



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

April 11, 2012

ALL COUNTY LETTER (ACL) NO: 12-19

TO: ALL COUNTY WELFARE DIRECTORS
IHSS PROGRAM MANAGERS

SUBJECT: IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM PROVIDERS
SIGNING INDIVIDUAL WAIVER REQUESTS AS AUTHORIZED
REPRESENTATIVES FOR RECIPIENTS

REFERENCE: ACL NO. 11-12, DATED JANUARY 26, 2011
ACL NO. 12-04, DATED JANUARY 26, 2012

REASON FOR THIS TRANSMITTAL	
<input checked="" type="checkbox"/>	State Law Change
<input type="checkbox"/>	Federal Law or Regulation Change
<input type="checkbox"/>	Court Order or Settlement Agreement
<input type="checkbox"/>	Clarification Requested by One or More Counties
<input type="checkbox"/>	Initiated by CDSS

This letter provides information and instructions for implementing Assembly Bill (AB) 876 (Chapter 73, Statutes of 2011), which prohibits an In-Home Supportive Services (IHSS) program provider applicant from signing his/her own individual waiver request as a recipient's authorized representative, with certain exceptions.

BACKGROUND

Senate Bill (SB) 1104 (Chapter 229, of Statutes 2004) established three crimes for which a conviction, or incarceration following a conviction, within the last ten years, excludes an individual from being an IHSS provider. These crimes, which are specified in Welfare & Institutions Code (WIC) section 12305.81, are referred to as Tier 1 crimes:

- Specified abuse of a child (Penal Code (PC) section 273a(a));
- Abuse of an elder or dependent adult (PC section 368); and
- Fraud against a government health care or supportive services program.

AB 1612 (Chapter 725, Statutes of 2010) added WIC section 12305.87, expanding the exclusionary crimes to include the following, which are referred to as Tier 2 crimes:

- A violent or serious felony, as specified in PC section 667.5(c), and PC section 1192.7(c);
- A felony offense for which a person is required to register as a sex offender, pursuant to PC section 290(c); and
- A felony offense for fraud against a public social services program, as defined in WIC section 10980(c)(2) and (g)(2).

In addition, AB 1612 added WIC section 12305.87(d)(1) to establish a provision which allows an IHSS recipient to request an individual waiver in order to hire an individual convicted of a Tier 2 crime(s) as his/her provider in spite of the conviction(s), thereby permitting the convicted individual to be enrolled as a provider for that particular recipient. Unfortunately, AB 1612 failed to address the potential consequences of allowing an applicant provider who is also the IHSS recipient's authorized representative to sign the waiver on the recipient's behalf.

NEW STATUTE

The previous enacted legislation did not prohibit a provider applicant, who also serves as the recipient's authorized representative, from signing the individual waiver form to request approval as the recipient's provider. This allowed an individual to waive his or her own exclusion as an IHSS program provider without consulting the recipient. AB 876 was enacted to prevent this action from occurring except under certain circumstances. The bill amended WIC section 12305.87(d)(4) to specify that, "Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or spouse or registered domestic partner of a recipient, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative."

Effective January 1, 2012, the county/Public Authority (PA)/Non-Profit Consortium (NPC) may not accept an IHSS Recipient Request for Provider Waiver (SOC 862) which has been signed by a provider applicant who is also the recipient's authorized representative unless it is documented that the provider applicant is the parent, guardian or person having legal custody of a minor recipient or the conservator, spouse or registered domestic partner of an adult recipient. Documentation of the relationship between the recipient and the provider applicant can be established by referring to the information entered in the Provider's Relationship to Recipient field (Item #8) on the IHSS Program Recipient Designation of Provider form (SOC 426A).

Should the county/PA/NPC receive an SOC 862 which has been signed by a provider applicant who is also the recipient's authorized representative and that individual is not one of the exempted individuals, the county/PA/NPC must notify the recipient that the SOC 862 is invalid. The attached Acknowledgment of Receipt of Invalid Request for Provider Waiver (SOC 857A) has been created for this purpose. The SOC 857A provides the IHSS recipient with the following options:

- Recipient may sign the SOC 862 himself/herself, if he/she is able;
- Recipient may request that a non-provider authorized representative sign form SOC 862, if the recipient has more than one authorized representative; or
- Recipient may choose another provider.

The county/PA/NPC shall provide a copy to the recipient of the signed SOC 862 along with the SOC 857A and a new unsigned SOC 862 to be properly signed by the recipient or another authorized representative. A copy of the SOC 857A should be retained in the recipient's case file along with the invalid SOC 862.

California Department of Social Services (CDSS) has revised the attached SOC 862 and three additional forms (IHSS Provider Enrollment Form [SOC 426], IHSS Recipient Designation of Provider [SOC 426A], and Important Information for Prospective Providers About the IHSS Program Provider Enrollment Process [SOC 847]) to include a statement indicating that the SOC 862 may not be signed by a provider applicant who is also the recipient's authorized representative. As previously stated, exceptions include when the individual is the parent, guardian or person having legal custody of a minor recipient or the individual is the conservator, spouse or registered domestic partner of an adult recipient.

As noted in ACL No. 12-04, dated January 26, 2012, the SOC 426 has also been revised to reflect the provisions of SB 930 (Chapter 649, Statutes of 2011), which repealed previously enacted legislation related to providers' use of Post Office (P.O.) Boxes. The notation in Part A stating that, "A paycheck for a provider cannot be mailed to a P.O. Box unless the county has approved a request from the provider," has been removed.

AVAILABILITY OF FORMS AND NOTICES

Counties/PAs/NPCs are advised that the forms and notices referenced in this ACL are designated as "Required – No Substitutes Permitted." Forms in this category shall be used, and they may not be modified or reconstructed.

Camera-ready copies of the English versions of the forms and notices are available on the CDSS Forms/Brochures web page at:

<http://www.dss.cahwnet.gov/cdssweb/PG183.htm>.

Spanish, Armenian, and Chinese translations of the forms and notices are being developed. Upon completion of the translation, camera-ready copies will be posted on the CDSS Translated Forms and Publications web page at:

http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm.

The designated Forms Coordinator for your county shall distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited-English proficient populations, as required by the Dymally-Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and/or by state regulation (California Department of Social Services Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, section 115).

Questions about accessing the forms may be directed to the Forms Management Unit at fmudss@dss.ca.gov. Questions about translations may be directed to the Language Services Unit at LTS@dss.ca.gov.

Should you have questions regarding the policies contained in this ACL, please contact the Adult Programs Policy & Operations Bureau at (916) 651-5350.

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachments

c: CWDA