

Telephone authorizations may be accepted by a county in lieu of written authorization when the applicant/recipient has adequately identified himself or herself to the county (MPP Section 19-005.22). Counties should ensure that adequate forms of identification are provided by an applicant/recipient or AR prior to allowing access to inspect a case record. (MPP Section 19-005.22.)

An applicant/recipient is not required to provide written authorization to allow inspection of a case record by another person when an applicant/recipient is physically present, accompanied by the person, and verbally authorizes the person to inspect documents in his or her case record. (MPP Section 19-005.21)

The county has 10 days to provide the requested documentation or notify the requestor as to why the county cannot provide the documents within the 10 day period and may extend the request by 14 days. If the county cannot provide the records within that time period, it must provide a good faith estimate to the requestor as to when it can provide the records. Counties may set timeframes to provide copies for a large quantity of documents.

#### Required and Recommended Practices to Facilitate Applicant/Recipient Inspection of His or Her Case Record

Counties should inform an applicant/recipient of the types of information and documents that are contained in his or her case record that he or she is authorized to inspect. Applicant/recipients are not required to state their reason for requesting to inspect their case record. Questions regarding an applicant/recipient's request to inspect their case record should be limited to those necessary to assist the applicant/recipient in identifying the case record information they want to inspect.

Counties must comply with an applicant/recipient's request to inspect his or her case record subject to the county's assessment and determination whether documents requested by an applicant/recipient are privileged and may not be released (MPP Section 19-006) or otherwise confidential under applicable laws. Inspection should be provided as expeditiously as possible to ensure the applicant/recipient's needs are met (e.g., request may be related to a state hearing).

Counties must allow an applicant/recipient to inspect non-confidential, non-privileged documents in his or her case record during normal business hours

An applicant/recipient must be able to inspect a non-confidential, non-privileged document in his or her case record regardless of whether the document is maintained in paper or electronic format, including scanned documents that are uploaded and stored separately from the county systems.

If an applicant/recipient requests to inspect a document in his or her case record that contains a mixture of privileged and non-privileged information as well as confidential and/or nonconfidential information, the county should assess whether the privileged and/or confidential information can be redacted or obscured to allow the applicant/recipient to inspect the remaining non-privileged and/or non-confidential portions of the document. This may require the county to print a copy of the document, redact the privileged and/or confidential information, and allow the applicant/recipient to inspect a copy of the redacted document. There may be circumstances in which the county determines that the entire document must be withheld to protect privileged or confidential information. Counties are strongly encouraged to consult with their county counsel in determining whether documents must be withheld or redacted to protect privileged or confidential information. Such consultations should be completed expeditiously to avoid an unwarranted delay in allowing an applicant/recipient to inspect his or her case record.

Counties are strongly encouraged to establish and publish written policies to assist county staff in facilitating applicant/recipient requests to inspect a case record and to ensure that an applicant/recipient understands his or her right to inspect his or her case record.

#### Limitations on Access to Inspect a Case Record: Privileged or Confidential Information

As described above, counties must allow an applicant/recipient to inspect non-privileged, non-confidential documents in his or her own case record. However, a recipient generally may not access a document that pertains to the IHSS provider, unless the IHSS provider who is the subject of the document has signed a written release authorizing the inspection. For example, even routine information received from the provider should be assessed by counties to determine if the recipient has authorization to inspect a requested document.

Other examples of information and documents that an applicant/recipient may not be authorized to inspect include: information regarding any Adult or Child Protective Services referrals; domestic abuse; criminal background; mental health and substance abuse treatment; learning disabilities; information pertaining to minors authorized by law to consent to medical treatment; and information received from a third party that was not obtained pursuant to an authorization from the applicant/recipient. In such circumstances, counties are strongly encouraged to consult with county counsel to determine whether inspection is authorized.

Due to the wide variety of individual circumstances and non-disclosure provisions that might be applicable when responding to an applicant/recipient request to inspect documents in his or her case record, it is the responsibility of the counties to perform individual assessments of each applicant/recipient request to determine if and when an applicant/recipient has authorization to inspect a document in his or her case record in its entirety or as appropriately redacted.

Again, counties are strongly encouraged to consult with county counsel when assessing whether documents in an applicant/recipient's case record must be redacted or withheld based on privilege and/or confidentiality.

#### Applicant/recipient Access to Inspect His or Her Case Record When a State Hearing is Pending or Being Considered

MPP Section 22-051 provides that, upon request, the county shall allow the claimant in a state hearing to examine the case record during regular working hours consistent with MPP Section 19-005. (MPP Section 22-051.1.) It also provides that if portions of the case record are privileged under the provisions of MPP Section 19-006, the claimant shall be entitled to inspect such material only if the claimant is the holder of the privilege. (MPP Section 22-051.11.) It further provides that the claimant shall have the right prior to and during the hearing to examine non-privileged information that the county has used in making its decision to take the action that is being appealed. (MPP Section 22-051.2.)

In addition, MPP Section 22-073.232(c) provides that the county must provide any and all information that can be of assistance to the claimant in preparing for the hearing. This includes revealing to the claimant any and all regulations and evidence, including that which might be favorable to the claimant's case.

An applicant/recipient who has requested a state hearing has the same authorization described above, to inspect non-privileged, non-confidential documents in his or her case record during business hours.

It should be noted that in addition to documents contained in the case record, the county must also reveal to the applicant/recipient laws and regulations applicable to the state hearing, including those that are favorable to the applicant/recipient, and must reproduce without charge, or at a charge related to the cost of reproduction, the regulations and other policy materials necessary for an applicant/recipient or AR to determine whether a state hearing should be requested or to prepare for a state hearing. (MPP Section 22-051.3.)

## II. BEST PRACTICES TO PROCESS REQUESTS

It is recommended that counties provide guidance and training to all county workers (i.e., social worker, county administrative staff, county hearing worker, etc.) on how to respond to an applicant/recipient request to inspect any part of his or her case record and how to assess whether a document should be withheld or redacted to protect privilege and/or confidentiality.

It is recommended that counties provide guidance to county workers on how to inform an applicant/recipient of the types of documents that he or she is authorized to inspect. An applicant/recipient shall not be required to submit a Public Records Act request to inspect his or her case record. Counties may also not condition case record inspection upon requesting a hearing or upon issues listed in a hearing request. County workers should ensure that they understand what documents the applicant/recipient wishes to inspect and should assist the applicant/recipient when warranted. A county worker should schedule an appointment, if necessary, for an applicant/recipient to inspect his or her case record as soon as practical during normal business hours that will allow sufficient time, if needed, for the county worker to review and determine if any of the requested documents should be withheld or redacted to protect privilege and/or confidentiality. The county worker's review should be completed expeditiously to avoid an unwarranted delay. A county worker should be prepared to provide an applicant/recipient access to inspect the requested documents at the scheduled appointment.

It is recommended that counties provide guidance to county workers regarding how to review a case record and how to determine when documents need to be redacted or withheld to protect privilege and/or confidentiality. It should be specifically noted that when a document contains privileged and/or confidential information, it does not necessarily mean that the document may be withheld, since the privileged and/or confidential information may be able to be redacted to allow an applicant/recipient to inspect the remaining non-privileged, non-confidential information in the document.

At the scheduled appointment, if applicable, county workers shall facilitate the document inspection by any combination of options below:

- (1) provide hard copies of the requested information or documents.
- (2) provide read-only access on the automated system to the applicant/recipient of the requested information or documents and hard copies of any documents the applicant/recipient would like to take with them.
- (3) if possible, provide a PDF file of the requested documents that have been scanned.

Regardless of the option used to facilitate the document inspection, hard copies of nonprivileged, non-confidential information must be provided to the applicant/recipient if requested. County workers should be capable of navigating or assisting an applicant/recipient to navigate through a county's automated system. County workers should carefully navigate through a county automated system in the presence of an applicant/recipient to ensure that the applicant/recipient does not inspect information that does not pertain to him or her or has been determined to be privileged and/or confidential, unless the system has been programmed to prevent applicant/recipient access to privileged and/or confidential information and documents. In general, whether the applicant/recipient's inspection is conducted in paper or electronic form, the inspection should occur in an area that is private, to prevent other persons who are not authorized from inspecting the documents. County workers are not required to be present when an applicant/recipient inspects requested documents if the documents have been reviewed and confidential or privileged documents have been withheld or properly redacted.

If a dispute arises between an applicant/recipient and the county worker regarding the requested inspection of all or portions of the case record, it is recommended that counties develop and implement a dispute resolution process that may include a review and assessment by a first line supervisor of the county worker who prepared the information or documents for inspection. It is also recommended that counties identify reasonable timeframes in which an applicant/recipient will be informed of the county decision regarding the dispute. Counties are strongly encouraged to post the dispute resolution process, if applicable, on their websites.

#### Applicable Fees for Duplication of Inspected Documents

1. Copying Fees for General Inspection:

Counties may provide free copies of requested documents to applicant/recipient or may charge an applicant/recipient for copying the requested documents.

2. Copying Fees for a State Hearing:

Pursuant to MPP Section 22-051.3, counties shall "...reproduce without charge, or at a charge related to the cost of reproduction, the specific policy materials, including regulations, necessary for an applicant or recipient, or his/her authorized representative, to determine whether a state hearing should be requested or to prepare for a state hearing."

Inspection and Translation of Documents

Counties are reminded that in accordance with the Americans with Disabilities Act (ADA), counties are required to provide reasonable accommodation (i.e., enlarged print, CDs, EW reading the documents, etc.) to an applicant/recipient who is unable to inspect requested documents from his or her case record in the original form.

Questions regarding the content of this ACL may be directed to the Policy and Operations Bureau within the Adult Programs Policy and Quality Assurance Branch at (916) 651-5350.

Sincerely,

DEBBI THOMSON  
Deputy Director  
Adult Programs Division

Attachment

DRAFT