



CDSS

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REASON FOR THIS TRANSMITTAL

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

January 24, 2012

ALL-COUNTY INFORMATION NOTICE NO.: I-04-12

TO: ALL COUNTY WELFARE DIRECTORS
IHSS PROGRAM MANAGERS

SUBJECT: QUESTIONS AND ANSWERS REGARDING CRIMINAL BACKGROUND CHECKS FOR IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDERS

REFERENCE: All-County Letter NO. 11-12, DATED JANUARY 26, 2011

The above referenced All-County Letter (ACL) provided information and instructions for implementing sections of Assembly Bill (AB) 1612 (Chapter 725, Statutes of 2010) relating to criminal background checks for individuals seeking to become service providers in the In-Home Supportive Services (IHSS) Program. AB 1612 added Welfare & Institutions Code (W&IC) section 12305.87, which expanded the list of crimes for which a conviction or incarceration following a conviction, within the last 10 years would exclude an individual from being enrolled as an IHSS provider. The attachment to this All-County Information Notice (ACIN) provides answers to questions raised by counties and Public Authorities (PAs) regarding the criminal background check process. The questions and answers reference the applicable statutes and should be considered the most current and valid guidelines.

Additionally, this ACIN transmits a new notice, the Notice to Provider of Provider Eligibility Acknowledgement of Receipt of Waiver (SOC 870), which responds to an issue raised within this ACIN.

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Page Two

Any additional questions or requests for clarification should be directed to the Policy and Operations Bureau at (916) 651-5350.

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachments (Q&As, SOC 870, flowchart)

c: CWDA

**Questions and Answers
Regarding Criminal Background Checks for
In-Home Supportive Services (IHSS) Providers**

Tier 1 & Tier 2 Crimes/Criminal Offender Record Information (CORI)

1. The listing of Tier 2 exclusionary crimes contains a number of Penal Code (PC) sections which do not include a specific subsection/subdivision. Would a subsection/subdivision of a crime that is on the listing also be exclusionary? For example, the listing includes PC section 261. Would a conviction for PC 261(a) be considered exclusionary?

Response: Yes. When a full section is included on the list, any subsection is also exclusionary. If only the subsection is exclusionary, it is listed specifically.

2. Misdemeanor convictions are NOT Tier 2 crimes, even if they are misdemeanor convictions for a sexual crime such as PC sections 288.2(a) (sends or causes to be sent harmful matter to a minor with the intent to arouse...) and 647.6(a)(1) (annoy or molest any child under 18 years of age). Based on my understanding, only certain FELONY crimes are considered Tier 2 crimes, NOT misdemeanor crimes.

Response: Tier 2 crimes are only felonies; there are no misdemeanor Tier 2 crimes.

3. Does a felony conviction for PC section 245(a) (1) (Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm...) meet the criteria on the last page of the list of Tier 2 crimes, which states “Any felony in which the defendant personally used a dangerous or deadly weapon?”

Response: Yes, a felony conviction for PC 245(a) (1) is a Tier 2 crime and would qualify as a disqualifying crime.

4. Welfare & Institutions Code (W&IC) sections 12305.81 and 12305.87 include the phrase, “or incarceration following a conviction.” If an individual was convicted of a disqualifying crime more than 10 years ago but his/her incarceration for that conviction ended within the last 10 years, is that individual ineligible based on the above referenced code sections? Are there other more complex interpretations of this language? For example, if an individual has been on probation within the last 10 years, is that considered incarceration? What if the individual on probation for the disqualifying crime violated the terms of his/her probation and was re-incarcerated within the last 10 years?

Response: The 10 year time frame begins at the end of the "incarceration following a conviction." Therefore, even if an individual's conviction was more than 10 years ago, if he or she was released from incarceration within the last 10 years, he or she is not eligible to serve as an IHSS provider under either W&IC section 12305.81 or 12305.87. "Incarceration" is defined by statute as time served in a correctional facility; it does not include probation or parole. If the individual violates the terms of his or her parole and is returned to incarceration to serve out the remainder of his or her original sentence that would count as incarceration for the original conviction. Therefore, the 10 year timeframe would not begin until after the individual was released from incarceration the second time.

5. PC section 487 (Grand Theft) is not included on the list of Tier 2 exclusionary crimes (that is, unless the PC section 487 is combined with the use of a firearm, as part of a conspiracy or as part of a street gang.). However, we are aware that in some counties, including ours, the district attorney prosecutes IHSS fraud under PC section 487. In our county, we have the ability to contact the DA's office to determine if a PC section 487 conviction is for IHSS fraud; however, there are no practical means to determine this when the conviction occurred in another jurisdiction. How should a county proceed when a CORI shows a PC section 487 which occurred in another jurisdiction and it is not possible to confirm the nature of the theft?

Response: When a CORI includes a conviction for PC section 487 and the county is unable to positively determine that the conviction is for IHSS fraud, either because the conviction occurred in another jurisdiction (county) or otherwise, the county shall not exclude the individual. The county may exclude an individual for a Tier 1 crime when his/her CORI includes either a misdemeanor or felony conviction for PC 487 when it can be positively determined, through court records, information from a law enforcement agency, or some other official means/source, that the crime for which the individual was convicted involved fraud against IHSS (or other governmental health care or supportive services program). Additionally, a felony conviction for PC 487, in conjunction with a conviction for PC 664, would be considered a Tier 2 exclusionary crime.

6. On page 10 of the list of Tier 2 exclusionary crimes, it says "Any felony in which the defendant personally inflicts great bodily injury (GBI) on another person other than an accomplice or any felony in which the defendant personally uses a firearm". Would the felony crimes listed below meet the criteria?

ATTACHMENT A

23152(B) VC – DUI ALCOHOL/0.08% W/PRIORS WITH PRIOR
DISPO: CONVICTED – PROB/JAIL
CONV STATUS: FELONY
487(A) PC – GRAND THEFT: MONEY/LABOR/PROP \$400+
DISPO: CONVICTED – PROB/JAIL
CONV STATUS: FELONY

Response: Felony crimes in which GBI was inflicted, or a firearm or dangerous or deadly weapon was used, or where the crimes are punishable by death or life imprisonment, meet the criteria for an exclusionary crime. There is no restriction on the type of felony that qualifies. So, both of the above examples would be potentially excludable. However, a felony on its own would not satisfy these criteria. There must be a finding of one of the listed criteria, such as use of a firearm/dangerous or deadly weapon or type of potential punishment.

In the example of a felony conviction for violation of Vehicle Code section 23152 (b), it would be reasonable for a county to consider driving (an automobile) under the influence (DUI) of alcohol or drugs to be use of a dangerous or deadly weapon, in which case, this could be considered a Tier 2 disqualifying crime. Furthermore, if a CORI includes a felony conviction for DUI and it also includes a reference to “bodily injury,” the county would be within reason to consider the conviction to be a Tier 2 crime.

In the example of a felony conviction for grand theft, unless the CORI also included some indication that a firearm or other dangerous or deadly weapon was used, or this can be positively determined through court records, information from a law enforcement agency, or some other official means/source, the county should not disqualify the individual.

7. On the list of Tier 2 exclusionary crimes (Attachment A of All County Letter No. 11-12) under the “Code Section” column, when a PC is listed in conjunction with another PC, e.g., PC 487 with PC 664, what does it mean? In this example, if a CORI shows a conviction for PC 487 but it does not also show a conviction for PC 664, would the individual be disqualified?

Response: No. The individual would not be disqualified. For those Tier 2 crimes which list a PC section conviction in conjunction with another PC section conviction, a conviction for only one of the PC sections would not be disqualifying. The CORI must show convictions for both PC sections in order for the individual to be disqualified.

8. With regards to Tier 1 convictions, there are the 3 crimes that are exclusionary: child abuse, elder abuse and fraud against Medicare or MediCal. But I thought I had read someplace, that a person could be excluded if they were convicted of similar crimes in another jurisdiction (meaning state). Is this correct? I’ve reviewed the ACL’s that have been issued and I can’t find it on any of them.

Response: If the county receives documentation (such as an FBI criminal background check or court documents from another state) showing that an applicant provider has been convicted of child or elder abuse or fraud against a government healthcare or supportive services program in a jurisdiction outside California (such as another state), that applicant provider would be disqualified to serve as an IHSS provider, per W&IC section 12305.81(a) (2). This section also specifies that child and elder abuse convictions are Tier 1 crimes. The section states:

(2) An individual who, in the last 10 years, has been convicted for or incarcerated following conviction for, a violation of subdivision (a) of section 273a of the Penal Code or section 368 of the Penal Code, or similar violations in another jurisdiction, is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

9. Is it necessary to pursue the exact nature of a W&IC section 10980 misdemeanor to ensure it is not a Tier 1 crime?

Response: Yes, it is important to determine the exact nature of the crime regarding misdemeanor W&IC section 10980 to ensure it is not a Tier 1 crime. If an applicant provider has been convicted of a W&IC section 10980 misdemeanor for fraud against a healthcare or supportive services program, the applicant provider is ineligible to provide services, due to his/her conviction of a Tier 1 crime.

10. PAs feel they have a responsibility for assisting the recipient with screening potential providers by providing the recipient with a list of registry providers who meet the recipient's needs and do not pose a potential danger. Because of this responsibility, is it permissible for a PA to deny eligibility to applicant providers for crimes not listed as disqualifying under W&IC sections 12305.81 and 12305.87? The PAs are reluctant to send notification of Tier 2 criminal convictions to recipients who may wish to submit waiver requests for providers with criminal convictions due to potential liability issues.

Response: The only crimes for which applicant providers can be denied eligibility are those specifically set forth in W&IC sections 12305.81 and 12305.87. These crimes are the same for both registry and non-registry providers. Individual counties and Public Authorities (PAs) cannot create their own lists of disqualifying crimes and deny eligibility for any of those crimes if they do not fall under the scope of either of the code sections listed. Denying eligibility in this way would erroneously disqualify an applicant provider who is otherwise eligible to work as a provider. W&IC section 12305.87(d)(1) requires that the counties and PAs allow those recipients, who wish to hire a provider with a criminal conviction which would disqualify that person under W&IC section 12305.87, to sign and submit an individual waiver to allow that person to work for him or her.

The Department is aware of the concerns PAs have with the current statute (W&IC section 12305.87(d) (7)) under which PAs do not share the same immunity from liability for filing waivers as the state and counties currently have. An amendment to the current statute would be necessary to extend this immunity to PAs.

11. Through January 31, 2011, we were denying applicant providers with W&IC 10980(c) (2) convictions and having them appeal through the PEAU (Provider Enrollment Appeals Unit). Under the new ACL (ACL 11-12, dated January 26, 2011), the Tier 1 type of fraud is still NOT defined. However, the Tier 2 list includes W&IC 10980(c) (2) as a conviction. If that conviction was for food stamps or welfare fraud, the applicant provider could work for a recipient if approved through the individual waiver process. As you know, the CORI does not state the type of fraud involved in that conviction. I may need to send out a denial to an applicant provider; however, under ACL 11-12, I need to state if this is a Tier 1 or a 2 conviction. Do we make these Tier 1 convictions and send them to the PEAU, knowing this can take six months?

Response: Applicants should not automatically be denied because not all fraud convictions under W&IC section 10980(c) (2) are Tier 1 criminal convictions. Counties must determine by examining court records or any other available resources, to determine which program was defrauded because a conviction for a crime involving fraud against a healthcare or supportive services program, such as IHSS, whether it be a misdemeanor or a felony, would be a Tier 1 crime. A felony conviction for fraud against a public social services program, such as CalWORKs or CalFresh, would be a Tier 2 crime; however, a misdemeanor conviction for fraud against a public social services program is not exclusionary under Tier 2. A “felony” conviction for W&IC section 10980 would be a Tier 2 crime unless the county/PA has documentation indicating the conviction is for fraud “against a government health care or supportive services program . . .”, which would then be a Tier 1 crime.

12. Are we to understand from page 1 of the list of Tier 2 exclusionary crimes, that if an individual is convicted of PC section 182 alone, they are not excluded from working as an IHSS provider? But, if the individual was convicted of that crime in addition to any of those listed in the “Title” column (apparently, not only PC section 290(c) crimes), then the individual would be excluded?

Response: PC section 182 is for conspiracies, but not all conspiracies are excludable crimes. A provider can be denied for a conspiracy felony only if the conspiracy was to commit one of the crimes listed in PC sections 290(c) or 1192.7(c). There does not necessarily need to be an additional conviction for one of the PC section 290(c) or PC section 1192.7(c) crimes. However, there must be a conspiracy conviction as well as evidence that the conspiracy was to commit one of those crimes. If a CORI includes a conviction for PC 182, but

does not include a conviction for PC 290(c) or 1192.7(c) crime, and the CORI also does not include a reference to which crime the individual conspired to commit (e.g., the charge), the county shall not disqualify the individual.

- 13.** Why are the following crimes not included on the Tier 2 crimes list individually when these crimes are specifically referenced under “PC 182 with any PC 290(c) crime.” PC 261(a)(1), PC 261(a)(2), PC 261(a)(3), PC 261(a)(4), PC 261(a)(6), PC 262(a)(1) and PC 272?

Response: PC 261(a)(1), PC 261(a)(2), PC 261(a)(3), PC 261(a)(4), PC 261(a)(6) are not included individually because they are subsections of PC 261 which is listed. Similarly, PC 262(a)(1) is a subsection of PC 262 which is included on the list. Refer to the response to Question #1.

PC 272 would be a Tier 2 exclusionary crime only when it involves lewd or lascivious conduct. If the CORI includes a conviction for PC 272 and it also includes a specific reference (e.g., a charge) to lewd or lascivious conduct, or the county can positively determine, through court records, information from a law enforcement agency, or some other official means/source, that the crime involved lewd or lascivious conduct, the county may disqualify the individual. However, if the CORI includes a conviction for PC 272 and it does not include a specific reference to lewd or lascivious conduct, and the county cannot positively determine that the crime involved lewd or lascivious conduct, the county shall not disqualify the individual.

- 14.** Why are PC 288a(c) (2), PC 289(a)(1), PC 461, and PC 487(d)(2) not included on the Tier 2 crimes list individually when these crimes are specifically referenced under “PC 182 with any PC 1192.7(c) crime”?

Response: PC 288a(c)(2) and PC 289(a)(1) are not included individually because they are subsections of PC 288a and PC 289 which are included on the list. Refer to the response to Question #1. Similarly, PC 487(d) (2) is a subsection of PC 487 which is included on the list (when in conjunction with PC 664). Refer to the response to Question #5 regarding circumstances in which a conviction for PC 487 alone may be considered a Tier 1 exclusionary crime.

PC 461 pertains to the punishment for burglary: PC 461(a) specifies the punishment for first degree (felony) burglary; PC 461(b) specifies the punishment for second degree (misdemeanor) burglary. PC 461(a) would be a Tier 2 crime.

- 15.** On pages 7 and 8 of the list of Tier 2 exclusionary crimes, the “Title” column for “PC 664 with any PC 290(c) crime” and “PC 664 with any PC 1192.7(c) crime” includes references to crimes not included on the Tier 2 crimes list. Why?

Response: Refer to the response to Question #13.

16. If an individual is convicted of PC section 182, does it have to be with one of the listed PC section 1192.7(c) crimes, or does a PC section 182 conviction as a standalone crime preclude someone from being a provider? For example, if a CORI shows a conviction for PC section 182(a)(1) (Conspiracy to commit a crime), as well as convictions for PC section 459 (Burglary) and PC section 470(a) (Forgery), neither of which are included on the Tier 2 crimes list nor are they PC section 1192.7 listed crimes, would the individual be disqualified?

Response: Refer to the response to Question #13. PC sections 459 and 470(a) should not be considered exclusionary crimes. Therefore, the individual would be eligible to be a provider.

17. The top of page 8 of ACL 11-12 lists specific Tier 2 crimes for which expungement pursuant to PC section 1203.4 does not apply. Several of the crimes listed are NOT included on the list of Tier 2 exclusionary crimes. Specifically, PC section 288a(c) is not included on the Tier 2 list but PC section 288a is included; PC section 289(j) is not included but PC section 289 is; and, PC section 261.5(d) is not included but PC section 261 is.

Are the crime codes listed on page 8 correct?

If the page 8 crimes are Tier 2 crimes, why are they not included in the Tier 2 list? Are we to assume all subsections of a crime included on the list are also Tier 2 crimes?

If the crimes on page 8 are valid Tier 2 crimes, does that mean that any crime included on the Tier 2 list includes all subsections of that code? For example, does the fact that PC section 289 is in the list mean that PC section 289(j) (and all other possible subsections) is also a Tier 2 crime? If so, that would be inconsistent because PC section 288 and PC section 288.5 are specifically listed on page 8. What about PC section 288.2, PC section 288.3, and other PC section 288 subsections that are included in the Tier 2 list?

Response: PC section 288(a)(c) would be an exclusionary crime because PC section 288(a) includes all subsections. The same would apply to PC section 289 (j), which is a subsection of PC section 289. Refer to the response to Question #1.

Although the crimes on page 8 are correct in that they are crimes that cannot be expunged pursuant to PC section 1203.4, some of them should not have been included in the ACL because they are not Tier 2 crimes. Specifically, PC section 261.5(d) is a crime that would be ineligible for expungement; however, it is not a Tier 2 crime.

If a crime is listed on page 8, any subsections of that crime are also included. So, if the crime is PC section 288(j), it is included because PC section 288 covers all of the subsections. However, when a subsection is specified, such as PC section 288(a)(c), the other subsections of PC section 288(a) are not covered. Furthermore, PC section 288 and PC section 288.2 are entirely different sections. Thus, when PC section 288 is listed as exclusionary and it would include all subsections such as PC section 288(j); it would not include entirely different PC sections such as PC section 288.2.

18. The ACL states that in addition to the specifically listed Tier 2 crimes, the following are also disqualifying crimes:
- Any felony in which the defendant personally inflicts GBI on another person other than an accomplice or any felony in which the defendant personally uses a firearm; and
 - Any felony in which the defendant personally used a dangerous or deadly weapon.

What is the interpretation if a CORI shows the following conviction?

245(A) (1) PC – Force/ASSAULT WITH A DEADLY WEAPON (ADW)
NOT FIREARM: GBI LIKELY

Would that fall under the second bullet above? Also, is “GBI LIKELY” the same as “personally inflicts GBI” as stated in the first bullet above?

Response: ADW would cause the conviction to fall into the “Any felony in which the defendant personally used a dangerous or deadly weapon” category. This makes it unnecessary to determine whether “GBI LIKELY” is the same as “personally inflicts GBI.” Also, see response to question #3.

19. We occasionally receive subsequent arrests for providers charged, but not convicted, of serious crimes. In one recent case, the provider was charged with several sexual crimes involving a child under the age of 14 years. The provider is currently in the county jail; however, in the event that he is released on bail, can we temporarily disqualify him as a provider pending disposition due to the severity of the charges?

Response: No. The statute specifies that Tier 2 exclusions are for convictions only. This individual has not been convicted of these crimes; therefore, he cannot be deemed ineligible to be a provider.

20. Clarification is needed regarding the scope of PC 261(Rape). If a CORI shows a conviction for one of the following crimes, would these fall under PC 261, in which case the individual would be disqualified

261.5 PC – SEX INTERCOURSE W/MINOR: SPECIAL CIRC
261.5(D) PC – SEX WITH MINOR: PERP 21+VICTIM-16

Response: Those sections are not part of PC section 261. PC section 261.5 is a separate section from PC section 261. At the current time, PC section 261.5 should not be considered an exclusionary crime. Therefore, the individual would be eligible to be a provider.

- 21.** Our concern is regarding the potential violation of California Department of Justice (DOJ) policy forbidding the unauthorized dissemination of CORI results. The ACL proposes the use of a number of forms (specifically the SOC 862, SOC 852, SOC 852A, SOC 855B, SOC 858A, SOC 858B and SOC 859B) that will be mailed to both the provider applicant and/or the recipient that will contain information taken directly from the provider applicant's CORI results. Despite the use of disclaimers, we are concerned about the information's exposure to persons other than those intended to receive it. We are also concerned about the potential for DOJ to take away our privileged access to CORI results after an audit by DOJ because we are not in compliance with their explicit DOJ Custodian of Records policies/guidelines. Do we have anything from DOJ authorizing us to release CORI information to any other person or entity other than the subject of the CORI, i.e., to the recipient?

Response: The statute, (W&IC section 12305.87), authorizes release of the information regarding the applicant provider's criminal convictions to both the applicant provider and recipient, therefore it provides the authority for the release of the CORI information. The DOJ has reviewed and been consulted on the procedures for the release of the information by the counties on the various documents detailed in the question above.

- 22.** A CORI shows convictions for PC section 273.6(a) (Violating a court [restraining] order) in conjunction with PC section 273.5(a) (Inflicting felony corporal injury on a spouse/ex-spouse/cohabitant). Neither of these crimes is included on the list of Tier 2 exclusionary crimes. In such a case, are only the specific PC sections considered, in which case this individual would not be excluded as a provider, or can the spirit of the law (exclusion of individuals convicted of abuse of a child, elder, or dependent adult) be considered, in which case this individual could be excluded?

Response: A felony conviction for PC 273.5(a) would be disqualifying only if the CORI contained information (or it could be positively determined through court records, information from a law enforcement agency, or some other official means/source) that the crime fit the parameters of one of the crimes specified in PC section 290(c), PC section 667.5(c), or PC section 1192.7(c), e.g., one of the different types of assault listed in PC section 1192.7(c). Absent this information, the county shall not disqualify the individual.

- 23.** A CORI shows a conviction for PC section 243(d) (Battery with serious bodily injury). The conviction is not for PC section 243.4 (Sexual battery), which is included on the list of Tier 2 crimes. Since the conviction does not contain the “.4” designation, is it correct that this individual would not be excluded from being a provider?

Response: PC section 243.4 is not a subsection of PC section 243(d). These are separate PC sections and they do not refer to the same crime. A felony conviction for PC section 243.4 would be disqualifying. A felony conviction for PC 243(d) would be disqualifying only if the CORI contained information (or it could be positively determined through court records, information from a law enforcement agency, or some other official means/source) that the crime fit the parameters of one of the crimes specified in PC section 290(c), PC section 667.5(c), or PC section 1192.7(c), e.g., one of the different types of battery listed in PC section 1192.7(c). Absent this information, the county shall not disqualify the individual.

- 24.** How should the county determine the 10 year exclusionary timeframe from incarceration when the release date shown on the CORI is a future date?

Response: The 10 years would be counted from the last day of incarceration regardless of whether the incarceration was for the parole violation or the underlying crime. It is the responsibility of the applicant provider to provide documentation of actual release date.

Provider Enrollment Process

- 25.** The flow chart does not reflect that an applicant provider found ineligible to be enrolled based on a Tier 1 crime(s) has the right to appeal this to the Provider Enrollment Appeals Unit (PEAU).

Response: You are correct that an applicant provider found ineligible to be enrolled based on a Tier 1 crime does have the right to appeal this finding to the PEAU. The attached flow chart has been revised to reflect this.

- 26.** Page 4 of ACL 11-12 does not state how much time the county is allowed before sending form SOC 857 (IHSS Program Notice to Recipient of Provider Eligibility Acknowledgement of Receipt of Waiver) to consumers after receiving a signed SOC 862 from the consumer. The ACL states the consumer must submit the signed SOC 862 to the county within ten days. What is the time frame for the county/PA/NPC to send form SOC 857 to the consumer?

Response: The county/PA/NPC must notify the recipient (using form SOC 857) within twenty days from the date of the receipt of the waiver request form.

- 27.** What if a recipient fails to return the Recipient Request for Provider Waiver (SOC 862 form) to the county within 10 days; can the provider be paid retroactively for the authorized services?

Response: The 10 day period is not mandated by statute. It was established to encourage the recipient to promptly return the waiver request. If a recipient fails to return the waiver request within the specified time frame and the provider has been providing authorized services, once the waiver request is completed and returned to the county, the provider is eligible for retroactive payment for authorized services provided.

- 28.** Is it necessary to require certified copies of expungements per PC section 1203.4 from Tier 2 applicants?

Response: The statute does not require an applicant to produce a “certified” copy of their expungement; therefore, the county may not require them to provide a certified copy. Obtaining a “certified” copy of an expungement would require the applicant to incur an expense without authority.

- 29.** When a case is being transferred from one county to another, via the Inter-County Transfer (ICT) process, and the provider has completed all required steps in the sending county, but has not completed the background check in the receiving county, do we continue to pay the provider once we accept the case? Or, do we give the provider a specified amount of time to bring in the receipt showing he/she completed the background check so we may continue payment? If the provider does not complete any of the required steps, may we terminate him/her due to the lack of a background check?

Response: When a case is transferred from one county to another via the ICT process and their provider has been determined to be an eligible IHSS provider (completed all four requirements) in the sending county, the receiving county can continue to pay the provider. The current criminal background check is administered by DOJ which will include criminal convictions for all 58 counties within the State of California. Individual counties cannot require applicant providers to undergo another criminal background check if they have already been cleared in another county. See ACL 10-59 (December 9, 2010).

- 30.** Are provider enrollment requirements the same for registry and non-registry providers?

Response: As it relates to approval or denial of an applicant provider based on the criminal background check, the provider enrollment requirements are exactly the same regardless of whether the applicant provider will be on the IHSS provider registry.

31. Please clarify whether we are suppose to use the Department of Health Care Services' (DHCS) Suspended and Ineligible (S&I) list and/or the Office of the Inspector General's List of Excluded Individuals and Entities (LEIE) to disqualify an applicant as an In-Home Supportive Services (IHSS) provider.

Response: The California Department of Social Services (CDSS) issued ACL 11-12 which set forth an expanded list of crimes that can be used as a basis to exclude an individual from providing services. The expanded list, found in W&IC section 12305.87, was added by Assembly Bill 1612 (Chapter 725, Statutes of 2010). Thus, the only individuals who, within the last ten years, have been convicted of, or incarcerated following a conviction for, one of the crimes listed in W&IC sections 12305.81 or 12305.87 can be found ineligible to be enrolled as an IHSS provider. The use of any other means to exclude a provider based on a criminal conviction, including the S&I and LEIE lists, is precluded.

32. If an applicant provider's background check has been cleared in one county, can the PA in another county require a registry provider to complete a background check in order to receive subsequent arrest notices?

Response: No. The current criminal background check is administered by DOJ which will include criminal convictions for all 58 counties within the State of California. Individual counties cannot require applicant providers undergo a criminal background check again if they have already been cleared in another county. See ACL 10-59 (December 9, 2010).

33. Another question/concern we have originates with the 4th paragraph at the top of page 4 of the ACL where it discusses the county's responsibility to verify signatures on the waiver form. How will we verify or authenticate a recipient's signature without some kind of signature card on file to use for comparison? Or, is it the state's intent that we simply confirm the name signed matches with the name of the recipient on file (in CMIPS)? I think that there is a definite opportunity for applicant providers to sign the recipient's name to this form in order to get their exclusionary crime waived.

Response: We understand the county/PA/NPC staff cannot absolutely attest to the authenticity of the signatures on the waiver form (SOC 862). However, we are asking staff to purposefully review the signatures, with authenticity in mind. If a signature appears falsified, it should be looked into, as it would be for any other information provided that appeared fraudulent. This same approach would be pursued in other scenarios when a signature does not appear genuine.

34. Page 3 of ACL 11-12 states "Upon determining that an applicant provider is ineligible because of a conviction for a Tier 2 crime, the county/PA/NPC shall inform both the applicant and any recipient(s) for whom the applicant provider is providing or wishes to provide services of the applicant's ineligibility." At the time we determine a provider is ineligible due to a Tier 2 crime they are typically not yet working for any recipient. How are we to determine who the "provider wishes

35. to provide services for?" There are no forms signed by the provider that indicate who they "wish to work for." The 426A recipient form (signed only by the recipient) may not represent the provider's "wish to work for that recipient" so we cannot send confidential crime info to any "pending" recipients; true or false? By our interpretation of this statement we would only send notifications to recipients for which the provider is already in E status. This should only occur if the crime is some "subsequent" crime and would never occur at initial application time.

Response: Upon the recipient's completion of form SOC 426A (IHSS Program Recipient Designation of Provider), a provider shall be named on the form. If this provider is found to be ineligible, due to a Tier 2 crime conviction(s), the county shall notify the recipient, via SOC 855B (IHSS Program Notice to Recipient of Provider Ineligibility Tier 2 Crimes). The recipient would also be notified of the provider's ineligibility due to a conviction that occurred after being hired (notification of this is done via SOC 859B, IHSS Program Notice to Recipient of Provider Ineligibility Tier 2 Crimes Ineligibility – Subsequent Conviction.).

36. Do we notify the recipient of the provider's Tier 2 crime, only if the provider wants to pursue a waiver or regardless of the provider's intentions?

Response: For clarification, please note that the recipient (not provider) requests a waiver to hire a named provider, by completing form SOC 862 (IHSS Request for Provider Waiver).

As one of the four requirements to become a provider, the provider shall complete and sign form SOC 426 (IHSS Program Provider Enrollment Form). By doing so, the provider agrees to the disclosure of any conviction information to a recipient (see SOC 426, Page 2, Bullet 1). Therefore, the recipient intending to hire a specific provider is entitled to that provider's conviction information. The recipient is also instructed to maintain the information in a confidential manner.

Forms & Notices

37. When completing the Notice to Applicant Provider of Provider Ineligibility due to Tier 2 Crimes (SOC 852A), is it necessary to complete the entire form including the entire applicant provider's disqualifying convictions?

Response: Yes. W&IC section 12305.87 requires that an applicant provider, who is denied eligibility to be an IHSS provider, be given the reason for the denial. In this case, the county must set forth in the denial notice (SOC 852A) both the Penal Code sections and plain language description of the disqualifying crimes of which the applicant provider has been convicted as the cause of the denial. If the applicant subsequently chooses to pursue a general exception, the CDSS Criminal Background Check Bureau, General Exception Unit, will also need this information to determine the nature of the criminal conviction and whether the applicant was justifiably disqualified for his or her conviction.

38. Can the SOC 426 be “provided without a client”?

Response: The SOC 426 may be completed and submitted without regard to whether an applicant provider has a recipient for whom he/she is already providing or intends to provide services (upon successful completion of the enrollment requirements).

39. For previously existing providers who complete a 426 and a 426A, who now are enrolling with a new recipient, do they need to complete just a 426A? Our question is; if a provider that is currently enrolled and already filled out the 426, and they pick up a new client, in which case they would need the recipient to fill out a 426A, do they also need to fill out another 426? In other words, each time they pick up a new client, do they fill out a 426 and a 426A?

Response: The provider only completes the SOC 426 once. The recipient completes the SOC 426A every time a new provider is selected. The counties are required to obtain the SOC 426 from providers and the SOC 426A from recipients. For recipients who select a new provider or who make a change in their existing provider, the SOC 426A must be completed at the time the recipient makes his/her selection/change.

40. ACL 11-12 states, “Counties shall begin using the revised SOC 426 and SOC 426C for all new provider applicants as of February 1, 2011.”

Does “new applicant” mean when the provider first comes into the IHSS program and goes through orientation, or each time a provider starts for a new client? Before February 1, 2011, we sent out the 426 at each new hire, it included both provider and recipient information. Now I am wondering if it is expected for us to send this out with each new hire of an existing provider even though they are grandfathered in.

Response: The provider only completes the SOC 426 once. The recipient completes the SOC 426A every time a new provider is selected. The counties are required to obtain the SOC 426 from providers and the SOC 426A from recipients. For recipients who select a new provider or who make a change in their existing provider, the SOC 426A must be completed at the time the recipient makes his/her selection/change.

41. Can the individual who is granted a Power of Attorney sign the waiver form for a recipient they are the agent for?

Response: The individual who is granted a Power of Attorney has many legal responsibilities, one of which may be to serve as the authorized representative for the recipient. If the individual who has been granted Power of Attorney is the authorized representative, he or she may sign the waiver form.

42. Is an authorized representative (AR) allowed to sign the Individual Waiver, on behalf of the recipient, if the AR's CORI indicates a disqualifying crime?

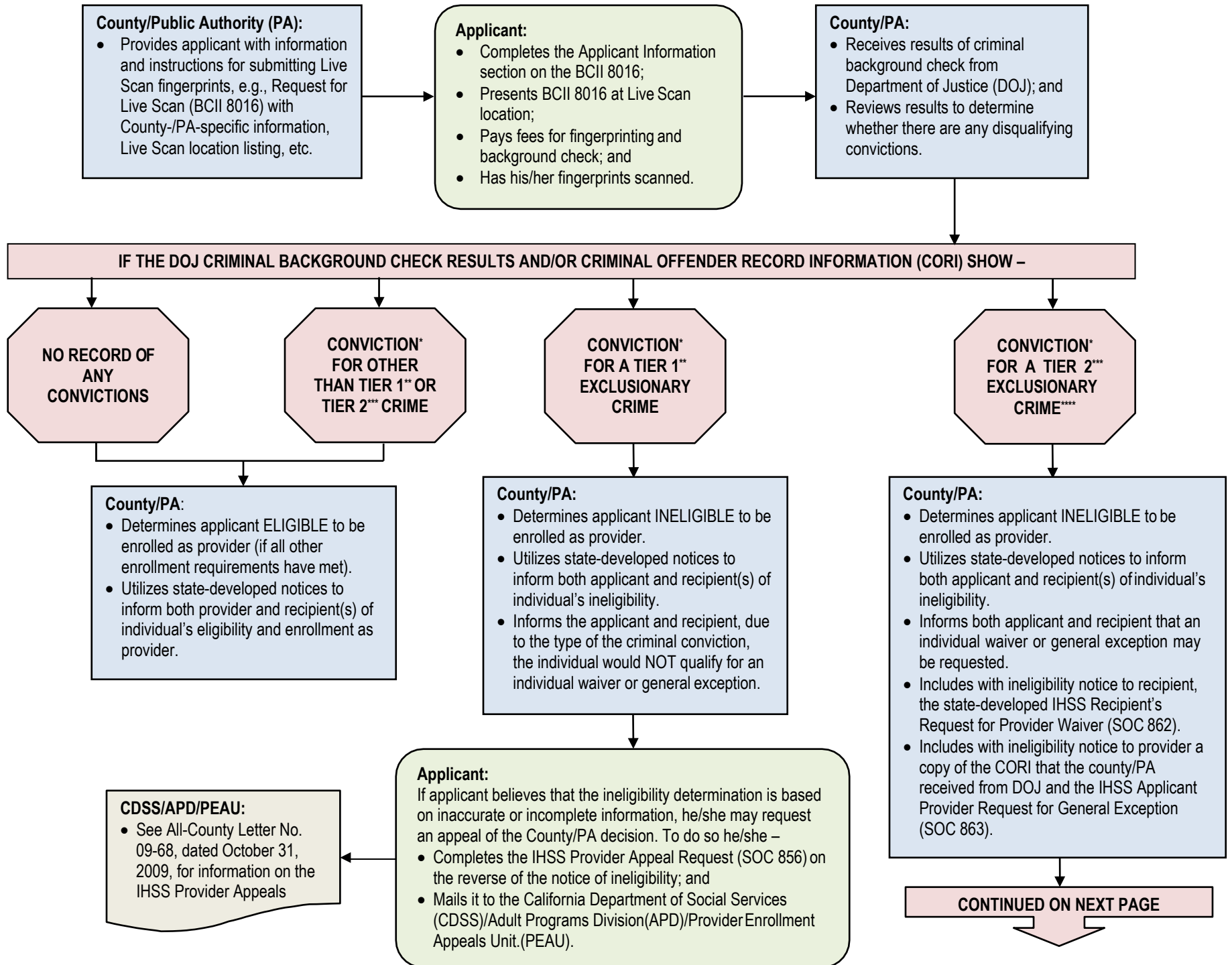
Response: No. Assembly Bill (AB) 876 was signed by Governor Brown on July 7, 2011, prohibiting an applicant provider from signing his or her own individual waiver form as the recipient's authorized representative. However, if the authorized representative is not the provider, he or she may sign the waiver on behalf of the recipient.

43. There is currently no form that serves to inform the applicant provider that he or she has been approved via individual waiver to work for a specific client. However, the instructions state that we have to inform the applicant. The regular Notice of Provider Eligibility (SOC 848) won't work because it does not specify "for this client only."

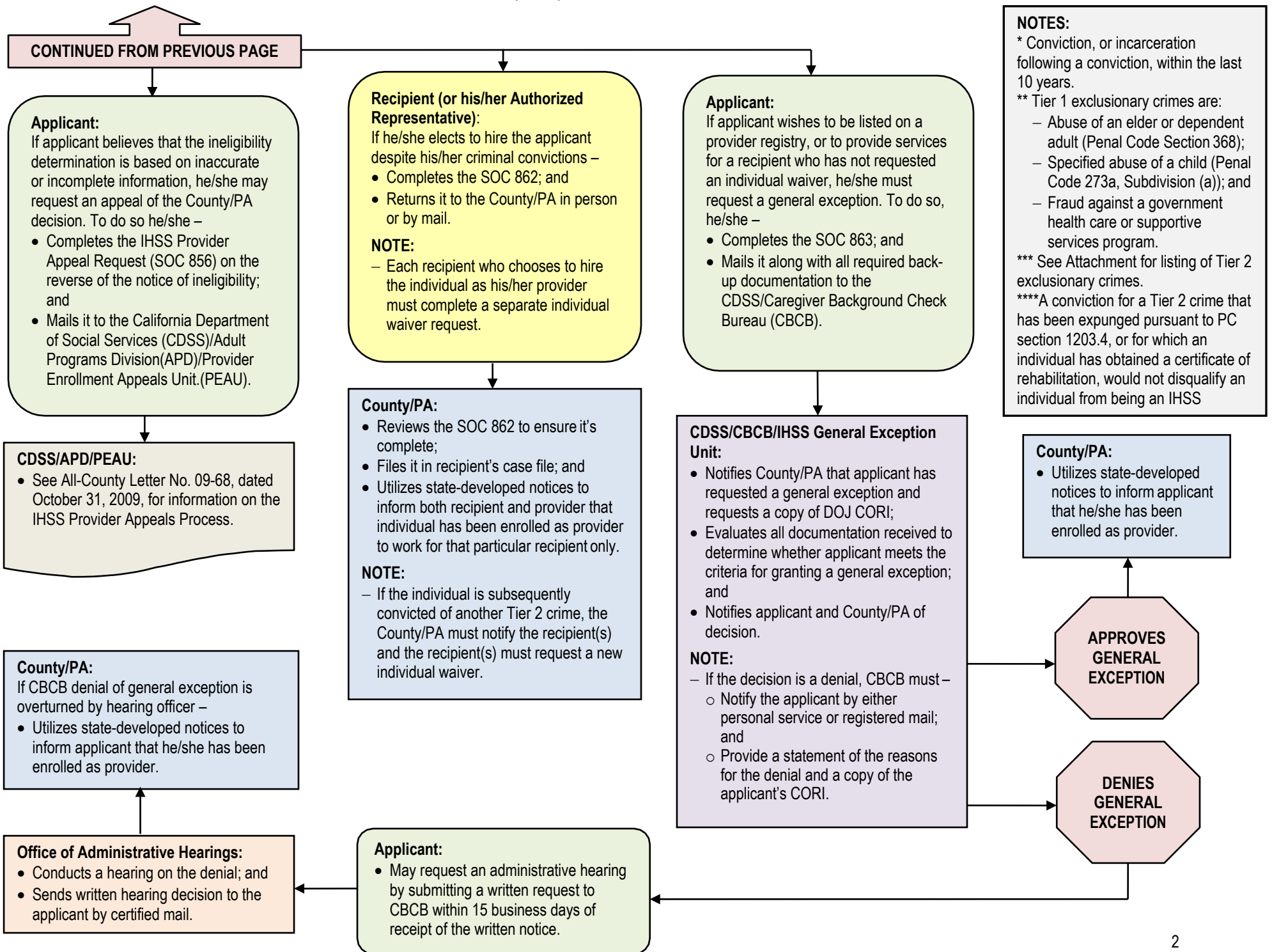
Response: You are correct that the Notice of Provider Eligibility (SOC 848) is not appropriate for a county/PA to utilize to inform an otherwise ineligible provider that a waiver submitted by a recipient has been accepted and that he or she is now enrolled to provide services for that recipient only. We have remedied this situation through the development of a new form, Notice to Provider of Provider Eligibility Acknowledgement of Receipt of Waiver (SOC 870). This notice is detailed below and provided as Attachment B to this ACIN.

Notice to Provider of Provider Eligibility Acknowledgement of Receipt of Waiver (SOC 870): This notice informs the provider that the waiver submitted by his or her recipient has been received and processed by the county/PA/NPC. It also informs him/her that he/she has been approved to work and to receive payment from the IHSS program as an IHSS provider. This waiver receipt notice reiterates that the provider has been approved to serve as the IHSS provider only for the recipient who submitted the waiver. The notice also instructs the provider that if he/she wishes to work for multiple recipients or wishes to be added to the county provider registry, he/she will need to obtain a waiver from each recipient he/she works for or request a general exception.

IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDER CRIMINAL BACKGROUND CHECK PROCESS



IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDER CRIMINAL BACKGROUND CHECK PROCESS



NOTES:
 * Conviction, or incarceration following a conviction, within the last 10 years.
 ** Tier 1 exclusionary crimes are:
 - Abuse of an elder or dependent adult (Penal Code Section 368);
 - Specified abuse of a child (Penal Code 273a, Subdivision (a)); and
 - Fraud against a government health care or supportive services program.
 *** See Attachment for listing of Tier 2 exclusionary crimes.
 ****A conviction for a Tier 2 crime that has been expunged pursuant to PC section 1203.4, or for which an individual has obtained a certificate of rehabilitation, would not disqualify an individual from being an IHSS