

CICA Statewide Call  
April 20, 2016  
10 a.m. to 11 a.m.

Notes

In attendance:

Michele Geving, San Diego	SEIU 2015, Eureka
Thomas Meadows, Riverside	Joe Samora, Sacramento
Michael Conon, San Diego	Joey Riley, San Diego
Elaine Paoli, Napa	Felicia Connelly, Mendocino
Janet Canterbury, PASC	Frances Smith, Yolo
Rick Simonson, Sacramento	Randi Bardeaux, Riverside
Janie Whiteford, Santa Clara	Kristine Loomis, Riverside
Margareta Jorgensen, Orange	Louise Osejo, Mendocino
Becky Stockton, Lake	Janet Clark, Calaveras
Mark Beckham, SF	Tami Orr, Shasta
Jervae Anthony, San Diego	Lucy Cherryl, Palmdale
Cindy Calderon, Humboldt	K. McCarrell, Spokane, WA
Kelsie Rivera, Mendocino	Heidi Aharonian, Orange
Mitchell, Sitting in for Michael Riser Fresno	Nancy Anderson, Riverside
Sandi Hilton, Solano	Staci
Charissa Miguelino, CDSS	Brad Toy, Yolo
Lena Berlove, Orange	Susan Pellingrino

**Orange County Announcement:** The position of Executive Director is open – **this was mailed out to CICA's mailing list April 21, 2016**. The Qualifications for the position was read. The closing date is April 25<sup>th</sup>!

**Charissa Miguelino, CDSS** spoke regarding exemptions – Two All County Letters have been released, [ACL 16-07](#) & [ACL 16-22](#) dealing with exemptions.

She shared a short overview of the two exemptions and a brief description of when they were presented. The below is taken directly from the two ACLs that gives more detail on these exemptions.

**EXEMPTION 1: LIVE-IN FAMILY CARE PROVIDERS ([ACL 16-07](#))**

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: The Extraordinary Circumstances Exemption** **([ACL 16-22](#))**

### Exemption Criteria

To be considered for Exemption 2, the provider must work for two or more IHSS recipients whose circumstances put them at serious risk of placement in out-of-home care.

In order to qualify for Exemption 2, all recipients the provider works for must meet at least one of the following conditions:

- A. Have a complex medical and/or behavioral needs that must be met by a provider who lives in the same home as a recipient.
- B. Live in a rural or remote area where available providers are limited and as a result the recipient is unable to hire another provider.
- C. Be unable to hire a provider who speaks his/her same language in order to direct his/her care.

The provider need not live in same home as the recipient(s) to qualify for Exemption 2 if the recipients meet conditions b and/or C above.

Evaluation of cases to determine whether an exemption will be granted or denied will be conducted by CDSS and counties.

An extraordinary circumstance is one in which all possible options for finding another provider to work within the recipients' authorized weekly and monthly hours have been explored and exhausted by both the recipients and the county and no other provider is available.

As a result, the only viable option during a specific period is to determine the recipients have extraordinary circumstances, and apply Exemption 2 allow the IHSS provider to work beyond the statutory workweek limitations to maintain continuity of care and ensure that the IHSS recipients are able to remain safely in their homes.

**CRITERIA A: COMPLEX MEDICAL AND/OR BEHAVIORAL NEEDS**

A complex medical and or behavioral condition for the purpose of Exemption 2 means that ab IHSS recipient has personal care services authorized in the IHSS program, pursuant to the Manual of Policies and Procedures (MPP) Section 30-757 et seq., which requires specific attention and care, and these services cannot be provided by anyone other than their primary IHSS provider without having an impact on the recipients' physical tolerance and/or behavioral temperament as it relates to a mental health condition (e.g. autism spectrum disorder, dementia, Alzheimer's, etc.). If services were provided by someone other than the existing provider, it would cause the IHSS recipient harm due to physical and/or emotional stress leading to out-of-home care.

**CRITERIA B: LIMITED PROVIDERS DUE TO RURAL OR REMOTE LOCATION**

For purposes of determining whether a recipient meets the condition of living in a rural or remote area, the United States Census Bureau definition of "rural" will be the standard for both rural and remote areas. According to that definition, a rural area is defined as, "all territory, population, and housing units located outside of urbanized areas ad urban clusters. Urbanized areas include populations of at least 50,000, and urban clusters included populations between 2,500 and 50,000 (<https://www.census.gov/geo/reference/urban-rural.html>).” Counties are best suited to determine which areas within their geographic boundaries qualify as rural and/or remote; therefore, when submitting a referral for exemption 2, the county must indicate whether the location where the recipient resides meets the established standard for being considered rural or remote.

### **CRITERIA C: LANGUAGE/COMMUNICATION BARRIER**

When determining whether an extraordinary circumstance exists related to the recipient's inability to hire a provider who speaks his/her same language, the county must determine the extent to which the circumstance presents a barrier in the provision of the recipient's authorized services. Simply because a recipient is unable to hire a provider who speaks his/her same language does not necessarily mean that the recipient is unable to direct his/her own care. Certain tasks, e.g. domestic and related services tasks, do not require significant direction by the recipient; thus, they could be performed by a provider who does not speak the recipient's same language. Even other tasks, including some personal care services, which require the recipient to direct the provider to some degree, could be accomplished effectively by a provider who does not speak the recipient's same language after initial interpretation assistance. An extraordinary circumstance only exists when the recipient's inability to hire a provider who speaks his/her same language results in a consistent barrier to the recipient directing his/her own care which cannot be overcome.

**Charissa added:** It was noted using the CIMPS information individuals affected by the changes have been identified who qualify for the exemptions and letters have been sent out to them. Noted because how exemption 2 was just released not everyone may have been contacted. Questions have been received but justification forms have not come in yet

Almost missed: If the exemption is granted, the provider can work up to 360 hours in a month, and this is the max for the provider.

**Question from Randi:** When the FLSA first came on, it was estimated that approximately 10,000 recipients would be affected adversely. Will these exemptions protect these people?

**Response:** I do not know the extent of those numbers. Using the CIMPS numbers for those that may fall under Exemption 1 letters were sent out. Those that fall under Exemption 2, letters were mailed out two-weeks ago from information gathered from CIMPS. She was a little familiar with the numbers, but did not state if it was connected to them specifically. It was

believed the numbers given has changed since this was after the Legislation pass SB 855 & 873.

**Question from Kristine:** About people who might have slipped through the cracks and adversely affected. Have you got any way of looking back for these people? Or, either exemption?

**Charissa Response:** For Exemption 1 they may contact the County for the appropriate form and it was admitted there may have been some who slipped through the cracks because of wrong coding and so forth, so they can still submit the proper information through the county.

Regarding exemption 2, it is not known if they will fall through the cracks. It is up to the County Social Workers' duty to identify those who fall into this exemption and they are to work with the consumer in identifying who may fall into this exemption. This is in the All County Letter (ACL) about the Social Workers' duty to identify those who qualify for this exemption. It is also open to change for individual recipients whose conditions may change; like next year they may move to an area where exemption 2 guidelines are valid and they fall into this exemption and need it. There is no closure to this exemption, it is open ended because a recipient's condition or situation could change.

**Question from Janie:** Is there a timeframe when the State has to respond to the paperwork, like two-weeks or other time?

**Charissa Response:** For us at the State we try to within two weeks or as quick as possible. But sometimes the county may not have provided the proper documentation justification for exemption 2 as it should so it could take longer.

For exemption 1 is very clear and should move on as quickly as possible.

**Question from Joey:** On behalf of another regarding an individual who had their SOC 2255 denied. They have two children with one having maximum Protective Services and the other being assessed. The Notice of Action (NOA) was received for the first child and it was appealed with the judge ordering the additional hours. The second child never received it proper approval and the County denied it for the exemption because it was

after the January 31<sup>st</sup> date, even though the original assessment was done prior to this date.

It was also shared that the county social workers (San Diego) have over 350 clients assigned to them and are over worked. When paperwork is not received individuals are providers are being terminated without any follow-up and opportunity to reschedule an appointment straighten the paperwork out. They do not find out they are terminated until after they do not receive a paycheck and then they call in to be told they were terminated because certain paperwork was not turned in. This is the kind of relationship happening, no relationship between the Social worker and the clients they serve. This idea there is a good relationship between the Social Worker and the Recipient and provider is not there, it seems more hostile.

Then, what if there is another category such as not being able to retain a provider because of the low pay, minimum wage and no health care?

**Charissa response:** That is not one of the exemptions. On the other the individual has appeal rights. (Bean's Note: Why is there not someone available to assist individuals with appeals in the county offices?)

**Question from Tami of Shasta County:** As a provider who has cared for her brother for 55 years, why are siblings not included as family? I have been is provider for 14 years through IHSS. Have 420 hours with him. I have not received anything in regards to IHO. I have tried to get information from my local office, I been waiting 8 months to talk to somebody and do not know who my social worker is, I have gone down to the local Social Services Office to talk to someone, which is a locked up facility and it is difficult to see anyone.

Wonder why I have seen a 36 page document on violations but not seeing the forms needed. No workers are not working with us or returning calls.

I am filling all the paperwork out for the waiver but it is late.

(Note: Get address and information about Tami).

**Charissa response:** IHO is handled through Health Care Services and I am only talking with services connected to IHSS. Health Care Services is

a different Department and there is WPCS has a program for your situation, but that is under the Health Care Service Department. Will try and get someone to contact you.

**Staci Wright question:** Has three children with 200 plus hours each, only claims what is worked. Being told she needs to hire more Providers but in San Diego it is difficult to find a provider who will work for minimum wage, even \$15 an hour. Social Workers are not listening or returning calls, a different case worker every year. Worried because just is not going to be seen as the only suitable provider.

**Charissa Response:** Complete the paperwork for exemption 1 and return it. There was policy provided for your situation in ACL 16-07 and recommend you call the number on the paperwork sent you.

**Question from Michael:** What is a provider supposed to do if they are rejected and how they go about the appeal about the exemptions?

**Charissa response:** There is no appeal process for exemption 1, clarification on this if you receive a denial for the exemption 1 you should receive a number on the document received to talk to someone about this and clarify information if you are denied. 2255 is just a work agreement form, there is no denial of this.

**Becky question:** Do these exemptions work with WPCS hours, can they combine the IHSS and WPCS hours, 360 per month allowed to work?

**Charissa Response:** Yes, the combined hours are okay with these exemptions, but the provider can still only work 360 hours per month. There is another waiver being developed through HCSD to address those who need to work more hours, but it has not been released. (Note: when this information is release CICA will share it with those on its mailing list)

If there are additional questions for Charissa, please send them to Charlie at [info@cicaihss.org](mailto:info@cicaihss.org) and he will get the response back to all.

**Susan question:** When was the WPCS new waiver to come out, May 1<sup>st</sup>?

**Charissa response:** That was her understanding and will follow-up.

**Note:** SOC 846 letter has been sent out so there is no longer a deadline for getting this in. People are reminded to get it in as soon as possible.

Fran shared information about the Senior Rally Day scheduled for May 11<sup>th</sup>. Flyer has been forwarded. Senator Brown is providing free lunches so it is important to RSVP. Link is provided on the flyer.

Team visits will be made to different representatives offices.

Are there talking points for use by those who live far away? If these are forwarded Susan Reed works for Senator Lou share we need to talk to individuals not showing their support.