



# **In-Home Supportive Services Program**

Report to the Legislature  
on the Impact of the  
Fair Labor Standards Act  
Overtime Rule

**Preliminary Report**

**March 2017**

**California Department of Social Services**  
Adult Programs Division  
CMIPS II Research, Data, and Analysis Unit

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## Executive Summary

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On October 1, 2013, the United States Department of Labor (DOL) published the Final Rule on the Application of the Fair Labor Standards Act (FLSA) to Domestic Services (RIN 1235-AA05), also known as the FLSA Overtime Rule. The Final Rule removed the ability of “third-party” agencies to claim a companionship exemption from minimum wage and overtime pay rules for personal care workers. As a result, the In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) providers became eligible for overtime, travel time, and wait time. Senate Bills (SB) 855 and 873 (Chapters 29 and 685, Statutes of 2014) were enacted to implement the DOL Final Rule in the IHSS and WPCS programs.

Following their enactment, the California Department of Social Services (CDSS) and the Department of Health Care Services (DHCS) worked with stakeholders to implement these new federal requirements. Stakeholder meetings were held, policy was written, forms were created, system changes were made, and the payment of overtime, travel time, and wait time compensation to providers of IHSS and WPCS went into effect on February 1, 2016.

SB 855 also required CDSS to conduct a 24-month study of the impact of the FLSA Overtime Rule on the IHSS Program. The purpose of this report is to provide preliminary information about the impact of the Final Rule on IHSS to the Legislature. A full report will be published upon the completion of the 24-month study, in early 2018.

This preliminary report describes the provider outreach and training efforts that were initially conducted and are ongoing; implementation of the required overtime, travel time and wait-time compensation requirements; overtime exceptions and the exemptions criteria and process; the violations and dispute process; and the State Administrative Review process. This report also provides information on additional policy and Case Management Information and Payrolling System changes.

Since the implementation of overtime, travel time, and wait time, the following occurred between July and December 2016:

### **Overtime**

- Since implementation of overtime, on average of 101,143 providers per month are paid overtime. This is 24% of paid providers. These providers are paid an average of 61.3 hours of overtime per month.

### **Travel Time**

- Since the implementation of travel time, an average of 6,954 providers per month are paid travel time. These providers are paid an average of 15.1 hours of travel per month.

### **Wait Time**

- The statewide average authorized hours for Medical Accompaniment increased from 2.3 to 2.6.
- The statewide average authorized hours for Accompaniment to Alternative Resources increased from 6.1 to 6.6.

**Exemptions**

- There have been 1,354 providers approved for Exemption 1, 52 for Exemption 2, and 753 for WPCS Exemption, totaling 2,159 approved exemptions.

**Violations**

- Of the average 83,243 paid providers serving multiple recipients, an average of 2% have received a violation each month.
- Of the average 334,514 paid providers serving one recipient, an average of 1% of the providers received a violation each month.

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## Purpose of Report

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The purpose of this report is to provide preliminary information regarding the impact of the Fair Labor Standards Act (FLSA) Overtime Rule on the In-Home Supportive Services (IHSS) Program per Senate Bill 855 (Chapters 29, Statutes of 2014) and Welfare and Institutions Code (WIC) § 12300.41(b) by April 2017. A full report will be published upon the completion of the 24-month study.

## Background

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On October 1, 2013, the United States Department of Labor (DOL) published the Final Rule on the Application of the FLSA to Domestic Services (RIN 1235-AA05), also known as the FLSA Overtime Rule. The Final Rule removed the ability of “third-party” agencies to claim a companionship exemption from minimum wage and overtime pay rules for personal care workers. As a result, the IHSS and Waiver Personal Care Services (WPCS) providers became eligible for overtime, travel time, and wait time.

Senate Bills (SB) 855 and 873 (Chapters 29 and 685, Statutes of 2014) were enacted to implement the DOL Final Rule in the IHSS and WPCS programs.

### SB 855

- Established provider maximum weekly work hours of 66.
- Allowed travel time up to seven hours per week for certain providers.
- Authorized a new service known as "wait time."
- Established a three-month transition period for recipients and their providers to learn the new rules.
- Required an IHSS provider to inform recipients of the number of hours he/she is available to work for that recipient.

### SB 873

- Allowed an IHSS recipient with a single provider to allow, with county approval, his/her provider to work in excess of the weekly authorized hours if the additional overtime hours of work do not exceed the total number of hours that the provider would be authorized to work in that month.

Following their enactment, the California Department of Social Services (CDSS) and the Department of Health Care Services (DHCS) continued working with stakeholders – counties, recipients, providers, and advocates – to implement these new federal requirements. Stakeholder meetings were held, policy was written, forms were created, system changes were made, for an effective date of January 1, 2015.

Judge Leon of the U.S. District Court, District of Columbia issued the following court orders:

- December 22, 2014 – vacated the section of the DOL Final Rule which precluded third-party employers from claiming applicable wage and overtime exemptions for services provided by live-in providers and employees performing companionship services.

- December 31, 2014 – granted a Temporary Restraining Order which stayed implementation of the DOL regulation on the revised definition of companionship services from going into effect until January 15, 2015.
- January 14, 2015 – issued a ruling, vacating the DOL’s revised companionship services definition that was scheduled to go into effect on January 15, 2015.

As a result of the last federal court order, on January 15, 2015, CDSS halted implementation of the changes related to overtime, travel time, and wait time pay for all IHSS and WPCS providers.

On August 21, 2015, the Appellate Court for the District of Columbia Circuit reversed the District Court’s decisions [*Home Care Association of America v. David Weil* (2015) 799 F. 3d 1084]. This decision reinstated DOL’s Final Rule and thus SB 855 and 873. As a result, CDSS began reinstating the implementation of the overtime, travel time, and wait time requirements for IHSS and WPCS providers.

On November 6, 2015, the State announced that the payment of overtime, travel time, and wait time compensation to providers of IHSS and WPCS would be effective as of February 1, 2016.



## Stakeholder Process

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As with all changes to the IHSS Program, CDSS obtained stakeholder input in all areas of the overtime, travel time, and wait time changes. The stakeholders included recipients, providers, counties, Public Authorities (PAs), County Welfare Director's Association (CDWA), labor organizations, and advocates, among others.

A few of the notable areas worked on together were:

- **Mailers/Notices for Recipients and Providers**

CDSS worked with stakeholders to develop mailers/notices for recipients and providers. Several workgroup meetings took place in order to walk through the mailers/notices and to give an opportunity to our stakeholders to provide their feedback from the counties, PAs, advocates, and labor organizations.

- **All-County Letters (ACLs)**

CDSS released multiple ACLs to provide counties with instructions, including the policies and procedures for implementation of the overtime and workweek requirements (pursuant to SB 855 and SB 873). These included revised forms and notices. Prior to release, CDSS stakeholders reviewed the draft ACLs and provided their input.

- **Exemption Criteria**

CDSS held discussions with counties and stakeholders to develop the criteria, requirements, and extraordinary circumstances that must exist for IHSS recipients and providers to qualify for exemptions from certain overtime rules.

- **Forms**

CDSS worked with stakeholders to develop forms, such as Travel Claims, Timesheets, Notice of Action Messages, etc.

- **Training for Providers/Recipient**

Training provided across the State and online, improving on late 2014 efforts.

- **CMIPS II System Changes**

Reports and changes to the system to fit the needs of the user such as:

- Creation of new FLSA forms and notifications

- New system functionality to calculate Overtime and Travel Time

- New functionality to determine Overtime and Travel Time Violations

- Exemption/Exception Processing

- Flexible Hours, Workweek Limitations and Violation Disputes

- State Administrative Review Process for IHSS and WPCS

- New Data Reports/Downloads

## **Outreach and Training**

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In conjunction with stakeholders, CDSS engaged in an extensive communication campaign. This campaign included statewide informational mailings, a training video that was made available on the internet and for counties and PAs to show locally and trainings for trainers so that information could be disseminated to providers in the most personalized methods possible.

CDSS' participating partners included: 58 county IHSS offices, 56 PAs, labor organizations including Service Employees International Union (SEIU) and United Domestic Workers (UDW) staff and members/providers, IHSS advocacy organizations, such as Disability Rights of California and California In-Home Supportive Services Consumer Alliance, and DHCS staff.

### **Recipient and Provider Mailings**

As part of the implementation of the FLSA requirements, two separate mailings were sent to recipients and providers to introduce changes to the IHSS and WPCS programs for workweek, travel time, and overtime requirements. All forms were produced in the four threshold languages and included instructions that informed recipients/providers that these forms needed to be completed, signed, and returned, as applicable, to their county of record.

The first statewide mailing (December 2015 through January 2016) included the following information and forms:

- Recipient Important Information (TEMP 3002), informational only
- Provider Important Information (TEMP 3001), informational only
- IHSS Program Provider Enrollment Agreement (SOC 846), to be returned to county; return envelope included

The second statewide mailing (February 2016) included the following information and forms:

- Informational stuffer
- IHSS Program Provider Workweek Agreement (SOC 2255), to be returned to county; return envelope included
- IHSS Program Recipient Workweek Agreement (SOC 2256), to be returned to county; return envelope included
- IHSS Program Provider Notification of Recipient Authorized Hours & Maximum Weekly Hours (SOC 2271), informational only
- IHSS Program Recipient Notification of Maximum Weekly Hours (SOC 2271A), informational only

### **Training Video**

In January 2016, CDSS released an informational video providing detailed updates about the new FLSA overtime and travel provisions. The video covered topics such as important terms, overtime pay, travel time compensation, timesheet completion, new and revised IHSS forms, travel claim form processes, and violations.

The video was developed in collaboration with San Diego State University Research Foundation (SDSURF) to assist recipients and providers in understanding the new program changes and correctly completing the IHSS timesheets and travel claim forms. The video also provided tips on how to prevent timesheet mistakes that could create payment delays and potentially cause violations.

This video is available on the CDSS website at the following link:

<http://www.cdss.ca.gov/inforesources/IHSS/Training-Academy>. Also, SDSURF distributed an initial DVD to each county and Public Authority statewide.

On February 1, 2016, CDSS mailed out a two-page informational notice to all IHSS recipients and providers encouraging them to view the informational video.

The video was translated in the State threshold languages for the IHSS population: Armenian, Chinese, and Spanish as required by Government Code § 7295.2, and included closed captioning for the hearing-impaired. The video translations were made available on the CDSS website in the Spring of 2016 and were distributed to the counties and PAs thereafter.

### ***Localized Training***

In February and March 2016, CDSS conducted eight FLSA Training-for-Trainer sessions. These three-hour, in-person sessions were offered statewide to approximately 320 trainers at the counties, PAs, and labor organizations.

In these trainings for the local trainers, CDSS provided educational materials and tools to train IHSS staff, recipients, and providers on the new FLSA requirements affecting the IHSS program. The trainings included an overview of the following topics: key terms, new and revised forms, the county adjustment/exception process, timesheet completion, travel time, the various IHSS recipient to provider relationships and its correlations to the weekly hourly limitations, and violations.

CDSS provided trainers with training curriculum (i.e., a PowerPoint presentation with trainer notes, informational notices, fact sheets), a copy of the FLSA informational video, and sample participant training materials including an IHSS Recipient/Provider Handbook, a corresponding worksheet packet containing exercises and sample scenarios, a participant agenda, and a laminated wallet card.

All materials were available in English, Armenian, Chinese, and Spanish and were made accessible to blind and visually-impaired individuals.

CDSS requested FLSA training plans from the counties and PAs to demonstrate how they will deliver training to their staff and IHSS recipients/providers. In an effort to assist counties and PAs in managing competing priorities, submission of training plans was made voluntary and optional. The following information reflects the counties and PAs that provided their voluntary FLSA training plans:

- 21 of the 58 counties (36%) provided an FLSA training plan
- Nine of the 56 PAs (16%) provided an FLSA training plan

Of the 26 FLSA training plans received:

- 100% will provide an in-person training, webinar, or both
- 96% will be utilizing CDSS' FLSA T4T training materials
  - 40% will use supplemental training materials in addition to the materials provided by CDSS
- 83% included their FLSA training schedule

Due to the volume of interest, CDSS also offered a 3-hour, FLSA T4T webinar session on Tuesday, March 8, 2016. At the conclusion of all FLSA T4T sessions, CDSS provided training to 420 participants statewide.

As part of an ongoing effort to train county staff and other participating stakeholders, CDSS is developing an FLSA training module that, after testing, will be incorporated into the IHSS Training Academy core curriculum. The initial module is expected to be piloted in Spring 2017.

## **Implementation of Overtime, Travel Time, and Wait Time Compensation**

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As of February 1, 2016, CDSS began compensating providers for overtime, travel time, and wait time. Overtime is paid at a rate equal to one and one-half times the regular rate of hourly pay when a provider's time worked exceeds 40 hours per workweek. Workweeks are defined in statute as the period beginning at 12:00 a.m. on Sunday and including the next 168 hours, terminating at 11:59 p.m. the following Saturday.

Travel time is paid when a provider works for multiple recipients and travels from one recipient to another in the same workday. Wait time is paid when a provider assists a recipient with accompaniment to a medical appointment or alternative resource and must remain engaged in providing care while the recipient waits for the appointment.

Below are details regarding implementation, along with details about compensation for overtime, travel time, and wait time, pursuant to SB 855 and 873.

### ***Notification of Maximum Weekly Hours***

In order to assist a recipient with scheduling his/her provider(s)'s weekly hours, he/she receives the IHSS Program Recipient Notice of Maximum Weekly Hours (SOC 2271A) form, which informs the recipient of his/her maximum weekly hours. Each provider of an IHSS recipient is informed of his/her recipient's maximum weekly hours and the services he/she may provide via the IHSS Program Provider Notice of Recipient Authorized Hours and Services (SOC 2271) form. Both of these documents were released beginning February 1, 2016 and are used by both recipients and providers to aid in establishing the weekly work schedule of the providers. Recipients and providers receive these notifications whenever there is a change in the recipient's authorized monthly hours, coinciding with the release of the Notice of Action informing the recipient of the change in hours and/or whenever a new service is added or a service is eliminated.

### ***Overtime and Workweek Agreements***

WIC § 12300.4 limits how many hours an IHSS provider may work in any workweek. WIC §12301.1 further requires each IHSS recipient to have their monthly authorized hours converted into a maximum number of weekly hours that can be distributed to his/her provider(s). Effective February 1, 2016, this maximum number of weekly hours is calculated by dividing the total number of the recipient's monthly authorized hours by four. This calculation determined by CDSS and stakeholders to be the most efficient method to ensure that IHSS recipients would receive all of his/her authorized monthly hours regardless of the number of days within the month itself. It also allows a single provider to meet the needs of a single recipient.

This calculation provides a guideline for recipients to effectively budget his/her service hours to ensure all of his/her monthly hours are received. However, since most months are slightly longer than four weeks, the recipient continues to allocate his/her authorized monthly hours throughout the month to ensure he/she has enough hours to meet his/her needs throughout each month.

This allocation does not represent a change in the previous process insofar as recipients were required to properly allocate their monthly authorized hours throughout the month to

ensure that they meet their needs throughout each month, regardless of the number of days or weeks within the month. The weekly hour's calculation is most critical for those recipients whose maximum weekly hours exceed 40 hours in the workweek, as this determines that the recipient's workweek schedule has the potential to include overtime hours for his/her provider(s). (See the *Exceptions and Exemptions* section for how overtime hours are approved.)

A new FLSA timesheet was developed to assist the providers on the claiming of hours within the FLSA guidelines. The maximum number of hours an IHSS provider can claim on his/her timesheet depends on the number of recipients for whom the provider works. In no case can a provider claim more hours working for a recipient than that recipient is authorized in a month.

There is no change in the process for how a provider works within a recipient's monthly authorized hours if a month begins or ends in the middle of a workweek. When the new month begins in the middle of the week, the provider may finish working the authorized monthly hours in the first month. When the next month begins, the recipient's hours reset, and the provider can begin providing authorized services for that month. The hours worked in the week between the two months must be worked in accordance with the recipient's maximum weekly hours and the workweek agreement.

In July 2016, FLSA data became regularly available in a standardized format as a monthly CMIPS data download. From July to December 2016, 24% of IHSS providers earned overtime on top of their regular pay. On average, these providers were paid 61 overtime hours each month.

**Figure 1: IHSS/WPCS Providers Paid Overtime**

	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jul-16 thru Dec-16 Avg.
All Providers Paid <sup>1</sup>	419,622	426,062	427,798	429,887	429,619	429,554	<b>427,090</b>
All Providers Paid Overtime <sup>2</sup>	100,029	102,040	98,009	103,902	99,670	103,210	<b>101,143</b>
Percent of Providers Paid Overtime <sup>3</sup>	24%	24%	23%	24%	23%	24%	<b>24%</b>
Overtime Hours Paid	6,355,735.7	6,422,288.2	5,532,723.4	6,931,553.0	5,675,818.6	6,311,621.0	<b>6,204,956.6</b>
Avg. Overtime Hours Paid per Provider <sup>4</sup>	63.5	62.9	56.5	66.7	56.9	61.2	<b>61.3</b>

When a recipient has more than one provider, statute requires that a provider inform each of

<sup>1</sup> Providers paid in the month specified, regardless of service period.

<sup>2</sup> Same as <sup>1</sup>.

<sup>3</sup> Out of all providers paid in the month specified, regardless of service period.

<sup>4</sup> Overtime hours paid in the month, regardless of service period, divided by the providers paid overtime in the month.

is/her recipients of the number of hours he/she is available to work for that recipient. To help facilitate this requirement, CDSS created the IHSS Program Recipient and Provider Workweek Agreement (SOC 2256) form to serve as a tool to assist those recipients with multiple providers to establish a work schedule that complies with the recipient's maximum weekly hours. Additionally, the workweek agreement ensures that there will be a sufficient number of providers to serve the recipient's authorized monthly hours. The SOC 2256 is only necessary if a recipient has multiple providers and must be completed and signed by the recipient and each of his/her providers. It documents the number of hours each provider will provide authorized services for the recipient each workweek.

The total number of hours in the workweek agreement must correspond to the recipient's maximum weekly hours. It should be noted that the workweek agreement is a guideline and a recipient may choose to have his/her providers work different hours within the week, as long as the providers stay within the recipient's maximum weekly hours and under 66 hours if the provider works for multiple recipients. This form also served to surface situations in which additional providers may be needed to ensure recipient health and safety.

The section on *Exceptions and Exemptions* provides details about the overtime flexibility that has been provided to recipients with specific needs.

From July to December 2016, on average 19% of all paid providers served multiple recipients. The rest of the providers served only one recipient.

**Figure 2: IHSS/WPCS Providers Working for Multiple Recipients**

	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jul-16 thru Dec-16 Avg.
All Providers Paid <sup>5</sup>	419,622	426,062	427,798	429,887	429,619	429,554	<b>427,090</b>
Paid Providers Serving Multiple Recipients <sup>6</sup>	82,177	83,244	83,273	83,551	83,638	83,576	<b>83,243</b>
Percent of Paid Providers Serving Multiple Recipients <sup>7</sup>	20%	20%	19%	19%	19%	19%	<b>19%</b>
Paid Providers Serving Multiple Recipients who were Paid Overtime	39,522	40,225	38,163	40,749	38,866	40,080	<b>39,601</b>
Overtime Hours Paid to Providers Serving Multiple Recipients	2,299,586.3	2,312,731.1	1,913,911.7	2,377,536.6	1,941,775.7	2,121,024.0	<b>2,161,094.0</b>
Avg. Overtime Hours Paid per Provider Serving Multiple Recipients <sup>8</sup>	58.2	57.5	50.2	58.3	50.0	52.9	<b>54.5</b>

<sup>5</sup> Providers paid in the month specified, regardless of service period.

<sup>6</sup> Same as <sup>5</sup>.

<sup>7</sup> Out of all providers paid in the month, regardless of service period.

<sup>8</sup> Overtime hours paid in the month to these providers, regardless of service period, divided by these providers who were paid overtime in the month.

## ***Travel Time***

If a provider serving multiple recipients works for more than one recipient at different locations on the same day, he/she is eligible to be paid for time spent traveling between the two recipients, up to seven hours per workweek. Travel time payment covers the time it takes the provider to travel directly from the location where he/she provides services for one recipient to another location where he/she provides services for a different recipient on the same day.

The provider will get paid for actual travel time regardless of the method of travel used (e.g. driving a car, taking public transit, walking, riding a bicycle). The cost of the travel (e.g. gas or bus fare) is not compensable.

The provider is responsible for keeping track of his/her travel time each week so that he/she can report it on the travel claim form. The time spent traveling between recipient locations does not count toward the provider's maximum weekly hours of 66 hours or the recipient's maximum weekly hours and is not deducted from any recipient's monthly authorized hours.

To calculate the wage rate when traveling from a recipient in one county to a recipient in another county, the provider must indicate on the travel claim form which recipient he/she is traveling to since the wage rate for that travel will be determined by the collectively bargained wage for the destination county.

If the provider's claimed travel time adds up to more than seven hours per workweek, the county is required to work with the provider to rearrange the provider's work schedule to ensure his/her claimed travel time is no more than seven hours per workweek. If the provider submits a travel claim form claiming travel time of more than seven hours in a workweek, he/she will get paid for the travel time claimed but will be assessed a violation (see *Violations* section).

To assist IHSS providers eligible for travel time, CDSS created the IHSS Program Provider Workweek and Travel Agreement (SOC 2255) form. This form must be completed in order for a provider to be compensated for his/her travel time. The SOC 2255 includes the travel time section in Part B, which requires the provider to indicate the names of the recipients he/she is providing services to, as well as the addresses and the estimated travel time. Without this information, payment for travel time cannot be processed.

From July to December 2016, providers who were approved for travel time were paid an average of 15.1 hours of travel each month. Out of these approximately 7,000 IHSS providers who were paid travel time, on average, 62% of travel time was paid as overtime.



**Figure 3: IHSS/WPCS Providers Paid Travel Time**

	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jul-16 thru Dec-16 Avg.
Providers Paid Travel Time <sup>9</sup>	5,456	7,225	7,123	7,333	7,239	7,345	<b>6,954</b>
Travel Hours Paid per Provider	48,457.4	128,190.3	107,335.8	128,270.3	112,266.5	117,322.0	<b>106,973.7</b>
Avg. Travel Hours Paid per Provider <sup>10</sup>	8.9	17.7	15.1	17.5	15.5	16.0	<b>15.1</b>
Avg. Travel Overtime Hours Paid per Provider <sup>11</sup>	5.6	11.2	8.7	11.2	9.9	9.5	<b>9.4</b>
Percent of Travel Hours Paid as Overtime <sup>12</sup>	63%	63%	58%	64%	64%	59%	<b>62%</b>

Once the SOC 2255 has been received by the county IHSS office and entered into CMIPS, the system will automatically generate a request for a Travel Claim Form to be sent to the provider from the Centralized Print Vendor at the Employment Development Department. After that point, each time a timesheet is sent to the provider, it will be accompanied by a Travel Claim Form. The timesheet and Travel Claim Form must be sent in a single envelope to the Timesheet Processing Facility (TPF).

Once received, the Travel Claim Form will be evaluated to ensure it conforms with the information provided by the provider in the “Part B. Travel Time” section of the SOC 2255.

**Wait Time**

The DOL rule provided two definitions for the different types of wait time: time spent engaged to wait and time spent waiting to be engaged.

- “Engaged to wait” means that the provider is not performing work duties, but he/she is unable to use the time effectively for his/her own purposes. These periods of time are generally unpredictable and usually of short duration. The wait time is an integral part of the job; it belongs to and is controlled by the recipient.
- “Waiting to be engaged” means that the provider is completely relieved from performing work duties, and he/she has enough time to perform tasks for his/her own purposes. The provider must be informed in advance that he/she may leave the job and that he/she will not have to resume work until a specified time.

<sup>9</sup> Providers paid travel time in the month, regardless of service period.

<sup>10</sup> Travel hours paid in the month, regardless of service period, divided by the providers paid for travel in the month.

<sup>11</sup> Overtime hours paid due to travel time.

<sup>12</sup> Travel overtime hours paid out of all travel hours paid.

The FLSA rules required employers to pay an employee for time he/she spends “engaged to wait”; however, an employee is not required to be compensated for time he/she spends “waiting to be engaged.” In order to better comprehend these terms, the term “engaged to wait” will hereafter be referred to as “Wait Time—On Duty,” and the term “waiting to be engaged” will hereafter be referred to as “Wait Time—Off Duty.”

In the IHSS program, wait time associated with medical accompaniment may be eligible for compensation as “Wait Time—On Duty.” During periods when the provider is using “Wait Time—On Duty,” he/she may not be actively performing authorized services, but he/she cannot effectively use the time for his/her own purposes because the time is unpredictable and of unknown duration. The provider must be paid for time he/she spends in “Wait Time—On Duty.”

An example of time spent in “Wait Time—On Duty” would be when a provider accompanies a recipient to a medical appointment of unknown duration, and the provider is required to remain at the medical office because, at any moment, he/she may be called upon to assist the recipient with returning to his/her home.

However, if the provider is informed in advance that he/she is relieved from performing work duties for a specified and generally longer period of time, during which he/she is free to engage in his/her own personal business, he/she is considered to be using “Wait Time—Off Duty.” Time spent in “Wait Time—Off Duty” is not compensable.

An example of time spent in “Wait Time—Off Duty” would be when a provider accompanies a recipient to a hemodialysis treatment that is scheduled to last for three hours. In such a case, the provider would be informed that he/she is not required to remain on the premises and that he/she need not return to retrieve the recipient until the designated time. He/she could use the time to conduct his/her own personal business or engage in personal activities, and this time would not be considered work hours for which he/she would be compensated.

If a recipient feels they need additional wait time for their provider, a county social worker must assess for this need, then authorize additional wait time as applicable.

Authorization for wait time is incorporated, as applicable, into two existing IHSS services: Accompaniment to Medical Appointments (Medical Accompaniment) and Accompaniment to Alternative Resources.

Medical Accompaniment is defined in CDSS regulation § 30-757.15 as transportation to and from appointments with physicians, dentists, and other health practitioners (.151) and transportation necessary for fitting health-related appliances/devices and special clothing (.152). Accompaniment to Alternative Resources is defined as transportation to the site where alternative resources provide in-home supportive services to the recipient in lieu of IHSS (.154).

*An example of an alternative resource at which in-home supportive services might be provided to the recipient in lieu of IHSS would be an Community Based Adult Services (CBAS) program site.*

It should be noted that Medical Accompaniment is not to be authorized for the sole purpose of transportation; rather, the recipient must require his/her provider’s assistance with an authorized IHSS task while in transit to/from or at the destination in order for Medical Accompaniment to be authorized. In both cases, a county social worker can assess when recipients need their providers to receive compensation for “Wait Time—On Duty” as part of these services. Transportation is often provided by the CBAS site, in which case Medical Accompaniment through IHSS would not be authorized. However, in such circumstances that transportation is not provided by the CBAS and consequently IHSS Medical Accompaniment service is authorized, it is unlikely that the provider’s wait time would be compensable (Wait Time—On Duty) because the time duration typically spent by a recipient at CBAS site would be sufficient to allow the provider to be relieved of his/her duties so that he/she could engage in his/her own person business or activities. Thus, compensable wait time (Wait Time—On Duty) is most often be associated with Medical Accompaniment to medical appointments, not alternative resource sites.

To measure changes in authorization for these services due to wait time, CDSS compared July 2016 through December 2016 data to the same timeframe in the prior year. While the number of recipients authorized for Medical Accompaniment grew by 5%, the hours authorized grew by 20%, indicating a significant increase in hours due to wait time authorization. Similarly, the number of recipients authorized for Accompaniment to Alternative Resources grew by 11%, the hours authorized grew by 19%. The 6-month average of the statewide average monthly authorized hours per case for Medical Accompaniment increased from 2.3 for the July 2015 to December 2015 period to 2.6 for the July 2016 to December 2016 period. The 6-month average of the statewide average monthly authorized hours per case for Accompaniment to Alternative Resources increased from 6.1 for the July 2015 to December 2015 period to 6.6 for the July 2016 to December 2016 period.

**Figure 4: Compensation for Wait Time – 6-Month Average Comparison**

	<b>Jul-15 thru Dec-15 Avg.</b>	<b>Jul-16 thru Dec-16 Avg.</b>
Recipients Authorized for Medical Accompaniment	442,561	464,348
Hours Authorized for Medical Accompaniment	1,025,885.1	1,227,447.3
Avg. Hours Authorized per Medical Accompaniment Recipient	2.3	2.6
Recipients Authorized for Accompaniment to Alternative Resources	10,777	11,946
Hours Authorized for Accompaniment to Alternative Resources	66,127.0	78,479.7
Avg. Hours Authorized per Accompaniment to Alternative Resources Recipient	6.1	6.6

## Overtime Exceptions and Exemptions

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### ***Adjusting Recipients' Maximum Weekly Hours (Recipient Flexibility)***

On occasion, it may be necessary for a recipient to authorize his/her provider to work more than the recipient's maximum weekly hours as identified on the SOC 2271A. The recipient may make such an authorization without requesting approval from the county, as long as the hours worked:

- Do not result in the provider working more than 40 hours in a workweek when the recipient is authorized 40 hours or less in a workweek; or
- Do not result in the provider receiving more overtime hours than he/she normally works in a calendar month;
- And do not result in a provider working for multiple recipients for more than the maximum weekly limit of 66 hours.

In a situation in which a recipient has more than one provider and one of the providers becomes ill or is otherwise unable to work in a given week, the recipient can assign some or all of his/her weekly hours to the other provider, even if this would cause that provider to work overtime. This recipient may do so without requesting approval from the county, as long as the hours worked by the single provider do not cause him/her to work more than the recipient's maximum weekly hours or if it causes a provider working for more than one recipient to work in excess of 66 hours in the workweek.

As required under statute, and consistent with current recipient practice, a recipient is assessed for his/her needs and then authorized a monthly service amount based on this need. As such, a recipient can never authorize any provider to work more than his/her total authorized monthly services hours. Therefore, when a recipient authorizes a provider to work extra hours during a week, he/she must have that provider work fewer hours in the other week(s) of the same calendar month to ensure that the provider does not work more than his/her authorized monthly service hours.

### ***Overtime Approval/Exception Process***

If a recipient needs his/her provider to work more than the recipient's maximum weekly hours and the work performed will not meet one of the criteria in the previous section, the recipient is required to contact the county to obtain a one-time exception to allow the provider to work the additional overtime hours.

An exception is defined as a request by an IHSS recipient to a county to allow the recipient to adjust his/her maximum weekly hours. The adjustment would allow a provider to work additional hours during a particular workweek, which may cause the provider to work and be compensated for additional overtime hours within a calendar month.

An IHSS recipient seeking an exception must make the request either prior to the event which caused the need for the exception request or as soon as safely possible afterwards to avoid endangering the health and safety of the recipient.

Counties also advise recipients to make the request prior to the submission of the timesheet for the pay period in which the adjusted workweek occurred to ensure the provider does not receive a violation.

In the event an IHSS recipient who has an authorized representative is unable to contact the county IHSS office, the recipient's authorized representative may contact the county to initiate the exception request. However, if the recipient's authorized representative is the provider for whom the exception is being requested, he/she is not permitted to contact the county on behalf of the recipient to make the exception request unless he/she is the parent, guardian, or person having legal custody of a minor recipient or the conservator, spouse, or registered domestic partner of an adult recipient.

Counties utilize the following criteria to determine whether to approve an exception request:

- The additional hours must be necessary to meet an unanticipated need;
- The additional hours must be related to an immediate need that cannot be postponed until the arrival of a back-up provider as designated on the IHSS Program Individual Emergency Back-Up Plan (SOC 827) form; and
- The additional hours must be related to a need that would have a direct impact on the IHSS recipient and would be needed to ensure his/her health and/or safety.

If the exception request meets all of the above criteria, the counties approve the request. WIC § 12301.1(b)(1)(C) states that the county, "...shall not unreasonably withhold approval..." of an exception request.

If the county approves the exception request, the recipient is sent the IHSS Program Notice to Recipient Approval of Exception to Exceed Weekly Hours (SOC 2266) and the provider(s) receives the IHSS Program Notice to Provider Approval of Exception to Exceed Weekly Hours (SOC 2266A). Each of these notices remind the recipient and provider(s) that the provider(s) need to adjust their hours before the end of the calendar month to avoid exceeding the recipient's monthly authorized hours.

If the county denies the exception request, the recipient is sent the IHSS Program Notice to Recipient Denial of Exception to Exceed Weekly Hours (SOC 2267), and the provider(s) is sent the IHSS Program Notice to Provider Denial of Exception to Exceed Weekly Hours (SOC 2267A). The SOC 2267 provides details for the recipient explaining why the exception request was denied. The notices also inform both the recipient and the provider(s) that if the hours have already been worked and documented on the provider's timesheet that the hours will be paid, but a violation will be assessed against the provider. Like the SOC 2266/2266A, these notices also remind the provider(s) and recipient that the hours claimed by one or more providers (if the denied exception hours were worked) need to be adjusted later in the same calendar month to avoid exceeding the recipient's monthly authorized hours.

If the recipient, or his/her authorized representative, did not seek approval and the provider worked extra hours and documented the hours on his/her timesheet, when the timesheet is

submitted for processing and payment to the TPF, the payment will be processed. However, CMIPS will trigger a notification to the county IHSS office informing the office of the additional hours worked by the provider. Within five business days after receiving the notification from the TPF, the county IHSS office has the option to review the circumstances and to determine whether or not county approval of the adjustment was necessary and, if county approval was needed, to contact the recipient to discuss the reason the additional hours were worked to determine whether or not it meets the criteria for an exception.

If the additional hours were worked and claimed on the Part A timesheet (covering the first fifteen days of the month), the county has the option of waiting until the submission of the Part B timesheet (covering the time period from the 16<sup>th</sup> day of the month until the final day of the month) to determine if the excess hours claimed in the Part A timesheet were properly adjusted during the second half of the month.

If the county chooses to review the circumstances that led to the additional hours being worked and determines that the circumstances warrant approval of the exception, the county can manually grant the exception request in CMIPS and cancel the processing of a violation (see *Violations* section).

If the county chooses not to review or is unable to determine the circumstances that led to the additional hours being worked, after five days from when the notification was sent by the TPF, a violation notice is automatically sent to the provider and an informational notice regarding the violation is sent to the recipient. At that time, the provider may contact the county IHSS office within ten calendar days of the date on the violation notification to request an official county review of the circumstances and the subsequent violation. If the county determines that the circumstances warrant an exception, the violation against the provider is then rescinded.

If the county denied a request, but the provider worked the hours and documented them on his/her timesheet, the payment will be processed by the TPF but a violation notice is automatically sent to the provider, along with an informational notice to the recipient.

### ***Approval for Recurring Needs***

Pursuant to WIC § 12301.1(b)(1)(A), a county IHSS office may adjust the weekly hours of a recipient for any particular week for known recurring or periodic needs of the recipient. Effective February 1, 2016, in situations in which the county becomes aware during a recipient's assessment, or any time thereafter, of a recipient's recurring need that requires an adjustment of his/her weekly hours, the county can adjust the recipient's weekly hours and issue an IHSS Notice to Recipient Approval for Provider to Work Alternate Schedule Due to Recurring Event (SOC 2268), which details the adjustment to his/her weekly hours.

*An example of a known recurring need that would require an adjustment in the weekly maximum hours, would be when a recipient undergoes a session of chemotherapy once every three months. During that day, she needs extra care due to the severity of the side effects of the chemotherapy. The recipient may request that her provider work extra services on that day to care for her, as the recipient is weak from the treatment, such as assistance with ambulation, meal preparation, laundry, and dressing/undressing. Therefore, during the week in which she undergoes the*

*chemotherapy she needs to adjust the provider's standard work schedule by two hours to accommodate for the extra services she needs during that time. The social worker will annotate the reason in the case notes and provide the approval notice to the recipient and the provider.*

A similar notice, the IHSS Program Notice to Provider Approval to Work Alternate Schedule Due to Recurring Event (SOC 2269) is sent to the provider(s) informing him/her of the adjustment in the recipient's weekly hours. Counties annotate the recipient case file to indicate the reason for the recurring need that requires the adjustment of the weekly hours. Additionally, the county should set forth a date as to when an evaluation may be necessary to determine if the recipient's needs have changed and the exception is no longer warranted.

### ***Exemption 1 and 2 Processes***

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

#### Exemption 1: Live-In Family Care Providers

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

- The IHSS provider works for two or more IHSS recipients; and
- The IHSS provider lives in the same home as all the IHSS recipients for whom he/she provides services; and
- 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.

#### Exemption 2: Extraordinary Circumstances

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

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

- A. Have complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the 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 own care.

The provider does not need to live in the same home as the recipient(s) to qualify for this exemption if the recipients meet condition B or C.

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 recipient has an extraordinary circumstance, and apply Exemption 2 to allow the IHSS provider to work beyond the statutory workweek limitations to maintain continuity of care and ensure that the recipients are able to remain safely in their homes.

In circumstances where an Exemption 2 approval is granted and the IHSS recipients' combined hours total more than 360 hours a month, the IHSS recipient(s) are required to hire an additional IHSS provider(s) to work their remaining authorized IHSS hours.

### ***Waiver Personal Care Services Exemption***

The WPCS program, created an exemption for WPCS providers to allow them to work up to a maximum of 12 hours per day, or 360 hours per month of WPCS and IHSS combined. The WPCS provider had to meet one of three criteria as of January 31, 2016 to be eligible for this exemption:

- The care provider lives in the same home as the waiver participant. They do not have to be a family member; or
- The care provider is now giving care to the waiver participant and has done so for two or more years without a break; or
- DHCS agrees that there are no other possible care providers near the waiver participant's home. The waiver participant must work closely with DHCS care managers to try to find more care providers.

Over 2,000 providers have been approved for exemptions since implementation. The table below shows the number of providers approved for Exemption 1 - Parent Provider, Exemption 2 - Extraordinary Circumstances, or the WPCS Exemption from July through December 2016.



**Figure 5: IHSS/WPCS Providers Approved for Overtime Exemptions**

	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16
<b>Exemption 1</b>						
Number of Requests Received at CDSS	1,604	1,718	1,793	1,872	1,918	1,955
Number of Providers Approved	1,107	1,174	1,267	1,312	1,336	1,354
<b>Exemption 2</b>						
Number of Requests Received at CDSS	86	102	119	137	146	164
Number of Providers Approved	18	29	35	41	47	52
<b>WPCS Exemption</b>						
Number of Providers Approved	314	602	664	694	718	753
<b>Total Approved Exemptions</b>						
Total Number of Providers Approved for All Exemptions	<b>1,439</b>	<b>1,805</b>	<b>1,966</b>	<b>2,047</b>	<b>2,101</b>	<b>2,159</b>

## **Violations Process**

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While the workweek requirements and restrictions went into effect on February 1, 2016, no formal action on violations of the workweek and overtime requirements and restrictions occurred until July 1, 2016. During this period, such events were treated as errors, in acknowledgement of the complexity of the new rules. County staff were instructed to contact any providers who committed errors on timecards and to provide guidance to assist in making adjustments to workweek schedules to prevent further occurrences.

### **Violations**

Beginning July 1, 2016, violations began to be incurred whenever an IHSS provider exceeded the workweek or travel time limitations. IHSS providers began to receive a violation if his/her action constituted one of the following:

- When a provider works more than 40 hours in a workweek for a recipient without receiving county approval when the recipient's maximum weekly hours are 40 or less;
- When a provider works more hours in a workweek for a recipient than the recipient's maximum weekly hours, causing the provider to work more overtime hours in a month than he/she normally works, without receiving county approval;
- When a provider works more than the maximum weekly limit of 66 hours when working for multiple recipients; or
- When a provider claims more than seven hours of travel time in a workweek.

Each time a provider incurs a violation, he/she is still paid the overtime and/or travel time that exceeded the workweek and/or travel time limitations, but also receives a violation notice. In order to ensure every opportunity is made to address these situations prior to issuing a violation notice, county staff have the ability to conduct a prior review of all violations before issuance and can rescind or uphold the violation at that time, based on the outcome of the review. If no action is taken within three business days, CMIPS will automatically issue the violation. If the violation is rescinded by the county staff, a supervisor has two days to renew the decision.

CMIPS generates the violation notices, which are printed at the county offices. The county staff send these notices, which include information on how a provider may request a county review of the violation, to the provider and the recipient(s).

Whenever a provider incurs multiple violations within the same month, the provider will only receive a single violation regardless of the number of times the provider violates the workweek or travel time limitations within the same month.

### **Levels of Violations**

IHSS providers are Medicaid providers. Under pre-FLSA law, providers could be immediately terminated for breaking program rules. In recognizing the complexity of the new rules, and intending to minimize potential interruptions in recipient care, WIC § 12300.4(b)(5), created a gradual and progressive educational process that allows providers the opportunity to correct

any errors causing excessive overtime or travel time claims before such errors rise to the level of provider ineligibility. The process also grants providers the ability to receive support through counseling and voluntary instructional review materials in an effort to ensure that providers understand the program requirements. This process involves four levels of violation which range from a written warning to one-year of ineligibility as an IHSS provider.

- **Initial (first) Violation:** After a provider violates the limitations for the first time, he/she receives a written warning notification from the county. County staff is available to assist the providers to understand the workweek, overtime, and travel requirements.
- **Second Violation:** If the provider incurs a second violation, he/she is offered a one-time opportunity to review instructional materials and sign a certification form stating that he/she understands and agrees to the requirements and return it to the county. These voluntary-instructional-review materials are included with the second violation notice.

If the provider takes advantage of this opportunity within 14 calendar days after receiving the violation, the second violation is rescinded once the county receives a signed copy of the certification form. The provider is given an additional seven calendar days in order to ensure proper timing for mailing of the certification form to the county. The county staff then has five calendar days beyond the provider submission deadline of 21 days to enter the completion date of the certification form into CMIPS.

If the provider chooses *not* to review the instructional materials and submit the completed certification form to the county IHSS office, the county will issue a notice confirming the second violation. If, after having the violation rescinded by reviewing the voluntary-instructional-review materials, the provider violates the workweek and/or travel time limitations again, he/she will receive a second violation with no opportunity to review the instructional materials again. (The only time this option will be offered in the future is when the provider's IHSS eligibility has been suspended for one year based on a fourth violation and the provider completes the provider enrollment process as a brand new provider with a clean record following the one-year suspension, as discussed below.)

After the second violation has been incurred, county staff are required to contact the provider to discuss the violation consequences and advise them on methods to correct the behavior that led to the violation. County staff stress the importance of the provider modifying his/her workweek schedule and/or travel time if necessary to avoid further violations. Additionally, it may be necessary to include recipients in these discussions, so they understand when requests for adjustments to workweek schedules can be requested and granted. Given that another violation occurrence would result in suspension of the provider's eligibility for 90 calendar days, county staff make every effort to communicate with the provider by telephone or in writing, if the receipt of the written communication can be documented.

- **Third Violation:** If the provider incurs a third violation, there is a temporary suspension of the IHSS provider's eligibility to work and be paid through the IHSS

program for a period of 90 calendar days. The provider has the option to request a county review of this violation.

- **Fourth Violation:** After the 90 calendar days' suspension (due to a third violation) is completed, if the provider incurs a fourth violation, he/she is suspended for a period of one year. The provider has the option to request a county review of this violation.

For the third and fourth violations, if the county does not choose to rescind the violation after the county-review process, the provider receives a notice. The notice explains the outcome of the county review and how the provider can request a State administrative review by the CDSS Adult Program Division's Provider Appeals Unit (PAU) within ten calendar days of the date of the county's notice. While a county/State review process is occurring, the provider is permitted to continue providing IHSS services and be paid as a provider in the IHSS program until the county/State makes a determination regarding the provider's third/fourth violation. If the fourth violation has been assessed and the one-year ineligibility has ended, he/she may work and be paid by the IHSS program as an IHSS provider if he/she completes the provider enrollment process again as a new applicant provider, including the criminal-background check, provider orientation, and completion of all required forms.

On average, 2% of the providers with multiple recipients and 1% of the providers with one recipient received a violation between July through December 2016.

**Figure 6: IHSS/WPCS Providers Receiving Violations**

	Jul-16 <sup>13</sup>	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jul-16 thru Dec-16 Avg.
Number of Paid Providers Serving Multiple Recipients <sup>14</sup>	82,177	83,244	83,273	83,551	83,638	83,576	<b>83,243</b>
Number of Providers with Multiple Recipients Who Have Received Violations <sup>15</sup>	1,694	1,657	2,081	2,660	1,599	1,834	<b>1,921</b>
Percent of these Providers Who Have Received Violations	2%	2%	2%	3%	2%	2%	<b>2%</b>
Number of Paid Providers Serving One Recipient <sup>16</sup>	329,790	334,114	334,508	336,697	337,071	334,905	<b>334,514</b>
Number of Providers with One Recipient Who Have Received Violations <sup>17</sup>	1,076	1,728	2,372	3,383	1,935	2,737	<b>2,205</b>
Percent of these Providers Who Have Received Violations	0%	1%	1%	1%	1%	1%	<b>1%</b>

<sup>13</sup> Enforcement of violations began 7/1/2016. Only the Part A timesheets are included for July 2016.

<sup>14</sup> Providers paid in the month, regardless of the service period. Approximately 1% of paid providers were in transition at the time the CMIPS data download was run. Not all of the paid providers are counted as either serving multiple recipients or one recipient.

<sup>15</sup> All violations incurred by these providers in the month, regardless of the service period. A provider can only incur one violation each month.

<sup>16</sup> Same as 14.

<sup>17</sup> Same as 15.

In October 2016, the first set of third violations were incurred. In November 2016, there were 119 providers impacted upon which after evaluation had not completed the optional training. As result of this missed opportunity, CDSS made the decision to remove these third violations and provide direct outreach to these providers.

In December 2016, there were 196 providers who incurred a third violation. It was found that these providers also did not complete the optional training. CDSS worked with the counties to evaluate these cases and provide a recommendation to CDSS on whether the violation should be upheld or rescinded. As a result of this, 140 of the 198 had their third violation overridden and about 50 were upheld.

**Figure 7: IHSS/WPCS Providers with Violations**

Violation Type	Jul-16 <sup>18</sup>	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16
Providers with 2 Violation <sup>19</sup>	0	1	526	912	796	1,114
Providers with 3 Violation <sup>20</sup>	0	0	0	4	119	196

A forthcoming ACL will be issued in April 2017 providing direction to the counties on the criteria to request CDSS to rescind violations.

After a provider incurs a violation, the county issues a notice confirming the violation along with the IHSS Program Notice to Provider of Right to Dispute Violation for Exceeding Workweek and/or Travel Time Limits (SOC 2272). When a provider receives a violation notice, he/she has ten calendar days from the date of the notice to request a county review of the violation. If the provider does not submit an SOC 2272 within the ten calendar days, the violation remains in effect. Once the county receives the request for review, the county staff will send two notices, the IHSS Program Notice to Provider Acknowledgement of Receipt of County Violation Review for Exceeding Workweek and/or Travel Time Limits (SOC 2272A) to the provider and the IHSS Program Notice to Recipient Acknowledgement of Provider’s Request for County Violation Review for Exceeding Workweek and/or Travel Time Limits (SOC 2272B) to the recipient. The county then has ten business days to review and investigate the circumstances that led to the violation and send the provider a notice stating the outcome of the county review and detailing the instructions for requesting a State administrative review if applicable.

**Reduction of Violations**

The violations could add up over the course of the provider’s employment as an IHSS provider. Therefore, if after receiving a violation the provider does not receive another violation for one year, the number of violations he/she has received will be reduced by one. As long as the provider does not receive additional violations, for each year after the last violation, the number of violations he/she has received will be reduced by one.

<sup>18</sup> July Methodology: Enforcement of violations began 7/1/2016. July 2016 data only includes providers who incurred violations in the first half of the month. Violations for services provided July 16-July 31 are represented in August data.

<sup>19</sup> These are providers who triggered a violation in the month and currently have two or more violations.

<sup>20</sup> Same as 19.

However, if the provider has received a fourth violation and has become ineligible to work and be paid as an IHSS provider for one year, when the year has expired and the individual has undergone the provider enrollment requirements to be re-enrolled as a provider, his/her violations count is reset to zero.

**Figure 8: Reduction of Violations**

	Jul-16 <sup>21</sup>	Aug-16 <sup>22</sup>	Sep-16	Oct-16	Nov-16	Dec-16	Jul-16 thru Dec-16 Avg.
Providers with 2 Violations <sup>23</sup>	0	1	526	912	796	1,114	<b>594</b>
Cumulative Count of Providers Who Have Completed Training After Receiving Their Second Violation		0	135	497	805	1,327	<b>533<sup>24</sup></b>
Number of Disputes Filed by Providers	53 <sup>25</sup>	313 <sup>26</sup>	474	762	358	665	<b>438</b>
<i>Disputes Pending<sup>27</sup></i>	9	34	46	67	33	79	<b>45</b>
<i>Disputes Upheld</i>	4	144	328	542	199	407	<b>271</b>
<i>Disputes Overturned</i>	40	135	100	153	126	179	<b>122</b>

<sup>21</sup> The enforcement of violations was effective Jul 1, 2016, therefore the first possible second violation could not be incurred until August 2016.

<sup>22</sup> Same as 18.

<sup>23</sup> These are providers who triggered a violation in the month and currently have two or more violations.

<sup>24</sup> Five-month average due to the enforcement of violations, see 21.

<sup>25</sup> These are disputes filed for violation 1.

<sup>26</sup> Same as 24.

<sup>27</sup> These are the status of the disputes as of the last day of the month. Pending Review means those violations still in county review on the last day of the month.

## **Additional Policy and System Changes**

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### ***Advance Pay Changes***

Advance Pay is a cash option for severely impaired recipients. Previously, recipients who had chosen Advanced Pay would receive cash for their authorized services at the beginning of the month, then the provider would need to submit a reconciling timesheet at the end of the month to ensure appropriate accounting of the funds for purposes of taxes and benefits.

In order for overtime compensation to be paid to Advance Pay providers, modifications to the Advance Pay timesheet process were implemented in CMIPS on September 23, 2016. Now, Advance Pay timesheets are automatically issued on a semi-monthly basis, on the 1<sup>st</sup> and the 10<sup>th</sup> of the month. Travel Claim forms are issued and mailed separately from the Advance Pay timesheets if the provider is eligible for travel time pay.

The IHSS Arrears Timesheet (SOC 2261) is used for the Advance Pay timesheet. Travel Time and Overtime payments for Advance Pay function on a semi-monthly basis. Overtime pay is not paid until after the timesheet for the prior pay period has been reconciled. Overtime hours worked and claimed on the Advance Pay timesheet are paid directly to the provider as a supplemental paycheck.

By April 2017, six months after the semi-monthly Advance Pay Reconciling Timesheets were implemented, the TPF will stop accepting previously-issued Monthly Advance Pay Reconciling Timesheets. The counties will then be required to reissue new semi-monthly timesheets to replace any Monthly Advance Pay Reconciling Timesheets the provider may still have after this six-month time period.

In addition to modifying the Advance Pay timesheet reconciliation process to a semi-monthly schedule, the Advance Pay Earning statement (SOC 2260) is printed and mailed to providers of Advance Pay recipients.

### ***Cash Management, Information, and Payrolling System (CMIPS) Changes***

Multiple changes were made in CMIPS to facilitate the implementation of FLSA Overtime, Wait Time, and Travel Time Compensation and to record and provide needed information and data. Some of these changes included modifications to implement, support, and manage the following:

- FLSA Forms
- Travel Claim Processing
- Overtime and Travel Time Violations
- Exemption/Exception Processing
- Flexible Hours
- Workweek Limitations And Travel Time Violation Disputes
- State Administrative Review Process for IHSS and WPCS
- New Data Reports
- New Data Downloads
- Automated Processing of Violation and Dispute Forms

## Case Study Conclusion

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The purpose of this report is to provide preliminary information regarding the impact of the FLSA Overtime Rule on the IHSS Program per SB 855 and WIC § 12300.41(b).

A full report will be published upon the completion of the 24-month study by April 2018. At that time, the FLSA implementation and corresponding data will be evaluated comprehensively. This evaluation will include recommendations regarding future overtime, travel time, and wait time policies and processes for both IHSS and WPCS providers, and the recipients they serve, in California.



## Appendix A: FLSA Overtime References

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### **Guiding Authority**

- Senate Bills [855](#) and [873](#) (Chapters 29 and 685, Statutes of 2014)
- United States Department of Labor (DOL) published the Final Rule on the Application of the Fair Labor Standards Act (FLSA) to Domestic Services (RIN 1235-AA05)

### **All County Letters and Notices**

The following are the All County Letters and Notices that were created by CDSS to inform counties of the implementation of FLSA Overtime:

### **2016 Letters and Notices**

- [ACL 16-86 \(October 24, 2016\)](#)  
Reinstatement Of Deadline For Submission Of Provider Enrollment Agreement (SOC 846 [REV. 11/15]) Form For In-Home Supportive Services Providers Enrolled Prior To February 1, 2016
- [ACL 16-89 \(October 13, 2016\)](#)  
Modifications To The Case Management, Information And Payrolling System To Manage In-Home Supportive Services And Waiver Personal Care Services Overtime And Travel Time Violations And Forms, Forms For Blind And Visually Impaired Recipients, Advance Pay Reconciliation, And Authorized Hours Exceeded Letters
- [ACL 16-46 \(May 16, 2016\)](#)  
Modifications To The Case Management, Information And Payrolling System (CMIPS) To Implement And Manage Workweek Limitations And Travel Time Violation Disputes And The State Administrative Review Process For In-Home Supportive Services (IHSS) And Waiver Personal Care Services (WPCS)
- [ACL 16-44 \(May 10, 2016\)](#)  
Modifications to In-Home Supportive Services and Waiver Personal Care Services in Case Management, Information and Payrolling System to Manage Overtime and Travel Time Violations, Exemption Processing and Flexible Hours
- [ACL 16-36 \(April 21, 2016\)](#)  
Violations For Exceeding Workweek And/Or Travel Time Limits For The In-Home Supportive Services (IHSS) And Waiver Personal Care Services Programs (WPCS)
- [ACL 16-22 \(April 1, 2016\)](#)  
Exemption From The In-Home Supportive Services Program Workweek Limitations Due To Extraordinary Circumstances And Clarification On The Policies For The Live-In Family Care Provider Exemption
- [ACIN I-20-16 \(March 14, 2016\)](#)  
Modifications To In-Home Supportive Services (IHSS) Timesheets To Accommodate IHSS And Waiver Personal Care Services (WPCS) Overtime And Travel Time Compensation Relating To Implementation Of Provisions Of Senate Bills 855 And 873

- [ACIN I-09-16 \(January 27, 2016\)](#)  
Release of IHSS Informational Video: 2016 Fair Labor Standards Act (FLSA) Release of IHSS Informational Video: 2016 Fair Labor Standards Act (FLSA)
- [ACIN I-08-16 \(January 22, 2016\)](#)  
Updates to the Case Management, Information and Payrolling System (CMIPS) II Screens and Forms Tracking for Implementation of Provisions of Senate Bills 855 and 873 Relating to the IHSS and Waiver Personal Care Services Programs
- [ACL 16-07 \(January 21, 2016\)](#)  
Exemption to Provisions of Senate Bills 855 and 873 (Chapters 29 and 685, Statutes of 2014) Relating to the In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) Programs for Family Live-In Care Providers
- [ACL 16-01 \(January 7, 2016\)](#)  
Reinstatement of Implementation of Provisions of Senate Bills 855 and 873 (Chapters 29 and 685, Statutes of 2014) Relating to the IHSS and Waiver Personal Care Services Programs

## 2015 Letters and Notices

- [ACL 15-97 \(December 1, 2015\)](#)  
Implementation of Provisions of Senate Bills 855 and 873 (Chapters 29 and 685, Statutes of 2014) Relating to the IHSS and Waiver Personal Care Services Program (WPCS)
- [ACL 15-10 \(January 23, 2015\)](#)  
Halt To Implementation Of Provisions Of Senate Bills 855 And 873 (Chapters 29 And 685, Statutes Of 2014) Relating To The IHSS And Waiver Personal Care Services Programs
- [ACIN I-73-14 \(January 5, 2015\)](#)  
Information Regarding Federal Court Order Impacting The Implementation Of The Federal Department Of Labor Regulations Pertaining To The Payment Of Overtime Compensation And Other Compensable Activities And To Related Provisions Of Senate Bills 855 And 873 (Chapters 29 And 685, Statutes Of 2014) For The IHSS And Waiver Personal Care Services Programs

## 2014 Letters and Notices

- [ACL 14-102 \(December 31, 2014\)](#)  
New Program Rules And Requirements For IHSS Provider Enrollment Orientation And Clarification Of Provider Enrollment Identification Process Related To Social Security Numbers
- [ACL 14-103 \(December 19, 2014\)](#)  
Implementation Of New Timesheets To Accommodate In Home Supportive Services (IHSS) And Waiver Personal Care Services (WPCS) Overtime And Travel Time Compensation

- [ACL 14-99 \(December 17, 2014\)](#)  
Implementation Of Required New Screens In The Case Management And Information Payrolling System To Accommodate In-Home Supportive Services (IHSS) And Waiver Personal Care Services (WPCS) Overtime And Travel Time Forms Tracking
- [ACL 14-82 \(November 25, 2014\)](#)  
Wait Times Associated With Accompaniment To Medical Appointments And Alternative Resource Sites
- [ACL 14-76 \(October 8, 2014\)](#)  
Implementation Of Provisions Of Senate Bills 855 And 873 (Chapters 29 And 685, Statutes Of 2014) Relating To The IHSS And Waiver Personal Care Services Programs

## **Appendix B: Recipient/Provider Mailers and Forms**

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### ***Recipient/Provider Mailers***

The first statewide mailing (December 2015 through January 2016) included the following information and forms:

- [Recipient Important Information \(TEMP 3002\)](#), informational only
- [Provider Important Information \(TEMP 3001\)](#), informational only
- [IHSS Program Provider Enrollment Agreement \(SOC 846\)](#), to be returned to county; return envelope included

The second statewide mailing (February 2016) included the following information and forms:

- Informational stuffer
- [IHSS Program Provider Workweek Agreement \(SOC 2255\)](#), to be returned to county; return envelope included
- [IHSS Program Recipient Workweek Agreement \(SOC 2256\)](#), to be returned to county; return envelope included
- [IHSS Program Provider Notification of Recipient Authorized Hours & Maximum Weekly Hours \(SOC 2271\)](#), informational only
- [IHSS Program Recipient Notification of Maximum Weekly Hours \(SOC 2271A\)](#), informational only

### ***FLSA Overtime Forms***

Following are the Forms created by CDSS for the implementation of FLSA Overtime:

## Forms to Providers

<b>Violation</b>	SOC 2257	In-Home Supportive Services Program Notice to Provider of First/Second Violation For Exceeding Workweek And/Or Travel Time Limits
	SOC 2272	In-Home Supportive Services Program Notice To Provider of Right to Dispute Violation for Exceeding Workweek And/Or Travel Time Limits
	Trng Materials	In-Home Supportive Services Program Notice To Provider of Right to Dispute Violation for Exceeding Workweek And/Or Travel Time Limits
	SOC 2257B	In-Home Supportive Services (IHSS) Program Certification For Instructional Material Review
	SOC 2258	In-Home Supportive Services Program Notice to Provider of Third Violation (90-Day Suspension of Eligibility) For Exceeding Workweek And/Or Travel Time Limits
	SOC 2259	In-Home Supportive Services Program Notice to Provider of Fourth Violation (One-Year Period of Ineligibility) For Exceeding Workweek And/Or Travel Time Limits
<b>Dispute</b> - if violation is upheld	SOC 2272A	In-Home Supportive Services Program Notice to Provider Acknowledgement of Receipt of County Violation Review for Exceeding Workweek and/or Travel Time Limits
	SOC 2280	In-Home Supportive Services Program Notice to Provider Upholding First Or Second Violation For Exceeding Workweek And/Or Travel Time Limits
	SOC 2282	In-Home Supportive Services Program Notice to Provider Upholding Third Violation (90-Day Suspension of Eligibility) For Exceeding Workweek And/Or Travel Time Limits
	SOC 2273	In-Home Supportive Services Program State Administrative Review Request of Third or Fourth Violation For Exceeding Workweek And/Or Travel Time Limits
	SOC 2284	In-Home Supportive Services Program Notice to Provider Upholding Fourth Violation (One-Year Period of Ineligibility)
<b>Dispute</b> -Form Not Completed or Submitted Timely	SOC 2292	In-Home Supportive Services Program Notice to Provider For Failing to Complete the Right To Dispute Violation for Exceeding Workweek And/Or Travel Time Limits Form Timely or Completely
- if violation is overridden	SOC 2272A	In-Home Supportive Services Program Notice to Provider Acknowledgement of Receipt of County Violation Review for Exceeding Workweek and/or Travel Time Limits
	SOC 2263	In-Home Supportive Services Program Notice to Provider Rescinding Violation
<b>State Administrative Review</b> - if violation is upheld	SOC 2286	In-Home Supportive Services Program State Administrative Review Request Response Letter to Provider Upholding Third Violation (90-Day Suspension of Eligibility) For Exceeding Workweek And/Or Travel Time Limits
	SOC 2290	In-Home Supportive Services Program State Administrative Review Request Response Letter to Provider Upholding Fourth Violation (One-Year Period of Ineligibility)
- if violation is overridden	SOC 2288	In-Home Supportive Services Program State Administrative Review Request Response Letter to Provider Rescinding Third or Fourth Violation For Exceeding Workweek And/Or Travel Time Limits

## Forms to Recipients

<b>Violation</b>	SOC 2257A	In-Home Supportive Services Program Notice to Recipient of Provider's First/Second Violation For Exceeding Workweek And/Or Travel Time Limits
	SOC 2258A	In-Home Supportive Services Program Notice to Recipient of Provider's Third Violation (90-Day Suspension of Eligibility) For Exceeding Workweek And/Or Travel Time Limits
	SOC 2259A	In-Home Supportive Services Program Notice to Recipient of Provider's Fourth Violation (One-Year Period of Ineligibility) For Exceeding Workweek And/Or Travel Time Limits
<b>Dispute</b> - if violation is upheld	SOC 2272B	In-Home Supportive Services Program Notice to Recipient Acknowledgement of Provider's Request for County Violation Review for Exceeding Workweek and/or Travel Time Limits
	SOC 2281	In-Home Supportive Services Notice to Recipient Upholding Provider's First Or Second Violation For Exceeding Workweek And/Or Travel Time Limits
	SOC 2283	In-Home Supportive Services Notice to Recipient Upholding Provider's Third Violation (90-Day Suspension of Eligibility) For Exceeding Workweek And/Or Travel Time Limits
	SOC 2285	In-Home Supportive Services Program Notice to Recipient Upholding Fourth Violation (One-Year Period of Ineligibility)
<b>Dispute</b> -Form Not Completed or Submitted Timely	SOC 2293	In-Home Supportive Services Program Notice to Recipient of Provider Failure To Complete The Right To Dispute Violation For Exceeding Workweek And/Or Travel Time Limits Form Timely or Completely
- if violation is overridden	SOC 2272B	In-Home Supportive Services Program Notice to Recipient Acknowledgement of Provider's Request for County Violation Review for Exceeding Workweek and/or Travel Time Limits
	SOC 2264	In-Home Supportive Services Program Notice to Recipient Rescinding Provider Violation
<b>State Administrative Review</b> - if violation is upheld	SOC 2287	In-Home Supportive Services Program State Administrative Review Request Response Letter to Recipient Upholding Provider's Third Violation (90-Day Suspension of Eligibility) for Exceeding Workweek And/Or Travel Time Limits
	SOC 2291	In-Home Supportive Services Program State Administrative Review Request Response Letter to Recipient Upholding Fourth Violation (One-Year Period of Ineligibility)
- if violation is overridden	SOC 2289	In-Home Supportive Services Program State Administrative Review Request Response Letter to Recipient Rescinding Third or Fourth Violation For Exceeding Workweek And/Or Travel Time Limits



STATE OF CALIFORNIA  
Edmund G. Brown, Jr., Governor

HEALTH AND HUMAN SERVICES AGENCY  
Diana S. Dooley, Secretary

DEPARTMENT OF SOCIAL SERVICES  
Will Lightbourne, Director

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