



CDSS

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EDMUND G. BROWN JR.  
GOVERNOR

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

**DRAFT**

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

SUBJECT: CLARIFICATION OF REGULATIONS REGARDING MINOR  
RECIPIENTS LIVING WITH PARENT(S)

REFERENCE: [WELFARE AND INSTITUTIONS CODE SECTIONS 12300\(e\) and 12300.4](#); [FAMILY CODE SECTION 7610](#); [MANUAL OF POLICIES AND PROCEDURES SECTIONS 30-763.44 through 30-763.457](#) and [SECTION 30-760.24](#); [ALL-COUNTY LETTERS 00-83 \(December 7, 2000\)](#), [15-25 \(March 19, 2015\)](#), [15-45 \(May 1, 2015\)](#), [18-31 \(March 27, 2018\)](#); [ALL COUNTY INFORMATION NOTICE 1-40-17 \(June 23, 2017\)](#)

**Purpose**

The purpose of this All-County Letter (ACL) is to further clarify the application of the In-Home Supportive Services (IHSS) regulations concerning minor recipients living with parent(s).

**Background**

Effective January 1, 2015, amendments were made to the California Department of Social Services' (CDSS) [Manual of Policies and Procedures \(MPP\), Sections 30-763.44 through 30.763.457](#), which pertain to IHSS being provided to a minor child by a parent. In addition, [ACL 15-45](#) was issued on May 1, 2015, providing counties with clarification regarding the implementation and application of these regulatory amendments.

[MPP Sections 30-763.44 through 30.763.457](#) apply to minor IHSS recipients living with their parents in the IHSS Residual (IHSS-R), IHSS Plus Option (IPO), and Community First Choice Option (CFCO) programs. Paid parent IHSS providers are not permitted in the Personal Care Services Program (PCSP) pursuant to [MPP Section 30-763.457](#). Minor recipients are defined as children under the age of eighteen. Pursuant to [Family](#)

[Code Section 7610](#), the parent/child relationship exists between a child and their natural or legally adoptive parent(s).

Under the Family Code, parents have a duty to provide care for their children, and typically, this care is expected to be provided without compensation. However, in certain circumstances, a parent may hire an IHSS provider to provide needed supportive services to his or her IHSS eligible child, or may become a paid parent IHSS provider for the child themselves if certain conditions are met.

### **Hiring A Non-Parent IHSS Provider**

Pursuant to [MPP section 30-763.44](#), in each of the following circumstances, a parent is considered unable or unavailable to provide the necessary care to his or her child, and therefore may hire a non-parent IHSS provider:

- When the parent(s) is unavailable because of employment or is enrolled in an educational or vocational training program.
- The parent(s) is physically or mentally unable to provide the needed IHSS services.
- The parent is unavailable because of on-going medical, dental or other health-related treatment.
- When the parent(s) must be unavailable to perform shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings, IHSS may be purchased from a provider other than the parent(s) for up to eight hours per week to perform IHSS tasks necessary during the unavailability of the parent(s).

### **Employed Parent**

A parent is not considered available to perform IHSS duties pursuant to [MPP section 30-763.441](#) when they are absent due to employment. Parents are considered unavailable during hours of employment whether it be full time employment or part time employment. *Note: A parent providing IHSS funded care to his or her own child is not full-time employment, regardless of the number of hours worked.* [MPP section 30-763.451\(a\)](#). During the time a parent is working, regardless of worksite location (including working from home), a non-parent provider could be paid to provide the needed IHSS.

### **Educational or Vocational Training**

A parent is not considered available to perform IHSS duties pursuant to [MPP section 30-763.441](#) when they are absent due to an educational or vocational training program. This unavailability is limited to the hours of instruction.

### Physically or Mentally Unable

A parent is not considered able to perform IHSS duties pursuant to [MPP section 30-763.442](#) when they have mental or physical limitations which prevent them from adequately providing the needed IHSS. The limitation can be permanent or temporary. If a parent states that he/she is physically or mentally unable to provide the IHSS for his/her child, the county can ask for a description of that parent's limitations. The parent is not required to disclose Health Insurance Portability and Accountability Act (HIPAA) protected information, but the county can ask for information about the parent's limitations and how this may affect his/her ability to perform the needed IHSS.

### Ongoing Medical, Dental or Other Health Related Treatment

A parent is not considered available to perform IHSS duties pursuant to [MPP section 30-763.443](#), when they are absent due to ongoing medical, dental or other health related treatment. This parental unavailability does not include routine medical or dental appointments.

### Shopping, Errands, Search for Employment, and Care of Other Minor Children

A parent is not considered available to perform IHSS duties when the parent must perform shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings. In these situations, IHSS may be purchased from a provider other than the parent for up to eight hours per week to perform IHSS tasks necessary during the unavailability of the parents ([MPP Section 30-763.444](#)). Such activities may include grocery shopping, picking up prescriptions, school activities, medical and dental appointments, etc. Parents must be actively seeking employment in order to be determined unavailable due to employment searches.

The eight hours allowed pursuant to [MPP Section 30-763.444](#) are not IHSS hours in addition to existing authorized IHSS hours. This section permits eight hours per week to be paid to a non-parent IHSS provider from the existing authorized IHSS hours to perform IHSS tasks necessary during the unavailability of the parent.

If a parent is unable or unavailable to provide IHSS to their child due to any of the reasons listed above, and there is no other parent in the home who is a suitable provider, IHSS services may be provided by a non-parent IHSS provider.

Any information collected regarding a parent's ability and availability to provide IHSS services to their child should be documented as part of the IHSS assessment or in the Case Management and Payrolling System II (CMIPS II) case notes.

## **Paid Parent IHSS Providers**

Pursuant to [MPP section 30-763.45](#), a parent may become a paid parent IHSS provider when the parent has left *full-time employment* or is prevented from obtaining full-time employment because *no other suitable provider is available* and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

### **Full-Time Employment**

Full-time employment is defined by MPP section 30-763.451(a) as "...working an average of 40 or more hours per week regardless of worksite location. A parent providing IHSS-funded care to his/her own child is not full-time employment." Because parents' worksite locations are not considered, parents who work from home are considered to be employed full-time so long as they work an average of 40 or more hours per week.

If a parent was not previously employed, but his/her child's current IHSS needs prevent that parent from obtaining full-time employment, that parent may qualify to be the paid parent IHSS provider, pursuant to [MPP Section 30-763.451](#), if no other suitable provider is available. The paid parent IHSS provider requirements, set forth in [MPP Section 30-763.451](#), do not require nor imply that a parent must have marketable job skills or a work history to be their child's paid IHSS provider, as long as it is the recipient child's needs which prevent the parent from maintaining or obtaining full-time employment. However, if a parent is not employed full-time for a reason other than the recipient child's IHSS needs, such as seasonal employment or providing regular childcare for another child, that parent would not qualify as a paid parent IHSS provider.

As part of the IHSS assessment process, counties must gather information pertaining to the employment status and work schedule for parent(s) of minor recipients. Although it is appropriate for counties to request supporting information to verify parental employment, there is no regulatory requirement that a parent, or parents, must supply an affidavit or other documentation concerning his/her employment status, employment history, or work schedule; therefore, counties cannot deny or terminate an IHSS case based *only* on the lack of a signed affidavit or other documentation of a parent's employment status, employment history, or work schedule.

### ***Common Issues Related to Parental Fulltime Employment***

The following are common situations related to employment when a parent cannot be a paid IHSS provider for their recipient child:

- The parent is employed full-time (40 or more hours a week).
- The parent is providing 40 or more hours a week of IHSS to another recipient who is not his/her own child (i.e. spouse, parent, unrelated recipient, etc.).

- The parent is working part-time as a condition of employment or seasonally due to reasons other than the need to provide IHSS care for their child.
- The IHSS needs of the child do not prevent the parent from obtaining full-time employment.
- The parent only has occasional physical custody, such as weekends or one or two days a week, if the custody schedule would not prevent the parent from full-time employment.

Please note that the list above is not exhaustive.

#### *Employment Leave*

A parent who is employed full-time, but is on paid or unpaid leave, (such as State Disability Insurance (SDI), Family Medical Leave Act (FMLA), sick/vacation leave, etc.) is still considered employed full-time for the purposes of IHSS since the employer-employee relationship is not terminated. Accordingly, the parent does not qualify to be a paid parent IHSS provider, pursuant to [MPP Section 30-763.451](#).

#### *Lay-off*

A parent who was employed full-time, but is laid off by their employer, is not considered to have left full-time employment because of the need to care for his/her IHSS recipient child. In this situation, the parent has not left or is not prevented from obtaining full-time employment due to the care needs of the child; therefore, that parent does not meet the requirements of [MPP Section 30-763.451](#) and cannot be the paid parent IHSS provider.

#### *Retirement*

A parent who retires from full-time employment, due to the need to provide IHSS to his/her minor child, may meet the regulatory requirements to be a paid parent IHSS provider, pursuant to [MPP Section 30-763.451](#). However, if the parent's retirement was due to a reason other than the need to provide IHSS to the child, he/she would not meet the regulatory requirements to be the paid parent IHSS provider unless he or she is then prevented from obtaining other full-time employment due to the need to provide IHSS to his/her minor child.

#### Suitable Provider

As referenced above, in order to be a paid parent IHSS provider, the parent must leave full-time employment, or be prevented from full-time employment because no other suitable provider is available. "Suitable provider" is defined by [MPP section 30-763.452](#) as any person who is willing, able, and available to provide the needed IHSS.

A suitable provider who is a person having a duty pursuant to the Family Code (in this case a parent or adoptive parent of a minor recipient) need only be able and available to

provide the needed IHSS, i.e. it is presumed that the parent is willing to provide the needed IHSS. A parent is only considered to be unavailable if that unavailability occurs during a time the recipient must receive a specific service, due to employment, enrollment in an educational or vocational training program, or employment searches.

Any information collected regarding a parent's ability and availability to provide IHSS services to their child should be documented as part of the IHSS assessment or in the Case Management and Payrolling System II (CMIPS II) case notes.

#### *Determining if a Parent is a Suitable Provider*

In order to be a suitable provider, a parent must be able as defined by MPP section 30-763.44 and available as defined by MPP section 30-763.452 to provide the needed IHSS services. A parent would not be considered a "suitable provider" for all of the following reasons:

- 1) the parent is unavailable because of employment;
- 2) the parent is unavailable because he or she is enrolled in an educational or vocational training program;
- 3) The parent is unavailable due to employment searches; or
- 4) The parent is physically or mentally unable to provide the needed IHSS.

#### **Two-Parent Households**

A parent provider who meets the requirements of [MPP section 30-763.451](#) can be paid as an IHSS provider for performing authorized services regardless of the presence of the other parent in the home, including during non-work hours, weekends, and holidays. However, in a two-parent household, a non-parent provider cannot be paid to provide IHSS when one or both parents are able and available as defined by MPP section 30-763.44 and present in the home.

However, when both parents who have a duty to care for a minor child pursuant to the Family Code are present in the home, and the county has determined that both parents are able and available pursuant to MPP sections 30-763.44 and 30-76.45 to provide care to the minor recipients, the parents are responsible for providing that care uncompensated and may not be authorized to hire a non-parent provider.

**Example 1:** Parent 1 and Parent 2 are employed full time, but are currently present in the home during their non-work hours. In this case, the non-parent provider would not be eligible to provide IHSS services to the recipient while the parents are home able and available to care for their child. Additionally, these parents cannot be paid to provide IHSS services to their child because they are not prevented from full-time employment due to their child's needs as required by [MPP section 30-763.451](#). However, they are able to hire a non-parent provider to provide the necessary IHSS to their child while they are both unavailable at the same time due to employment.

Example 2: Parent 1 is away from home at work. Parent 2 is working from home. In this case, the parents may hire a non-parent IHSS provider to provide services to the recipients in the home during hours when both parents are working because although Parent 2 is present in the home, s/he is not considered available due to employment.

Example 3: If Parent 1 is considered unavailable pursuant to [MPP section 30.763.44](#) and Parent 2 leaves full time employment or is prevented from full time employment as defined by [MPP section 30-763.451\(a\)](#) because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care, Parent 2 would qualify to be a paid parent IHSS provider for their minor child.

Example 4: Parent 1 states that, due to physical limitations resulting from an illness, he/she is physically unable to provide the needed IHSS for his/her minor child. Parent 2 is employed full-time as defined by [MPP section 30-763.451\(a\)](#). In this situation, Parent 1 is not able to provide the needed services and Parent 2 is unavailable to provide the needed services due to employment; therefore, the family may choose to hire a suitable non-parent provider if one is available. However, if there is no other suitable provider available and the inability of Parent 1 to perform supportive services may result in inappropriate placement or inadequate care, and Parent 2 is required to leave their full time employment due to the care needs of the child, Parent 2 could become a paid parent IHSS provider pursuant to [MPP Section 30-763.451](#).

#### Authorization of Two Paid Parent IHSS Providers

On October 1, 2013, the United States Department of Labor (DOL) published the Final Rule on the Application of the Fair Labor Standards Act (FLSA) to Domestic Service (RIN 1235-AA05). The Final Rule extended the protections of the FLSA to IHSS providers by effectively removing the ability of CDSS to claim an exemption for IHSS providers from minimum wage and overtime pay. In response, the Legislature passed [Senate Bills \(SB\) 855](#) and [SB 873](#) which added and then amended [Welfare and Institutions Code \(WIC\) section 12300.4](#), establishing limits on the number of authorized hours providers in the In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) programs are permitted to work in a workweek.

After an evaluation of these new requirements it was determined that [MPP section 30-763.45 et seq.](#) inadvertently places arbitrary restrictions on parent providers who have reached the statutory work week maximum imposed by [WIC section 12300.4](#). Due to the workweek limitations, they would not be allowed to provide any unmet authorized IHSS hours themselves, nor hire an additional non-parent provider because the parent has already been deemed a “suitable provider”. In order to address this scenario, CDSS will consider a parent that reaches one of the statutory work week maximums imposed by [WIC section 12300.4](#) to be “unavailable” to provide the needed services, and therefore no longer a suitable provider as defined by [MPP section 30-763.452](#), once they have reached the statutory workweek maximum.

Accordingly, as set forth in [ACL 18-31](#), CDSS will permit a second parent in the same household to also be a paid parent IHSS provider when the first parent who is providing IHSS has reached the statutory workweek limitation. The second parent may be paid as a parent IHSS provider to fulfill the remaining authorized hours of the minor recipient(s) children in the home, once the first parent has reached the statutory workweek maximum, as long as the second parent meets all requirements set forth in [MPP Section 763.45 et seq.](#)

#### *Extraordinary Circumstances Exemption (Exemption 2) Considerations*

Pursuant to [WIC section 12300.4\(d\)\(3\)\(B\)](#), in certain extraordinary circumstances which make it difficult to find a second IHSS provider, a provider who serves two or more recipients may be granted an exemption from the standard workweek limitations, and may work up to 360 hours per month. If a parent provider in a two-parent household who is a paid parent IHSS provider to their two (or more) minor recipient children has qualified for such an exemption, and has reached the 360 hours a month maximum permitted by the exemption, the parent providing IHSS services would no longer be considered available to provide the remaining authorized hours. Accordingly, the paid parent IHSS provider would not be considered a suitable provider, as defined by [MPP section 30-763.452](#), for the hours in excess of the 360-hour monthly maximum. In this situation, the second parent may provide the remaining authorized hours of the minor recipient children, as long as they meet the requirements of [MPP Section 30-763.45 et seq.](#)

However, as explained above, the basis for such an exemption being granted is that extraordinary circumstances make it extremely difficult to find a second IHSS provider. In this situation, if a second parent qualifies as a paid parent IHSS provider once the first paid parent IHSS provider reaches the 360 monthly maximum, it is possible that the authorized hours of the recipients can be captured without the exemption. As explained above, the second parent may qualify to be a paid parent IHSS provider once the first parent reaches the standard workweek limitation. Because the basis for the exemption was the inability to find a second provider, county social workers should reevaluate the case and determine whether the recipients' authorized hours can be worked by both paid parent IHSS providers within the standard workweek limitations, thereby negating the need for the exemption.

#### **Shared Parental Custody**

When parents are living separately and share custody of a minor recipient, the county shall assess the child at the primary parent's home. During the assessment, the county shall also request information regarding the custody arrangement and environment of the other parent's home to appropriately assess IHSS services for each household. All needs should be documented in a single assessment.

If parents share custody of a child, but reside in separate counties, the primary county is the county with the active Medi-Cal case. To ensure recipient safety and the need for services in each home, the primary county shall perform face-to-face assessments in both counties, or coordinate with the other county to perform the additional assessment. The primary county is responsible for entering the information from both assessments into CMIPS II and must note information obtained from both IHSS face-to-face assessments.

If either parent wishes to be a paid parent IHSS provider, the IHSS social worker must determine if each parent meets the parent provider requirements, pursuant to [MPP Section 30-763.45](#). If both parents meet the requirements of [MPP Section 30-763.45](#) and share custody of the child and qualify to be paid parent IHSS providers, the IHSS hours would be assigned to each parent based upon the recipient's needs when the child is in each parent's home.

### **Institutionally Deemed Cases (6V/6W)**

Pursuant to [ACL 00-83](#), when the recipient is an institutionally deemed child, a non-parent provider may provide Personal Care Services Program (PCSP) services even if the parent is present in the home and is able and available. Because PCSP eligibility requirements do not permit a spouse or a parent to provide authorized services to the recipient, this policy is intended to not limit a non-parent provider's ability to provide the needed services to the recipient.

It should be noted that this allowance does not extend to institutionally deemed cases (6V/6W) that are funded through the In-Home Supportive Services Plus Option (IPO) and the Community First Choice Option (CFCO) as both of these programs permit a parent to provide authorized services to the recipient.

### **Foster Care**

Foster parents are not subject to the parent IHSS provider rules because they are not natural or legally adoptive parents, and therefore are treated as non-parent providers. Because [MPP sections 30-763.44](#) and [30-763.45](#) do not pertain to them, foster parents may choose to provide IHSS services to the minor recipient or hire another provider. Additionally, they are not limited in the services they may provide to the minor children as stated in [MPP section 30-763.456](#).

### **Adoption**

Because of the change in the legal relationship that occurs between the foster parent and the minor recipient during a completed adoption, the county must conduct a re-assessment of authorized providers.

Once the foster parent becomes the child's adoptive parent, they now have a parental relationship with the child and have a duty under the Family Code to provide care for the

minor child. The adoptive parent is then subject to the parent IHSS provider rules and would be required to meet the requirements of [MPP section 30-763.44](#) in order to hire a non-parent provider, or meet the requirements of [MPP section 30-763.451](#) to become a paid parent IHSS provider. If the adoptive parent is approved to be a paid parent IHSS provider, the services they may be paid to provide are limited as specified in [MPP section 30-763.456](#). Furthermore, as a paid IHSS provider they would only be authorized to hire a non-parent provider for 8 hours per week to provide IHSS services when they are unavailable due to performing shopping and errands, searching for employment, or fulfilling other essential purposes related to the recipient's minor siblings. ([MPP section 30-763.444](#))

If the parent refuses to provide legal documentation to prove the adoption, the county should educate the parent that the change in legal status has affected the provision of IHSS services and that willfully failing to report changes makes them incompliant with program requirements pursuant to [MPP section 30-760.12](#). This non-compliance could result in the termination of IHSS services.

### **Eligibility vs. Parent Provider Rules**

It is important to remember that determining whether a parent can be a paid IHSS provider and/or hire a non-parent IHSS provider is a separate and distinct inquiry from whether their minor child is eligible for IHSS. The minor shall still be assessed for IHSS and authorized hours if appropriate, regardless of whether the parent is allowed be paid as a provider or allowed to hire another provider. If after applying [MPP sections 30-763.44 and .45](#) to a case it is determined that both parents are able and available to provide the needed IHSS to their child and do not qualify to be paid parent IHSS providers, and are also ineligible to hire a paid IHSS provider, the child is technically still "eligible" for IHSS and therefore the case should not be terminated. If a parent's circumstances change and they meet the requirements of [MPP section 30-763.44 or .45](#) in the future, the parent may hire a paid IHSS provider for the IHSS services authorized.

There is currently no "Notice of Action" (NOA) message for this scenario; therefore, CDSS has created one for documentation purposes.

XXXX NOA:

Because you have a duty to the Family Code as a parent or adoptive parent to provide care for your minor child and you are considered "able and available" pursuant to [MPP section 30-763.44 or .45](#) to provide that care to your child, you are not authorized to be a paid parent provider, nor may you hire a non-parent provider to provide IHSS services at this time.

Although, you are currently considered "able and available" to care for your child and therefore are not permitted to hire a non-parent provider or be paid for providing services to your child, if circumstances change and you meet the requirements of [MPP](#)

[section 30-763.44 or .45](#), you may be able paid as your child's IHSS provider or to hire a paid provider in the future.

### **County Responsibilities**

Counties are responsible for informing parent(s) living with minor recipients about the rules and requirements of [MPP Sections 30-763.44 through .457](#) to ensure that families understand when they are authorized to hire a non-parent provider and when they may be authorized to become a paid parent provider. The county must also ensure that this discussion is appropriately documented. To assist counties complete this documentation, CDSS developed the In-Home Supportive Services – IHSS Minor Recipient Requirements form (SOC2323), Attachment A. The SOC 2323 may be reviewed and completed at the time of the initial IHSS home assessment, and as necessary upon changes in the circumstances of the case thereafter. A signed copy of the SOC 2323 should be retained in the case file. If the SOC 2323 is not completed, the county must fully document the discussion of these minor recipient requirements in the CMIPS II case narrative.

To ensure all cases with minor recipients living with parents comply with the regulatory requirements, counties shall review their existing process to verify that IHSS providers are appropriately enrolled. Prior to the enrollment of a new IHSS provider on minor recipient cases, the IHSS county staff shall verify that the case follows [MPP Sections 30-763.44 through .457](#). Counties that delegate provider enrollment responsibilities to Public Authorities should have a process in which the public authority staff confers with the county staff regarding the individual's provider eligibility prior to assigning a provider to any minor recipient case.

Counties must complete a review of impacted IHSS cases as soon as administratively possible, but no later than the next regularly scheduled reassessment. As cases of minor recipients living with their parents are reassessed, counties are responsible for ensuring that these cases follow the directions contained in this letter.

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

Sincerely,

DEBBI THOMSON  
Deputy Director  
Adult Programs Division

c: CWDA