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ALL-COUNTY LETTER NO: 15-45

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 PROGRAM MANAGERS

SUBJECT: IMPLEMENTATION OF THE AMENDED MINOR RECIPIENTS LIVING WITH PARENT(S) REGULATIONS MANUAL OF POLICIES AND PROCEDURES SECTIONS 30-763.44 through 30.763.457

REFERENCE: WELFARE AND INSTITUTIONS CODE SECTION 12300(e);
MANUAL OF POLICY AND PROCEDURES SECTION 30-763

Purpose

The purpose of this All-County Letter (ACL) is to transmit the amended In-Home Supportive Services (IHSS) Minor Recipients Living with Parent(s) regulations, approved by the Office of Administrative Law on November 13, 2014, effective January 1, 2015. This ACL also provides answers to questions that arose during the regulation development process.

Background

In a California Department of Social Services (CDSS) Director's Alternate Decision (DAD), the Director invalidated the previous version of Manual of Policy and Procedures (MPP) Section 30-763.453(c), which prohibited payment for the provision of IHSS to a provider parent when a non-provider parent was present in the home. The DAD stated that the regulation went beyond the scope of Welfare and Institutions Code (WIC) Section 12300(e) by creating a limitation on compensation to parent providers where none was intended by the legislature. The purpose of this regulatory package was to resolve the discrepancy between MPP Section 30-763.453(c) and WIC Section 12300(e).

In addition to resolving this discrepancy, amendments were made to MPP Sections 30-763.44 through 30-763.457 to provide clarification to improve regulatory understanding and application.

Highlights of Changes

30-763.44

- Added reference to the parental duty under the Family Code to specify this regulation section is applicable only when the minor lives with the natural or adoptive parent(s).
- Amended to reflect that services must be provided during the parents' inability and unavailability.

30-763.444

- "Search for employment" was added as an additional reason to pay a provider, who is not the recipient's parent, for tasks that must be performed during the parental absence.
- Clarified that allowing a provider, who is not the recipient's parent, to be paid due to the unavailability of the parent(s), for the reasons outlined in this regulation section; and only for tasks that must be performed when the parent(s) is unavailable.

30-763.45

- Added reference to the parental duty under the Family Code to specify this regulation section is applicable only when the minor lives with his/her natural or adoptive parent(s).

30-763.451

- Revised to combine MPP Sections 30-763.451 (a) through (c) of the former regulations. This revision mirrors statutory language and permits a more consistent reading of this regulation.

30-763.451(a)

- Specified full-time parental employment for the purposes of IHSS as 40 hours a week, not including IHSS-funded care to his/her own child.

30-763.452

- A parent is only considered unavailable, if the unavailability occurs during a time when the recipient must receive a specific service, for the following reasons: employment, enrollment in an educational or vocational training program, or employment searches.

- Defined both a suitable provider who does not have a legal duty pursuant to the Family Code and a suitable provider who does have a legal duty pursuant to the Family Code.

30-763.455

- Clarified that if a parent provider meets the requirements in MPP Section 30-763.451, that parent shall be paid for performing authorized services regardless of the presence of another parent in the home, including non-work hours, weekends, and holidays.

30-76.457

- Added to clarify that a recipient's parent(s) are not eligible to be providers for the Personal Care Services Program (PCSP).

Questions and Answers

1. Q. If the non-provider parent in a two-parent household is not working, or going to school full-time, is the child still eligible for IHSS?

A. Yes, the child may be eligible for IHSS; however, the provider parent would not meet the qualifications to be a paid IHSS provider under MPP Section 30-763.451 because of the availability of the non-provider parent.
2. Q. When the parent(s) must be absent from the home to take the minor recipient's siblings to the doctor, how does a social worker assess and authorize IHSS hours (up to eight per week) allowed under MPP Section 30-763.444?

A. The IHSS time under MPP Section 30-763.444, is not authorized separately; it is already contained within the existing authorized hours based on the assessment. A provider, who is not the recipient's parent, shall only be paid for tasks that must be performed during the absence of the parent(s). No separate IHSS hour authorization is required. In a two-parent household, both parents must be absent to perform shopping and errands essential to the family in order for a provider, who is not the recipient's parent, to be paid in their absence under this regulation.

Also, during the initial assessment and reassessment process, the social worker should inform the recipient's parents of the provider enrollment

process, so if needed, there is an enrolled provider available to perform the needed services during the parent's absence.

3. Q. Is a step-parent considered a parent for the purposes of MPP Sections 30-763.44 and 30.763.45?
 - A. No, a step-parent is not considered a parent for the purposes of MPP Sections 30-763.44 and 30.763.45, unless the step-parent has legally adopted the child. These regulation sections only apply to natural or adoptive parents. When a minor recipient is legally adopted by a step-parent, MPP Sections 30-763.44 and 30.763.45 would apply.

4. Q. A minor recipient is living in a household with his two full-time employed parents and three siblings, and a non-parent provider is currently hired to provide IHSS tasks when the parents are unavailable because of employment (MPP Section 30-763.441). Can the recipient have eight additional hours for respite on the weekends as the mother says the father is no help with the children?
 - A. No. On weekends, the father refusing, or being unwilling to assist with his child, is not a reason for a non-parent provider to complete IHSS tasks for the child. The non-parent provider can only be paid for reasons specified in MPP Sections 30-763.44 through 30-763.444, and only for the tasks that must be completed during the periods of parental unavailability (ADL care, Protective Supervision; not daycare). For example, if the parents had weekend errands such as shopping with their other children, the non-parent provider could be paid under MPP Section 30-763.444. However, if one parent takes the other kids out for weekend errands and the other parent is home watching TV, cleaning, or is unwilling to assist the recipient child, the regulation requirements of MPP Section 30-763.444 are not met; therefore, a non-parent provider could not be paid.

5. Q. Can a social worker authorize IHSS hours on a case for a minor recipient when the only available parent cannot be a paid IHSS provider due to a Tier 1 crime conviction?
 - A. No, if the parent with a Tier 1 conviction is able and available to provide the needed care they must meet their obligation to provide care under the Family Code, even if they are not eligible to be paid as an IHSS provider.

However, per MPP Sections 30-763.44 through 30-763.444, a non-parent provider may provide services only if the parent is unavailable because they are searching for employment or are enrolled in an educational or vocational training program; if the parent(s) is physically or mentally unable to provide the needed IHSS services; or if they are unavailable because of on-going medical, dental or other health-related treatment. Also, if 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).

6. Q. How does the social worker know if the parent is employed full-time?
 - A. During the assessment visit, the social worker should ask about the recipient's living arrangements and the parent(s) employment status and hours.

7. Q. Can a parent be employed full-time from home and be an IHSS provider to their child?
 - A. No, if a parent is working full-time (an average of 40 hours or more per week), even if they work from home, that parent is not prevented from full-time employment (Please note, a parent providing IHSS funded care to his/her own child is not full-time). The location of the parent's workplace does not make a difference. Since this parent is not prevented from full-time employment, the parent cannot be the IHSS provider (MPP Section 30-763.451).

However, a provider, who is not the recipient's parent, can be paid to provide the needed IHSS services, but only during periods of parental work-related unavailability (MPP Section 30-763.441).

For example, both parents are employed full-time, one works from home and one works outside the home. In this situation, neither parent is eligible to be the paid IHSS provider. A provider, who is not the recipient's parent, may be paid to provide the IHSS services that must be provided during periods when both parents are unavailable due to employment.

8. Q. In a two-parent household, one parent states he/she is prevented from full-time employment, and the other parent is not willing to assist with any of the IHSS care for their child. Can the parent, who states he/she is prevented from employment, be the IHSS provider?

A. No, pursuant to MPP Section 30-763.452, an individual who has a duty under the Family Code need only be able and available to provide the needed IHSS to be considered a suitable provider, they need not be willing. A parent being “unwilling” to provide assistance is not a valid reason to pay the other parent as an IHSS parent provider. Because the “unwilling” parent would still be a suitable provider, the other parent is not prevented from obtaining full-time employment because no other suitable provider is available.

However, if one of the parents is not mentally or physically “able” to perform the needed IHSS services, and the other parent is prevented from obtaining full-time employment because no other suitable provider is available, the parent who is prevented from obtaining full-time employment may be a paid provider.

9. Q. MPP Section 30-763.455 states "A parent provider.....shall be paid for performing authorized services regardless of the presence of the parent in the home, including non-work hours, weekends and holidays." In a two-parent home with one parent being the IHSS provider, is the other parent, who is employed outside the home, considered a suitable provider when they are available during non-work hours, weekends and holidays?

A. No, a parent, who is employed full-time, is not considered a “suitable provider” if he/she is only available during non-work hours, weekends, and holidays. “IHSS may be purchased from a parent under the condition that the parent has left full-time employment or is prevented from full-time employment because no other provider is available...” (MPP Section 30-763.451). This section refers to the presence of the other parent/non-provider parent in the home and should not affect payment to the parent provider.

10. Q. In a single parent home, when the parent is employed full-time (40 or more hours a week), can that parent be paid to be an IHSS provider when they are not at work?

A. No, a single parent, who is employed full-time, does not meet the criteria to be the parent provider under MPP Section 30-763.451 because they have not left full-time employment and are not prevented from full-time employment because of the care needs of the child. In this situation, a non-parent provider can be paid, but only for periods of parental inability or unavailability as detailed in MPP Section 30-763.44-.444.

11. Q. Can two parents, in the same household, who are not employed other than by IHSS, and who are otherwise both able and available to provide the needed IHSS at all times, be enrolled as the IHSS care providers for their one minor IHSS recipient child?

A. No, because both parents would not meet the qualifications to be a paid IHSS provider under MPP 30-763.451. In this situation, while one parent is providing IHSS, the other parent is able and available to provide IHSS. Therefore, the parents would not both be prevented from full-time employment because the other able and available parent is considered a suitable provider.

12. In a two-parent household, one parent operates a construction business full-time from home; the other parent is licensed to run a small family home for medically needy and fragile children. In the home, there are four adopted children and two children who are living in the home because they are medically needy, fragile, and receive care under the license. During the assessment process, the county should gather information to determine who is providing care and any additional case circumstances.

Q. Is the parent, who runs the licensed small family home and stays home to provide care for all the children, eligible to be an IHSS parent-provider for the adopted children under MPP Section 30-763.45?

A. No, the parents of the adopted children have a responsibility to provide care for their natural or adopted children under the Family Code. The parent who runs the licensed small family home is employed full-time to provide care to the medically needy and fragile children if he/she works an average of 40 or more hours per week. That parent is not prevented from full-time employment due to the care needs of their adopted children.

- Q. Is this parent considered employed full-time because he/she runs a licensed small family home for medically needy and fragile children?
- A. Yes, the parent who is licensed to run a licensed small family home, for medically needy children, is considered to be employed full-time if he/she works an average of 40 or more hours per week.
- Q. Is the parent operating a construction business full-time, from their home, considered to be employed full-time?
- A. Yes, the parent operating the construction business full-time, from home, is also considered to be employed full-time. Therefore, neither parent is eligible to be an IHSS parent-provider for their adopted children. In addition, the foster children are also ineligible for IHSS since they reside in a licensed facility.
- 13. Q.** Does a notarized handwritten letter from a parent appointing a caregiver as a “guardian” for a child verify a Legal Guardianship of a child?
- A. No, a Legal Guardianship is approved by a Superior Court Judge; therefore, a handwritten note, without supportive court documentation, does not meet the definition of “Legal Guardianship.”
- 14. Q.** How do MPP Sections 30-763.44 and 30-763.45 apply when a minor recipient lives with both his/her grandparent, who is also his/her Legal Guardian, and his/her biological parent?
- A. When a Legal Guardianship is in place, the appointed Guardian assumes the care, custody, and control of the minor. Per Family Code Section 7505(a), when a Legal Guardianship is in place, it ceases the “parental authority” (ceasing parental authority is not the same as termination of parental rights, as termination of parental rights is permanent such as adoption or emancipation). Because the Legal Guardian (the grandparent) assumes the duty to care for the minor, the parent is absolved of his/her duty to provide care for the child. Because the parent is temporarily relieved of the duty of care, MPP Sections 30-763.44 and 30-763.45 do not apply to the parent, nor do they apply to the grandparent because the grandparent is not an adoptive parent. Therefore, either the grandparent and/or the biological parent could be the child’s paid IHSS provider in this situation.

15. Q. If a minor does not live with his/her parent(s), would an informal caregiver be considered as a parent or non-parent for the purpose of IHSS?
- A. A caregiver is considered a non-parent. In this case, MPP Sections 30-763.44 through 30-763.457 do not apply since the minor recipient is not the caregiver's natural or adoptive child. WIC Section 12300(e) states in pertinent part: "...a person having a legal duty pursuant to the Family Code to provide for the care of *his or her* child..." (Emphasis added.) Thus, because the recipient is not the child of the guardian, WIC Section 12300(e) and the related regulations do not apply.

County Responsibilities

Counties shall complete a review of impacted IHSS cases as soon as administratively feasible, but no later than the next regularly scheduled reassessment. As cases are reassessed and minors living with their parents are assessed according to the amended regulations, counties will be responsible for ensuring that time is authorized in compliance with the amended regulations.

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,

Original Document Signed By:

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c: CWDA