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January 23, 2015

REASON FOR THIS TRANSMITTAL

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

ALL COUNTY LETTER NO. 15-10

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

SUBJECT: **HALT TO IMPLEMENTATION OF PROVISIONS OF SENATE BILLS 855 AND 873 (CHAPTERS 29 AND 685, STATUTES OF 2014) RELATING TO THE IHSS AND WAIVER PERSONAL CARE SERVICES PROGRAMS**

REFERENCE: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, MEMORANDUM OPINION (JANUARY 14, 2015); ACL 14-76 (OCTOBER 8, 2014); ACL 14-102 (DECEMBER 31, 2014), ACIN I-73-14 (JANUARY 5, 2015)

This All County Letter (ACL) is to inform counties of recent court orders issued by Judge Richard Leon of the United States District Court, District of Columbia, which impact the implementation of regulations adopted by the U.S. Department of Labor (DOL) pertaining to the payment of overtime compensation and other compensable activities for In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) providers that were to be effective January 1, 2015. The information provided in this ACL supersedes the information contained in ACL 14-76 (October 8, 2014).

BACKGROUND

On October 1, 2013, the DOL published the Final Rule on the Application of the Fair Labor Standards Act (FLSA) to Domestic Service (RIN 1235-AA05). This Final Rule was intended to extend the protections of the FLSA to Domestic Service workers by effectively removing the ability of “third party” agencies to claim an exemption for personal care workers from minimum wage and overtime pay as providers of “companionship services” or as live-in providers.

The Final Rule additionally narrowed the definition of “companionship services” to strictly “fellowship and protection” that may include “provision of care” (i.e., assistance with Activities of Daily Living and Instrumental Activities of Daily Living only if the care is

provided as part of fellowship and protection and does not exceed 20 percent of the total hours worked per person and per workweek).

On December 22, 2014, Judge Leon of the U.S. District Court, District of Columbia, vacated the section of the DOL Final Rule which precluded third-party employers from claiming applicable wage and overtime exemptions for services provided by live-in providers and employees performing companionship services.

On December 31, 2014, Judge Leon granted a Temporary Restraining Order which stayed implementation of the DOL regulation on the revised definition of companionship services from going into effect until January 15, 2015.

On January 14, 2015, Judge Leon issued a ruling, vacating the DOL's revised companionship services definition that was scheduled to go into effect on January 15, 2015.

As a result of this recent federal court order, on January 15, 2015, California Director of Social Services (CDSS) Director Will Lightbourne announced a halt to the implementation of the changes related to overtime, travel time, and wait time pay for all IHSS providers, which had been initially scheduled to go into effect on January 1, 2015, pursuant to the requirements of SB 855 and SB 873.

REVISED PROGRAM REQUIREMENTS

In light of the above referenced court orders, CDSS will not be implementing changes related to overtime compensation, travel time, or wait time, nor the 61-hour weekly limitation. All of the newly-created forms and notices released pursuant to ACL 14-76 (SOC 2255 through SOC 2259A, SOC 2263 through SOC 2270, and TEMP 3000) are not in effect and shall not be used. The forms (SOC 426A, SOC 846, and SOC 858) and notices (SOC 851 and SOC 855) that were revised to include language related to overtime compensation or other compensable changes are likewise not in effect, and the previous versions of these forms will be made available again for counties to use.

If the county has already received a Workweek Agreement (SOC 2255 or SOC 2256) or Recipient Declaration (TEMP 3000), or Provider Enrollment Agreement (SOC 846) form from an IHSS recipient or currently enrolled IHSS provider, do not enter this information into CMIPS II. Instead, the county should place the documents in the recipient's case file for future reference. If the county has not yet received the documents, do not send the Notice to Recipient for Failure to Complete the Workweek Agreement notice (SOC 2270) or attempt to contact any recipient to receive the information.

As previously stated in ACIN I-73-14 (January 5, 2015), in those instances in which counties have conducted assessments that included wait time adjustments for medical

accompaniment and those adjustments were entered into CMIPS II, counties must ensure that these adjustments are removed from CMIPS II as soon as possible. However, the information should be retained by the counties within the IHSS recipient's case file for future reference.

All IHSS recipients will continue to receive all of the monthly hours for which they have been authorized and will continue to receive those services from the provider of their choice. All IHSS providers will continue to be paid straight-time at the locally bargained hourly wage rate in the same manner in which hours were reported and providers were paid in 2014.

All county IHSS offices and county public authorities should continue to operate under the requirements and regulations for payment of wages that were in effect on December 31, 2014. CDSS is continuing to move forward with the implementation of the new timesheet format, but CMIPS II will not process payments for overtime or travel time. However, in February 2015, CDSS will implement the new modified transitional timesheets

The attached information notice has been designed to inform all IHSS providers and IHSS recipients of the halt in the implementation of overtime, travel, and wait time pursuant to the January 14, 2015, court order. This notice will be sent to all IHSS providers and recipients beginning in February 2015.

As stated in ACL 14-102 (December 31, 2014), the new IHSS program rules and requirements for the provider enrollment orientation required under SB 878 must be implemented by April 1, 2015. CDSS is currently working to update the provider enrollment materials to conform to the new rules and requirements. However, the training and materials detailing the applicable federal and state requirements regarding minimum wage and overtime pay, including paid travel time and wait time, required to be included in the provider enrollment orientation pursuant to Welfare and Institutions Code section 12301.24(a), will no longer be included due to the January 14, 2015, court order. Counties are advised to remove the 2015 new IHSS Program Requirements video from their websites to avoid confusion.

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

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachment

c: CWDA

To: IHSS Recipients and Providers

On December 31, 2014, the California Department of Social Services notified the public that implementation of the California In-Home Supportive Services Program's new overtime, travel and wait time rules were being delayed due to a federal court order.

This letter contains further guidance.

In two court orders issued December 22, 2014 and January 14, 2015, the U.S. District Court in Washington D.C. invalidated the U.S. Department of Labor's changes to its rules regarding home care workers.

Because of the court's rulings, the program changes regarding overtime, travel and wait time compensation will not go into effect.

Accordingly, the California In-Home Supportive Services Program will not implement payments for overtime, travel, or wait time and will not implement weekly hour limits.

What this means for recipients:

- You may continue to receive care from your current provider for your monthly approved hours as you did in 2014.

What this means for the providers:

- You will continue to be paid your regular hourly wage as you were in 2014.
- You will not be limited to working 61 hours in a workweek.

You will be notified if there is any change to payroll policy or procedures in the future.