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DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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EDMUND G. BROWN JR.
GOVERNOR

May 27, 2014

ALL COUNTY LETTER (ACL) NO. 14-35

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

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

SUBJECT: **ONE PERCENT RESTORATION IN IHSS RECIPIENTS' TOTAL AUTHORIZED MONTHLY SERVICE HOURS PURSUANT TO SENATE BILL (SB) 67**

REFERENCE: [ACL NO. 13-47, DATED JUNE 7, 2013](#)

This ACL provides instructions for counties to implement a seven percent reduction in each IHSS recipient's total monthly authorized service hours, effective July 1, 2014, in accordance with the provisions of SB 67 (Chapter 4, Statutes of 2013). The seven percent reduction represents a one percent restoration in recipients' total authorized service hours from the eight percent reduction currently in effect through June 30, 2014.

BACKGROUND

SB 67 was enacted to institute the settlement agreement reached by parties in *Oster v. Lightbourne, et al.*, and *Dominguez v. Brown, et al.* Resulting legislation added Welfare and Institutions Code (WIC) section 12301.01, which required the California Department of Social Services (CDSS) to implement an eight percent reduction in each IHSS recipient's total authorized service hours, effective July 1, 2013. The eight percent reduction is to remain in place through June 30, 2014. SB 67 also added WIC section 12301.02, which requires CDSS to implement a seven percent reduction in each IHSS recipient's authorized service hours effective July 1, 2014. The statute specifies that the seven percent reduction will be ongoing and that it may be offset if a home care services assessment generates General Fund savings.

As with the previous reduction, statute specifies that the seven percent reduction be applied first to any documented unmet need (excluding protective supervision), and that each recipient may determine how the reduction is applied to his/her specific authorized services.

STATE RESPONSIBILITIES

CDSS will mail Notices of Action (NOAs) to all current IHSS recipients to inform them of the reduction. The NOAs will inform existing recipients that, beginning July 1, 2014, one percent of the current eight percent reduction in their total monthly authorized service hours will be restored, resulting in an ongoing reduction of seven percent. The NOA will also inform recipients that the reduction will first be applied to any documented unmet need (excluding protective supervision), and then applied to the total authorized monthly hours. Finally, as required by statute, the NOA specifies the total monthly authorized service hours both before and after the reduction. For current recipients who have a documented unmet need (excluding protective supervision), the appropriate existing unmet need NOA message will also be included.

The NOA, as well as the state hearing rights information that will accompany it, have been translated into the languages that currently meet the statewide recipient population threshold, which are Armenian, Chinese and Spanish. The text of the NOA is provided in Attachment A.

COUNTY RESPONSIBILITIES

County staff will continue to conduct assessments/reassessments and enter case information into the Case Management, Information and Payrolling System (CMIPS) II. CMIPS II will automatically calculate the seven percent reduction and apply the reduction to the total monthly authorized service hours. Severely impaired and non-severely impaired categories for recipients will not change as a result of this reduction, as individual IHSS services will not be reduced. CMIPS II will automatically generate the initial and ongoing NOA messages informing recipients of the reduction.

As with previous reductions in recipients' authorized service hours, recipients will determine how the seven percent reduction is applied to their authorized services. The recipient or his/her authorized representative is responsible for advising the provider of the reduction in service hours and also the specific services he/she has chosen to reduce. Recipients do not need to report to the county which services they choose to reduce; this is between the recipient and his/her provider(s). County IHSS staff will not have a role in allocating remaining hours after the reduction is applied.

Because the NOA directs recipients to contact their local IHSS office with questions regarding the seven percent reduction, counties should be prepared to respond to an increased number of calls from recipients.

Requests for Reassessment

The WIC section 12301.02[a][2] specifies that, “a request for reassessment based only on the reduction...may be administratively denied by the county.” Therefore, when the county receives a request for reassessment within 90 days following issuance of the NOA informing recipients of the reduction, the county must carefully evaluate whether the recipient is requesting the reassessment only to dispute the reduction.

If the request for reassessment is based, even in part, on a change in the recipient’s condition that impacts his/her functional abilities, or a change in his/her living situation, the county cannot deny the request. The county must proceed with the reassessment request according to current policies and procedures. If necessary, the county may request additional information from the recipient to assist in evaluating any change in his/her functional abilities; however, the county may not require the recipient to provide a health care certification or a note from a physician to substantiate a change in his/her medical condition in order to obtain a reassessment.

An IHSS recipient may request a reassessment any time there has been a change in circumstances that affects his/her need for services. Examples of such changes include, but are not limited to, the following:

- A change in the recipient’s physical or mental condition that affects at least one Activity of Daily Living or Instrumental Activity of Daily Living; or
- A change in the recipient’s living situation, such as having a roommate move in or out, or the recipient no longer having a washer and dryer in the home.

Current practice allows for IHSS workers to determine whether a reassessment must be conducted in-person or by telephone. Although a phone reassessment can help to facilitate a more prompt response and expedite a potential increase in authorized hours, a phone reassessment does not satisfy the requirement for an annual face-to-face reassessment.

As a reminder, anytime a county completes a reassessment, whether in-person or by telephone, a NOA must be issued to inform the recipient of the county’s determination.

This includes situations in which a phone reassessment has been conducted and the county has determined there is no change in the recipient's needs for IHSS. A NOA must be sent to inform the recipient that the reassessment has not resulted in a change in the recipient's monthly authorized service hours.

If the county determines that the sole purpose of the recipient's request for a reassessment is to dispute the reduction, the county may deny the request for reassessment and send the recipient the Notice of Denial of Request for Reassessment Based on State Law Change (SOC 885), along with information about his/her right to request a state hearing. (Note: The SOC 885 is not automatically generated by CMIPS II; it must be manually processed.)

CMIPS II FUNCTIONALITY AND DATA ENTRY

CMIPS II will perform a one-time process that reduces the Authorized to Purchase hours by seven percent on all existing recipient cases, in "Eligible" and "Presumptive Eligible" status. This reduction in hours will apply to both the recipient's authorized to purchase hours and any provider who works for them without assigned hours. The system will automatically end the current authorization for existing cases that contain open authorization segments and create a new assessment beginning July 1, 2014. If the end date of the current authorization is in the past, CMIPS II will automatically bring the authorization current with an end date of June 30, 2014, and then build a new assessment with a begin date of July 1, 2014.

During the initial implementation of the seven percent reduction CMIPS II will delete all Pending Evidence and a new authorization will be created for every active case with the effective date beginning July 1, 2014. Once the reduction is implemented system edits will not allow creation of eligibility segments that span the July 1, 2014 date. Cases entered after the initial batch run and any ongoing changes to existing authorizations that begin prior to July 1, 2014 will require two authorizations: one authorization for any days of service through June 30, 2014, and a second authorization created beginning July 1, 2014. Users will also have to create two eligibility segments for cases that are in "Leave" status when the initial batch run is executed and are subsequently brought to "Eligible" status. CMIPS II will also be modified to apply the seven percent reduction to newly created and reactivated recipient cases that have authorizations that span the July 1, 2014 date.

The number of authorized to purchase and unmet need hours before and after the reduction and the number of reduced hours will display on the Authorization Summary screen in the following fields: Total Authorized to Purchase Before Legislative Mandated Adjustment (LMA), Unmet Need Before LMA, LMA, Unmet Need After LMA,

and Total Authorized to Purchase LMA. It is possible to have a case where the only adjustment is to the unmet need hours resulting in no actual change to the number of hours the recipient will receive.

CMIPS II will produce a one-time notification for all active recipients in “Eligible” and “Presumptive Eligible” status whose hours are being reduced. CDSS will mail all of the initial NOAs generated by the implementation of this reduction. However, all ongoing NOAs will be printed locally at the county CMIPS II printers and counties will be responsible for mailing the notice after the initial seven percent reduction implementation.

Copies of all NOAs generated as part of the initial implementation of the seven percent reduction and ongoing will be viewable by selecting the Forms and Correspondence link on the Cases tab of the side-bar menu in CMIPS II. Two new NOA messages have been developed. The first new NOA message (LM04) will be displayed on the initial NOAs mailed by CDSS in June 2014. The second new NOA message (LM05) will be used for cases that are new or reactivated on or after July 1, 2014, that were not impacted by the 8 percent reduction which ends June 30, 2014, and it will also be displayed on all subsequent NOA for all recipients. The text of the new messages is provided in Attachment A. There is not a new message for unmet need. Recipients with documented unmet need (excluding protective supervision) will receive the existing CMIPS II NOA message for unmet need.

After the seven percent reduction has been applied to the recipient’s total authorized hours, CMIPS II will automatically update the provider hours associated to that recipient. In some rare instances when hours have been assigned to multiple providers, the providers’ assigned hours will not match the recipient’s total authorized hours after the seven percent reduction. In such instances, the case owner will receive a task notification so that the discrepancy in hours can be rectified. Recipients who choose to assign their restored hours differently must contact the county, and they may be required to complete a new Recipient Request for Assignment of Authorized Hours To Providers form (SOC 838). Counties are responsible for implementing requests for reassignment of hours.

STATE HEARINGS

SB 67 includes a provision that specifies that, “A recipient shall have all appeal rights otherwise provided for ...,” which emphasizes the fact that a recipient has the right to request a state hearing if he/she disagrees with a county action taken on his/her IHSS

case. Pursuant to Manual of Policies and Procedures section 22-009.2, the recipient must request a state hearing within 90 days of the notice of the reduction.

Section 10950 of the WIC states, "...Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients." Therefore, any hearing request in which the sole issue being disputed is the seven percent reduction will be dismissed.

If the county receives an oral request for a state hearing regarding the seven percent reduction, the county must refer the recipient to the State Hearings Division (SHD) at (800) 743-8525. Any written requests for a state hearing regarding the seven percent reduction that are received by the county must be faxed to the SHD at (916) 651-2789.

Questions regarding the content of this ACL may be directed to the Policy and Operations Bureau at (916) 651-5350.

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division

c: CWDA

Attachment

**CMIPS II NOTICE OF ACTION MESSAGES
RELATED TO THE SEVEN PERCENT REDUCTION**

LM04 – Initial Message for Continuing Recipients

This notice is about a state law that affects your IHSS hours.

On July 1, 2013, a state law went into effect which said that your total authorized hours had to be cut by 8 percent. Starting July 1, 2014, 1 percent of your authorized hours will be restored, which means that from now on your authorized hours will only be cut by 7 percent. This is because a state law says the California Department of Social Services must reduce all IHSS recipients total authorized hours by 7 percent (Section 12301.02 of the Welfare and Institutions Code). The 7 percent cut will stay in effect until further notice. Starting July 1, 2014, your new monthly IHSS hours will be ###.##.

You can choose which of your specific authorized IHSS services shown on the front of your IHSS Notice of Action to increase by 1 percent. For example, if you get two more hours of service per month, you can choose to add two hours from one type of service or choose to split up the two hours among different services. You must tell your provider(s) about the change in your service hours. You do not have to tell the county which hours you choose to change. This is between you and your provider.

The law also applies to all reassessments. Starting July 1, 2014, when a reassessment changes a recipient's authorized hours, the 7 percent reduction will be applied to the new total authorized monthly hours. If your condition gets worse or your circumstances change before your annual reassessment you may call the county to ask for a reassessment of your IHSS needs. The county will not ask you to provide a medical certification form or a doctor's note to show the change in your condition. A request for a reassessment only about the 7 percent reduction to your authorized hours will be denied by the county. If you are denied a reassessment for any other reason, you may request a state hearing.

Your hearing rights are included with this message. However, if you ask for a state hearing only to dispute the state law requiring the 7 percent reduction in service hours, your hearing request will be dismissed.

If you do not understand the information in this notice or have questions about the change in your hours contact your county IHSS office.

LM05 – Initial Message for New Recipients (who apply on or after July 1, 2014) & Ongoing Message for All Recipients

Your total authorized hours have been reduced by 7 percent. This is because a state law says that, starting July 1, 2014, the California Department of Social Services must reduce all IHSS recipients total authorized hours by 7 percent (Section 12301.02 of the Welfare and Institutions Code). The 7 percent cut will stay in effect until further notice. Your monthly IHSS hours will be ###.##.

You can choose which of your specific authorized IHSS services shown on the front of your IHSS Notice of Action to decrease by 7 percent. For example, if you get two less hours of service per month, you can choose to cut two hours from one type of service or choose to split up the two hours among different services. You must tell your provider(s) about the change in your service hours. You do not have to tell the county which hours you choose to change. This is between you and your provider.

The law also applies to all reassessments. Starting July 1, 2014, when a reassessment changes a recipient's authorized hours, the 7 percent reduction will be applied to the new total authorized monthly hours. If your condition gets worse or your circumstances change before your annual reassessment you may call the county to ask for a reassessment of your IHSS needs. The county will not ask you to provide a medical certification form or a doctor's note to show the change in your condition. A request for a reassessment only about the 7 percent reduction to your authorized hours will be denied by the county. If you are denied a reassessment for any other reason, you may request a state hearing.

Your hearing rights are included with this message. However, if you ask for a state hearing only to dispute the state law requiring the 7 percent reduction in service hours, your hearing request will be dismissed.

If you do not understand the information in this notice or have questions about the change in your hours contact your county IHSS office.