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

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ORD #0915-11

August 16, 2019

Notification of 15-Day Public Availability
of Changes to Regulations and Supporting
Documents and Information

On December 27, 2018 and January 18, 2019, public hearings were held to consider the proposed adoption, amendment, or repeal of the following regulations:

ITEM #1 IHSS Paramedical

Pursuant to the provisions of Sections 11346.8(c) and 11347.1(a) of the Government Code, the California Department of Social Services (CDSS) has revised the Statement of Reasons and the proposed regulatory language. A copy of the full text of the regulations with the proposed changes indicated is enclosed for your review. A copy of the Addendum to the Initial Statement of Reasons is also enclosed for review and comment. All documents may be obtained at:

California Department of Social Services
Office of Regulations Development
744 P Street, M.S. 8-4-192
Sacramento, CA 95814

There were no additional supporting documents or information relied upon by CDSS in making these regulatory changes.

Any person interested may submit written statements or arguments relating to the modified language and documents or information during the public comment period from August 16, 2019, to September 3, 2019. These statements may be submitted to the Office of Regulations Development at the address listed above, by e-mail to ord@dss.ca.gov, or by fax at (916) 654-3286. In order to be considered, public comments must be received by CDSS by 5:00 p.m., September 3, 2019.

Any questions concerning the proposed regulations and documents or information may be directed to the Office of Regulations Development at (916) 657-2586.

KENNETH JENNINGS, Regulations Analyst
Office of Regulations Development

Enclosures

Description of Method Used to Illustrate Changes to Original Text

In the attached document, the language originally proposed is underlined. Deletions to existing language are shown by strikeout. Revisions made subsequent to public hearing are shown as follows:

Added language	double underlined
	New language added following public hearing.
Deleted language	double strikeout
	~~Language deleted following public hearing.~~

For the incorporated forms the revisions subsequent to public hearing are shown as follows:

Added language	single underlined
	New language added following public hearing.
Deleted language	single strikeout
	~~Language deleted following public hearing.~~

Amend Section 30-701 to read:

30-701 Special Definitions 30-701

(a)(1) - (l) (1) (Continued)

(2) (A) (Continued)

(B) A Licensed Health Care Professional for the purposes of ordering Paramedical Services (LHCP-PM) is an individual who is licensed in the State of California by the appropriate regulatory agency, acting within the scope of his/her license or certificate as defined in the Business and Professions Code, and is limited to the following:

1. A physician or surgeon (either a Medical Doctor [M.D.] or a Doctor of Osteopathic Medicine [D.O.]);
2. A podiatrist (Doctor of Podiatric Medicine [D.P.M.]);
3. A Dentist (either a Doctor of Dental Surgery [D.D.S.] or a Doctor of Dental Medicine [D.D.M.]);
4. A Nurse Practitioner (N.P.); and
5. A Physician Assistant (P.A.).

(3) (Continued) Through

(q) (Continued)

(r) (1) ~~Recipient means a person receiving IHSS, including applicants for IHSS when clearly implied by the context of the regulations.~~ Range of motion exercises are activities aimed at improving movement of a specific joint in order to maintain function, improve gait, ~~or~~ maintain strength, or maintain endurance. Range of motion exercises may include moving a joint through its range of motion, or flexing, and/or stretching of associated muscles. Range of motion exercises are classified as either active or passive:

(A) Active range of motion exercises are performed by the individual him/herself without assistance, other than verbal instructions, from another person. Active range of motion exercises may be authorized as a repositioning and rubbing skin task pursuant to Section 30-757.14.(g).

(B) Passive range of motion exercises are performed by another person who moves the individual's body part manually for him/her because he/she is unable to do it for him/herself because of his/her functional limitation(s). Passive range of motion exercises may be authorized as a paramedical task pursuant to Section 30-757.191.

(2) ~~Reduced payment means any payment less than full payment that may be due.~~ Recipient means a person receiving IHSS, including applicants for IHSS when clearly implied by the context of the regulations.

(3) Reduced payment means any payment less than full payment that may be due.

(s)(1) – (z) (Continued)

NOTE: Authority cited: Sections 10553, 10554, 12301.1, and 22009(b), Welfare and Institutions Code; and Chapter 939, Statutes of 1992.

Reference: Sections 10554, 11102, 12300(c), 12300.1, 12301, 12301.6, 12304, 12306, 12308, 13302, 14132.95, 14132.95(e), 14132.95(f), and 22004, Welfare and Institutions Code.

Amend Section 30-756 to read:

30-756 NEED 30-756

.1 - .15 (Continued)

.2 Staff of the designated county department shall rank the recipient's functioning in each of the following functions.

(a) – (i) (Continued)

(j) ~~Eating~~/Feeding;

(k) – (n) (Continued)

.3 - .372 (Continued)

.4 ~~Notwithstanding Section 30-756.11, staff shall rank a recipient the rank of "1" if the recipient's needs for a particular function are met entirely with paramedical services as described in Section 30-757.19 in lieu of the correlated task.~~ Staff shall assign an indicator of "6" instead of designating a rank identified in Section 30-756.1 when all of an individual's needs in any one of the following service categories ~~is~~ are met entirely through the provision of paramedical services, as described in Section 30-757.19, in lieu of the correlated task: meal preparation and clean-up; feeding; bowel, bladder, and menstrual care; and/or respiration.

.41 If all of the recipient's ingestion of nutrients occurs with paramedical services such as, tube feeding, the recipient shall be assigned an indicator of ~~ranked "1"~~ "6" in both meal preparation and clean-up and ~~eating~~ feeding because tube feeding is a paramedical service.

(a) If a recipient has been designated an indicator of "6" but has nutritional formulas prepared by the IHSS provider that are not pre-packaged, any meal preparation and clean-up time will be included in the paramedical service authorization.

.42 If all the recipient's needs for human assistance in respiration are met with ~~the~~ paramedical services such as, ~~of~~ tracheostomy care and suctioning, the recipient should be assigned an indicator of ~~ranked a "1"~~ "6" because this care is a paramedical service ~~rather than respiration~~.

.43 If all the recipient's needs for human assistance in bowel, and bladder ~~and menstrual~~ care are met with paramedical services and the recipient does not require assistance in menstrual care ~~such as, ostomy care~~, the recipient should be assigned an indicator of "6" because all care needs in the bowel, bladder and, menstrual care service category have been met through ~~ostomy care is a~~ paramedical services.

(a) If the recipient has their bowel and bladder care met exclusively by paramedical services but also requires menstrual care, the recipient shall be designated the appropriate ranking in bowel, bladder and menstrual care based on the recipient's menstrual care needs.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Chapter 939, Statutes of 1992.

Reference: Sections 12300 and 12309, Welfare and Institutions Code; and the State Plan Amendment, approved pursuant to Section 14132.95(b), Welfare and Institutions Code.

Amend Section 30-757 to read:

30-757 PROGRAM SERVICE CATEGORIES AND TIME GUIDELINES 30-757

.1 Only those services specified in Sections 30-757.11 through .19 shall be authorized through IHSS. A person who is eligible for a personal care service provided pursuant to the PCSP shall be equal to the level of the same service provided by PCSP.

(a) – (a)(6)(D). Handbook (Continued)

.11 - .135(c)(1) (Continued)

.14 Personal care services, limited to:

(a) – (d)(3)(C) (Continued)

(e) Bathing, oral hygiene, and grooming:

(1) (Continued)

(2) (Continued)

(3) Grooming includes hair combing/brushing; hair trimming when the recipient cannot get to the barber/salon; shampooing, applying conditioner, and drying hair; shaving; fingernail/toenail care ~~except for nail clipping, which is not a service authorized in the IHSS program; when these services are not assessed as "paramedical" services for the recipient;~~ and washing/drying hands. Grooming excludes cutting with scissors and clipping toenails.

(4) (Continued)

(f) – (3)(E) (Continued)

(g) Repositioning and rubbing skin, which includes rubbing skin to promote circulation and/or prevent skin breakdown; turning in bed and other types of repositioning; and active range of motion exercises which shall be limited to the following:

(1) General supervision of exercises which have been taught to the recipient by a licensed therapist or other health care professional to restore mobility restricted because of injury, disuse, or disease; or

(2) Maintenance therapy when the specialized knowledge and judgment of a qualified therapist is not required, and the

exercises are consistent with the patient's capacity and tolerance; and

(A) Such exercises shall include the carrying out of maintenance programs, i.e., the performance of the repetitive exercises required to maintain function, improve gait, maintain strength, or maintain endurance.~~; passive exercises to maintain range of motion in paralyzed extremities; and assistive walking.~~

(3) - .185(g) (Continued)

.19 Paramedical services.~~, under the following conditions:~~

.191 ~~The~~ Paramedical services ~~shall have the following characteristics~~ are limited to tasks which:

(a) ~~are activities which persons~~ an individual would normally perform for ~~themselves~~ him/herself but for ~~their~~ his/her functional limitation(s)~~,~~;

(b) ~~are activities which,~~ due to the ~~recipient's~~ individual's physical or mental condition, are necessary to maintain ~~the recipient's~~ his/her health~~.~~; and

(c) ~~are activities which~~ include the administration of medications, puncturing the skin, or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a ~~licensed health care professional~~ acting within the scope of his/her license or certificate pursuant to the Business and Professions Code, Division 2, when the activity has been ordered by an LHCP-PM, as defined in Section 30-701(l)(2)(B).

HANDBOOK BEGINS HERE

(1) Examples of common paramedical services tasks include, but are not limited to, the following:

(A) Any treatment requiring sterile procedures;
(B) Administering medication or giving injections;
(C) Blood or urine testing;
(D) Care of pressure sores (skin and wound care);
(E) Catheter care;
(F) Enemas, digital stimulation or insertion of suppositories;

(G) Ostomy (ileostomy/colostomy) care;
(H) Tube feeding;
(I) Airway suctioning; and
(J) Passive range of motion exercises, as defined in Section 30-701(r)(1)(B).

~~(2) Examples of tasks that cannot be authorized under paramedical services include, but are not limited to, the following:~~

~~(A) Nail (fingernail/toenail) clipping is not a service authorized in the IHSS program;~~
~~(B) Active range of motion exercises, as defined in Section 30-701(r)(1)(A);~~
~~(C) Vital Signs when ordered unrelated to other paramedical services;~~
~~(D) Blood Pressure Checks, when ordered unrelated to other paramedical services;~~
~~(E) Applied Behavioral Analysis (ABA) therapy including, sensory, auditory, and visual therapies are not services authorized in the IHSS program; and~~
~~(F) Monitoring the time in between the initiation and conclusion of the provider performing the paramedical service; including but not limited to the time the g-tube machine is running.~~

HANDBOOK ENDS HERE

.192 ~~The services shall be provided when ordered by a licensed health care professional who is lawfully authorized to do so. The licensed health care professional shall be selected by the recipient. The recipient may select a licensed health care professional who is not a Medi-Cal provider, but in that event shall be responsible for any fee payments required by the professional.~~ Authorization of Paramedical Services.

(a) Paramedical services shall only be authorized when ordered by a LHCP-PM, as defined in Section 30-701(l)(2)(B).

(1) The applicant/recipient shall have the right to choose the LHCP-PM from whom he/she obtains the order for paramedical services.

(A) ~~The individual shall be responsible for payment of any fees required by the LHCP-PM.~~ The recipient may select a licensed health care professional who is not a Medi-Cal provider; however, the IHSS program shall not be responsible for any fee payments required by the professional.

(B) When receiving services from a Medi-Cal provider, all Medi-Cal covered services will be reimbursed by the Medi-Cal program as set forth by Medi-Cal rules and regulations.

(b) The county shall only accept an order for paramedical services that is provided on the CDSS-developed form, Request for Order and Consent – Paramedical Services [SOC 321 (XX/20XX)], which is incorporated in its entirety herein by reference.

(1) The SOC 321 (XX/20XX) shall be completed, signed and dated by the LHCP-PM ordering the paramedical services. The ~~LHCP-PM shall be provided with the Statewide Paramedical Services Time Authorization Guidelines~~ SOC 321 (XX/20XX) shall include a Paramedical Service Authorization Reference Tool, which may also be accessed on CDSS' website, to refer~~ence in~~ when ordering paramedical services. The purpose of ~~these guidelines~~ the Paramedical Service Authorization Reference Tool is to provide the LHCP-PM and counties with a tool for ~~both~~ consistently ~~and accurately~~ assessing paramedical service needs and authorizing time.

(A) The ~~Statewide Paramedical Services Time Authorization Guidelines~~ Paramedical Service Authorization Reference Tool shall be established by the Department and shall be updated when determined necessary by the Department due to advancements in medicine, new medical information, or when the Department otherwise deems it necessary. Updating of the reference tool ~~guidelines~~ shall include, but is not limited to, deletion and/or addition of services, time ranges or changes to existing time ranges.

(2) The LHCP-PM shall indicate on the SOC 321 (XX/20XX):

(A) Each specific paramedical task that is required;

1. The county shall not authorize a service listed on the SOC 321 by the LHCP-PM if the service does not satisfy the conditions specified in Section 30-757.191.

(B) The estimated amount of time required to perform each specific paramedical task;

1. If the estimated time required to perform a specific paramedical task exceeds the range of time listed for the task in the ~~Statewide Paramedical Service Time Authorization Guidelines~~ Paramedical Service Authorization Reference Tool, which may be accessed on CDSS' website, the LHCP-PM shall ~~provide a justification for why additional time is required~~ describe the recipient's functional limitation that has necessitated the authorization of additional time.

2. If a task is not listed in the ~~Statewide Paramedical Services Time Authorization Guidelines~~ Paramedical Service Authorization Reference Tool, the county must authorize the amount of time the LHCP-PM has indicated on the SOC 321, if authorization of the paramedical task is allowable pursuant to Section 30-757.191 and is based on the time needed for a provider who exercises ordinary care, skill, and judgment to perform the task for the recipient.

(C) The frequency that each specific paramedical task is to be performed; and

(D) The duration that the authorization for paramedical services is to remain in effect.

1. A new SOC 321 (XX/20XX) shall be required if paramedical services continue to be needed beyond the end date the LHCP-PM has indicated on the original SOC 321 (XX/20XX).

(3) The SOC 321 (XX/20XX) includes a statement of informed consent and by signing the form, the applicant/recipient, his/her guardian, conservator, or authorized representative, shall give his/her informed consent associated with the provision of paramedical services in the IHSS program, and that he/she agrees to have paramedical services performed by his/her IHSS provider.

(A) The statement of informed consent on the SOC 321 (XX/20XX) must be signed and dated by the recipient, and submitted to the county prior to authorizing paramedical services.

(4) The SOC 321 (XX/20XX) has a LHCP-PM certification section and by signing the form, the LHCP-PM shall certify that he/she has informed the recipient of the risks associated with accepting the provision of paramedical services by an IHSS provider.

(A) The LHCP-PM certification included on the SOC 321 (XX/20XX) must be signed and dated by the LHCP-PM, and submitted to the county prior to authorizing paramedical services.

(c) The SOC 321 (XX/20XX) shall not be dated more than 60 days prior to the date received by the county.

(d) The authorization of other services described in Sections 30-757.11 through 30-757.18 shall not be delayed pending determination of the need for paramedical services.

(1) If the county is unable to obtain the completed SOC 321 (XX/20XX) from the LHCP-PM within the standard time frame for determining eligibility for services, as specified in Section 30-759.2, the county shall authorize all other services for which the individual has been found eligible and increase the authorization, if allowable pursuant to Section 30-757.193(d), to include paramedical services when the completed SOC 321 (XX/20XX) is received.

(e) The county shall utilize the ~~Statewide Paramedical Service Time Authorization Guidelines~~ Paramedical Service Authorization Reference Tool, which may be accessed on CDSS' website, as a ~~guideline/~~tool to authorize time for paramedical services.

(1) The time authorized for paramedical services shall not be based on a specific IHSS provider's skill level or the time it takes for him/her to perform the specific paramedical task but rather on the time it would take an ~~average person~~ IHSS provider who has been trained to do the task pursuant to Section 30-757.193 (a)(1) and (b), and who exercises ordinary care, skill, and judgment to perform the task for the recipient.

(2) When determining how much time to authorize for paramedical services, the county shall:

(A) Compare the LHCP-PM's estimate of the time required to perform the specific paramedical task(s) ordered as indicated on the completed SOC 321 (XX/20XX) with the ~~Statewide Paramedical Service Time Authorization Guidelines~~ Paramedical Service Authorization Reference Tool, and

(B) If the estimate of the time required to perform the paramedical service by the LHCP-PM on the completed SOC 321 (XX/20XX) is:

1. Within the time range listed in the ~~Statewide Paramedical Services Time Authorization Guidelines~~ Paramedical Service Authorization Reference tool, the county shall authorize the amount of time the LHCP-PM has indicated.

2. ~~Outside of~~ Above the time range listed in the ~~Statewide Paramedical Services Time Authorization Guidelines~~ Paramedical Service Authorization Reference tool, and the LHCP-PM:

(i) Has ~~provided a justification for going~~ described the recipient's functional limitation that has necessitated the authorization of additional time ~~outside~~

~~of~~ above the ~~guidelines~~ the time range listed in the Paramedical Service Authorization Reference Tool, the county shall authorize the amount of time the LHCP-PM has indicated.

(ii) Has not ~~provided a justification for going~~ described the recipient's functional limitation that has necessitated the authorization of additional time ~~outside of~~ above the ~~guidelines~~ the time range listed in the Paramedical Service Authorization Reference Tool, the county shall consider the SOC 321 (XX/20XX) to be incomplete ~~and shall contact the LHCP-PM to obtain the omitted justification, notate the SOC 321 (XX/20XX) based on the subsequent information provided by the LHCP-PM, and authorize the amount of time the LHCP-PM has indicated subject to subparagraph (C).~~

I. ~~If, after two documented attempts, not less than one week apart, the county is unable to contact the LHCP-PM to obtain the justification for indicating an amount of time that is outside the range specified in the Statewide Paramedical Services Time Authorization Guidelines, the county shall authorize time based on the in-home assessment and the Statewide Paramedical Services Time Authorization Guidelines.~~ The County shall contact the LHCP-PM to obtain the omitted description of the recipient's functional limitation necessitating the authorization of additional time above the time range listed in the Paramedical Service Authorization Reference Tool, and notate the SOC 321 (XX/20XX) based on the subsequent information provided by the LHCP-PM.

~~a. If the LHCP-PM indicated an amount of time below the range specified in the Statewide Paramedical Services Time Authorization Guidelines, the county~~

~~shall authorize the lowest time indicated in the range.~~

~~b. If the LHCP-PM indicated an amount of time above the range specified in the Statewide Paramedical Services Time Authorization Guidelines, the county shall authorize the highest time indicated in the range.~~

II. ~~If, at a later date,~~ Once the LHCP-PM provides a ~~justification for indicating an amount of time~~ description of the recipient's functional limitation necessitating the authorization of additional time that is above ~~outside the range specified in the Statewide Paramedical Services Time Authorization Guidelines of~~ the time range listed in the Paramedical Service Authorization Reference Tool, and the county verifies that the requirements of Sections 30-757.192(b)(3)(A) and (b)(4)(A) have been met, the county shall ~~revise the individual's authorized hours to reflect~~ consider the SOC 321 (XX/20XX) complete and authorize the amount of time indicated by the LHCP-PM, ~~subject to subparagraph (C).~~

a. The effective date of ~~a change in a recipient's authorized hours~~ the completed SOC 321 (XX/20XX) as specified in Section 30-757.192~~(d)~~(e)(2)(B)2.(ii)II shall be retroactive as specified in Section 30-757.193(d) ~~if all of the conditions have been met~~.

3. Below the time range specified in the Paramedical Service Time Authorization Reference Tool, the county shall authorize the lowest time indicated in the range.

4. Not listed in the Paramedical Service Authorization Reference Tool, the county shall authorize the amount of

time pursuant to Section 30-757.192(b)(2)(B)2.

(i) If the county determines that the LHCP-PM has authorized time due to a specific provider's individual ability and skill, the county shall contact the LHCP-PM and clarify that the time per task should be based on the time necessary for a provider who exercises ordinary care, skill and judgement to perform the task for the recipient.

I. Once the LHCP-PM authorizes time based on the time needed for a provider who exercises ordinary care, skill, and judgment to perform the task for the recipient, and the county verifies that the requirements of Sections 30-757.192(b)(3)(A) and (b)(4)(A) have been met, the county shall consider the SOC 321 (XX/20XX) complete and authorize the amount of time indicated by the LHCP-PM.

a. The effective date of the completed SOC 321 (XX/20XX) as specified in Section 30-757.192(e)(2)(B).4(i)I shall be retroactive as specified in Section 30-757.193(d).

(C) ~~The county must assess whether or not the justification of the LHCP-PM to exceed the range specified in the Statewide Paramedical Services Time Authorization Guidelines is reasonable. If the county determines the justification provided is not reasonable, the county shall authorize the time based on the in-home assessment and the Statewide Paramedical Services Time Authorization Guidelines.~~ Obtain a verbal order for paramedical services from the LHCP-PM when the county requires additional information in order to process an incomplete SOC 321, The verbal order of the LHCP-PM should be notated on the original SOC 321 and the discussion documented in the recipient's case notes.

1. The county must verify that the original SOC 321 (XX/20XX) includes: the LHCP-PM's certification that they informed the recipient of the risks associated with the provision of the ordered paramedical services; and the recipient's informed consent to receive those services. Upon this verification, the county shall authorize the paramedical services ordered pursuant to Section 30-757.192(e)(2)(C).

2. The county must follow-up with the LHCP-PM to obtain a complete SOC 321 to provide written documentation of the verbal order for paramedical services authorized pursuant to Section 30-757.192 (e)(2)(C). The county shall document the LHCP-PM's verbal order on the SOC 321 and send it to the LHCP-PM for signature and submission to the county.

(f) Any change in a recipient's condition that results in a change in the time to perform previously authorized paramedical tasks and/or additional paramedical tasks not previously authorized shall require a new SOC 321 (XX/20XX) to be completed and submitted to the county.

(1) Upon receipt of the SOC 321 (XX/20XX), the effective date of the increase in time to perform a currently authorized paramedical task or the effective date of the newly authorized paramedical service shall be made retroactive if all of the conditions in Section 30-757.193(d) have been met.

(g) Pursuant to Section 30-760.15, within 10 calendar days, the recipient must report the hiring of a new IHSS provider to provide paramedical services. The new IHSS provider may not provide paramedical services prior to submitting an SOC 321 (XX/20XX) or SOC 321A (XX/20XX) verifying that they have met the training requirement pursuant to Section 30-757.193(b).

(h) Upon notification that the recipient has hired a new IHSS provider to provide IHSS paramedical services, the county

shall provide an SOC 321 (XX/20XX) and SOC 321A (XX/20XX) to the recipient for completion.

(i) During the recipient's annual reassessment, the county will ensure that there is a current SOC 321 (XX/20XX) or SOC 321A (XX/20XX) on file indicating that all of the recipient's IHSS providers responsible for the provision of paramedical services are appropriately trained to provide those services.

.193 ~~The services shall be provided under the direction of a licensed health care professional.~~ Provision of Paramedical Services.

(a) Paramedical services, when authorized, shall be provided by the recipient's IHSS provider(s).

(1) No special credentials shall be required of a provider of paramedical services.

(b) Before providing a paramedical service to a recipient, an IHSS provider shall receive training from a ~~LHCP-PM~~ health care professional licensed pursuant to Division 2 of the Business and Professions Code in each specific paramedical task to be provided to the recipient. An IHSS provider shall not receive payment for providing paramedical services for which he/she has not been trained by a ~~LHCP-PM~~ health care professional licensed pursuant to Division 2 of the Business and Professions Code.

(1) The county shall accept as evidence that the provider has received the necessary training from the ~~LHCP-PM~~ health care professional licensed pursuant to Division 2 of the Business and Professions Code to perform the specific paramedical tasks, indicated by the form(s) Provider Self-Certification of Completion of Training in the Provision of Paramedical Services [SOC 321A (XX/20XX)], which is incorporated in its entirety herein by reference, and/or SOC 321 (XX/20XX) on which Section 5 has been completed to indicate that the provider has received the necessary training.

(2) When a recipient changes his/her provider, the county shall obtain a new SOC 321 (XX/20XX) with Section 5 completed and/or a new SOC 321A (XX/20XX), to provide proof that the provider received the necessary training from the ~~LHCP-PM~~ health care professional licensed pursuant to Division 2 of the Business and

Professions Code to perform the specific paramedical tasks.

(c) An IHSS provider shall receive the same hourly rate of pay for providing paramedical services that he/she receives for providing any other authorized IHSS services.

(d) The county shall not authorize paramedical services before the completed SOC 321 (XX/20XX) has been received by the county.

(1) Retroactive payment for paramedical services provided before the county received the completed SOC 321 (XX/20XX) may be made back to the date the paramedical service was ordered as indicated on the SOC 321 (XX/20XX), not to exceed the protected date of eligibility for applicants pursuant to Section 30-759.12 only if the following conditions have been met:

(A) The specific paramedical services that were provided are consistent with those ordered by the LHCP-PM on the SOC 321 (XX/20XX) and those ordered are consistent with the county Social Worker's documentation; and

(B) The provider received training in the specific paramedical services before he/she provided the paramedical services to the recipient, as verified on Section 5 of the SOC 321 (XX/20XX) and/or the SOC 321A (XX/20XX).

(2) Retroactive payment for paramedical services provided to a recipient before the county received the completed SOC 321 (XX/20XX) may be made back to the date the recipient informed the county of his/her need of paramedical services only if the following conditions have been met:

(A) The specific paramedical services that were provided are consistent with those ordered by the LHCP-PM on the SOC 321 (XX/20XX) and those ordered are consistent with the county Social Worker's documentation; and

(B) The provider received training in the specific paramedical services before he/she provided the paramedical services to the recipient, as

verified on Section 5 of the SOC 321 (XX/20XX) and/or the SOC 321A (XX/20XX).

(3) If the conditions in Section 30-757.193(d) are not met, the date the LHCP-PM signed the SOC 321 (XX/20XX) shall be the effective date of paramedical services if paramedical services are otherwise allowable pursuant to Section 30-757.193.

~~.194 The licensed health care professional shall indicate to social services staff the time necessary to perform the ordered services.~~

~~.195 This service shall be provided by persons who ordinarily provide IHSS. The hourly rate of provider compensation shall be the same as that paid to other IHSS providers in the county for the delivery method used.~~

~~.196 The county shall have received a signed and dated order for the paramedical services from a licensed health care professional. The order shall include a statement of informed consent saying that the recipient has been informed of the potential risks arising from receipt of such services. The statement of informed consent shall be signed and dated by the recipient or his/her guardian or conservator. The order and consent shall be on a form developed or approved by the department.~~

~~.197 In the event that social services staff are unable to complete the above procedures necessary to authorize paramedical services during the same time period as that necessary to authorize the services described in .11 through .18, social services staff shall issue a notice of action and authorize those needed services which are described in .11 through .18 in a timely manner as provided in Section 30-759. Paramedical services shall be authorized at the earliest possible subsequent date.~~

~~.198 In no event shall paramedical services be authorized prior to receipt by social services staff of the order for such services by the licensed health care professional. However, the cost of paramedical services received may be reimbursed retroactively provided that they are consistent with the subsequent authorization and were received on or after the date of application for the paramedical services.~~

NOTE: Authority cited: Sections 10553, 10554, 12300, 12300.1, 12301.1, 12301.2 and 12301.21, Welfare and Institutions Code; and Chapter 939, Statutes of 1992.

Reference: Peremptory Writ of Mandate, Disabled Rights Union v. Woods, Superior Court, Los Angeles County, Case #C 380047; Miller v. Woods/Community Services for the Disabled v. Woods, Superior Court, San Diego County, Case Numbers 468192 and 472068; and Sections 12300, 12300(c)(7), 12300(f), 12300(g), 12300.1, and 12301.2, Welfare and Institutions Code.

Request for Order and Consent - Paramedical Services **ADOPT**

PATIENT'S NAME
IHSS CASE NUMBER

DRAFT
~~Month Day, 20XX~~

~~Dear Licensed Health Care Professional (LHCP):~~

This patient has applied for In-Home Supportive Services (IHSS) and stated that he/she needs certain paramedical services for him/her to remain safely at home. Please indicate on this form what specific paramedical services are needed by completing sections 1-5 of this form.

For the purposes of IHSS, paramedical services are services that require judgment based on training provided by a licensed health care professional (LHCP) licensed pursuant to Division 2 of the Business and Professions Code, that are necessary to maintain the patient's health and that he/she would normally perform for himself/herself if not for his/her functional limitation(s); such as: the administration of medications, puncturing the skin or inserting a medical device into a body orifice, ~~and~~ activities requiring sterile procedures, ~~among other things~~ or other activities requiring judgement based on a training given by an LHCP. These services will be provided by IHSS providers who are not licensed to practice health care and are not medically trained. If you order paramedical services, ~~you are responsible for ensuring that~~ the IHSS provider ~~is~~ must be trained to administer the paramedical services.

The time indicated to perform a specific paramedical service shall not be based on the ability of the IHSS provider to perform a task, but rather on the time it would take a~~n average person~~ trained IHSS provider who exercises average care, skill and judgement to perform the task for this patient, taking into account the patient's functional limitations. The Paramedical Services Authorization Reference Tool (Reference Tool) ~~Statewide Paramedical Services Time Guidelines are~~ is attached for you to use as a guide, and provides a list of common paramedical tasks with typical ~~range of~~ time ranges it would take a trained IHSS provider to perform each task~~., which allows for variation~~ The required time may vary based on the individual needs of the patient. If the time necessary to perform the task for this patient ~~falls outside of~~ exceeds the timeframes listed in the attached Reference Tool ~~Statewide Paramedical Services Time Authorization Guidelines (Time Guidelines)~~, you must provide a description of how the recipient's functional limitation necessitates that authorization of the additional time ~~justification for the time ordered~~. *If you do not provide the required description necessitating ~~justification for indicating an amount of~~ additional time that is outside the range specified in the Reference Tool ~~Time Guidelines~~, the county will contact you to obtain this information prior to authorizing the paramedical services. (Emphasis added.)* ~~*authorize time based on the in-home assessment and the Time Guidelines.*~~

You may authorize a paramedical service not listed on the Reference Tool as long as it meets the definition of a paramedical service as indicated above and the amount of time authorized is solely based on the recipient's need and not based on a provider's inability to perform a task efficiently.

Your examination of this patient is reimbursable through Medi-Cal as an office visit provided

that all other applicable Medi-Cal provider requirements are met through the Department of Health Care Services (DHCS). You should submit billing to DHCS for payment for this office visit as you would with all other reimbursable Medi-Cal services.

PARAMEDICAL SERVICE AUTHORIZATION REFERENCE TOOL

CATEGORY/SPECIFIC TASK	TIME RANGE *(In Minutes)*
BLADDER CARE	
Bladder irrigation	10-15
Catheter Insertion (Intermittent or Foley)	10-20
Catheter Site Care	5-10
Catheter Bag Change	5-10
External Catheter (Condom Catheter) Replacement	5-10
BOWEL CARE	
Insertion of suppository	1-3
Digital Stimulation (Does not include wait time between passes)	5-10
Digital Stool Removal (Does not include wait time between passes)	5-15
Enema (Ready to Use)	5-10
Enema (Prep Required)	10-15
Ostomy Irrigation	10-15
Ostomy Site Care/Bag Change (1 or 2 piece)	5-15
Abdominal Manual Motility	5-15
Suppositories	See Medication Administration
DIALYSIS	
Continuous Ambulatory Peritoneal Dialysis	10-30
Automated Peritoneal Dialysis	30-45
Site Care	5-10
Mixing Dialysate	10-20
Weekly maintenance (lab work, drain line maintenance)	20-40
FEEDING TUBES (GT/NG/JG)	
Via Pump (prep formula, set-up and program pump, connect, disconnect, address alarms, flush, and clean up)	10-20
Without Pump (Gravity)	10-20
Syringe (Bolus) Syringe (Bolus) (prep, connect/disconnect/flush)	10-20
Flush/Give Water (through out the day)	2-5
Site Care/placement/residual check/balloon check (fill/refill)	2-5
Venting (or Ferrell bag)	2-5
GT Change	5-15
GT/NG/JG Medications	See Medication Administration

INTRAVENOUS (IV) FLUIDS

- Hang IV fluids (inclusive of preparation/takedown with before/after flushes) 10-15
- Change Fluids or Piggyback (no new tubing)..... 3-5
- IV infusion troubleshooting/ addressing alarms..... 1-5
- IV flush (per flush)..... 2-3
- Total parenteral nutrition (TPN) – with lipids 10-30
- Total parenteral nutrition (TPN)..... 10-20
- Medication Cartridge 5-10
- Dressing change for IV central line (sterile technique)..... 10-15
- Central IV Cap Changes 3-5
- Port-A-Cath (Access, secure, discontinue) 5-15

MEDICATION ADMINISTRATION

- Administer oral medication (or meds in food)..... 1-5
- GT/NG/JG medication (single/multiple-administration/flushing - liquid/crushed)..... 3-10
- Administer injectable medication (intramuscular or subcutaneous) 2-5
- Apply topical medication - per application site (Creams ointments, paste, patches).. 1-3
- Miscellaneous Medications (ear drops, eye drops, nasal spray, inhaler) 1-3
- Insertion of Suppository (Rectal or Vaginal)..... 5-10
- Hang IV medications..... 10-15
- IV Push, Per Medication (range reflects the varying rates per medication)..... 2-10
- Insulin Pump Infusion Set (includes insertion and cartridge prep, change tubing)..... 5-10

RESPIRATORY CARE

- Oral/Nasal Suctioning 2-3
- Tracheostomy – clean tubes and/or change inner cannula..... 5-15
- Tracheostomy – dressing change and /or change of ties..... 3-10
- Compressed Air/CPAP/BiPAP - apply/remove/settings 3-10
- Chest Physiotherapy - percussion and postural drainage (manual)..... 3-10
- Vest Airway Clearance System (on/off)..... 5-10
- Cough assist machine (cycles) 10-20
- Apply/remove Tracheostomy Heat/Moisture Plug (Nose) or Talk Valve..... 1-3
- Nebulizer treatment (load/hold) – consumer unable to hold mouthpiece/mask (time per dose)..... 10-15
- Administer Oxygen, regulate flow, cannula/mask (on/off) 1-3
- Ventilators - apply/remove/settings (bedside and/or mobile vent)..... 1-3
- Inhaler..... See Medication Administration

WOUND CARE

- Prep for Wound Care (Gather supplies, Set-up field, Reposition)..... 1-3
- Remove Old Dressing..... 1-5
- Clean Wound 1-5
- Apply Treatment (ointments, topical medications, packing, wet-to-dry) 1-3
- Dressing Application (includes wound drain dressing)..... 1-4
- Empty Wound Drain..... 3-5
- Apply Barrier Dressing 3-5

MISCELLANEOUS

VITAL SIGNS (WHEN REQUIRED TO SAFELY PERFORM PROCEDURE/TASK)

PATIENT'S NAME
IHSS CASE NUMBER

Your patient is requesting the following Paramedical Services:

_____

_____

_____

_____

_____

~~PARAMEDICAL SERVICES (EXAMPLES)~~	~~NON-PARAMEDICAL SERVICES (EXAMPLES)~~
~~-Ostomy irrigation/base change, enema or suppository insertion~~ ~~-Urine catheter, Foley replacement/irrigation~~ ~~-Injections~~ ~~-Glucose testing~~ ~~-G/J Tube: feeding, hydration, medication administration~~ ~~-Peritoneal/Central line home-dialysis~~ ~~-Wound cleaning~~	~~-Domestic and related services: i.e. meal preparation and cleanup, laundry, grocery shopping, routine maintenance of Respiratory Equipment, etc.~~ ~~-Personal care: i.e. Bathing, bed baths, grooming, oral hygiene, bowel, bladder, and menstrual care, assistance with Prostheses and Medications,~~ ~~-Stand-alone blood pressure and vital sign checks~~

If you have any questions about completion of this form, please contact the county Social Worker or Public Health Nurse at the following:

SOCIAL WORKER NAME or PUBLIC HEALTH NURSE NAME	SIGNATURE ▸
TELEPHONE NUMBER	EMAIL

PATIENT'S NAME
IHSS CASE NUMBER

SECTIONS 1 THROUGH 5 TO BE COMPLETED BY THE RECIPIENT'S PHYSICIAN/SURGEON/D.O., PODIATRIST, PHYSICIAN ASSISTANT (PA), NURSE PRACTITIONER (NP), or DENTIST ~~LHCP~~

PLEASE PRINT CLEARLY:

1.

NAME ~~OF LHCP~~	
OFFICE TELEPHONE NUMBER	MEDICAL LICENSE NO./MEDI-CAL PROVIDER NO.
OFFICE ADDRESS	
TYPE OF PRACTICE/MEDICAL SPECIALTY	
MEDICAL TITLE ☐PHYSICIAN/SURGEON/D.O. ☐PODIATRIST ☐PHYSICIAN ASSISTANT (PA) ☐NURSE PRACTITIONER (NP) ☐DENTIST	

2. DOES THE PATIENT HAVE A MENTAL OR PHYSICAL FUNCTIONAL LIMITATION WHICH RESULTS IN A NEED FOR ASSISTANCE BY AN IHSS PROVIDER FOR PARAMEDICAL SERVICES? ☐YES ☐NO

If YES, describe ~~list~~ the functional limitation(s) below:

PATIENT'S NAME
IHSS CASE NUMBER

3. LIST THE PARAMEDICAL SERVICES WHICH ARE NEEDED AND SHOULD BE PROVIDED BY AN IHSS PROVIDER

*If the time required to perform the paramedical service exceeds the time range provided in the attached Paramedical Services Authorization Reference Tool ~~for this patient falls outside of the attached Statewide Paramedical Services Time Guidelines~~ due to the patient's specific needs ~~circumstances~~, you must describe how the recipient's functional limitation necessitates ~~provide justification for~~ the time ordered in ~~the following section (~~section 4~~)~~. You may attach separate pages if needed.

~~Example: Listing Paramedical Services~~

~~Type of Service~~	~~Time required to perform the service~~	~~Frequency~~		~~How long should this service be provided~~
~~Injection (insulin or other)~~	~~5 minutes~~	~~3 times~~	~~Daily~~	~~Continued~~

TYPE OF PARAMEDICAL SERVICE	*TIME (IN MINUTES) REQUIRED TO PERFORM THE PARAMEDICAL SERVICE	FREQUENCY AND NUMBER OF TIMES PERFORMED (DAILY, WEEKLY, ETC.)	HOW LONG DOES THIS SERVICE NEED TO BE PROVIDED? (Specify Begin Date and ~~ongoing or provide an~~ End Date)
EXAMPLE ONLY: *Injection (insulin or other)*	*5 minutes*	*3 Times Daily*	*3/5/2018 - Continuous*

PATIENT'S NAME
IHSS CASE NUMBER

4. DESCRIBE HOW THE RECIPIENT'S FUNCTIONAL LIMITATION NECESSITATES THE NEED TO AUTHORIZE ~~ADDITIONAL COMMENTS TO EXPLAIN~~ TIME ABOVE ~~OUTSIDE OF~~ THE TIME RANGE IN THE PARAMEDICAL SERVICES AUTHORIZATION REFERENCE TOOL ~~STATEWIDE PARAMEDICAL SERVICES TIME GUIDELINES~~ (IF APPLICIBLE)

☐ Please check here if separate pages are attached.

5. PLEASE LIST IHSS PROVIDER(S) TRAINED TO PERFORM THIS/THESE PROCEDURE(S).

☐ Please check here if the IHSS provider was not trained by you or your staff. ~~is not at this appointment.~~ He/she must complete the SOC 321A when he/she has received training directed by a LHCP licensed pursuant to Division 2 of the Business and Professions Code to certify that he/she is able to perform the Paramedical Services.

IHSS PROVIDER(S) NAME	TRAINING PROVIDED BY (INCLUDE TITLE)	TYPE OF PARAMEDICAL SERVICE TRAINED ON	DATE OF TRAINING

~~LHCP~~ CERTIFICATION	
I certify that I am licensed to practice in the State of California as specified above and that this order falls within the scope of my practice. In my judgment the paramedical services which I have ordered are necessary to maintain the patient's health and would normally be performed by the recipient for himself/herself if not for his/her functional limitation(s). I shall provide such direction as needed, in my judgment, in the provision of the ordered paramedical services. I have informed the patient of the risks associated with the provision of the ordered paramedical services.	
~~LHCP~~ SIGNATURE ▶	DATE

PATIENT'S NAME
IHSS CASE NUMBER

IHSS RECIPIENT'S INFORMED CONSENT

***Social Worker may have recipient complete informed consent ~~prior to~~ after the LHCP has completed~~ing~~ the SOC 321 and certified that they have informed the patient of the risks associated with the provision of the ordered paramedical services.**

BE SURE YOU HAVE READ EVERY ITEM AND ANSWERED ALL THE QUESTIONS THAT APPLY TO YOU. READ THE FOLLOWING CAREFULLY BEFORE SIGNING:

I the undersigned have been advised of risks associated with the provision of the paramedical services listed above and consent to the provision of these services by my IHSS provider(s).

I accept the responsibility for allowing this person named on the SOC 321 and/or 321A form to perform these paramedical services and I understand the County and the State of California are immune from any related liability.

I agree to inform the County Department of Social Services if there are any changes in my condition that changes my need for paramedical services.

I agree to have a new SOC 321 completed if I have a need for new paramedical service(s).

I agree to notify the county within 10 calendar days if my provider(s) of these paramedical services changes. This includes when a new provider will be performing my paramedical services or my existing provider quits or is fired.

I agree to inform my IHSS provider(s) of my existing paramedical service needs and inform him/her that he/she must get the necessary training in order to properly perform these services for me and get paid for performing these services.

I THE UNDERSIGNED DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING STATEMENTS ARE TRUE AND CORRECT.

IHSS RECIPIENT'S SIGNATURE ▸	DATE
AUTHORIZED REPRESENTATIVE (IF RECIPIENT CANNOT SIGN ON THEIR OWN BEHALF)	
RELATIONSHIP TO RECIPIENT	TELEPHONE NUMBER
SIGNATURE	DATE

Return to: (County Social Services/IHSS Department)

DRAFT

IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM ADOPT
PROVIDER SELF-CERTIFICATION OF COMPLETION OF TRAINING IN THE PROVISION OF PARAMEDICAL SERVICES

IHSS Recipient Name:_____IHSS
Recipient Case Number: _____

IHSS Provider Name:_____IHSS
Provider Number: _____

The IHSS program recipient named above is authorized to receive Paramedical Services. Paramedical Services are services that require judgment based on training provided by a Licensed Health Care Professional (LHCP), that are necessary to maintain a recipient's health and that he/she would normally perform for himself/herself if not for his/her functional limitation(s). Some examples of Paramedical Services include, but are not limited to, ~~oral~~ administration of medicine, giving injections, catheter care, blood or urine testing and tube feeding. The specific Paramedical Service(s) the recipient needs has/have been ordered by the recipient's Physician/Surgeon/Doctor of Osteopathic Medicine (D.O.), Podiatrist, Physician Assistant (PA), Nurse Practitioner (NP), or Dentist. ~~his/her LHCP.~~

Before you can receive payment from the IHSS program for providing Paramedical Services for this recipient, you must receive training directed by a LHCP to administer the specific Paramedical Service(s) ordered by the recipient's Physician/Surgeon/Doctor of Osteopathic Medicine (D.O.), Podiatrist, Physician Assistant (PA), Nurse Practitioner (NP), or Dentist ~~LHCP~~. ~~Only the following LHCPs can direct your training: Physician/Surgeon/Doctor of Osteopathic Medicine (D.O.), Podiatrist, Physician Assistant (PA), Nurse Practitioner (NP) Dentist.~~ The training may be provided by a LHCP other than the type(s) who ordered the paramedical service, however, only an LHCP who is licensed pursuant to Division 2 of the Business and Professions Code may provide this training. If you have not yet been trained on how to provide the Paramedical Service(s) ordered you will not receive payment for providing the recipient's authorized Paramedical Service(s).

You must complete, sign and date this form and return it to the county at the address listed below in order to provide the Paramedical Service(s) ordered for the IHSS recipient named above as a part of the IHSS program. If you receive training on a new Paramedical Service, you will be required to complete a new SOC 321A, indicating the Paramedical Service(s) to be performed and the date you were trained to perform them; or, the ordering Physician/Surgeon/Doctor of Osteopathic Medicine (D.O.), Podiatrist, Physician Assistant (PA), Nurse Practitioner (NP), or Dentist ~~LHCP~~ must submit a new SOC 321 certifying that you have been trained to perform the paramedical services ordered. ~~with the appropriate sections completed~~.

~~Please check the box of the LHCP who directed your training (check all that apply):~~

~~☐ Physician/Surgeon/D.O. ☐ Podiatrist ☐ Physician Assistant (PA) ☐ Nurse Practitioner (NP) ☐ Dentist~~

NAME AND TITLE OF LHCP ~~AND PHONE NUMBER~~	PHONE NUMBER	TYPE OF PARAMEDICAL SERVICE TRAINED ON	DATE TRAINED

IHSS PROVIDER DECLARATION

BE SURE YOU HAVE READ EVERY ITEM AND ANSWERED ALL THE QUESTIONS THAT APPLY TO YOU. READ THE FOLLOWING CAREFULLY BEFORE SIGNING:

I certify that I have received training directed by a LHCP on the Paramedical Service(s) listed on this form.

I accept the responsibility of performing the Paramedical Service(s) to the IHSS recipient named above and I understand that the County and State of California are immune from any related liability.

I declare that I have read and understand the requirements as stated in this document.

I agree to comply with these requirements.

I understand that a copy of this declaration will be provided to this IHSS recipient for his/her records.

I THE UNDERSIGNED DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING STATEMENTS ARE TRUE AND CORRECT.

IHSS PROVIDER'S SIGNATURE ▶	DATE

Return to: (County Social Services/IHSS Department)

THE FOLLOWING TO BE COMPLETED BY THE COUNTY:

Copy of SOC 321A provided to IHSS recipient on _____ (DATE)	SOCIAL WORKER'S or Public Health Nurse's NAME	
Copy of SOC 321A filed in IHSS provider's file on _____ (DATE)	SOCIAL WORKER'S or Public Health Nurse's SIGNATURE ▶	DATE

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

The California Department of Social Services (CDSS) has made the determination that these proposed regulation changes do not duplicate and are consistent with existing federal and state laws, regulations, or rulings. These proposed regulations are meant to clarify existing federal or state laws, regulations, or rulings.

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 30-701(r)(1), (r)(1)(A), and (r)(1)(B)

Specific Purpose:

These sections are adopted to establish a clear definition of range of motion exercises. The definition distinguishes between two different classifications of range of motion exercises: active range of motion and passive range of motion.

Factual Basis:

These sections are necessary to provide context necessary for compliance with WIC section 12300(c)(6), which identifies range of motion exercises as one of the personal care services that may be authorized in the IHSS program. This distinction is imperative in determining whether the service should be authorized under the paramedical services category or the repositioning and rubbing skin service category.

Final Modification:

Following the public hearing, as a result of testimony and public comments received during the comment period, summarized in Comments 1, 2, 3, 6, 23, 24 and 25 of the Testimony and Response section, CDSS modified Section 30-701(r)(1)(A) and (B) to clarify that active range of motion exercises are personal care service tasks authorized under repositioning and rubbing skin service category, whereas passive range of motion exercises are authorized as paramedical service tasks. This modification is necessary to ensure that each service is authorized under the appropriate service category.

The CDSS also modified this section to account for the proper use of the oxford comma.

Section 30-756.2(j)

Specific Purpose:

This regulation section lists the functions for which the designated county department shall rank the recipient. This section replaces the terminology "eating" with "feeding" to clarify and make consistent with current regulations.

Factual Basis:

This section is amended to clarify and make consistent with existing regulations, specifically MPP sections 30-701(s)(1)(C), 30-757(c), and 30-780.1(a)(6). These specified sections describe "feeding" as consumption of food and assurance of adequate fluid intake, which is more appropriate terminology to reflect the service that is being provided to the recipient, as opposed to "eating." This revision is necessary to ensure that the existing regulations are consistent and appropriately reflect the service being provided to the recipient.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments1 2, 3, and 19 of the Testimony and Response section, CDSS modified Section 30-756.2(j). This modification was necessary to ensure counties recognize both "eating" and "feeding" as methods in which a recipient may intake food and drink during the receipt of IHSS services.

Section 30-756.4

Specific Purpose:

This section is amended to specify that when conducting needs assessments counties should now assign an indicator of 6, instead of Rank 1 which was done previously, to certain functions when an individual's needs in those functions are met exclusively through the performance of a paramedical services task(s).

Factual Basis:

This revision is necessary to ensure that counties are aware that a new indicator of 6 has been established to assess a recipient's level of functioning in the specific authorized services of meal preparation and clean-up; feeding; bowel, bladder, and menstrual care; and/or respiration and that they understand when to assign an indicator of 6. An indicator of 6 has been established to be used in limited circumstances in order to prevent the authorization of additional service hours in related IHSS service categories when the need is to be met exclusively with

paramedical services. This will ensure that recipients are authorized appropriate services and hours based on the needs assessment.

Final Modification:

The CDSS acknowledges the testimony presented at the public hearings and the comments received during the comment period, summarized in Comments 1, 2, 3, 6 and 20 of the Testimony and Response section; however, CDSS maintains that the use of indictor 6 when assessing recipient need is necessary to provide a more accurate representation of needed services for a recipient receiving paramedical services in place of services authorized in meal preparation and clean-up; feeding; bowel, bladder, and menstrual care; and/or respiration. Therefore, only one grammatical change was made to this section.

Commenters also requested an explanation for the use of indicator 6. This has been addressed in Comment 20 of the Testimony and Response section.

Section 30-756.41 and .41(a)

Specific Purpose:

This section is amended to specify that counties should now assign an indicator of 6, instead of Rank 1 as previously assigned, to the meal preparation/clean-up and feeding functions when an individual's nutrition needs are being met exclusively through paramedical service tasks, such as feeding through a gastrostomy or nasogastric tube. The assigned indicator of 6 is necessary to be used as a prompt and disallow the additional authorization of IHSS hours in a related service category.

Factual Basis:

This revision is necessary to ensure that counties understand when it is appropriate to assign the indicator of 6 to a recipient's level of functioning in the meal preparation/clean-up and feeding functions. The assigned indicator of 6 has been established to be used in limited circumstances in order to prevent the authorization of additional service hours in related IHSS service categories when the need is to be met exclusively with paramedical services. This will ensure that recipients who are, for example, exclusively tube-fed are not inadvertently authorized duplicate hours in the meal preparation/clean-up and feeding service categories as well as in the paramedical services service category.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 6, 20 and 21 of

the Testimony and Response section, CDSS modified Section 30-756.41 by adding Section 30-756.41(a). This modification was necessary to clarify that a recipient who is exclusively tube fed and has special meals prepped for tube feeding will have time authorized for meal prep and clean-up as a part of the paramedical service authorization. Furthermore, Section 30-756.41 is modified to keep "eating" as part of this regulation to ensure consistency with Section 30-756.2 (j) [see Final Modification statement for Section 30-756.2(j)].

Sections 30-756.43 and .43(a)

Specific Purpose:

This section is amended to specify that counties should now assign an indicator of 6, instead of Rank 1 as previously assigned, to the bowel, bladder, and menstrual care function when an individual's needs in these areas are being met exclusively through paramedical service tasks such as, ostomy care. The assigned indicator of 6 is necessary to be used as a prompt to disallow the additional authorization of IHSS hours in a related service category.

Factual Basis:

This revision is necessary to ensure that counties understand when it is appropriate to assign an indicator of 6 to a recipient's level of functioning in the bowel, bladder, and menstrual care functions. The assigned indicator of 6 has been established to be used in limited circumstances in order to be used as a prompt to disallow the additional authorization of IHSS service hours in a related category. This will ensure that recipients who require, for example, ostomy care are not inadvertently authorized duplicate hours in the bowel and bladder service category as well as in the paramedical services category.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 6, 20 and 22 of the Testimony and Response section, CDSS modified Section 30-756.43. This modification was necessary to clarify that any recipient receiving all bowel and bladder care through paramedical services, who does not require menstrual care, shall be assigned an indicator of 6 in bowel, bladder and menstrual care as all care in this service category is met through paramedical services. This modification is necessary to ensure that the county does not authorize the same service in two different service categories.

CDSS additionally added Section 30-756.43(a). This modification is necessary to ensure that any recipient whose bowel and bladder care is met solely through paramedical services but who also requires menstrual care is

assigned the appropriate ranking in bowel, bladder, and menstrual care to allow for the authorization of service hours for menstrual care.

Section 30-757.14(e)

Specific Purpose/Factual Basis:

This section is amended to make a grammatical change to account for an oxford comma. No other changes have been made to this section.

Section 30-757.14(e)(3)

Specific Purpose:

This section is amended to clarify that allowable fingernail/toenail care tasks within the grooming service category do not include nail clipping. The amendment also deletes a language that implied that nail clipping may be authorized as a paramedical service.

Factual Basis:

The section is necessary to ensure that counties have a clear understanding that nail care within the grooming service category is limited to filing and buffing the nails and other similar tasks that do not involve the use of scissors, clippers, or other sharp implements. Because of the risk of potential injury to elderly or disabled individuals, nail clipping is best performed by a professional, e.g., a podiatrist; therefore, it is not a task that can be authorized in the IHSS program.

Final Modification:

The CDSS acknowledges the testimony presented at the public hearings and the comments received during the comment period as summarized in Comments 1, 2, 3, 6, 25, 26, 27 and 28 of the Testimony and Response section. However, the reference to nail clipping as a paramedical service in this section continues to be unnecessary and creates confusion by implying that nail care is categorically allowed and should be authorized as a paramedical service which is not accurate. If a LHCP-PM orders nail clipping as a paramedical task, an analysis of whether it meets the definition set forth in Section 30-757.191 will need to be done on a case by case basis.

Furthermore, CDSS maintains that nail clipping cannot be authorized under the bathing, oral hygiene, and grooming service category. The IHSS program is predominately delivered as a benefit of the state-federal Medicaid health services program (known as Medi-Cal in California) for low-income populations. As a part of that benefit, the IHSS program is subject to Medi-Cal rules. Pursuant to the California Code of Regulations (CCR) Title 22,

Section 51350(f), the personal care service of grooming specifically excludes cutting with scissors or clipping toenails. Therefore, to ensure CDSS is compliant with Medi-Cal rules, it was necessary to modify Section 30-757.14 (e) to clarify that grooming excludes cutting with scissors and clipping toenails.

Sections 30-757.14(g)(1) through 30-757.14(g)(2)(A)

Specific Purpose:

These sections are amended to clarify that the repositioning and rubbing skin service category can be authorized due to meeting criteria listed under MPP section 30-757.14(g)(1) or, if the criteria has not been met, the county may authorize the service based on meeting the criteria listed under MPP section 30-757.14(g)(2)(A).

Factual Basis:

This amendment is necessary to clarify that counties have a clear understanding that authorization of the repositioning and rubbing skin service category is based on meeting either the criteria listed under MPP section 30-757.14(g)(1) or, if the criteria has not been met, the county may authorize the service based on meeting the criteria listed under MPP section 30-757.14(g)(2)(A).

Final Modification:

The CDSS has made grammatical changes to these sections to account for the use of the oxford comma. The CDSS added "maintain" as a modification of MPP section 30-757.14(g)(2)(A) that is necessary to ensure consistency with the description of maintenance therapy programs. No additional modifications have been made to these sections.

Sections 30-757.19 and 30-757.191 through 30-757.191(c)

Specific Purpose:

These sections are amended to provide a clearer and more concise description of paramedical services and to include a reference to the regulation section which defines a LHCP-PM.

Factual Basis:

This revision is necessary to ensure that the definition of paramedical services is easy to understand, and that it provides a reference to the section within the regulations which defines LHCP-PM.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 6, 7, 37, 38 and 45 of the Testimony and Response section, CDSS modified Section 30-757.191 and 30-757.191(c). Section 30-757.191 now specifies that paramedical services are limited those services which meet the criteria specified in Sections 30-757.191(a), (b) and (c).

This modification is necessary to ensure compliance with WIC 12300.1 which specifies that "paramedical services include the administration of medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional."

Additionally, Section 30-757.191(c) was modified to specify that paramedical services include other activities that require judgement based on a training given by a licensed healthcare professional acting within the scope of their license or certificate pursuant to the Business and Professions Code, Division 2, when that activity has been ordered by an LHCP-PM.

This modification was necessary to clarify that there is distinction between a licensed health care provider who may train an IHSS provider to perform paramedical services, and an LHCP-PM who is authorized, pursuant to WIC 12300.1, to order paramedical services for the purposes of IHSS.

Handbook Sections 30-757.191(c)(1) through (c)(1)(J)

Specific Purpose/Factual Basis:

This handbook section is adopted to provide examples to illustrate some common paramedical services tasks. This handbook has no regulatory effect.

Final Modification:

The CDSS modified this section as it was necessary to clarify that Sections 30-757-191(c)(2) through (c)(2)(F) provide a list of common paramedical services. This modification is necessary to ensure that the county understands that this list is not exhaustive.

Handbook Sections 30-757.191(c)(2) through (c)(2)(F)

Specific Purpose/Factual Basis:

This handbook section is adopted to provide examples to illustrate some common tasks which are not considered, and may not be authorized as, paramedical services. This handbook has no regulatory effect.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 6, 25, 26, 29, 30 and 31 of the Testimony and Response section, CDSS acknowledges that paramedical services should not be categorically disallowed and instead should be reviewed on a case by case basis. Therefore, this handbook section has been removed.

Section 30-757.192(a)(1)(A)

Specific Purpose:

The section is adopted to clarify that in the event the applicant/recipient elects to obtain the order for paramedical services from a LHCP-PM who is not a Medi-Cal provider, the applicant/recipient is responsible for paying any fees charged by the LHCP-PM for any services provided, including completing the order for paramedical services, from his/her own pocket.

Factual Basis:

The costs for obtaining an order for paramedical services from a LHCP-PM who is an approved Medi-Cal provider would be covered under the Medi-Cal program. However, there may be costs incurred if an applicant/recipient were to choose to obtain an order for paramedical services from a LHCP-PM who is not an approved Medi-Cal provider. This section is necessary to ensure that the state or county is not held responsible for payment of fees or any other costs in those circumstances when an applicant/recipient chooses a LHCP-PM who is not an approved Medi-Cal provider.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 6 and 43 of the Testimony and Response section, CDSS modified Section 30-757.192(a)(1)(A). This modification was necessary to clarify that although the recipient may choose a non-Medi-Cal provider, the IHSS Program is not responsible for any fees incurred as the result of the recipient selecting a non-Medi-Cal provider.

Section 30-757.192(a)(1)(B)

Specific Purpose

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 6 and 43 of the Testimony and Response section, CDSS adopted this section to specify that all Medi-Cal services received from a Medi-Cal provider will be reimbursed in accordance with all Medi-Cal rules and regulations.

Factual Basis:

This section is necessary to clarify that all Medi-Cal services received from a Medi-Cal provider shall be reimbursed by the Medi-Cal Program in accordance with Medi-Cal rules and regulations.

Section 30-757.192(b)(1)

Specific Purpose:

The section is adopted to establish the requirement that the SOC 321 must be completed, signed, and dated by the LHCP-PM. The Statewide Paramedical Services Time Authorization Guidelines will be provided along with the SOC 321, for the LHCP-PM to reference in ordering services and the purpose of these guidelines is to provide the LHCP-PM and counties with a tool for both consistently and accurately assessing paramedical service needs and authorizing time. The SOC 321, page 1, introduces the LHCP-PM to general guidance to the form's function; page 2, allows the county social worker to indicate the paramedical service being requested for the LHCP-PM to order; however, the social worker is not required to do so. The county social worker or public health nurse is the point of contact listed on page 2 of the form and it is required that he/she provides his/her name, signature, telephone number and email. Sections 1 and 2 of the SOC 321 identify the LHCP's professional information for qualification of provisions of WIC section 12300.1 and documenting a general assessment of the patient's need for assistance.

Factual Basis:

The section is necessary to ensure that the paramedical services are being ordered, which includes a general assessment of the patient's need for assistance, by a qualified LHCP-PM as required pursuant to WIC section 12300.1, which specifies that, "…'supportive services' include those necessary paramedical services that are ordered by a licensed healthcare professional who is lawfully authorized to do so...." The signature is necessary to validate the document, and the date indicates when the form was completed, which is important because it ensures that the form provides current information about the applicant’s/recipient’s

needs. The Statewide Paramedical Services Time Authorization Guidelines are necessary to assist LHCP-PMs in authorizing the appropriate estimate of the time required to perform each ordered paramedical task, and to ensure that the authorization of paramedical services is consistent statewide. Many LHCP-PMs do not have experience with the IHSS program and may not understand which tasks should be authorized under paramedical services and which tasks fit within other service categories. This has resulted in significant differences in the amount of time authorized for paramedical services which are essentially the same. The introduction page of the form is needed to guide the LHCP-PMs without IHSS program experience.

To develop the Statewide Paramedical Services Time Authorization Guidelines, CDSS convened a workgroup comprised of Public Health Nurses who have experience in the IHSS program. The workgroup consisted of 16 registered nurses, 15 of whom are Licensed Public Health Nurses. Various titles and degrees held among group members included Bachelor of Science in Nursing, Master of Science in Nursing, Certified Case Manager, and Supervisor. The workgroup had a combined experience of over 58 years of registered nursing practice, 40 years of public health nursing experience, and 20 years of experience in the IHSS program. The time ranges developed for paramedical services were based upon a combination of standard medial practices and procedures as noted in credible medical sources such as, Seattle Children's Hospital Research Foundation, Duke University Health System, Centers for Disease Control and Prevention, and Johns Hopkins Medicine. The time ranges were also developed through the workgroup's combined nursing experience and their subject matter expertise of the IHSS program.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 13, 32, 33, 34, 35, 36, and 42 of the Testimony and Response section, CDSS has modified this section to refer to the recommended time per paramedical task as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not included in the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit the LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

Furthermore, the SOC 321 has been updated to reflect final modifications made in this Addendum to the Initial Statement of Reasons. Additionally, the

Reference Tool has been included in the SOC 321 to ensure LHCP-PMs may easily access it.

Section 30-757.192(b)(1)(A)

Specific Purpose:

This section is adopted to establish the factors which would require updates to the Statewide Paramedical Services Time Authorization Guidelines. The guidelines will be updated based upon advances in medicine, new medical information, or when the CDSS determines it is necessary. The guidelines will be reviewed on an as needed basis to determine whether updates are required to reflect current medical procedures. Updated information to the guidelines may include but is not limited to removing or adding paramedical services, updating corresponding time ranges, or changing existing time ranges.

Factual Basis:

This section is necessary to ensure the Statewide Paramedical Services Time Authorization Guidelines have current paramedical tasks and corresponding time ranges to meet the requirements of WIC section 12300.1, which defines what the IHSS program authorizes as a paramedical service. The updates to the guidelines will ensure that Licensed Health Care Professionals and counties authorize the appropriate paramedical tasks and associated times for IHSS applicants/recipients to reflect current medical procedures and practices.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 32, 33, 34, 35, 36, and 42 of the Testimony and Response section, CDSS has modified this section to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not included in the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit an LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

Furthermore, the Reference Tool acts as a quick reference for LHCP-PMs and will be updated by CDSS as necessary. As required by the proposed regulations, the most current version of the Reference Tool will be provided

to LHCP-PMs as part of the SOC 321, which they will be able to consult while completing the form.

Section 30-757.192(b)(2)(B)1.

Specific Purpose:

This section is adopted to specify that, if the LHCP-PM indicates on the SOC 321 that the amount of time he/she estimates it will take to perform a specific paramedical services task is outside the time standards for that particular task, the LHCP-PM must provide a brief explanation to justify the need for additional time to perform the task. The Statewide Paramedical Services Time Authorization Guidelines is a document developed by CDSS that lists time standards for performing various paramedical services tasks. The document may be accessed on the CDSS web site.

Factual Basis:

This section is necessary to ensure that the county has all the necessary information about the paramedical services needs of the applicant/recipient so that the county can authorize the appropriate amount of time. In order to make this determination, it is critical that the county is aware of any particular reason(s) that the individual may require more than the standard amount of time to have the task performed for him/her.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, and 13 of the Testimony and Response section, CDSS has modified this section to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not included in the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit the LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

The CDSS also modified this section to clarify that when the LHCP-PM determines that the recipient requires additional time to perform a paramedical task listed in the Reference Tool, they should describe the recipient's functional limitation which necessitates the authorization of

additional time above the recommended time range in the Reference Tool. This modification is necessary to ensure that paramedical service time is authorized time in accordance with recipient need, as required by Section 30-760.24, and not a specific provider's ability and skill to perform a task.

Section 30-757.192(b)(2)(B)2.

Specific Purpose:

This section is adopted to specify that, if a task is not listed in the Statewide Paramedical Services Time Authorization Guidelines, the county must authorize the amount of time the LHCP-PM has indicated on the SOC 321, if authorization of the paramedical task is allowable pursuant to MPP section 30-757.191.

Factual Basis:

This section is necessary to ensure that the county authorizes the amount of time indicated on the SOC 321 by the LHCP-PM, pursuant to WIC section 12300.1, when the paramedical task is not listed in the Statewide Paramedical Services Time Authorization Guidelines. However, the task must meet the criteria to be authorizable under the paramedical services category pursuant to MPP section 30-757.191.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 13 of the Testimony and Response section, CDSS has modified this section to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not included in the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit a LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

The CDSS also modified this section to clarify that when the LHCP-PM determines that the recipient requires additional time to perform a paramedical task that is not listed in the Reference Tool, the county should authorize the time indicated by the LHCP-PM if it is allowable pursuant to Section 30-757.191, and the authorization of time is based on the time needed for a provider who exercises ordinary care, skill, and judgement to perform

the task for the recipient. This modification is necessary to ensure that paramedical services that do not have an existing time range recommendation included in the Reference Tool are authorized time in accordance with recipient need, as required by Section 30-760.24, and not a specific provider's ability and skill to perform a task.

Although Comments 11 and 13 state that CDSS may not use an "average person" standard, CDSS maintains that the establishment of an ordinary provider standard is necessary to clarify that time shall be authorized based on the recipient's functional limitations and not a specific provider's ability and skill to perform a task. The "average", "ordinary", and/or "reasonable" person standard is an objective comparative standard used in many legal contexts as a hypothetical person in society who exercises average care, skill, and judgment in conduct. Because IHSS providers are typically lay persons and are not required to have any specialized skills, the ordinary person standard is appropriate to apply to providers to establish an "ordinary provider" standard. The standard set forth in the proposed regulations is based on the definition of a reasonable person as defined by West's Encyclopedia of American Law, edition 2. (2008).

Section 30-757.192(b)(3)(A)

Specific Purpose:

This section is adopted to specify that the recipient must complete the statement of informed consent included on the SOC 321 and submit it to the county prior to the authorization of paramedical services.

Factual Basis:

This section is necessary to comply with WIC 12300.1 which specifies that, "…necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for services."

Section 30-757.192(b)(4)

Specific Purpose:

This section is adopted to specify that the SOC 321 includes a statement of certification. The LHCP-PM, by signing the SOC 321, acknowledges that he/she has advised the recipient of the potential risks associated with the provision of the ordered paramedical services.

Factual Basis:

This section is necessary to comply with WIC 12300.1 which specifies that, "…necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for services."

Section 30-757.192(b)(4)(A)

Specific Purpose:

This section is adopted to specify that the LHCP-PM must complete the certification statement included on the SOC 321 and submit it to the county prior to the authorization of paramedical services.

Factual Basis:

This section is necessary to comply with WIC 12300.1 which specifies that, "…necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for services."

Section 30-757.192(e)

Specific Purpose:

This section is adopted to specify that, in determining how much time to authorize for specific paramedical services tasks that the LHCP-PM has ordered for an applicant/recipient, the county should refer to the Statewide Paramedical Services Time Authorization Guidelines. This is a document that has been developed by CDSS and lists typical time standards for performing various paramedical services tasks. The document may be accessed on the CDSS web site.

Factual Basis:

This section is necessary to ensure that counties have a clear understanding of the appropriate use of the Statewide Paramedical Services Time Authorization Guidelines. The guidelines have been developed by CDSS to provide counties with a standard amount or range of time to perform paramedical services tasks most commonly ordered by LHCP-PMs. The Guidelines will help to ensure uniformity and consistency in the authorization of time for paramedical services tasks from worker to worker and county to county. Without some established standards, there can be significant variances in the amount of time authorized for the same task despite no special circumstances justifying the difference, resulting in inequities among applicant's/recipient's authorized hours.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 4, 6, 7, 8, 9, 10, 33, and 42 of the Testimony and Response section, CDSS has modified this section to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not included in the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit an LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

Section 30-757.192(e)(1)

Specific Purpose:

This section is adopted to specify that the time authorized to perform a paramedical services task(s) is to be based on the time it would take for an average person to perform the task for the recipient. Neither the specific individual's level of skill in performing the task nor the time it takes a specific individual to perform the task should be considered as a factor when the county authorizes time for the performance of paramedical tasks.

Factual Basis:

This section is necessary to establish that, although there are differing levels of skill among providers, the amount of time authorized for performing a specific paramedical services task(s) is to be based on the time it takes for an average person to perform the task for the recipient. An applicant/recipient is permitted to choose the provider of his/her choice to perform all of his/her authorized services, including paramedical services. One provider may have significant experience in performing paramedical services tasks; for example, he/she may have previously worked in the medical field. Due to his/her experience and level of skill, this individual would likely be able to perform paramedical services task(s) more quickly than the average person. Conversely, another provider may have a physical limitation that causes him/her to take longer to perform the paramedical services task(s) than the average person. The county should not authorize less time for paramedical services for an applicant/recipient who receives paramedical services from the more highly skilled provider than it would for an applicant/recipient whose provider takes more time to perform the service task due to his/her skill level or abilities. To ensure equity, time authorization within paramedical services needs to

be uniform and consistent; therefore, it should be based on an average person's, not a specific individual's, ability to perform paramedical service tasks.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 6, 8, 9, 10, 11, and 13 of the Testimony and Response section, CDSS has modified this section to clarify that the authorization of paramedical service time per task must be based on how much time it would take an IHSS provider to perform a task when they exercise ordinary care, skill, and judgement, and have been trained by a licensed health care professional to perform the paramedical service task.

This modification is necessary to ensure that paramedical services are authorized in accordance with recipient need as required by Section 30-760.24 and not a specific provider's ability and skill to perform the task.

Although Comments 11 and 13 state that CDSS may not use an "average person" standard, CDSS maintains that the establishment of an ordinary provider standard is necessary to clarify that time shall be authorized based on the recipient's functional limitations and not a specific provider's ability and skill to perform a task. The "average", "ordinary", and/or "reasonable" person standard is an objective comparative standard used in many legal contexts as a hypothetical person in society who exercises average care, skill, and judgment in conduct. Because IHSS providers are typically lay persons and are not required to have any specialized skills, the ordinary person standard is appropriate to apply to providers to establish an "ordinary provider" standard. The standard set forth in the proposed regulations is based on the definition of a reasonable person as defined by West's Encyclopedia of American Law, edition 2. (2008).

Sections 30-757.192(e)(2) and (e)(2)(A)

Specific Purpose:

These sections are adopted to specify how counties should determine the appropriate amount of time to authorize for paramedical services.

Factual Basis:

These sections are necessary to establish a standard process counties should utilize in order to promote uniformity and consistency in the authorization of time for performance of paramedical services tasks.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 6, 8, 9, 10, and 12 of the Testimony and Response section, CDSS has modified Section 30-757.192(e)(2)(A) to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not included in the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit a LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

The CDSS also acknowledges Comments 8, 10, and 12, which state that the county should not be reviewing an LHCP-PMs order against a reference tool; however, this administrative process is necessary to ensure time for a paramedical service is correctly authorized in accordance with the recipient's need, as required by Section 30-760.24, and not a specific provider's ability or skill to perform the task. This does not interfere with an LHCP-PM's ability to authorize time above the time range listed in the Reference Tool due to a recipient's functional limitation as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

Sections 30-757.192(e)(2)(B) and (e)(2)(B)1.

Specific Purpose:

These sections are adopted to specify that if the estimated amount of time to perform a specific paramedical task indicated on the LHCP-PM's order for paramedical services is consistent with the amount or range of time listed in the Statewide Paramedical Services Time Authorization Guidelines, the county should authorize the amount of time the LHCP-PM has indicated.

Factual Basis:

These sections are necessary to ensure that the county has a clear understanding of the appropriate amount of time to authorize for paramedical services in those situations when the time the LHCP-PM has estimated to perform a specific paramedical task conforms to the Statewide Paramedical Services Time Authorization Guidelines.

Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 5, 6, 8, 9, and 10 of the Testimony and Response section, CDSS has modified Section 30-757.192(e)(2)(B)1 to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges.

Sections 30-757.192(e)(2)(B)2. and (e)(2)(B)2.(i)

Specific Purpose:

These sections are adopted to specify that if the estimated amount of time to perform a specific paramedical task indicated on the LHCP-PM's order for paramedical services is not consistent with the amount or range of time listed in the Statewide Paramedical Services Time Authorization Guidelines, but the LHCP-PM has provided a justification for estimating more (or less) time, the county should authorize the amount of time the LHCP-PM has indicated.

Factual Basis:

These sections are necessary to ensure that the county has a clear understanding of the appropriate amount of time to authorize for paramedical services in those situations when the time the LHCP-PM has estimated to perform a specific paramedical task does not conform to the Statewide Paramedical Services Time Authorization Guidelines, but he/she has provided a justification for estimating more or less time. The Statewide Paramedical Services Time Authorization Guidelines provide standards for the amount of time it would take for an average provider to perform a specific paramedical services task for an average applicant/recipient. However, each applicant/recipient will have different needs based on his/her specific health conditions and circumstances, and these needs are best known by the LHCP-PM ordering paramedical services. Similar to the Hourly Task Guidelines, established pursuant to WIC section 12301.2, which are utilized to ensure uniformity and consistency in the authorization of time for other types of services authorized in the IHSS program, and allow for exceptions when a recipient's special needs have been documented, the Statewide Paramedical Services Time Authorization Guidelines may be exceeded when the LHCP-PM provides a sufficient justification for doing so.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 6, 8, 9, 10, 12 and 13 of the Testimony and Response section, CDSS has modified Section 30-757.192(e)(2)(B)2 to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not listed on the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit a LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

The CDSS also modified Section 30-757.192(e)(2)(B)2 to specify that this section sets forth the responsibilities of the county when an LHCP-PM authorizes time above the range included in the Reference Tool.

Section 30-757.192(e)(2)(B)(2)i was modified to specify that the county shall authorize the time specified by the LHCP-PM once the LHCP-PM has provided a description of the recipient's functional limitation which has necessitated the authorization of additional time above the range listed in the Reference Tool.

The CDSS acknowledges Comment 8; however, these modifications set forth an administrative process of reviewing the LHCP-PM's service order which is necessary to ensure that time for a paramedical service is correctly authorized in accordance with recipient need, as required by Section 30-760.24, and not a provider's individual ability or skill.

Section 30-757.192(e)(2)(B)2.(ii)

Specific Purpose:

This section is adopted to specify what steps the county should take when the estimated amount of time to perform a specific paramedical task indicated on the LHCP-PM's order for paramedical services is not consistent with the amount or range of time listed in the Statewide Paramedical Services Time Authorization Guidelines, and the LHCP-PM has failed to provide a justification for estimating more (or less) time. Under these circumstances, the county should contact the LHCP-PM to attempt to obtain the omitted justification. If the county is able to obtain the information, the county should document the justification provided by the LHCP-PM during the interaction on the SOC 321 and should authorize the amount of time the LHCP-PM has indicated.

Factual Basis:

This section is adopted to establish procedures that the county should follow when the order for paramedical services from the LHCP-PM is missing the justification for estimating time outside the Statewide Paramedical Services Time Authorization Guidelines. This procedure has been established because it provides for a more expeditious resolution of a potentially common problem with the SOC 321 than rejecting the incomplete form outright and returning it back to the LHCP-PM for completion. This will ensure that the authorization of needed paramedical services for the applicant/recipient is not unnecessarily delayed.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 of the Testimony and Response section, CDSS has modified this section to refer to the recommended time per paramedical tasks as the Paramedical Service Authorization Reference Tool (Reference Tool) to avoid confusion with the IHSS Hourly Task Guidelines, which unlike this tool, set forth mandatory authorization time ranges. This tool exists to promote consistency in the authorization of time for the same type of paramedical services and does not prohibit an LHCP-PM from using their professional judgment to authorize a service not included on the Reference Tool, if it meets the requirements of Section 30-757.191. It also does not prohibit a LHCP-PM from authorizing time above the recommended time range in the Reference Tool as specified in Sections 30-757.192(e)(2)(B)2(i) and 30-757.192(e)(2)(B)4(i)l.

The CDSS further modified this section to clarify that an SOC 321 is to be considered incomplete when it authorizes time above the time per task recommendations included in the Reference Tool and does not include a description of the recipient's functional limitation which has necessitated the authorization of additional time.

The CDSS acknowledges Comment 8; however, this administrative process is necessary to ensure that time for a paramedical service is correctly authorized in accordance with recipient need, as required by Section 30-760.24, and not a provider's individual ability and skill. Furthermore, this process does not interfere with a LHCP-PM's ability to authorize time above the recommended time range per paramedical service task listed in the Reference Tool, if it is due to the recipient's functional limitation.

Section 30-757.192(e)(2)(B)2.(ii)I.

Specific Purpose:

This section is adopted to specify what steps the county should take when it has attempted, but been unsuccessful in, contacting a LHCP-PM who failed to include a justification on the SOC 321 for paramedical services for estimating time outside the Statewide Paramedical Services Time Authorization Guidelines. Under these circumstances, the county should document the unsuccessful attempts (i.e., dates and times of calls) on the SOC 321 and then authorize time based on the Statewide Paramedical Services Time Authorization Guidelines rather than what the LHCP-PM has indicated.

Factual Basis:

This section is necessary to establish procedures that the county should follow to authorize time for the performance of paramedical services tasks when, after a good faith effort has been made, the county is unable to obtain from the LHCP-PM a justification for estimating time outside the Statewide Paramedical Services Time Authorization Guidelines.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Testimony and Response section, CDSS has modified Section 30-757.192(e)(2)(B)2.(ii)I to specify that the county shall contact the LHCP-PM to obtain the omitted description of the recipient's functional limitation which has necessitated the authorization of time above the time range listed in the Paramedical Service Authorization Reference Tool (Reference Tool). Once this information is obtained the county shall notate the SOC 321 with the updated information.

The CDSS further modified this regulation to remove any references which require the county to default to the time range listed in the Reference Tool. This administrative process is necessary to ensure that time for a paramedical service is correctly authorized in accordance with recipient need, as required by Section 30-760.24, and not a provider's individual ability and skill. Furthermore, this process does not interfere with a LHCP-PM's ability to authorize time above the recommended time range per paramedical service task listed in the Reference Tool, if it is due to the recipient's functional limitation.

Sections 30-757.192(e)(2)(B)2.(ii)I.a. and (e)(2)(B)2.(ii)I.b.

Specific Purpose:

These sections are adopted to specify the correct time the county should authorize if the LHCP-PM has indicated a time outside of the Statewide Paramedical Services Time Authorization Guidelines. If the LHCP-PM has indicated an amount of time below the range specified in the guidelines, the county shall authorize the lowest amount of time that is indicated in the time range for the specific paramedical service task. If the LHCP-PM has indicated an amount of time above the range specified in the guidelines the county shall authorize the highest time indicated in the range.

Factual Basis:

These sections are necessary to specify the time the county shall authorize when a LHCP-PM has listed a time outside of the guidelines and has not provided a justification. This will ensure that the county has authorized an appropriate amount of time for the corresponding paramedical task and ensures uniformity and consistency in the authorization of paramedical services, when the LHCP-PM has not provided the required justification.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Testimony and Response section, CDSS has removed Sections 30-757.192(e)(2)(B)2.(ii)I.a and (e)(2)(B)2.(ii)I.b.

Section 30-757.192(e)(2)(B)2.(ii)II.

Specific Purpose:

This section is adopted to specify what steps the county should take when, after it has authorized time for paramedical services tasks based on the Statewide Paramedical Services Time Authorization Guidelines (rather than what the LHCP-PM indicated in his/her order for paramedical services) because the LHCP-PM did not include a justification on the SOC 321, and the county was unsuccessful after multiple attempts to contact the LHCP-PM to obtain the justification, the LHCP-PM subsequently provides the justification for estimating time outside the Statewide Paramedical Services Time Authorization Guidelines. In such a situation, the county must change the time authorization for paramedical services to reflect the amount of time the LHCP-PM has indicated.

Factual Basis:

This section is necessary to establish procedures that the county should follow in situations such as those described above. The Statewide Paramedical Services Time Authorization Guidelines provide standards for the amount of time it would take for an average provider to perform a specific paramedical services task for an average applicant/recipient. However, each applicant/recipient will have different needs based on his/her specific health conditions, and these needs are best known by the LHCP-PM ordering paramedical services. Similar to the Hourly Task Guidelines, established pursuant to WIC section 12301.2, which are utilized to ensure uniformity and consistency in the authorization of time for other types of services authorized in the IHSS program, and allow for exceptions when a recipient's special needs have been documented, the Statewide Paramedical Services Time Authorization Guidelines may be exceeded when the LHCP-PM provides a justification for doing so.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Testimony and Response section, CDSS has modified Section 30-757.192(e)(2)(B)2.(ii)II to specify that once an LHCP-PM has provided a description of the recipient's functional limitation which necessitates the authorization of time above the time range listed in the Paramedical Service Authorization Reference Tool (Reference Tool), the county shall verify that the SOC 321 has been signed by both the LHCP-PM and the recipient as required by Section 30-757.191(b)(3)(A) and (b)(4)(A), and if so, consider the SOC 321 complete and authorize the time indicated by the LHCP-PM. This modification is necessary to ensure that the recipient provides informed consent as required by WIC 12300.1. It also ensures that time for a paramedical service is correctly authorized in accordance with recipient need, as required by Section 30 760.24, and not a provider's individual ability and skill.

The CDSS further modified this section to remove the requirement that the county to default to the time range listed in the Reference Tool in the absence of a completed SOC 321.

Section 30-757.192(e)(2)(B)2.(ii)II.a.

Specific Purpose:

This section is adopted to specify that when the county subsequently obtains justification from a LHCP once it has already authorized time for paramedical services tasks based on the Statewide Paramedical Services Time Authorization Guidelines (rather than what the LHCP-PM indicated in his/her order for

paramedical services) because the LHCP-PM did not include a justification on the SOC 321, and the county was unsuccessful after multiple attempts to contact the LHCP-PM to obtain the justification, the effective date for changing the time authorization for paramedical services to reflect the amount of time the LHCP-PM can be retroactive if the conditions specified in MPP section 30-757.193(d) are met.

Factual Basis:

This section is necessary to ensure that the county has a clear understanding of when the effective date for a change in authorization for paramedical services based on the situation described above can be made retroactive. Allowing the effective date of the change to be retroactive to a date previous to when the justification for estimating time outside the Statewide Paramedical Services Time Authorization Guidelines was finally obtained from the LHCP-PM will ensure that the applicant/recipient is not negatively impacted by the delay in obtaining the justification.

Final Modification:

The CDSS has modified this section to ensure that the retroactive authorization of paramedical services becomes effective as of the date ordered by the LHCP-PM on the completed SOC 321. CDSS further modified this section to correct a regulatory reference specifying what constitutes a completed SOC 321.

These modifications are necessary to ensure that the recipient receives all paramedical service hours authorized in accordance with the LHCP-PM's order and are not unduly penalized due to a delay in working with the ordering LHCP-PM to obtain a complete SOC 321.

Section 30-757.192(e)(2)(B)3.

Specific Purpose:

This section is adopted to specify that when an LHCP-PM authorizes a paramedical service task that is below the time range included in the Paramedical Service Authorization Reference Tool (Reference Tool), the county shall authorize the lowest time indicated in the range.

Factual Basis:

This section is necessary to ensure that the county knows how to authorize paramedical service time when the paramedical service time ordered by the LHCP-PM is below the time range included in the Reference Tool.

Section 30-757.192(e)(2)(B)4.

Specific Purpose:

This section is adopted to specify that when an LHCP-PM authorizes a paramedical service task that is not included in the Paramedical Service Authorization Reference Tool (Reference Tool), the county shall authorize the service if the recipient has submitted an SOC 321 completed by an LHCP-PM, the task(s) ordered meets the definition of a paramedical service task, and the time ordered is based on the time needed for a provider who exercises ordinary care, skill, and judgement to perform the task(s) for the recipient.

Factual Basis:

This section is necessary to ensure that the county and the LHCP-PM know how to authorize paramedical service time when the paramedical service task is not included on the Reference Tool. This section ensures that time for a paramedical service is correctly authorized in accordance with recipient need, as required by Section 30 760.24, and not a provider's individual ability and skill.

Although Comments 11 and 13 state that CDSS may not use an "average person" standard, CDSS maintains that the establishment of an ordinary provider standard is necessary to clarify that time shall be authorized based on the recipient's functional limitations and not a specific provider's ability and skill to perform a task. The "average", "ordinary", and/or "reasonable" person standard is an objective comparative standard used in many legal contexts as a hypothetical person in society who exercises average care, skill, and judgment in conduct. Because IHSS providers are typically lay persons and are not required to have any specialized skills, the ordinary person standard is appropriate to apply to providers to establish an "ordinary provider" standard. The standard set forth in the proposed regulations is based on the definition of a reasonable person as defined by West's Encyclopedia of American Law, edition 2. (2008).

Section 30-757.192(e)(2)(B)4.(i)

Specific Purpose:

This section is adopted to specify that if the LHCP-PM has authorized time outside the time range listed in the Paramedical Service Authorization Reference Tool due to a circumstance other than the recipient's functional limitation, the county shall contact the LHCP-PM to clarify that the time should be authorized based on the recipient's need not the provider's individual ability and skill to perform the tasks.

Factual Basis:

This section is necessary to ensure that the county correctly authorizes paramedical service time based on recipient need, as required by Section 30-760.24, and not an individual provider's ability and skill.

Section 30-757.192(e)(2)(B)4.(i)I.

Specific Purpose:

This section is adopted to specify that when paramedical services time is authorized based on the time needed for a provider who exercises ordinary care, skill, and judgement to complete the ordered paramedical service tasks for the recipient. the county shall verify that the SOC 321 has been signed by both the LHCP-PM and the recipient as required by Section 30-757.191(b)(3)(A) and (b)(4)(A), then, consider the SOC 321 complete.

Factual Basis:

This section is necessary to ensure that the county correctly authorizes paramedical service based on recipient need, as required by Section 30-760.24, and not a provider's individual ability and skill.

Section 30-757.192(e)(2)(B)4.(i)I.a.

Specific Purpose:

This section is adopted to specify that when the county obtains a completed SOC 321 that describes the recipient's functional limitation which has necessitated the authorization of time outside the time range listed in the Paramedical Service Authorization Reference Tool and authorizes time based on the time needed for a provider who exercises ordinary care, skill, and judgement to perform the task for the recipient, the county shall retroactively authorize the paramedical service hours to the date specified by the LHCP-PM on the SOC 321, not to exceed the recipient's date of protected eligibility.

Factual Basis:

This section is necessary to ensure that the county correctly authorizes paramedical service based on recipient need, as required by Section 30-760.24, and not a provider's individual ability and skill.

Additionally, this section is necessary to ensure that the county has a clear understanding of the applicable effective date for a change in authorization for paramedical services based on the situation described above.

Furthermore, this section ensures that the recipient is not negatively impacted by the delay in obtaining the required description from the LHCP-PM.

Section 30-757.192(e)(2)(C)

Specific Purpose:

This section is adopted to specify that the county must assess whether the justification by the LHCP-PM is reasonable for estimating time outside the Statewide Paramedical Services Time Authorization Guidelines. If the county determines that the justification is not reasonable, the county must authorize the time based on the in-home assessment and the Statewide Paramedical Services Time Authorization Guidelines.

Factual Basis:

This section is necessary to ensure that the justification by the LHCP-PM supports the time indicated on the SOC 321 and provides the county a clear understanding of how it must authorize time when the justification provided by the LHCP-PM is not sufficient.

Final Modification:

Following the public hearing, as a result of testimony and comments received during the comment period, CDSS has revised Section 30-757.192(e)(2)(C). This section no longer requires the county to default to the Statewide Paramedical Services Time Authorization Guidelines (now referred to as the Paramedical Service Authorization Reference Tool).

This section has also been revised to instruct the county on how to process incomplete SOC 321 forms. This section now permits the county to accept a verbal order from an LHCP-PM when the county needs additional information to process an incomplete SOC 321. It further specifies that the verbal order of the LHCP-PM should be notated on the original SOC 321 and the discussion documented in the recipient's case notes.

This modification is necessary to ensure that the county is able to authorize paramedical services in a timely manner when a verbal order from a LHCP-PM has been obtained. This modification ensures that any delays in authorizing paramedical services are minimized.

Section 30-757.192(e)(2)(C)1.

Specific Purpose:

This section is adopted to specify that when the county has authorized paramedical services based on an LHCP-PM's verbal order pursuant to Section 30-757.192(e)(2)(C), the county must ensure that the original SOC 321 includes: the LHCP-PM's certification that they have informed the recipient of the risks associated with the paramedical services ordered, and the recipient's informed consent to receive the ordered services.

Factual Basis:

This section is necessary to comply with WIC 12300.1 which specifies that, "…necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for services."

Section 30-757.192(e)(2)(C)2.

Specific Purpose:

This section is adopted to specify that when the county has authorized paramedical services based on an LHCP-PM's verbal order pursuant to Section 30-757.192(e)(2)(C), the county must follow-up with the LHCP-PM to obtain am updated SOC 321 which documents the verbal order for paramedical services. The county must document the verbal order on the SOC 321 and send it to the LHCP-PM for signature and submission to the county.

Factual Basis:

This section is necessary to ensure that the county has an accurate and up-to-date SOC 321 on file in order to comply with WIC 12300.1 which states that paramedical services are ordered by a licensed health care professional who is lawfully authorized to do so.

Section 30-757.192(g)

Specific Purpose:

This section is adopted to specify that a recipient must report to the county the hiring of a new IHSS provider to provide paramedical services within 10 calendar days, as required by Section 30-760.15. It further specifies that the new IHSS provider cannot provide paramedical services prior to submitting

an SOC 321 or SOC 321A verifying that they have been trained to perform the recipient's authorized paramedical services.

Factual Basis:

This section is necessary to ensure that paramedical services are rendered by a provider under the direction of a licensed healthcare professional, subject to the informed consent of the recipient obtained as a part of the order for service as required by WIC 12300.1 and Section 30-757.193(b).

Section 30-757.192(h)

Specific Purpose:

This section is adopted to specify that the county is responsible for providing the recipient with a copy of an SOC 321 and SOC 321A for completion when the recipient has notified the county that they have hired or intend to hire a new IHSS provider who will perform paramedical services.

Factual Basis:

This section is necessary to ensure that the provision of paramedical services complies with WIC 12300.1 which states that paramedical services shall be rendered by a provider under the direction of a licensed healthcare professional, subject to the informed consent of the recipient obtained as a part of the order for service. It also ensures that the recipient is provided assistance with obtaining the necessary forms to complete to verify that the provider has been trained by a licensed health care professional.

Section 30-757.192(i)

Specific Purpose:

This section is adopted to specify that during the recipient's annual reassessment, the county is responsible for ensuring that copies of the SOC 321 and, if applicable, the SOC 321A are on file with the county, and are current with all the recipient's paramedical service needs.

Factual Basis:

This section is necessary to ensure that the provision of paramedical services complies with WIC 12300.1 which states that paramedical services shall be rendered by a provider under the direction of a licensed healthcare professional, subject to the informed consent of the recipient obtained as a part of the order for service.

Section 30-757.193(b)

Specific Purpose:

This section is adopted to specify that a provider must receive training from an applicant's/recipient's LHCP-PM in each specific paramedical service task an applicant/recipient needs before the individual can provide paramedical services to an applicant/recipient. This section also specifies that a provider is prohibited from receiving payment for performing paramedical services for an applicant/recipient if he/she has not first been trained by the LHCP-PM.

Factual Basis:

This section is adopted to comply with WIC section 12300.1, which specifies that paramedical services, "shall be rendered by a provider under the direction of a licensed healthcare professional…." This section will ensure that counties understand that a provider must be trained in the performance of the specific paramedical services task(s) by the LHCP-PM who has ordered the paramedical services task for the applicant/recipient. In addition, before a provider can receive payment from the IHSS program for performing a paramedical services task(s) for an applicant/recipient, the individual must have received training in the performance of that task(s) from the LHCP-PM.

Final Modification:

The CDSS acknowledges the testimony presented at the public hearings and the comments received during the comment period, summarized in Comments 1, 2, 4, 6, 14, 17, 18, 39, 40, 41, 45 and 46 of the Testimony and Response section; however, the provider training requirement is necessary to ensure compliance with WIC 12300.1, which specifies that paramedical services "shall be rendered by a provider under the direction of a licensed healthcare professional."

Following the public hearing, as a result of testimony and comments received during the comment period which stated that LHCP-PMs do not typically perform training, CDSS modified Section 30-757.193(b) to expand the list of licensed health care professionals who may train an IHSS provider to provide paramedical services. The regulation now permits any health care professional licensed pursuant to Division 2 of the Business and Professions Code to perform paramedical service training if they are acting within the scope of their license.

This modification was necessary as CDSS acknowledges that licensed health care professionals who do not order medical therapies or prescribe medications may still train recipients and their providers to complete paramedical service tasks.

Section 30-757.193(b)(1)

Specific Purpose:

This section is adopted to specify how the provider can provide evidence of training and the county can confirm that a provider has received the required training by the LHCP-PM on the specific paramedical services tasks ordered for the applicant/recipient. The Provider Self-Certification of Completion of Training in the Provision of Paramedical Services form (SOC 321A) (XX/20XX) is incorporated by reference, in its entirety, at this point because it is first mentioned here in regulations. The SOC 321A documents the IHSS recipient's name and case number, the provider's name and provider number, the LHCP-PM profession that directed training for the provider, name and phone number of LHCP-PM, type of training, date training received, a declaration with provider signature and date signed. The SOC 321A also provides the counties recording of Social Worker information for approving file.

Factual Basis:

This section is necessary to establish a uniform and consistent process that the county can use to positively determine that the necessary training of the provider by the LHCP-PM has occurred, which includes the necessary incorporation of SOC 321A, so that the provider can be allowed to perform the ordered paramedical services tasks and receive payment for performance of them. The SOC 321 and/or the SOC 321A, identifies the individuals the LHCP-PM has trained in the specific paramedical tasks being ordered for the applicant/recipient. Although it us unduly or otherwise impractical to publish the incorporated form in the Manual of Policies and Procedures, as of the effective date of these proposed regulations, it may be found on the CDSS Forms/Brochures web page at: http://www.cdss.ca.gov/inforesources/Forms-Brochures.

Final Modification:

The CDSS acknowledges the testimony presented at the public hearings and the comments received during the comment period, summarized in Comments 1, 2, 4, 5, 6, 18, 32, 33, and 46 and of the Testimony and Response section; however, CDSS maintains that the completion of the SOC 321 or SOC 321A is necessary to ensure that the provision of paramedical services complies with WIC 12300.1 which specifies that paramedical services shall be rendered by a provider under the direction of a licensed healthcare professional, subject to the informed consent of the recipient obtained as a part of the order for service.

Additionally, in order to minimize any burden on providers, a provider is allowed to submit a self-certification of completion of training in the provision of paramedical services in place of the SOC 321 to avoid requiring providers

who have already been trained to provide paramedical services to undergo re-training.

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 4, 6, 14, 17, 18, 39, 40, 41, 45 and 46 and of the Testimony and Response section, CDSS modified this section to expand the list of licensed health care professionals who may train an IHSS provider to provide paramedical services to include any health care professional licensed pursuant to Division 2 of the Business and Professions Code.

This modification was necessary as CDSS acknowledges that licensed health care professionals who do not order medical therapies or prescribe medications may still train recipients and their providers to complete paramedical service tasks.

Section 30-757.193(b)(2)

Specific Purpose:

This section is adopted to specify how the county can confirm that a new provider for a recipient, e.g., an individual who is newly hired or an existing provider who has performed other services for the recipient but not paramedical service tasks, has received the required training by the LHCP-PM on the specific paramedical services tasks ordered for the applicant/recipient.

Factual Basis:

This section is necessary to establish a uniform and consistent process that the county can use to positively determine that the necessary training of a new provider by the LHCP-PM has occurred so that the new provider can be allowed to perform the ordered paramedical services tasks and receive payment for performance of them.

Final Modification:

The CDSS acknowledges the testimony presented at the public hearings and the comments received during the comment period as summarized in Comments 1, 2, 4, 5, 6, 18, 32, 33, and 46 and of the Testimony and Response section; however, CDSS maintains that the completion of the SOC 321 or SOC 321A is necessary to ensure compliance with WIC section 12300.1 which specifies that paramedical services shall be rendered by a provider under the direction of a licensed healthcare professional, subject to the informed consent of the recipient obtained as a part of the order for service.

Additionally, in order to minimize any burden on providers, a provider is allowed to submit a self-certification of completion of training in the provision of paramedical services in place of the SOC 321 to avoid requiring providers who have already been trained to provide paramedical services to undergo re-training.

Following the public hearing, as a result of testimony and comments received during the comment period, summarized in Comments 1, 2, 4, 6, 14, 17, 18, 39, 40, 41, 45 and 46 and of the Testimony and Response section, CDSS modified this section to expand the list of licensed health care professionals who may train an IHSS provider to provide paramedical services to include any health care professional licensed pursuant to Division 2 of the Business and Professions Code.

This modification was necessary as CDSS acknowledges that licensed health care professionals who do not order medical therapies or prescribe medications may still train recipients and their providers to complete paramedical service tasks.

Sections 30-757.193(d)(1) through 30-757.193(d)(2)(B)

Specific Purpose:

These sections are adopted to specify the circumstances under which payment can be made retroactively for paramedical services provided to an applicant and recipient before the county received the completed SOC 321. These regulations provide that retroactive payment can be made only when the two following conditions have been met: 1) the paramedical services task that were performed for the applicant and recipient were the same as those that the LHCP-PM ordered on the SOC 321 and those ordered are consistent with the county Social Worker's documentation; and 2) the provider who performed the specific paramedical services tasks had received the required training on those specific paramedical services tasks from the LHCP-PM before he/she performed them for the applicant/recipient. The final condition can be verified by reviewing the section of the SOC 321 (Section 5) and/or SOC 321A, which identifies the individuals the LHCP-PM has trained in the specific paramedical tasks being ordered for the applicant/recipient.

Factual Basis:

These sections are necessary to ensure that counties have a clear understanding of the conditions under which payment can be made retroactively for paramedical services provided to an applicant and recipient before the county received the completed SOC 321.

Final Modification:

The CDSS has modified Section 30-757.193(d)(1) to clarify that the retroactive authorization of paramedical services becomes effective as of the date the paramedical service is ordered by the LHCP-PM on the completed SOC 321, not to exceed the date of protected eligibility.

This modification is necessary to ensure that paramedical services are not retroactively authorized to a date prior to the date of protected eligibility.

b) Identification of Documents Upon Which the Department is Relying

The CDSS is relying on the WIC 10554, 12300.1, and 12301.2 to clarify existing Paramedical Services regulations which will help to ensure uniformity and consistency in the authorization of time for paramedical service tasks throughout counties for the IHSS program.

c) Testimony and Response 45-Day Public Comment Period

These regulations were considered at two public hearings held on December 27, 2018 and January 18, 2019, in Sacramento, California. Written and oral testimony was received during the comment period from November 9, 2018 to January 18, 2019. The comments received and CDSS' responses to those comments follow the commenter index.

The following individuals and entities presented testimony at the public hearing or during the comment period and are indexed below by outline lettering for ease of reference:

A. Alesia Garrett
B. Bet Tzedek
C. California In-Home Supportive Services Consumer Alliance
D. Californians for Disability Rights
E. Cassandra Cassandra
F. Communities Actively Living Independent and Free
G. Connie Arnold
H. County of Los Angeles Department of Public Social Services
I. County Welfare Directors Association
J. Cynde Soto
K. Debbie R. Schneider
L. Disability Rights California
M. Jennie Cantu on Behalf of Daniel Cantu
N. Jonathan Harshman
O. Justice in Aging
P. Kristie Sepuleva-Burchit
Q. Leona Heavens

R. Lindsay Imai Hong
S. Loretta Kennemer MacDonald
T. Lynnea Johnson
U. Marissa Shaw
V. Mark Harshman
W. Meghan Cosgriff
X. Mona Shams
Y. Monterey County Department of Social Services
Z. Paula Herman
AA. Rose (No Last Name Provided)
BB. Rosemary Ledbetter
CC. SEIU Local 2015
DD. Stacey Puentes
EE. Thea Wilson
FF. Tina Harshman
GG. UDW AFSCME Local 3930/AFL-CIO
HH. Yvonne Morentin

1. Comment:

Commenters B, D, G, O, and Y strongly object to the proposed changes to the Department of Social Services Manual of Policies and Procedures (MPP) sections 30-701, 30-756, and 30-757, and ask that they be withdrawn in order to allow meaningful stakeholder engagement for the following reasons:

- There is no reasonable justification of the need for the proposed regulations. The proposed regulations will give rise to an increased and more complicated and expensive bureaucracy.
- The regulations fail to consider the role of the IHSS consumer and primary caregivers in directing care.
- The Department seeks to develop an exhaustive list of timeframes for paramedical services outside the regulatory process. If in fact such guidelines are needed, they must be developed in the context of the regulatory process as was done with the hourly task guideline ranges for non-medical personal care services.
- While the Department states that it invited interested parties to present alternatives to the proposed regulations and held workgroups with counties, stakeholder and advocacy groups, our agencies and others have not had the opportunity to review these regulations or offer edits before they were formally released for comments through the Office of Administrative Law. It is also unclear whether the Department consulted with the provider/consumer community. Groups including IHSS beneficiaries and relative providers who we and our advocacy partners contacted indicated they only heard about proposed changes to the paramedical regulations when contacted by our advocacy partners.

- Stakeholders and advocates must have an opportunity to work with the Department to develop less burdensome alternatives.

Commenters B, D, G, O, and Y further remarked that while the Department states that it invited interested parties to present alternatives to the proposed regulations and held workgroups with counties, stakeholder and advocacy groups, our agencies and others have not had the opportunity to review these regulations or offer edits before they were formally released for comments through the Office of Administrative Law. It is also unclear whether the Department consulted with the provider/consumer community. Groups including IHSS beneficiaries and relative providers who we and our advocacy partners contacted indicated they only heard about proposed changes to the paramedical regulations when contacted by our advocacy partners.

Commenters C, N, V CC, FF, and GG also requested that CDSS withdraw the proposed regulations in ORD #0915-11 and to work with consumer stakeholders and advocates to ensure that the paramedical regulations reflect the needs of IHSS consumers. As an alternative commenters B, C, N, V, and FF requested an extension to the comment period and submit notices to consumers so that they are made aware of the changes and can comment on the proposals.

Commenter DD stated that they were concerned there was no notification regarding this regulation package and no attempt at collaboration with any program consumers, licensed physicians or therapists who have experience and exposure with the disabled population as to the potential impact of these changes. It's imperative that qualified individuals are involved in these proposals and policy changes prior to developing written recommendations/program changes.

Commenter DD further stated that input from program participants is also critical. Who knows better exactly how proposed changes and program cuts will impact them, which changes may cause injury, death, loss of independence, possibly resulting in consumers being forced from their homes and into institutions. (And at significant increased costs to the state, not to mention consumer's rights or quality of life).

The commenter was also concerned that the public notice regarding the publication of proposed regulations ORD #0915-11 was not given in a timely manner.

Response:

The proposed regulations are necessary to create a standardized and consistent process for authorizing IHSS paramedical services across the state of California. By clearly defining paramedical services and creating clear regulatory guidance regarding the processing of SOC 321s, CDSS is ensuring that paramedical services are authorized and provided in accordance with WIC 12300.1.

The CDSS has revised these proposed regulations to further clarify that the Paramedical Services Authorization Reference Tool does not supersede a LHCP-PM's professional judgment when authorizing paramedical services, nor are LHCP-PM's limited to authorizing paramedical services included in the Reference Tool. The Paramedical Services Authorization Reference Tool acts as a quick reference tool for LHCP-PMs and should not be confused with the mandatory Hourly Task Guidelines which require the county to authorize IHSS service hours within a specific time range for various IHSS service tasks.

The public notice of the initial public hearing on December 27, 2019, was timely and adequate as required by law. Nevertheless, at the request of stakeholders, CDSS held an additional public hearing to permit additional stakeholders to comment on the proposed regulations to ensure meaningful stakeholder involvement.

2. Comment:

Commenter DD expressed concerns about who will monitor (and at what cost) and enforce the proposed regulations. The commenter asserts that county eligibility workers are already overburdened with their current caseloads. The commenter stated that they believe many of these amended program adjustment proposals are strictly to ensure that there isn't duplication of service hours awarded to consumers in multiple service areas. They state that it would be far more cost effective to properly train the eligibility/social workers rather than attempting to re-write a significant portion of the IHSS program. They state that they wish the focus was on helping consumers' needs, as opposed to excessive concerns about program fraud which have been demonstrated to be unfounded anyway.

Response:

The proposed regulations establish a clear administrative process to ensure that CDSS and counties comply with the law. The changes to the administrative processing of SOC 321s and SOC 321As are able to be conducted within the existing framework of the IHSS Program.

3. Comment:

Commenter G stated that the proposed changes create more county staff confusion involving definitions, assignment of numerical ranking, overlapping service care categories, artificially and constructing county staff override for paramedical task times as assigned by LHCP-PM for such services. These proposed changes will lead to more litigation at taxpayer expense to rectify these wrongs.

Response:

The proposed regulations are necessary to ensure that the provision of paramedical services comply with the requirements of WIC 12300.1, and are being promulgated to address existing confusion surrounding the authorization of paramedical services.

4. Comment:

Commenters FF stated that the extra paperwork and training sessions will mean extra wait times per each office visit which will require the State to pay a recipients' worker.

Commenter X states that the regulations will impose additional fees and costs. IHSS recipients will have to pay additional transportation costs to see their LHCPs and LHCPs will charge additional fees to have the forms completed.

Response:

Forms and training requirements already exist under the current paramedical services authorization framework. The proposed regulatory changes provide additional clarity to the existing framework.

5. Comment

Commenter X states that the updated SOC 321 and SOC 321A forms will make the provider enrollment process more complex which discourages IHSS providers from enrolling in the program. The forms may also discourage Medi-Cal providers from remaining in the Medi-Cal program due to increasing forms and regulations.

Commenters CC and GG stated that the new Self Certification Form, SOC 321A creates an additional burden on providers, which is magnified by the new limitations for who can be an LHCP-PM. It is likely to be much more challenging to be trained by only certain healthcare professionals who have limited time, and to complete the new form. They are opposed to the requirement of completing SOC 321A as it creates yet another hurdle for IHSS providers and consumers to give the range of care that is needed.

Response:

Forms and training requirements already exist under the current paramedical services authorization framework. The proposed regulatory changes provide additional clarity to the existing framework.

However, CDSS acknowledges that licensed health care professionals other than a LHCP-PMs may perform training of providers; therefore, CDSS has revised the proposed regulations accordingly.

6. Comment:

Commenter G and DD state that these regulatory changes will result in recipients being placed in institutional care causing state costs for recipient care to rise.

Response:

Forms and training requirements already exist under the current paramedical services authorization framework. The proposed regulatory changes provide additional clarity to the existing framework.

7. Comment:

Commenters E, J, M, R, U, BB, EE, and FF asserted that CDSS is inappropriately cutting existing paramedical services.

Response:

The proposed regulations clarify the definition of paramedical services in accordance with WIC 12300.1 to ensure the proper authorization of paramedical services. They do not reduce existing paramedical services that are appropriately authorized.

8. Comment:

Commenters B, G, L, O, Y, CC, FF, and GG stated that Section 30-757.192(b)(1) requires that an order for paramedical services be within the Statewide Paramedical Services Time Authorization Guidelines unless the provider gives an explanation for why the time needed exceeds the guidelines. This is procedurally improper because the Department has not released the Statewide Paramedical Services Time Authorization Guidelines as a part of this regulatory package. This means that stakeholders cannot meaningfully comment on the Time Authorization Guidelines.

These guidelines also fail to comport with the statutory language of Welfare and Institutions Code (WIC) section 12300.1 which states that paramedical services are supportive services that "are ordered by a licensed healthcare professional who is lawfully authorized to do so... ". An integral part of authorizing the service is assigning the duration of the task for that particular IHSS recipient. The Statewide Paramedical Services Time Authorization Guidelines are impermissibly usurping the role of the licensed health care professional and substituting the judgment of 20 public health nurses who do not know the individual clients' needs. They propose

the Department eliminate the Statewide Paramedical Services Time Authorization Guidelines from the regulations completely.

Commenters B, G, L, and O further state that the proposed regulation package exceeds the Department of Social Services' statutory authority. The statutory scheme identifies specific supportive services that can be authorized under the IHSS/personal care services program. Paramedical services are the only services specifically defined in statute, and the statute is clear that it is the IHSS recipient's physician or other licensed health care professional who determines what is medically necessary and the time the paramedical task should take. The responsibility of county social service staff is purely ministerial (see, MPP section 30-757.19). The proposed regulatory changes go beyond the scope of the statute in a number of ways, including by limiting the definition of a licensed healthcare professional; restricting the services that a licensed medical professional can order; and by adding proscriptive timeframes (i.e., the "Statewide Paramedical Services Time Authorization Guidelines" referenced in the proposed regulations) for ordered tasks.

The Department is not permitted by law to promulgate regulations not authorized by the governing statute. Therefore, all proposed regulations removing authority from the licensed health care professional for the authorization of paramedical services and the determination of the time needed for services are not authorized by Welfare and Institutions Code section 12300.1.

Commenter I states that the Statewide Paramedical Services Time Authorization Guidelines document has not been provided for review. It is difficult to assess the impact of several of these new regulations without reviewing the time guidelines developed by CDSS. These guidelines would need to be included as part of this regulatory package in order for appropriate comment. Please note however, that during the process of implementing the Hourly Task Guidelines (HTGs), paramedical tasks were excluded from consideration under the HTGs as such services are directed by LHCPs and can vary greatly by individual, and therefore were not considered appropriate for guidelines. Further, such guidelines have not been tested, as were the tasks that were eventually included in the HTGs. We therefore question the relevancy of having any such guidelines.

Commenter I further states that most IHSS social workers do not have the medical expertise to determine if the justification provided by the LHCP is reasonable or not. These regulations give no guidance to the social worker about how to make that decision. As used in these regulations, the term "reasonable" is very subjective and will likely result in a lack of uniformity.

Commenters DD stated that it is improper for a social worker to be able to override a LHCP-PM's order for paramedical services.

Commenter P described a case in which a nurse wrote on the SOC 321 reducing the time drastically and changing the days from 7 to 5. She questioned the time for the various services and told the doctor's office over the phone and in a letter that if he wanted to go over these amounts, he must explain his justification for the time. The nurse made changes to the form based on talking to the doctor's office manager and not to the doctor himself. The commenter is concerned that this would become common place if these forms and regulations are allowed to go through.

Response:

The CDSS has revised these proposed regulations to further clarify that the Paramedical Services Authorization Reference Tool does not supersede a LHCP-PM's professional judgment when authorizing paramedical services, nor are LHCP-PM's limited to authorizing paramedical services included in the Reference Tool. The Paramedical Services Authorization Reference Tool acts as a quick reference tool for LHCP-PMs and should not be confused with the mandatory Hourly Task Guidelines which require the county to authorize IHSS service hours within a specific time range for various IHSS service tasks. The administrative process of reviewing the LHCP-PM's service order is necessary to ensure that time for a paramedical service is correctly authorized in accordance with recipient need, as required by Section 30-760.24, and not a provider's individual ability and skill. Furthermore, pursuant to WIC 10554, it is within CDSS' authority to interpret or make specific the law enforced by CDSS.

The Paramedical Services Authorization Reference Tool has been released as part of the 15-day re-notice and is open for comment.

9. Comment:

Commenter FF stated that there is nothing 'uniformed or consistent' when it comes to working with persons who are developmentally disabled. Something that can take a person with autism 10 minutes to do, can the very next day take 20 minutes. So holding persons with developmental disabilities to the same standards as a non-disabled person is not taking into consideration their needs. Because of issues like this the Counties calculations for services leave 'unmet' needs, which for the recipients care providers leave them with time for a task/need that must be met uncompensated. And by adding additional stress, strain, and burden of care on providers, the largest cost in all of this will be the recipients eventually having to be placed into institutional care.

Response:

The proposed regulations are necessary to ensure that the provision of paramedical services is in accordance with the requirements of with WIC 12300.1.

These regulations are limited to a specific IHSS service which is performed by the provider and not the disabled recipient.

10. Comment:

Commenter I states that LHCP's will always have more up-to-date information on advances in technology and be the best source for estimating the time to complete paramedical services; however, the draft regulations indicate that DSS will update the regulations as it deems necessary. While the guidelines can assist social workers, we don't expect LHCP's to consult the DSS website and guidelines as this will be an additional step and add time to their process for completing the form.

Response:

As previously stated, CDSS has revised these proposed regulations to further clarify that the Paramedical Services Authorization Reference Tool does not supersede a LHCP-PM's professional judgment when authorizing paramedical services, nor are LHCP-PM's limited to authorizing paramedical services included in the Reference Tool. The paramedical services authorization Reference Tool acts as a quick reference tool for LHCP-PMs and will be updated by CDSS as necessary. As required by the proposed regulations, the most current version of the Paramedical Services Authorization Reference Tool will be provided to LHCP-PMs with the SOC 321 which they will be able to consult while completing the form.

11. Comment:

Commenters B, D, G, L, O, Y, CC, and GG states that Section 30-757.192(e)(1) requires the time authorized for paramedical services to be based on the time it would take an "average person" to perform the task for the recipient. This language is ambiguous as there is no "average person" standard. Each consumer's needs must be taken into account when determining the time necessary to complete to a paramedical service.

Commenters B, G, L, O, Y, CC, and GG further states that the Department will need to address whether the so-called "average person" standard comports with requirements under the Fair Labor Standards Act. Additionally, Section 30-757.192 (e)(2) goes through standards for determining time for task that in practice will be tremendously onerous, as well as improperly default to a generic Guideline (which as noted above has not yet been created or vetted by stakeholders) rather than the treating professional's assessment (30-757.192(e)(2)(B)(2)(l)).

Response:

Proposed section 30-757.192(e)(1) has been revised to specify that paramedical service authorizations must be based on the time it takes a provider who was

trained by a licensed healthcare professional to perform the paramedical service task and who exercises ordinary care, skill, and judgment to perform that paramedical service task for the specific recipient; thus, setting forth the applicable "ordinary person" standard. Although it has been stated that CDSS may not use an "average person" standard, CDSS maintains that the establishment of an ordinary provider standard is necessary to clarify that time shall be authorized based on the recipient's functional limitations and not a specific provider's ability and skill to perform a task. The "average", "ordinary", and/or "reasonable" person standard is an objective comparative standard used in many legal contexts as a hypothetical person in society who exercises average care, skill, and judgment in conduct. Because IHSS providers are typically lay persons and are not required to have any specialized skills, the ordinary person standard is appropriate to apply to providers to establish an "ordinary provider" standard. The standard set forth in the proposed regulations is based on the definition of a reasonable person as defined by West's Encyclopedia of American Law, edition 2. (2008).

The Paramedical Services Authorization Reference Tool was developed by a workgroup comprised of 16 registered nursed with experience in the IHSS program, 15 of whom are Licensed Public Health Nurses. The various titles and degrees held among the workgroup members included Bachelor of Science in Nursing, Master of Science in Nursing, Certified Case Manager, and Supervisor. The workgroup had a combined experience of over 58 years of registered nursing practice, 40 years of public health nursing experience, and 20 years of experience in the IHSS program.

Additionally, CDSS has revised these proposed regulations to further clarify that the Paramedical Services Authorization Reference Tool does not supersede a LHCP-PM's professional judgment when authorizing paramedical services, nor are LHCP-PM's limited to authorizing paramedical services included in the Reference Tool. The Paramedical Services Authorization Reference Tool acts as a quick Reference Tool for LHCP-PMs and should not be confused with the mandatory Hourly Task Guidelines which require social workers to authorize IHSS service hours within a specific time range for various IHSS service tasks.

The Paramedical Services Authorization Reference Tool has been released as part of the 15-day re-notice and is open for comment.

12. Comment:

Commenters B, G, L, O, Y, CC, and GG stated that requiring a health professional to justify time outside the proposed (and unwritten) Guidelines will effectively bar consumers from the paramedical services they need. Consumers already struggle with getting a treating healthcare professional to fill out the existing form. A licensed healthcare professional who treats an IHSS recipient should not have to justify a need for Paramedical Services against a general set of guidelines.

Commenter I further stated that the counties already have difficulty getting completed forms back from physicians. Also, forms that are returned are routinely incomplete. The additional requirement that the LHCP provide the exception language will likely create additional barriers to authorization of paramedical services.

Commenter I further asserts that the proposed regulations, expanded SOC 321, and new SOC 321A will result in significant new county workload and new costs.

Response:

The required completion of an order for paramedical services with an informed consent form completed by the recipient pursuant to WIC 12300.1 is not a new requirement. The revised SOC 321 requests additional information regarding the recipient's functional limitations which is necessary to ensure that paramedical services are authorized appropriately.

The CDSS has revised these proposed regulations to further clarify that the Paramedical Services Authorization Reference Tool does not supersede a LHCP-PM's professional judgment when authorizing paramedical services, nor are LHCP-PM's limited to authorizing paramedical services including in the Reference Tool. The Paramedical Services Authorization Reference Tool acts as a quick reference tool for LHCP-PMs and should not be confused with the mandatory Hourly Task Guidelines which require social workers to authorize IHSS service hours within a specific time range for various IHSS service tasks.

13. Comment:

Commenters B, G, L, and O stated that the Department cannot use an average time guideline for paramedical services, or supersede the treating professional's order. They describe a previous case that involved San Diego County's application of time-for-task guidelines for testing glucose levels and administering insulin injections. San Diego County overruled the IHSS recipient's doctor's authorization of blood level glucose testing and instead, without a new signed form and requisite consents, authorized a lower amount. The parties settled the case through a stipulated judgment holding that San Diego County could not use an average time guideline for paramedical services, or supersede the treating professional's order.

Response:

The CDSS has revised these proposed regulations to further clarify that the Paramedical Services Authorization Reference Tool does not supersede a LHCP-PM's professional judgment when authorizing paramedical services, nor are LHCP-PM's limited to authorizing paramedical services including in the Reference Tool. The Paramedical Services Authorization Reference Tool acts as a quick Reference Tool for LHCP-PMs and should not be confused with the mandatory

Hourly Task Guidelines which require social workers to authorize IHSS service hours within a specific time range for various IHSS service tasks.

Although it has been stated that CDSS may not use an “average person” standard, CDSS maintains that the establishment of an ordinary provider standard is necessary to clarify that time shall be authorized based on the recipient’s functional limitations and not a specific provider’s ability and skill to perform a task. The “average”, “ordinary”, and/or “reasonable” person standard is an objective comparative standard used in many legal contexts as a hypothetical person in society who exercises average care, skill, and judgment in conduct. Because IHSS providers are typically lay persons and are not required to have any specialized skills, the ordinary person standard is appropriate to apply to providers to establish an “ordinary provider” standard. The standard set forth in the proposed regulations is based on the definition of a reasonable person as defined by West's Encyclopedia of American Law, edition 2. (2008).

14. Comment:

Commenter T stated that paramedical services should not be performed by IHSS providers as they are usually untrained which can cause significant risk to the recipient. The commenter stated that paramedical service should only be provided by licensed vocational nurses (LVN) or registered nurses (RN).

Response:

Paramedical services are an available IHSS service pursuant to WIC 12300.1

15. Comment:

Commenters A, B, G, L, I, O, P, Y, CC, and GG stated that the definition of LHCP-PM is too narrow and will result in fewer paramedical service tasks being authorized to recipients as recipients receive their care from a variety of providers not included in the LHCP-PM definition.

Commenters B, G, L, O, Y, CC, and GG further state that numerous examples demonstrate that these limitations are inappropriate. For instance, while a physician would recognize the need for occupational or physical therapy (OT/PT), it is the occupational or physical therapist who would provide the directions with respect to a home program of therapy which may include range of motion. Likewise, in the context of the California Children's Services program, a parent accompanying a child receiving OT/PT services at a Medical Therapy Unit will receive instructions about implementing a home therapy program which would be expected to be modified at subsequent hands-on therapy sessions.

And while a physician would recognize a need for ventilator care, in the context of ventilator users, it would be a Licensed Vocational Nurse (LVN) or respiratory

therapist or RN experienced in managing ventilator users who would actually provide the training on managing the ventilator, adjusting the rate, and being able to respond in the event of an emergency.

Commenter HH stated that the proposed changes are requiring the doctor do all the paperwork, when in reality it is the other staff and professionals who are in charge of the training, set up, care, and follow up.

Commenters A, and P proposed to include physical therapists (PT), occupational therapists (OT) and nurses in the definition of LHCP-PM. Commenters B, G, L, O, and Y also indicated that the list of licensed health care professionals allowed to authorize paramedical services should align with WIC section 12309.1 which permits anyone licensed pursuant to the Business and Professions Code to authorize general IHSS services. Commenters CC and GG stated that the definition should include all healthcare professionals that provide services to IHSS consumers and are able to train IHSS providers to execute the relevant care at home for their consumer.

Response:

Pursuant to WIC 12300.1, paramedical services "are ordered by a licensed healthcare professional who is lawfully authorized to do so." The CDSS specifically included in the definition of LHCP-PM, licensed healthcare professionals who are lawfully authorized to order medical therapies that may be considered authorizable paramedical services. Some LHCPs, such as a nurse, may carry out a treatment plan at the order of a LHCP-PM but would not be able to order the service themselves.

The CDSS acknowledges that licensed health care professionals other than a LHCP-PMs may perform training of providers; therefore, CDSS has revised the proposed regulations accordingly.

16. Comment:

Commenter K stated that paramedical services are generally defined as services provided by professionals not in the public health system, i.e. not a doctor. These services include chiropractic, physiotherapy, massage therapy, naturopathy, acupuncture, etc.

Response:

While paramedical services may be defined differently elsewhere, paramedical services for the purposes of IHSS are defined by WIC 12300.1 as "those necessary paramedical services that are ordered by a licensed health care professional who is lawfully authorized to do so, which persons could provide for themselves but for their functional limitations. Paramedical services include the administration of

medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed healthcare professional. These necessary services shall be rendered by a provider under the direction of a licensed healthcare professional, subject to the informed consent of the recipient obtained as a part of the order for service."

17. Comment:

Commenters B, G, L, O, and Y agreed with the changes in section 30-757.19(a) and (b), but felt that some of the other proposed rule changes do not comport with the definition of paramedical services. Specifically, the proposed requirement that only licensed health care professional can train a provider to perform a paramedical task runs counter to section 30-757.191(a) and (b). Many consumers have the ability to direct the paramedical services they need, they just need assistance to perform the task itself. Given the fact that paramedical services are services that "an individual would normally perform for him/herself but for his/her functional limitations," it is appropriate to allow IHSS recipients to train providers on paramedical tasks that they have been trained to perform, but are simply not capable of performing for themselves.

Commenters I stated that they have concerns that this change increases barriers to services as it requires training by a licensed health care practitioner and does not allow training by the recipient.

Commenter I further stated that these draft regulations impose a requirement onto the LHCP to provide such training, and onto providers to receive training directly from the LHCP. However, the IHSS program has always put the responsibility on recipients to hire, fire and direct the care from their providers, which includes ensuring their providers have received some form of training. Some recipients receive such training directly and then are able to direct their provider(s) via verbal cueing/coaching. This draft regulation is a significant change from the consumer-directed care that is the foundation of the IHSS program. It shifts the responsibility for training, and presumably the liability, onto the LHCP and the county. For example, in the event the training was provided and not sufficient and the recipient was injured, or absent training and something happens to the recipient for whom care is rendered.

Commenter I stated that some recipients change providers frequently. If they must wait for a provider to receive training, this could mean the recipient goes without much-needed paramedical services in the meantime. Who would provide these? Back up (i.e. registry) providers aren’t always available and they may not be trained in the specific paramedical service. This is administratively burdensome to require a LHCP-PM to sign a form anytime a new provider starts and before the provider may provide specific services. Changes in providers are not always planned and securing an appointment with a Medi-Cal LHCP can take days or even weeks. This

creates a significant barrier to the client receiving necessary services and the provider getting payment in a timely manner.

Commenter S, AA, and HH stated that the requiring LHCP-PMs as defined by the initially proposed regulations to be the only individuals to be able to train providers on how to perform paramedical services was improper.

Commenter S states that it has always been protocol for physicians to make the referral to the patients to go to OTs, PTs, and nurses for training since they are the ones with the well earned degrees and knowledge in that specialty field to do so and then send back reports to the physicians. Most physicians have not had the training in those specialty fields, nor do they have the time to do them. To suggest that these individuals can no longer give the training, but a non-trained physician can, is harmful and dangerous to patient care. The commenter also stated that a trained parent provider should be able to train other providers to perform paramedical tasks. Commenter S further stated that these regulatory changes would lead to delays in service and inadequate care.

Commenter AA stated that she has been caring for her son who is quadriplegic for 33 years and has had no hospitalizations. She was trained by an RN and feels that nurses should be permitted to train providers to perform paramedical services.

Commenter X asserted that there is a caregiver crisis in the State of California. It is very difficult for the most high need paramedical clients to find and retain care providers. The additional step of now needing to be trained by a LHCP in addition to an already lengthy provider enrollment process, may cause further decline in number of people who are interested to become IHSS care providers. We certainly do not want to make this crisis worse by adding unnecessary regulations.

Response:

Pursuant to WIC 12300.1, paramedical services for the purposes of IHSS require judgment based on *training* given by a licensed heath care provider and are provided under the direction of a licensed heath care provider. (Emphasis added.)

Nevertheless, CDSS acknowledges that licensed health care professionals other than a LHCP-PMs may perform training of providers; and therefore, CDSS has revised the proposed regulations accordingly.

Furthermore, the Provider Self-Certification of Completion of Training in the Provision of Paramedical Services form (SOC 321A) was created to ensure that existing IHSS providers who have been trained to perform a variety of paramedical service tasks do not have to unnecessarily undergo re-training by allowing them to self-certify that they have been trained to perform the paramedical service. This form does not need to be completed by an LHCP.

18. Comment:

Commenter I stated that some recipients change providers frequently. If they must wait for a provider to receive training, this could mean the recipient goes without much-needed paramedical services in the meantime. Who would provide these? Back up (i.e. registry) providers aren't always available and they may not be trained in the specific paramedical service. This is administratively burdensome to require a LHCP-PM to sign a form anytime a new provider starts and before the provider may provide specific services. Changes in providers are not always planned and securing an appointment with a Medi-Cal LHCP can take days or even weeks. This creates a significant barrier to the client receiving necessary services and the provider getting payment in a timely manner.

Response:

To ensure that existing IHSS providers who have been trained to perform a variety of paramedical service tasks do not have to unnecessarily undergo retraining, CDSS created the Provider Self-Certification of Completion of Training in the Provision of Paramedical Services form (SOC 321A). This form may be completed by any IHSS provider which has previously been trained to perform paramedical service tasks.

Furthermore, pursuant to WIC 12300.1, the provision of paramedical services has always been contingent upon a provider being trained by a licensed healthcare professional to perform the service.

19. Comment:

Commenters B, G, I, L, O, Y, CC, and GG stated that the current provision in subjection (j) regarding feeding should be preserved because the actions of eating and feeding are distinct. It was suggested that the term be "feeding and/or eating" or to create two separate terms acknowledging the difference between feeding and eating.

Response:

The CDSS has revised the proposed regulations to acknowledge that "Eating/Feeding" are both types of food ingestion.

20. Comment:

Commenter DD asked for clarity regarding the change from assessing a Rank 1 versus an indicator of 6.

Commenter G felt that this indicator was being created to restrict access to services.

Response:

Currently, the county assigns a Rank 1 in meal preparation and clean-up; eating/feeding; and/or respiration when those services are solely met through paramedical services as required by Section 30-756.4.

Section 30-756.11 defines Rank 1 as "Independent: able to perform function without human assistance, although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety. A recipient who ranks a '1' in any function shall not be authorized the correlated service activity."

By assigning a Rank 1 to a service category, the county determines that a recipient has no need in that category and therefore, no time will be authorized for services in that service category. However, assigning a Rank 1 to a service category where the need is met entirely through paramedical services inaccurately represents a recipient's functional limitations and need. The use of indicator 6 ensures that no time will be authorized for services in that service category; however, it provides a clear indication that the recipient has needs in the service category, but the identified need is met solely through paramedical services. For example, a recipient has been authorized paramedical service time for tube feeding. This time authorization included time to prepare the formula and clean-up. A county social worker should not authorize time in feeding and meal-prep and clean-up as time has already been authorized for those service tasks under paramedical services.

To more accurately reflect the nature of service delivery, CDSS will now assign an indicator of 6 when meal preparation and clean-up; and/or respiration is solely met through paramedical services. The proposed regulation also allows an indicator of 6 to be assigned in the bowel, bladder, and menstrual care service category when the recipient has all bowel and bladder care met through paramedical services and does not require menstrual services.

This change seeks to ensure that there is not an inaccurate representation of the recipient's functional limitations or a duplication of services, and does not limit access to paramedical services

21. Comment:

Commenters B, G, I, L, O, Y, CC, and GG commented that they agreed with the use of rank 6 in service categories that are solely met with paramedical services; however, they requested that the regulations provide more clarity for circumstances in which a tube fed recipient has special homemade nutritious formulas prepared for them by their provider.

Commenter S noted that many of those on exclusive tube feeds have formulas that are often a mix of real foods and/or water/other fluids as well as pre-mixed formulas

all of which require mixing/prep, and cleaning of the containers, counters, and prep area. She further requested that time be allowed to complete meal preparation and clean-up for these activities.

Response:

The CDSS agrees that authorized time should be allotted for meal prep and clean up when a recipient has specialized formulas prepared by the provider. The CDSS has revised the proposed regulations to add Section 30-756.41(a) to allow a recipient who has been determined to be solely tube fed, but has nutritional formulas prepared by the IHSS provider, to have meal preparation and clean-up time included in the paramedical service authorization.

22. Comment:

Commenters B, G, L, and O stated that they agreed with the use of rank 6 in service categories that are solely met with paramedical services; however, they requested that the regulations provide more clarity for circumstances in which a recipient whose bowel and bladder care is solely met by paramedical services, but also has menstrual care needs.

Response:

The CDSS agrees that ostomy care does not include menstrual care and has revised the proposed regulations to specify that any recipient receiving ostomy care, but who also requires menstrual care, should be assigned the appropriate ranking in bowel, bladder, and menstrual care to reflect their need for menstrual care.

23. Comment:

Commenter A stated that they were unclear as to whether or not range of motion exercises were categorized as a paramedical service.

Commenters P, Z, and DD expressed concern that the Department amended the definition of range of motion as they felt that active and passive range of motion exercises should continue to be authorized as a repositioning and rubbing skin service.

Commenters B, G, L, O, Y, CC, and GG stated that active range of motion exercises cannot be unilaterally prohibited. They further stated that the distinction between active and passive range of motion exercises is artificial. However, if the Department retains the distinction, it was proposed that the Department clearly state that active range of motion is an authorized service under Repositioning and Rubbing Skin, not Paramedical Services.

Response:

The distinction between active and passive range of motion exercises is not artificial. Active range of motion exercises are those in which the individual him/herself completes the exercise through its range of motion in accordance with training by a specialized therapist with another person providing only supervision, not hands-on assistance, to ensure that the exercise is done correctly. Active range of motion exercises can be authorized under the repositioning and rubbing skin service category pursuant to Section 30-757.14(g)(1).

Passive range of motion exercises are those in which another person provides the individual with hands-on assistance to move a joint or other body part through its range of motion unlike active range of motion exercise where the recipient has been trained to do the exercise under the supervision of a provider. With passive range of motion exercises, the provider must be trained to perform the task to ensure they are performed correctly, and therefore, passive range of motion exercises are to be authorized in the paramedical services category pursuant to Section 30-757.191.

The revised regulations establish a clear distinction between active range of motion exercises and passive range of motion exercises and clarifies under which service category each exercise should be authorized. Both active and passive range of motion exercises continue to be allowed in the IHSS program.

24. Comment:

Commenters B, G, L, and O stated that Tyler v Anderson (1999) was a class action challenging CDSS' denial of coverage of physician-ordered range of motion therapy as a paramedical service. The court in Tyler found that prohibiting range of motion as a paramedical service violated WIC section 12300.1 because "that section gave defendants no discretion to prohibit range of motion exercises when ordered by a licensed healthcare professional."

Response:

The proposed regulations do not disallow the authorization of range of motion exercises. Rather, the proposed regulations add additional clarity by distinguishing between "active" and "passive" range of motion exercises to determine under what service category they should be authorized. Both active and passive range of motion exercises continue to be allowed in the IHSS program.

25. Comment:

Commenters F, P objected to the list of non-paramedical services included in Section 30-757.191(c)(2) of the Handbook.

Commenters B, G, I, L, and O specifically stated that a categorical exclusion of activities listed in Section 30-757.191(c)(2) is unduly restrictive and that authorizing the time should be an option, on a case-by-case basis, depending on the LHCP's recommendation, or can be authorized under other IHSS tasks. For example, with respect to g-tubes, although, there are often times when the machine will run and needs no monitoring, there may be cases that require monitoring.

Commenters B, G, L, O, Y, CC, and GG stated that the Department's specific purpose and factual basis for changes in these sections is merely to provide examples of common tasks which may not be authorized as paramedical services. This is inaccurate. Current regulations do not disallow specific paramedical services. Moreover, in practice, the Handbook will be used by Counties as if it has regulatory effect, and the statement to that the Handbook will have no regulatory effect will be meaningless to consumers. The list of tasks set forth in Section 30-757.191(2)(A-F) that cannot be authorized are all vital for persons with severe disabilities, and cannot be prohibited wholesale.

Commenters CC and GG further state that the aforementioned paramedical services were previously authorized for IHSS consumers to receive as part of their care to remain safely in their home. Without these vital services, some consumers, especially those with high needs, will be forced to resort to institutional or nursing level of care to maintain their health and wellbeing. The proposed changes place an unnecessary burden on both consumers and providers by modifying the way in which care is being rendered and by potentially reducing authorized hours. We strongly urge CDSS to remove these restrictions as they compromise the health and safety of IHSS consumers.

Response:

The CDSS has removed the list of non-paramedical tasks from the Handbook.

26. Comment:

Commenters D and DD objected to the exclusion of nail clipping from the list of authorizable IHSS paramedical service tasks.

Commenters B, G, L, O, Y, CC, and GG stated that nail clipping cannot be unilaterally prohibited. For people with disabilities who may have sensitive skin, diabetes, etc. this is a necessary service to maintain health. The stated factual basis for this prohibition is that there is a risk of potential injury. This concern flies in the face of the purpose of paramedical services, which is to allow trained professionals to delegate discrete tasks to lay persons and in turn ensure that consumers avoid institutional care.

Commenter I stated that they object to the exclusion of nail clipping from the list of authorized IHSS tasks. At minimum, it should be included in "grooming." They

further commented that it is odd that this specific task is excluded due to high risk for potential injury considering there are other paramedical tasks with the same, or greater, potential risk to the recipient (wound care, ostomy care, peritoneal dialysis, suctioning, etc.).

Commenter FF stated that many care providers already struggle with the burden to provide over 207+ hours per month of uncompensated care, just to keep recipients safe in their homes. Now, according to demanding policies families will have to find specialists to handle mundane tasks like finger and toe nail clippings. The commenter further stated that they don't have podiatrists who are available let alone willing to provide that type of service.

Response:

The CDSS has removed the handbook section which set forth examples of non-paramedical tasks, which included nail clipping. Notwithstanding, nail care is generally authorized as grooming, and thus, it is not included in the list of common paramedical tasks. If a LHCP-PM orders nail clipping as a paramedical task, an analysis of whether it meets the definition set forth in 30-757.191 will need to be done on a case by case basis.

27. Comment:

Commenter H requested that the Department further define fingernail and toenail care in the grooming service category.

Response:

Nail care is generally authorized in the bathing, oral hygiene, and grooming service category and not as a paramedical service which is the subject of this regulatory package. Nevertheless, nail care is included in the definition of grooming, set forth in Section 30-757.14(e)(3).

28. Comment:

Commenter K asks what will happen if insurances/Medi-Cal decides to not cover nail clipping or any of the services that the new proposals consist of?

Response:

The proposed regulations only address paramedical services in the IHSS program. The CDSS does not oversee or administer Medi-Cal or insurance plans.

29. Comment:

Commenters B, G, L, O, Y, CC, and GG commented that vital sign and blood pressure checks cannot be unilaterally prohibited. A treating physician may order glucose blood levels recorded and blood pressure and temperature and blood oxygen saturation levels recorded as part of ensuring a consumer's health is stable. Additionally, the Department has not provided any justification in the Initial Statement of Reasons explaining why vital sign and blood pressure checks are disallowed.

Commenter I stated that they have concerns with the exclusion of blood pressure checks if directly linked to other, authorized paramedical services. For example, if blood pressure checks were part of administering in-home dialysis, it would be included in paramedical services authorized time. However, they agree that, as a stand-alone service, blood pressure checks would not be an authorized paramedical service.

Several commenters were concerned that the regulations eliminated blood glucose testing as a paramedical service.

Response:

The CDSS maintains that vital sign, and blood pressure monitoring may be authorized with a correlating paramedical service; however, they are not standalone authorizable IHSS service tasks. The CDSS acknowledges that including these services in a list of services that are not authorizable paramedical services may cause confusion with service authorization as they may be authorizable as a part of a correlating paramedical service task. Therefore, CDSS has revised the proposed handbook section to remove the list of services that are not authorizable paramedical services. Additionally, it should be noted that blood and urine testing is listed as allowable paramedical services pursuant to Section 30-757.191(c)(1)(C).

30. Comment:

Commenters B, G, L, O, Y, CC, and GG stated that Applied Behavioral Analysis (ABA) services to remediate autism or behavior intervention service seeking to reduce or extinguish or reduce problem behaviors cannot be unilaterally prohibited. To implement the home portion of an ABA program often requires intensive services and training funded by Medi-Cal and private health plans. Moreover, excluding paramedical services needed because of a cognitive or psychiatric disability constitutes discrimination in violation of federal Medicaid requirements. Any proposed regulation package should comport with the state and federal nondiscrimination provisions.

Response:

These proposed regulations are limited to paramedical services within the IHSS program. ABA therapies do not meet the conditions of MPP section 30-757.191(a), or the definition of paramedical services set forth in WIC section 12300.1, and therefore cannot be authorized as a paramedical services for the purposes of IHSS.

31. Comment:

Commenter D stated that monitoring of a patient during treatments should be an allowable paramedical service the provider may need to perform tasks such as unclog or unkink a tube.

Commenters B, G, L, O, Y, CC, and GG stated that monitoring the time in between the initiation and the conclusion of the provider performing the task cannot be unilaterally prohibited. This would prevent critical tasks such as: monitoring of a person to determine when suctioning may be needed; intervention to address autonomic dysreflexia; determining when there needs to be adjustment to the functioning of a kangaroo pump; or whether the IHSS beneficiary remains properly placed with their head elevated, for instance.

Commenters B, L, and O stated that one client was a first grader on a ventilator who would troubleshoot ventilator problems with his LVN. He would advise when the ventilator tubing needed to be emptied of fluid and when suctioning was needed.

Response:

The CDSS maintains that tasks must meet the conditions of Section 30-757.191 to be authorized as a paramedical service. Notwithstanding, CDSS has revised the proposed handbook section to removethe list of services that are not authorizable paramedical services.

32. Comment:

Commenter X testified that many clients with paramedical needs require complicated care for which they must see multiple medical specialists. The commenter stated for example, a client may require gastrostomy or G-Tube feeding and have a suprapubic catheter and has diabetes. In this case the client must see a gastroenterologist, a urologist, and an endocrinologist. The IHSS client will be burdened by additional transportation fees associated with being required to see multiple specialists and primary care physicians to get proposed SOC 321 filled out. This is especially important because some clients have to choose between food and medicine. This would be a big burden on them, because they have to pay now for transportation for multiple doctor visits.

Commenter I stated that the proposed regulations, expanded SOC 321, and new SOC 321A will result in significant new county workload and new costs.

Response:

The proposed regulations do not change current requirements regarding the completion of provider training and an order for paramedical services; rather, they provide additional clarifications and resources. Accordingly, there should not be an increased burden on recipients to obtain paramedical services.

Any additional workload associated with the promulgation of these regulations has been determined to be minor and absorbable within existing program functions.

33. Comment:

Commenters G and I were concerned that the length of the new SOC 321 would make completion of the form more difficult.

Response:

SOC 321 has been lengthened to provide the LHCP-PM with all the information they need in order to appropriately authorize paramedical services in accordance with WIC 12300.1, to limit completion errors, and to provide them with the Paramedical Services Authorization Reference tool to assist them in the authorization of common paramedical services. The changes to the SOC 321 also ensure that providers are trained to perform paramedical services, and the recipient receives adequate informed consent as required by WIC 12300.1.

Finally, a large part of the change in length can be accounted for a change in the font used to transcribe the form from Arial 9 to Arial 12.

34. Comment:

Commenter I asked whether the LHCP-PM would be required to complete a new SOC 321 for each expired service task when there are multiple paramedical service tasks ordered with separate end dates.

Commenter P was concerned that the county requires the SOC 321 to be updated annually.

Response:

As specified in the proposed regulations, a new SOC 321 is required if paramedical services continue to be needed beyond the end date the LHCP-PM has indicated on the original SOC 321, or the recipient needs a new paramedical service. If a task expires there would be no need for a new SOC 321 because the IHSS

recipient no longer needs that service and the county would adjust the authorized time accordingly.

The proposed regulations do not require an SOC 321 to be resubmitted annually. It is only required when a paramedical service task must be added or extended.

35. Comment:

Commenter I asked if paramedical services remain in place during an inter-county transfer or whether a new SOC 321 would need to be completed.

Response:

The proposed regulations do not require a recipient to have a new SOC 321 completed upon inter-county transfer unless they need to add new paramedical services or extend existing paramedical services which would otherwise expire. The inter-county transfer rules and regulations apply to paramedical services in the same manner as all other IHSS services.

However, if a recipient hires a new provider in their new county, they will need to ensure that the provider has an SOC 321A on file certifying that they are trained to perform the recipient's necessary paramedical services prior to the provision of services.

36. Comment:

Commenter I asked whether the county would be able to verbally accept an updated time authorization order from an LHCP-PM to fulfill the requirement in Sections 30-757.192(e)(2)(B)2.ii.I and 30-757.192(e)(3).i or does the LHCP-PM have to complete a new SOC 321 with the updated time authorization order?

Response:

When the county requires additional information from the LHCP-PM in order to process an incomplete SOC 321, the county may accept a verbal order from an LHCP-PM to authorize the paramedical services. The verbal order of the LHCP-PM should be notated on the original SOC 321. The social worker should also document the discussion in the recipient’s case notes.

After authorizing the paramedical services, the social worker must follow-up with the LHCP-PM to obtain an updated SOC 321 to put on file. This is to ensure accurate documentation of authorized paramedical services. The SOC 321 allows the person submitting the form to the LHCP-PM to list requested paramedical services. The social worker should document the verbal order in this section and submit it to the LHCP-PM for completion. The proposed regulations have been modified to incorporate this administrative process.

37. Comment:

Commenter I suggested that CDSS amend Section 30-757.191(c) to replace "administration of medications" with "oral administration of medications" to remain consistent with the language used in the SOC 321A.

Response:

WIC 12300.1 states that paramedical services include the "administration of medications" and does not specify how the medication is administered; therefore, in order to remain consistent with statute, no modification to this section will be made. The CDSS will amend the SOC 321A to accurately reflect that paramedical services include any administration of medications.

38. Comment:

Commenter I requested that the regulations include the following tasks in the lists that define whether they are or are not paramedical services:

Eye drops
Ear drops
Cutting of medications

The commenter would also like regulation to clarify whether medications that are "over the counter" included in "administration of medication," for example, "Clear Eyes Wet Drops" for individuals with dry eyes.

Response:

The CDSS has listed as examples several common paramedical service tasks in Section 30-757.191(c)(1) of the Handbook; however, it would be impossible to make that list exhaustive. Counties that are uncertain whether a task is considered a paramedical service should continue to contact CDSS to obtain clarification regarding the authorization of the service.

39. Comment:

Commenter Q asserts that Medi-Cal will not pay licensed healthcare providers to perform training for paramedical services which would result in a barrier to services.

Commenter I asks what should be done when there are multiple providers (due to turnover) that require training. They believe this could be a burden onto recipients to schedule and participate in multiple appointments for the sole purpose of training.

Commenter H further asks if providers will receive payment for attending the required training for the paramedical service(s) being requested for the recipient?

(FLSA ruling allows for payment to complete mandatory training post-employment). If yes, how will they submit the claim to be paid?

Response:

The Department of Health Care Services (DHCS) administers the Medi-Cal program. Commenters should consult with DHCS regarding what Medi-Cal provider/beneficiary costs are compensable. Notwithstanding, as previously stated, judgement based on training given by a licensed healthcare professional is a required characteristic of paramedical services pursuant to WIC 12300.1.

Notwithstanding, because the provider would be learning and performing IHSS service tasks during the medical appointment, the recipient may be authorized time for medical accompaniment pursuant to Section 30-757.151 which would compensate the provider for the time spent obtaining the necessary training to perform paramedical services.

40. Comment:

Commenter H stated that if the provider must pay for the training, it will be costly for him/her to pay every time he/she works for a new recipient who requires paramedical services. It could be that the provider has been recently trained on the same paramedical services. Recommend honoring this recent training and not require the provider to take the same training again.

They also requested that the Department clarify whether proof of qualifications to perform paramedical services are sufficient to meet the training criteria; thus, training from the Licensed Health Care Professional (LHCP) would not be required in these instances. Some providers may have the medical training that qualifies them to perform the required paramedical services.

Commenter P expressed concern that providers who have already been trained to perform a paramedical service would have to be re-trained to be certified to perform tasks they have already been trained to complete.

Response:

The Department of Health Care Services (DHCS) administers the Medi-Cal program. Commenters should consult with DHCS regarding what Medi-Cal provider/beneficiary costs are compensable. Notwithstanding, as previously stated, judgement based on training given by a licensed healthcare professional is a required characteristic of paramedical services pursuant to WIC section 12300.1.

Nevertheless, CDSS has created the Provider Self-Certification of Completion of Training in the Provision of Paramedical Services form (SOC 321A) which allows a

provider to self-certify that they have completed a paramedical service training and does not need to be completed by a LHCP.

41. Comment:

Commenter I stated that Section 30-757.193(b)(1) implies that the County is approving, or not, that the training requirement has been met, which in the past has been the recipient's responsibility, working through their LHCP. As such, this creates a concern that it may impose a new liability on county IHSS agencies.

Response:

Counties are only required to collect the form(s) and accept the information presented on the form, i.e. the assumption is that the certification or self-certification of training is in fact true and correct as indicated by the provider. Counties are not required to otherwise verify or approve the adequacy of the training.

42. Comment:

Commenter X stated that LHCPs may decide not to take new or even remain with existing Medi-Cal and/or IHSS clients due to ever increasing forms and regulations. The commenter states that the Department must not contribute to the existing crisis that so many of our most vulnerable clients face for not being able to find a healthcare provider that serves Medi-Cal patients.

Commenters Q and X state that these proposed policy changes burden LHCPs with liability and unreasonably protracted paperwork. Commenter Q further states that many LHCPs will refuse to complete the form and those who do complete the form it takes 2 – 6 weeks for the county to receive a completed copy.

Response:

The proposed regulations do not change current requirements regarding the completion of provider training and an order for paramedical services; rather, they provide additional clarifications and resources to assist providers in completing the required forms.

43. Comment:

Commenters B, G, L, O, Y, CC, and GG stated that the IHSS consumer "shall be responsible for payment of any fees required by the LHCP" - violates state and federal law. The Department simply cannot require a consumer of IHSS to pay for the establishment of the need for paramedical services. In addition, the Department has failed to provide instructions for consumers regarding how they may enforce their right to have their Medi-Cal health care professional complete the

form and/or how to ensure that the healthcare professional is paid for the work involved in having the form completed.

California Welfare & Institutions Code Section 12101 requires: "No applicant for or recipient of aid under this chapter shall be required to pay any part of the cost of a medical examination to determine blindness or disability as required by the department in connection with his application for or continued receipt of aid under this chapter." Because IHSS is now primarily a Medi-Cal funded program, state and federal Medicaid rules apply.

Commenters I and W further state that recipients have reported that physicians have charged an out of pocket fee for completing forms.

Response:

The CDSS has revised Section 30-757.192(a)(1)(A) and (B) to clarify that the recipient has the right to choose their provider; however, if the recipient choses a non Medi-Cal provider, CDSS will not be responsible for any fees incurred. The revisions also clarify that when the recipient receives services from a Medi-Cal provider, all Medi-Cal services will be reimbursed in accordance with all Medi-Cal rules and regulations.

44. Comment:

Commenters B, G, L, O, Y, CC, and GG stated that the proposal to invalidate an SOC 321 if the county receives it more than 60 days after it is dated is unfairly burdensome to consumers given the time delay many experience between requesting IHSS services and actually connecting with someone from the county. This will also harm consumers transferring between counties. We propose the Department eliminate this requirement entirely or at minimum extend the deadline to six (6) months.

Commenter I stated that some flexibility should be provided for circumstances beyond the recipient's control.

Response:

The 60-day timeframe is not contingent on the time between the recipient requesting the service and the county receiving the form. The LHCP must sign the form when they authorize the paramedical service, which cannot be dated more than 60 days prior to when the county receives the form, which ensures that the county has current information when assessing and authorizing paramedical services.

45. Comment

Commenters B, G, L, O, and Y stated that regulation also fails to acknowledge that while a physician often signs the paramedical order, it is most often other healthcare professionals (e. g., speech pathologists, occupational and physical therapists, LVNs and RNs) with direct and relevant treatment experience who provide the actual training. The IHSS consumer, or a primary trained caregiver, are also part of the training. Requiring that paramedical services may only be provided by someone directly trained by one of the healthcare professionals on the proposed limited list will be a bar to services for consumers.

Commenter G also stated that often recipients and primary IHSS providers and caregivers are trained in care needs to direct all other providers on specific paramedical service needs as overseen by our licensed health care professional (LHCP) with the initial consent and order for paramedical services. Now you want to add more burdens on the recipients, providers, and licensed health care professionals having to repeatedly, and on an ongoing basis, attend repetitive lifelong visits to the LHCP just to attend a training date to submit newly revised unnecessary revised Paramedical Services forms so an individual IHSS provider can be paid for delivery of such needed services.

Commenters CC and GG stated that the proposed requirement that only licensed health care professional can train a provider to perform a paramedical task runs counter to Sections 30-757.19(a) and (b). Many consumers have the ability to direct the paramedical services they need, they just need assistance to perform the task itself. Given the fact that paramedical services are services that "an individual would normally perform for him/herself but for his/her functional limitations," it is appropriate to allow IHSS recipients to train providers on paramedical tasks that they have been trained to perform, but are simply not capable of performing for themselves.

Response

Pursuant to WIC 12300.1, paramedical services for the purposes of IHSS require judgment based on *training* given by a licensed heath care provider and are provided under the direction of a licensed heath care provider. (Emphasis added.) This is an existing requirement and therefore does not pose a burden on recipients and providers. Furthermore, WIC 12300.1 does not permit a recipient or a trained IHSS provider to train another IHSS provider to perform paramedical services in order to meet this requirement.

Nevertheless, CDSS acknowledges that licensed health care professionals other than a LHCP-PMs may perform training of providers; and therefore, CDSS has revised the proposed regulations accordingly.

46. Comment:

Commenters CC and GG stated that Section 30-757.193 creates a new Self Certification Form, SOC 321A, that certifies an IHSS provider has received training from an LHCP-PM to perform paramedical services. This form creates an additional burden on providers, which is magnified by the new limitations for who can be an LHCP-PM; it is likely to be much more challenging to be trained by only certain healthcare professionals who have limited time, and to complete the new form. We are opposed to the requirement of completing SOC 321A as it creates yet another hurdle for IHSS providers and consumers to give the range of care that is needed.

Commenter G further states that requiring an LHCP to train providers prior to permitting them to perform paramedical services will bar access to care. For example, what happens to the longtime person with a disability needing urgent IHSS provider care for a catheter change, wound care, or other paramedical service activity who has to hire a new IHSS provider to fill in for an absent IHSS provider. Why can't the recipient train the provider to perform tasks when the IHSS recipient has been trained in their own care for decades and can instruct the substituting IHSS provider in their authorized paramedical task as overseen by the signing physician? Is the substituting provider not to be paid for paramedical service delivery until a specific date of training is established, signed off, and the newly revised paramedical forms are turned into the county IHSS division? In the meantime, is the IHSS recipient expected to forgo the necessary paramedical services and care because the new SOC321 & SOC321A paramedical forms weren't submitted to IHSS to be allowed to perform such crucial tasks for the IHSS recipients under these or unexpected urgent care situations? Is the State of California entering into a new policy of not paying authorized IHSS providers for performing paramedical services without having turned in the new and approved paramedical services forms? Additionally, the increased number of required forms to be returned for receipt of paramedical services increases the already burdensome paperwork required to be submitted by IHSS recipients and providers alike which will further decrease access to services by those persons with significant disabilities and seniors in need of IHSS and/or paramedical services. Having to make an appointment, travel to a licensed health care professional, and obtain in-person supervised training by a LHCP on an ongoing basis for each and every potential IHSS provider is burdensome and oppressive on those IHSS recipients needing paramedical services.

Response:

Pursuant to WIC 12300.1, paramedical services for the purposes of IHSS require judgment based on *training* given by a licensed heath care provider and are provided under the direction of a licensed heath care provider. (Emphasis added.) This is an existing statutory requirement. Therefore, a provider must be trained by an LHCP to perform paramedical service tasks and a recipient who has been

trained to perform a paramedical service task may not train their provider to perform the service in order to meet this requirement.

Nevertheless, CDSS acknowledges that licensed health care professionals other than a LHCP-PMs may perform training of providers; and therefore, CDSS has revised the proposed regulations accordingly.

Additionally, the SOC 321A was created to ensure that existing IHSS providers who have been trained to perform a variety of paramedical service tasks do not have to unnecessarily undergo retraining by allowing them to self-certify that they have been trained to perform the paramedical service. This form does not need to be completed by an LHCP.

A new SOC 321 is only required when a recipient must add or extend existing paramedical services; therefore, if they have a current SOC 321 on file, they will not be required to submit a new form.

Furthermore, the proposed regulation Section 30-757.192(e)(B)2.(ii)II.a and Section 30-757.192(e)(B)3.(i)I.a specify that paramedical service time may be retroactively authorized back to the date specified by the LHCP-PM on the SOC 321 so long as it does not exceed the recipient's protected date of IHSS eligibility.

47. Comment:

Commenter Q stated that they were concerned that CDSS does not send out a proposed notice of regulation to every county in the State of California because it is the counties that are implementing IHSS with the State. It is the people that work for the county that have to deal with the forms and feel the impact of change. In the interest of the People of California, these proposed regulations should be sent to every county when they get proposed.

Response:

The CDSS has complied with all rulemaking notice requirements.

48. Comment:

Commenter V was concerned that the promulgation of ORD #0915-11 would result in social workers refusing to authorize time for transportation and medical accompaniment.

Response:

The proposed regulations do not affect IHSS time authorization for travel and medical accompaniment.

49. Comment:

The CDSS also received comments unrelated to the promulgation of regulations. Comments included general statements regarding the necessity of IHSS program services as well as questions about how to implement the proposed regulations.

Response:

Because these comments were unrelated to the promulgation of regulations, CDSS has not provided a response. Policy regarding the implementation of regulations will be published upon adoption of regulations.