

Date

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY INFORMATION NOTICE (ACIN) NO. I-__-19

Previously released All County Letters (ACLs) provided counties with detailed information and instructions regarding the evaluation of requests for Exemption from the In-Home Supportive Services (IHSS) Program Workweek Limits for Extraordinary Circumstances (Exemption 2). This ACIN provides additional guidance and clarification on various issues related to the processing of Exemption 2 requests. In addition, this ACIN transmits a revised form for use by individuals to request an Exemption 2 as well as revised notices to inform individuals of county actions related to Exemption 2 requests.



KIM JOHNSON
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

Date

ALL COUNTY INFORMATION NOTICE (ACIN) NO. I-__-19

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY IHSS PROGRAM MANAGERS

SUBJECT: CLARIFICATIONS REGARDING EVALUATION OF REQUESTS
FOR EXEMPTION FROM THE IHSS PROGRAM WORKWEEK
LIMITS FOR EXTRAORDINARY CIRCUMSTANCES

REFERENCE: [ACL 18-31](#); [ACL 18-54](#); [ACL 18-58](#); [SENATE BILL \(SB\) 89](#);
[WELFARE AND INSTITUTIONS CODE \(WIC\) SECTION 12300.4](#)

This ACIN provides additional guidance and clarification for counties regarding the evaluation of requests for Exemption from the In-Home Supportive Services (IHSS) Program Workweek Limits for Extraordinary Circumstances (Exemption 2). In addition, this ACIN transmits a revised Request for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) (SOC 2305), as well as revisions to several notices used by counties to inform providers and recipients of county actions related to Exemption 2 requests.

BACKGROUND

On June 1, 2018, the California Department of Social Services (CDSS) implemented the provisions of SB 89, which amended WIC section 12300.4 to formally establish exemptions to the IHSS workweek limits and transfer responsibility for evaluating requests for Exemption 2 from the state level to counties. The CDSS released the following All County Letters (ACLs) related to the implementation of SB 89:

- ACL 18-31 provided counties with detailed information and direction regarding policies and procedures for evaluating Exemption 2 requests;

- ACL 18-54 provided counties with information regarding modifications to the Case Management, Information and Payrolling System (CMIPS) to allow counties to process Exemption 2 requests; and
- ACL 18-58 provided information regarding Exemption 2 State Administrative Review (ESAR) process for individuals whose Exemption 2 requests counties had determined ineligible.

The purpose of this ACIN is to provide additional guidance and clarification to ensure that all Exemption 2 requests are evaluated in a manner consistent with the policies and procedures outlined in the above-referenced ACLs.

EVALUATION OF EXEMPTION 2 REQUESTS

Acceptance of Exemption 2 Requests

When a provider requests an Exemption 2, or a recipient (or his/her authorized representative) requests one on behalf of his/her provider, the county must accept the request regardless of whether it appears the individual will be determined eligible. Counties must follow the process outlined in ACL 18-31 to evaluate and make a determination of eligibility on all Exemption 2 requests received, including entry of the request and outcome into CMIPS and issuance of notices informing the provider and recipients of the determination.

When a verbal request for an Exemption 2 is made, county staff should provide the individual with a blank SOC 2305 to be completed, signed and returned to the county. Once the completed and signed SOC 2305 is received, the county should proceed with the evaluation process as described in ACL 18-31.

Utilization of Information in CMIPS

Counties may rely on information in CMIPS to determine whether the basic Exemption 2 eligibility requirements are met e.g., the individual provides services for two or more recipients whose combined authorized service hours total more than 264 per month, etc.; however, beyond that, county staff should not automatically determine an Exemption 2 request ineligible based exclusively on information contained in CMIPS. For example, a recipient having more than one active provider listed on *Case Providers* screen is not an automatic indication that an exemption is not needed but would require further discussion with the provider or recipient and/or review of the timesheet history to determine if an exemption would be necessary.

As indicated in ACL 18-31, county staff should complete the evaluation process by using information from CMIPS, including assessment narratives, person notes, timesheet history, etc., as well as information collected from discussions with the provider requesting the exemption, the recipients (or their authorized representatives),

the assigned social worker, and any other active provider(s) to determine whether the requirements for granting an exemption are met.

Clarification on Use of Certain Exemption 2 Forms

The Exemption from Workweek Limits for Extraordinary Circumstances Referral Justification (SOC 2306) and the Secondary Evaluation Review Worksheet (SOC 2307) will no longer be considered “Required” forms. Counties have the discretion to use either the SOC 2306 and SOC 2307 or some other county-developed tool or worksheets to assist in the review and evaluation of Exemption 2 requests.

Regardless of the tool used, these tools should not be completed by the individual requesting the Exemption 2. Counties should document the justification for an Exemption 2 determination in CMIPS by entering a note on the provider’s *Person Home* screen. As stated in ACL 18-58, the documentation must address the following four key points:

1. Identification of the Exemption 2 criteria under which each recipient applied and was evaluated.
2. An explanation for why the county determined that the criteria for granting an Exemption 2 was either met or not met.
3. A description of the reasonable attempts made by the recipients (or their authorized representative(s)) to hire an additional provider(s), including (if applicable) an explanation of why these attempts were not viable and how this information was verified by the county. Alternatively, if options for hiring another provider were not explored, the reason for this, e.g., a description of documented past experiences when having another individual provide the recipient’s services resulted in adverse effects on the recipient’s health and/or well-being.
4. A description of the assistance provided by the county to identify an additional provider(s), such as providing referral to the provider registry maintained by the Public Authority, and/or advising recipients (or their authorized representative(s)) to reach out to relatives, friends, neighbors or others in the recipients’ network as potential providers.

As a reminder, to ensure that the justification can be readily differentiated from other notes on the provider’s *Person Home* screen, counties should begin the note entry with the following text: ***EXEMPTION 2 REQUEST DETERMINATION JUSTIFICATION.

Exploring Options for Hiring Additional Provider(s)

As indicated in ACL 18-31, counties should review the recipients’ (or their authorized representatives’) current and/or previous efforts to hire an additional provider(s) prior to considering approval of an Exemption 2 request. Counties may provide assistance to

recipients (or their authorized representatives) and allow the opportunity to explore options for hiring an additional provider(s) prior to making a determination on the Exemption 2 request pursuant to WIC section 12300.4(d)(3)(E)(ii).

Counties are reminded that recipients (or their authorized representatives) are no longer required to exhaust all options for hiring an additional provider(s). Since the enactment of SB 89, individuals are instead required to make reasonable attempts to hire additional providers. In addition, prior documented attempts to utilize other providers that have resulted in detrimental effects to the recipient's health and/or safety may be considered in meeting this requirement.

Exemption 2 Policies Do Not Supersede Other Program Rules

Counties are reminded that Exemption 2 policies are separate from and do not supersede any other IHSS program rules. Although changes in circumstances, authorized services and authorized hours may impact the continued need for an Exemption 2, requests from recipients (or their Authorized Representative) regarding their IHSS needs should be evaluated according to relevant IHSS program rules. For example, a recipient's request for a reassessment of his/her service needs (which may result in a change to the recipient's authorized services and/or hours) should not be denied because their provider is currently granted an Exemption 2 that allows him/her to provide up to 360 hour per month of authorized services. Rather a recipient's needs should be reassessed based on IHSS program rules and then the outcome of the reassessment will determine if the circumstances of the case still meet the eligibility criteria for an Exemption 2.

Reapplying After Denial for Exemption 2

There is no set length of time that must elapse before an individual may reapply for an Exemption 2 after being determined ineligible by the county or an ESAR decision upholding the county's ineligibility determination. When the county receives a request for Exemption 2 from an individual who was previously determined ineligible, the county should consider it to be an entirely new request, accept it and initiate the evaluation process. County staff must enter receipt of the new request into CMIPS separately from the previous request. Upon making a determination, county staff must update the outcome and document the justification in CMIPS, as well as send the appropriate notices to the provider and the recipients.

Change in Exemption Eligibility

County staff should terminate an approved Exemption 2 within 15 days of discovering that there has been either a change in one or more of the recipient's circumstances which results in the exemption no longer being needed. County staff must send notices informing the provider and recipients that the Exemption 2 will be terminated. CDSS has renamed and revised the Notices to Provider and Recipient of Termination of

Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) Due to a Change in Eligibility (SOC 2312 and SOC 2312A). Counties will now use the SOC 2312 and SOC 2312A to inform individuals whenever an approved Exemption 2 is being terminated due to a change in eligibility, regardless of whether this occurs during the approval period or upon evaluation for renewal, which is discussed later in this ACIN.

It should be noted that county staff should not send the Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) State Administrative Review Request Form (SOC 2313) with the SOC 2312 and SOC 2312A as an individual whose Exemption 2 is terminated due to a change in eligibility for the exemption is not entitled to request an ESAR. The individual may reapply for the Exemption 2 at any time.

ENTRY OF EXEMPTION 2 REQUESTS INTO CMIPS

Exemption 2 Requests Remaining in Pending Review

As indicated in ACL 18-54, entry of Exemption 2 requests into CMIPS is (in most cases) a two-step process:

1. First, when the SOC 2305 is received, county staff must access the *Overtime Violation Exemption* screen and add a new exemption by selecting the Pending Review – Exemption #2 option.
2. Then, once a determination has been made on the request, county staff must access the *Overtime Violation Exemption – Extraordinary Circumstance* screen and edit the previously created exemption to reflect the outcome of the county's evaluation of the request.

Violations are suppressed during the Exemption 2 evaluation period. Therefore, allowing a request to remain in Pending Review status permits individuals determined ineligible to continue to claim hours above the workweek limit without incurring violations, sometimes for an extended period. In addition, CDSS utilizes CMIPS data for statistical purposes. Therefore, it is critical to ensure that both steps of the Exemption 2 CMIPS entry process are completed in a timely manner.

Counties may utilize information from the daily and monthly provider data download files, which include Exemption 2 fields including the Violation Exemption County Review Outcome, to periodically check if requests have inadvertently been left in Pending Review status after a determination has been made. Information about the Exemption 2 information included in the provider data download can be found in ACL 18-54.

Annual Evaluation for Renewal of an Existing Exemption 2

Counties are reminded that cases approved for an Exemption 2 should be evaluated annually. As stated in ACL 18-54, to assist with the renewal process, CMIPS triggers a task to the Overtime Violation work queue 60 prior to the Exemption End Date of an active exemption. Counties should ensure that the appropriate staff have access to the Overtime Violation work queue to receive the task timely.

Once the county evaluates an existing Exemption 2 and determines it meets the requirement for being renewed, the county should create a new Exemption 2 request on the *Overtime Violation Exemption* screen; the date entered in the "Begin Date" field of the new request should be the day following the date in the "End Date" field of the existing Exemption 2.

EXAMPLE:

- A previously approved Exemption 2 has an "End Date" of March 31, 2020.
- On January 31, 2020, CMIPS triggers a task to the Overtime Violation work queue to remind the county staff to evaluate the exemption for renewal.
- On February 24, 2020, the county staff completes the evaluation and determines that the requirements for renewing the Exemption 2 are met.

The county staff would:

- Access the *Overtime Violation Exemption* screen and create a new exemption by selecting the "Extraordinary Circumstance" as the Exemption Type, and then, enter information in all the fields on the screen. The "Begin Date" entered would be April 1, 2020. As indicated in ACL 18-54, CMIPS will automatically populate an "End Date."
- Add a note to the provider's *Person Home* screen indicating the justification for renewing the Exemption 2.
- Mail the provider and recipients the appropriate notices, namely the Notices to Provider/Recipient of Approval of Exemption from the Workweek Limits for Extraordinary Circumstances (SOC 2309/SOC 2309A), to inform them that the exemption has been renewed.

If the county staff determines that the circumstances upon which the exemption was granted had changed and the requirements for approving an Exemption 2 were no longer met, there would be no change to the *Overtime Violation Exemption* screen. The exemption would automatically terminate as of the "End Date." The county staff would need to add a note to the provider's *Person Home* screen indicating the justification for not renewing the Exemption 2. In addition, the county staff would also mail the

SOC 2312 to provider and the SOC 2312A to the recipients to inform them that the exemption has been terminated.

Withdrawal of Exemption 2 Requests

A withdrawn Exemption 2 request should be treated as a denial, including entry into CMIPS and issuance of ineligibility notices, and the reason the request was withdrawn should be documented in a note entry on the provider *Person Home* screen. As indicated in ACL 18-54, the “Inactivate” function on the *Overtime Violation Exemption* screen should only be used to immediately remove an exemption that was created in error.

Designating County Exemption 2 Contacts

Counties are reminded to designate a primary and secondary Exemption 2 county contact in the Very Important Contacts (VIC) database and ensure that the contact information is complete and is kept current. Questions regarding updates to the VIC should be directed to the Systems Operation and Data Analysis Bureau at (916) 651-1069.

REVISIONS OF FORMS/NOTICES

Revisions to the SOC 2305

The Exemption 2 request form has been revised to add questions regarding the recipients’ (or their authorized representatives’) efforts to hire an additional provider(s). The information entered in the responses to these questions should assist counties in their initial review of the Exemption 2 request. Other minor changes were made to the wording on the form.

Revisions to the SOC 2310 and SOC 2310A

On the Notices to Provider and Recipient of Ineligibility for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) (SOC 2310 and SOC 2310A), the check boxes for “Initial Exemption” and “Exemption Renewal” have been removed. Counties will no longer use these notices to inform individuals of a provider’s ineligibility for renewal of an Exemption 2.

In addition, these notices have been revised to simplify and clarify the language relating to the individual’s right to request an ESAR of the county’s ineligibility determination. Language has also been added to these notices to indicate that an individual may request to be re-evaluated for an Exemption 2 in the future if there are changes in the recipients’ circumstances. Finally, other minor revisions in language have been made for clarity.

Revisions to the SOC 2312 and SOC 2312A

These notices have been renamed to more accurately reflect their purpose, which is to inform the provider and recipients of the termination of a previously approved Exemption 2 due to a change in an individual's eligibility. Minor changes were made to some of the language used on the notices for consistency and clarity.

Revision of the SOC 2313

In October 2018, CDSS revised the SOC 2313 to reflect the new mail station for the ESAR Unit, and to include text emphasizing that the individual requesting an ESAR must include a copy of the SOC 2310 or the SOC 2310A he/she received from the county along with the completed and signed SOC 2313 when submitting an ESAR request to CDSS. Counties should ensure that they are using this most current version of the SOC 2313.

Camera-ready copies of the English language versions of the revised notices are available on the [Forms/Brochures web page](#). The revised forms have been translated into the three threshold languages, Armenian, Chinese and Spanish, and they are available on the [Translated Forms and Publications web page](#). Counties are reminded that they should ensure that individuals receive appropriate Exemption 2 forms and notices in their preferred language.

The designated Forms Coordinator for your county must distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited-English proficient populations, as required by the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290 et seq.) and by state regulation (CDSS Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, Section 115).

Questions about accessing the forms may be directed to CDSS' Forms Management Unit at fmudss@dss.ca.gov. Questions about translations may be directed to CDSS' Language Services Unit at lts@dss.ca.gov.

Any questions regarding the information provided in this ACIN may be directed to the Appeals, Administrative Review and Reimbursement Bureau at (916) 651-3488.

Sincerely,

DEBBI THOMSON
Deputy Director
Adult Programs Division

Attachments

IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM REQUEST FOR EXEMPTION FROM WORKWEEK LIMITS FOR EXTRAORDINARY CIRCUMSTANCES (EXEMPTION 2)

Provider Name:

Provider Number:

County:

To be considered for an Exemption 2, you must work for two or more IHSS recipients and **ALL** the recipients you work for must meet **AT LEAST ONE** of the following conditions which puts them at serious risk of placement in out-of-home care:

- **Criteria A** – He or she has complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the recipient.
- **Criteria B** – He or she lives in a rural or remote area where available providers are limited, and, as a result, he or she is unable to hire another provider.
- **Criteria C** – He or she is unable to hire another provider who speaks the same language and as a result he or she is unable to direct his or her own care.

Note: The provider does not have to live in the same home as the recipients to qualify under Criteria B and C.

To be approved for an Exemption 2, the recipients (or their authorized representative(s)) with the assistance of the county, as needed, must have tried to hire an additional provider(s) so that their authorized service hours can be worked within the workweek limits. Prior documented attempts to hire and/or have services provided by other providers may be considered in meeting this requirement.

PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Do you work with two or more recipients? YES NO
2. Do you live in the same home as all recipients applying under Criteria A?
 YES NO
3. How many total combined monthly hours do you currently work for all your recipients? _____ hours

4. Have the recipients (or their authorized representatives) tried to hire an additional provider(s)? YES NO

If YES, briefly describe the efforts to hire an additional provider(s):

If NO, briefly explain why no efforts were made to hire an additional provider(s):

LIST ALL RECIPIENTS YOU ARE CURRENTLY SERVING:

Recipient #1 Name:	Case Number:
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Please evaluate recipient under exemption criteria: Criteria A Criteria B Criteria C

Recipient #2 Name:	Case Number:
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Please evaluate recipient under exemption criteria: Criteria A Criteria B Criteria C

Recipient #3 Name:	Case Number:
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Please evaluate recipient under exemption criteria: Criteria A Criteria B Criteria C

Recipient #4 Name:	Case Number:
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Please evaluate recipient under exemption criteria: Criteria A Criteria B Criteria C

Provider Name:	Provider Number:
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Provider Signature:	Date:
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**ONCE YOU COMPLETE AND SIGN THIS FORM,
PLEASE SUBMIT TO YOUR COUNTY IHSS OFFICE.**

FOR COUNTY USE ONLY

Received By:	Received Date:
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- Recipient(s) do not have complex medical and/or behavioral needs.
- Recipient(s) do not live in a rural/remote area.
- Recipient(s) do not meet Language/Communication Barrier criteria.
- Recipient(s) did not demonstrate that services could not be provided with initial interpretive assistance.
- Recipient(s) failed to provide sufficient justification as to why all the authorized service hours of the recipients could not be worked by additional providers when there are other providers associated with the case.
- Recipient(s) have exhibited an ability to work with other providers.
- The authorized hours for all recipients have been assigned to active providers; therefore, an exemption is not needed.

Because you have been determined ineligible for an exemption, you will be subject to the existing workweek limitations. Therefore, the maximum number of hours you may work in a workweek for two or more recipients combined is 66 hours. The recipients you work for will need to hire another provider(s) to work any remaining authorized hours.

If you have received any violations for submitting timesheets reporting working more hours than the workweek limits, the county will rescind those violations that you received from the date the exemption request was submitted up to the date of this letter.

In the future, if there are any changes in the recipients' circumstances that may affect your eligibility for an exemption, you can request to be re-evaluated for an Exemption 2 at that time.

If you disagree with the county's determination that you are ineligible for an exemption, you can request a state administrative review of the ineligibility determination. See the attached Exemption 2 State Administrative Review Request Form (SOC 2313) for information about the state administrative review process and instructions on how to request one.

If you have any questions about this notice, call your recipient's IHSS social worker at the telephone number shown above.

- You or the provider's other recipient(s) do not have complex medical and/or behavioral needs.
- You or the provider's other recipient(s) do not live in a rural/remote area.
- You or the provider's other recipient(s) do not meet Language/Communication Barrier criteria.
- You or the provider's other recipient(s) did not demonstrate that services could not be provided with initial interpretive assistance.
- You or the provider's other recipients (or their authorized representative(s)) failed to provide sufficient justification as to why all the authorized service hours of the recipients could not be worked by additional providers when there are other providers associated with the case.
- You or the provider's other recipient(s) have exhibited an ability to work with other providers.
- The authorized hours for all the provider's recipients have been assigned to active providers; therefore, an exemption is not needed.

Because your provider has been determined ineligible for an exemption, he/she will be subject to the existing workweek limits. Therefore, the maximum number of hours he/she may work in a workweek for two or more recipients combined is 66 hours. Either you or one of the other recipients your provider works for will need to hire another provider(s) to work any remaining authorized hours above the 66 hour per workweek limit.

In the future, if there are any changes in your circumstances that may affect your provider's eligibility for an exemption, your provider can request to be re-evaluated for an Exemption 2 at that time.

If you disagree with the county's determination that you are ineligible for an exemption, you can request a state administrative review of the ineligibility determination. See the attached Exemption 2 State Administrative Review Request Form (SOC 2313) for information about the state administrative review process and instructions on how to request one.

If you have any questions about this notice, call your IHSS social worker at the telephone number shown above.

OTHER REASON:

The termination of your Exemption 2 means you must adhere to the standard IHSS workweek limits. Therefore, the maximum combined number of hours you may work for two or more recipients is 66 hours per workweek. Once you work the maximum weekly hours, your recipients must hire another IHSS provider to work their remaining authorized IHSS hours.

If you submit timesheets that report working hours that exceed the 66-hour workweek limits for service periods after the exemption end date, you will receive a violation.

If you have questions about this notice, call your recipient's IHSS social worker at the telephone number shown above.

DRAFT

MAY 09 2019

**IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM
NOTICE TO RECIPIENT OF TERMINATION OF EXEMPTION FROM
WORKWEEK LIMITS (EXEMPTION 2) DUE TO A CHANGE IN ELIGIBILITY**

(ADDRESSEE)

County of: _____

┌ _____ ┐

Notice Date: _____

IHSS Office Address: _____

└ _____ ┘

IHSS Office Telephone: _____

Provider Name: _____

Provider Number: _____

At the end of service month _____, your provider's Exemption 2 will be terminated because of the following change(s) in his or her eligibility for the exemption:

- Your provider is no longer providing services for you or one of the other recipients he or she was previously working for.
- Your provider no longer lives in the same home with you or one of his or her other recipients.
- You or one of your provider's other recipients has had a reduction in authorized IHSS hours so your provider is now able to work within the workweek limits.
- You or one of your provider's other recipients no longer meets the Exemption 2 eligibility criteria.
- You or one of your provider's other recipients has hired an additional provider(s) and therefore, your provider is able to work within the workweek limits.
- Your provider did not submit a signed copy of the Exemption from Workweek Limits for Extraordinary Circumstances Approved Exemption Provider Agreement (SOC 2308) to the county as required.

OTHER REASON:

Because the Exemption 2 is being terminated, your provider will have to work within the standard IHSS workweek limits. This means that the maximum combined number of hours that your provider may work for you and any other recipients is 66 hours per workweek. If your provider works more than the 66-hour per workweek limit, he or she will receive a violation.

Either you or one of your provider’s other recipients will need to hire another provider(s) to work any remaining authorized IHSS hours above the 66 hour per workweek limit. You should discuss this information with your provider and make arrangements to ensure that he or she does not work more than the workweek limits.

If you have any questions about this notice, you may call your IHSS social worker at the telephone number shown above.