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November 25, 2014

ALL-COUNTY LETTER (ACL) NO. 14-82

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: **WAIT TIMES ASSOCIATED WITH ACCOMPANIMENT TO MEDICAL APPOINTMENTS AND ALTERNATIVE RESOURCE SITES**

REFERENCE: ACL NO. 14-76, DATED OCTOBER 8, 2014. MANUAL OF POLICY AND PROCEDURES (MPP) 30-757.15

The purpose of this ACL is to provide guidance to counties with assessing and authorizing wait times at medical appointments associated with medical accompaniment and alternative resource sites. Compensation for wait times at medical appointments/alternative resources sites, under certain circumstances, is now allowable in the IHSS program.

IHSS Social Workers will obtain the required information on IHSS recipients' medical appointments, including the type of appointment, the frequency and duration, in order to authorize medical accompaniment and wait times. To aid the counties in collecting the needed wait time information from the Licensed Health Care Professional (LHCP) and gather the information necessary to appropriately authorize wait time, the California Department of Social Services (CDSS) has developed an optional form, the "In-Home Supportive Services (IHSS) Program Accompaniment to Medical Appointment" form (SOC 2274) which may be used as a tool for the Social Worker or can be sent out directly to the LHCP for completion. The LHCP may include, but are not limited to, physicians, physician assistants, and specialists including oncologists, occupational therapists, physical therapists, psychiatrists, dentists, phlebotomists and other medical professionals responsible to provide treatment/care.

BACKGROUND

Welfare and Institutions Code section 12300(b) specifies that, "Supportive services shall include... accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites". The MPP section 30-757.15 further defines this service and states:

"Assistance by the provider is available for transportation when the recipient's presence is required at the destination and such assistance is necessary to accomplish the travel, limited to:

- .151 Transportation to and from appointments with physicians, dentists and other health practitioners.
- .152 Transportation necessary for fitting health related appliances/devices and special clothing.
- .153 Transportation under .151 and .152 above shall be authorized only after social service staff have determined that Medi-Cal will not provide transportation in the specific case.
- .154 Transportation to the site where alternative resources provide in-home supportive services to the recipient in lieu of IHSS."

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 which is scheduled to take effect on January 1, 2015. Under the revised FLSA rules, employers are required to pay employees for certain periods of time when they are not actively engaged in the performance of work.

The federal rules relating to pay for wait times are now applicable to IHSS providers, which means that providers will now be compensated for "wait time" that is associated with accompaniment to medical appointments and alternative resource sites, under certain circumstances.

Under current IHSS regulations wait time is included in the authorization of hours in three specific service categories: (1) out-of-home laundry services (when laundry facilities are not available on the premises), MPP 30-757.134(b); (2) food shopping, MPP 30-757.135(b); and (3) other shopping/errands, MPP 30-757.135(c). Accompaniment to medical appointments and alternative resource sites is the only IHSS service category in which wait time is not included in the authorization of hours.

COMPENSABLE WAIT TIMES

The FLSA requires employers to pay an employee for compensable wait time. The DOL provides two definitions of wait time: time spent engaged to wait and time spent waiting to be engaged.

- “Engaged to wait” means that the employee is not performing work duties but he/she is unable to use the time effectively for his/her own purposes. These periods of time are generally unpredictable and usually of short duration. The wait time is an integral part of the job; it belongs to and is controlled by the employer.
- “Waiting to be engaged” means that the employee is completely relieved from performing work duties and he/she has enough time to enable him/her to use the time effectively for his/her own purposes such as taking a meal break, running a personal errand or reading a book. The employee must be informed in advance that he/she may leave the job and that he/she will not have to resume work until a specified time.

The following are examples of the two types of wait time that counties may encounter:

Example 1: “Waiting to be engaged” would occur when a provider accompanies his/her recipient to a dialysis treatment that is scheduled to last two or more hours. The provider is not required to remain on the premises but must return at a designated time to retrieve the recipient. The provider can effectively use the time on his/her own to engage in personal activities, either on the premises or not, such as reading a book, etc.

Example 2: “Engaged to wait” would be when a provider accompanies his/her recipient to a routine medical appointment of known duration of 30 minutes or less and the provider is required to remain at the doctor’s office because at any moment he/she may be called upon to assist the recipient with the travel back home.

When a recipient is authorized for medical accompaniment, if all of the following conditions are met, his/her provider will be considered to be waiting to be engaged, which is not compensable:

- The duration of the recipient’s appointment is known in advance;
- The appointment is scheduled to last longer than 30 minutes; and
- The provider is not required or able to perform any other authorized service, e.g. food shopping, other shopping/errands, during the duration of the appointment.

AUTHORIZATION

Consistent with regulations, medical accompaniment should not be authorized simply to fill the recipient's need for transportation. Medical accompaniment should only be authorized when the recipient needs assistance with specific IHSS tasks during transportation and/or to and from the destination, as specified in statute and regulations. When medical accompaniment services are authorized to a site where alternative resources are provided, the Social Worker must ensure the site provides services that would be authorized in the IHSS program. However, wait time associated with accompaniment to alternative resource sites would not typically be compensable since IHSS recipients are usually dropped off and picked up at a later time thus allowing the IHSS provider to effectively use the time for his/her own purposes, which would be deemed as waiting to be engaged.

To further clarify the policy on medical accompaniment, in the case where the recipient is able to drive himself/herself to appointments but needs assistance at the destination, medical accompaniment may be authorized. Since medical accompaniment is not simply to fill the recipient's transportation needs, this service is authorized only when the provider's presence is required at the destination and assistance with other authorized IHSS services is necessary to accomplish the purpose of the travel.

An example of authorizing medical accompaniment would be if a recipient, who is in a wheelchair and is unable to maneuver the wheelchair without the assistance of the provider, has a medical appointment; without the provider's presence, the recipient would not be able to get in and out of the vehicle, get through the door at the doctor's office and would not be able to transfer or ambulate from the wheelchair onto the exam table. In this example the provider's presence is required at the destination. Medical accompaniment should be authorized for the travel time it takes to and from the medical appointment and for the wait time based on the type of appointment in which the provider would be deemed "engaged to wait". The time for assistance with transfer and ambulation will be authorized appropriately under the IHSS service categories of transfer and ambulation.

In order to comply with MPP 30-757.153, the county is required to verify if transportation for the IHSS recipient is provided by the Medi-Cal program. The IHSS recipient must have an approved Treatment Authorization Request (TAR) on file with the Department of Health Care Services (DHCS) for nonemergency medical transportation, which is only covered subject to the written prescription of a physician, dentist or podiatrist.

Medi-Cal funded transportation includes a nonemergency ambulance, wheelchair van or litter van. If any of these TAR approved nonemergency modes of transportation has been approved by DHCS for the IHSS recipient to get to/from needed medical appointments, the IHSS program will consider that the IHSS recipient's transportation needs have been met in accordance with MPP 30-757.153.

COUNTY RESPONSIBILITY AND USE OF THE SOC 2274 FORM

Counties will follow their standard operational procedures in reassessing cases for the authorization of wait time. As a reminder, counties are to ensure that they comply with MPP 30-757.153, and verify if transportation is provided for the IHSS recipient by the Medi-Cal program for the specific appointment prior to authorizing medical accompaniment.

To authorize the wait time the Social Worker will assess the recipient by phone or in person by asking how frequently they have medical or other health-related appointments, the purpose of the appointment and if accompaniment by a provider is needed during travel to the appointment(s).

In order to assist the Social Worker in collecting needed information for the authorization of medical accompaniment and wait times, counties may make telephone contact with the IHSS recipient directly or utilize the SOC 2274 to obtain the required information from the LHCP by phone, fax or mail. The SOC 2274 includes instructions for the LHCP on what information the Social Worker needs in order to authorize wait time. The LHCP is requested to provide appointment information which includes the purpose, typical length/duration and frequency per year of medical appointments. Completion of the SOC 2274 by the LHCP may assist the Social Worker in determining if the wait time is compensable.

As stated in ACL 14-76, counties shall complete their review of impacted IHSS cases as soon as administratively feasible, but no later than the next regularly scheduled reassessment. To assist counties in this effort, CDSS will provide each county with a report that includes the cases with authorized hours for accompaniment to medical appointments and alternative resource sites. As cases are reassessed and wait time is authorized under medical accompaniment, counties will be responsible for ensuring that time is authorized in compliance with the statutory maximum of 283 hours per month and that the weekly authorized limits are not exceeded.

For a camera-ready copy of the SOC 2274, contact the Forms Management Unit at fmudss@dss.ca.gov. If your office has internet access, you may obtain these forms from the CDSS webpage at <http://www.dss.cahwnet.gov/cdssweb/PG183.htm>.

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Should you have questions regarding about this ACL or the SOC 2274, please contact the Adult Programs Policy and Quality Assurance Branch, Policy and Operations Bureau at (916) 651-5350.

Sincerely,

Original Document Signed By Hafida Habek, acting for:

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachment