



CDSS

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

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EDMUND G. BROWN JR.
GOVERNOR

January 21, 2016

ALL-COUNTY LETTER NO. 16-07

TO: ALL COUNTY WELFARE DIRECTORS
IHSS PROGRAM MANAGERS

SUBJECT: **EXEMPTION TO PROVISIONS OF SENATE BILLS 855 AND 873
(CHAPTERS 29 AND 685, STATUTES OF 2014) RELATING TO THE IN-
HOME SUPPORTIVE SERVICES (IHSS) AND WAIVER PERSONAL
CARE SERVICES (WPCS) PROGRAMS FOR FAMILY LIVE-IN CARE
PROVIDERS**

REFERENCE: [ACL 15-97 \(DECEMBER 1, 2015\)](#); [ACL 16-01 \(January 7, 2016\)](#);
SENATE BILLS 855 AND 873

This All-County Letter (ACL) provides counties with information for implementing exemptions to the provisions of Senate Bill (SB) 855 and SB 873 that established limits on the number of authorized hours a provider in the IHSS and WPCS programs are permitted to work in a workweek. This ACL also transmits the new informational notices and the exemption form for the implementation of the overtime exemption for live-in family care providers.

BACKGROUND

As of February 1, 2016, CDSS will implement the provisions of SB 855 and SB 873 that among other items, established limits on the number of authorized hours providers in the IHSS and WPCS programs are permitted to work in a workweek. Information and instructions for implementing policies requiring that IHSS and WPCS providers receive compensation for overtime, travel time and wait time have been provided to counties via ACL 16-01. The workweek requirements and restrictions will be implemented on February 1, 2016, and providers who unintentionally commit errors on timecards will be contacted by county staff to discuss the circumstances in which providers exceeded the overtime and travel time limits, and to assist them in making adjustments to workweek schedules to prevent any further occurrences. Formal action on violations of the workweek and overtime requirements and restrictions will commence May 1, 2016.

REASON FOR THIS TRANSMITTAL

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

As required under state statutes, the maximum number of hours an IHSS/WPCS provider may work in a workweek for all the time he/she works for two or more recipients combined is 66 hours. To ensure continuity of care and to allow IHSS recipients to remain safely in their homes, the California Department of Social Services (CDSS) has established two exemptions for limited, specific circumstances that allow the maximum weekly hours to be exceeded.

EXEMPTION 1: LIVE-IN FAMILY CARE PROVIDERS

IHSS providers who meet the following requirements on or before January 31, 2016 may provide services to two or more live-in family member recipients and work up to 12 hours per day, or 90 hours per workweek, not to exceed 360 hours per month:

1. The IHSS provider must work for two or more IHSS recipients; and
2. The IHSS provider lives in the same home as all the IHSS recipients for whom he/she provides services; and
3. The IHSS provider is related to all the IHSS recipients for whom he/she provides services, as his/her parent, adoptive parent, step-parent, grandparent or legal guardian.

Recipients whose providers qualify for this exemption and work the maximum monthly 360 hours must hire additional IHSS providers as necessary to provide any remaining authorized IHSS. Further, state regulations (California Department of Social Services Manual of Policies and Procedures (MPP) § 30-763.44 to .457), pertaining to minor recipients living in a two-parent household remain applicable; hence, both parents continue to have a duty pursuant to the Family Code § 3910, which will exclude the other parent in the home from providing IHSS. However, a non-parent provider may be able to provide IHSS for any remaining hours that cannot be provided by the parent provider who has been limited to 360 hours. For example, in a two-parent household case where the mother provides IHSS for her two disabled children, each receiving 283 IHSS hours, and the father who is unavailable due to full-time employment, the recipient(s) would be allowed to have a non-parent provider provide the remaining authorized IHSS hours, because the mother reached the maximum hours of 360 allowed under the live-in family care provider exemption.

In order to ensure appropriate application of this exemption, the provider's relationship to his/her recipients and place of residence will be verified at the time of the recipient's reassessment for services.

No exemptions to overtime requirements for IHSS live-in family care providers shall be granted for any provider who does not meet the criteria prior to February 1, 2016.

Counties are responsible for informing all recipients and providers (current or applicant) of the requirements of the workweek and overtime limitations to ensure that they establish a work schedule that adheres to program requirements. This responsibility extends to any current provider and applicant provider who is a parent, adoptive parent, step parent, grandparent, or legal guardian and who does not meet the criteria on or before January 31, 2016.

EXEMPTION 2: EXTRAORDINARY CIRCUMSTANCES

The CDSS is developing a temporary exemption to allow an IHSS/WPCS provider to work beyond the recipient's maximum weekly hours or beyond the 66 hour limitation for two or more IHSS recipients where there are extraordinary circumstances which places the recipient(s) at imminent risk of out-of-home institutionalized care. (One example of extraordinary circumstances is where no other caregiver speaking the same language can be identified in the local labor market). Such exemptions will only be granted on a case-by-case basis. The CDSS will be working with counties and other stakeholders to refine the criteria and requirements. A forthcoming ACL will provide information addressing the development of the policy and procedures.

The Department of Health Care Services (DHCS) will be advising about an additional exemption for WPCS provider and consumers, which will also be forthcoming. DHCS and CDSS will be coordinating the exemption policies to ensure those that are applicable to IHSS will apply to WPCS program recipients.

The CDSS has developed informational provider and recipient notices, (TEMP 3007 and TEMP 3008) and stakeholders have been afforded the opportunity to review these notices prior to the release. The informational notices will be sent by CDSS to the IHSS providers and recipients who have been identified in the Case Management, Information, and Pay-rolling System (CMIPS) II and who meet the criteria listed above for Exemption 1. CDSS will begin mailing these notices January 25, 2016. The IHSS provider informational notice instructs the provider to complete the IHSS Program Live-In Family Care Provider Overtime Exemption form (SOC 2279) and to return it by April 1, 2016 to CDSS at 744 P Street, M.S. 9-9-04, Sacramento, CA 95814 in order to qualify for the exemption in May. Providers and recipients are directed to contact CDSS for questions regarding the exemption.

Modifications to the CMIPS II will be made to include an indicator to identify those providers who are approved for Exemption 1 for the Live-in Family Care Provider and may work beyond the weekly 66-hour limitation for two or more family members. Following the entry into the system, a letter approving or denying the exemption will be sent to both the provider and recipient. Counties will be provided with the list of the

IHSS providers who have been approved for the Live-in Family Care Provider exemption and the IHSS recipients for whom they provide IHSS.

New and Revised Forms and Notices

Counties should begin using the new and revised forms as of the date of this ACL. The new and revised forms, which are designated as “Required – No Substitutes Permitted,” are available in camera-ready format on the CDSS Forms/Brochures web page at:

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

Upon completion of translations, CDSS will post Armenian, Chinese and Spanish versions of the forms on the Translated Forms and Publications web page at:

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

The designated Forms Coordinator for your county must 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 (California Government Code section 7290 et seq.) and by state regulation (CDSS 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.

Questions or requests for clarification regarding the information in this letter should be directed to the Policy and Operations Bureau, Adult Programs Division at (916) 651-5350.

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Sincerely,

Original Document Signed by

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachments

c: CWDA

Provider Number _____

**IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM
LIVE-IN FAMILY CARE PROVIDER OVERTIME EXEMPTION**PROVIDER NAME:

_____**Part A: PROVIDER REQUIREMENTS**

Beginning February 1, 2016, state law (Welfare and Institutions Code section 12300.4) limits the maximum weekly number of hours an IHSS/Waiver Personal Care Services (WPCS) provider can work in a workweek. A provider in the IHSS/WPCS program will be paid overtime if they work more than 40 hours a week, but providers shall not work more than 66 hours a week for IHSS and WPCS recipients combined.

The IHSS program has created a family-member exemption to the workweek maximum of 66 hours for IHSS providers to allow them to work up to a maximum of 90 hours per workweek and up to a maximum of 360 hours a month. In order to be eligible for this exemption, you must meet the three (3) following conditions on or before January 31, 2016:

- You must provide IHSS services to two or more IHSS recipients.
- You must currently live in the same home as the IHSS recipients that you provide services to.
- You must be related to the IHSS recipients to whom you provide services as his/her parent, stepparent, adoptive parent or grandparent or be his/her legal guardian.

With this exemption, you cannot work more than 90 hours per workweek or more than 360 hours per month. If you work up to these maximum hours for your recipients and your IHSS recipients still have IHSS hours left, then your IHSS recipients will have to hire another IHSS provider to work the rest of their IHSS hours.

Please complete **Part B** of this form and provide all information to verify that you meet the three (3) requirements above to qualify for this exemption as a Live-in Family Care Provider.

Provider Number _____

Part B: PROVIDER & RECIPIENTS' INFORMATION

INSTRUCTIONS: You must complete the information below about your residential and mailing addresses and then complete the chart below for the recipients you provide services to.

1. Your residential address: _____

2. Your mailing address: _____

A		B	C
Recipient Information		Relationship to Recipient	Does this recipient live with you in the same residence? Please answer Yes or No
Name	Case Number		
1.		1.	1.
2.		2.	2.
3.		3.	3.
4.		4.	4.

Provider Number _____

I declare that I meet all of the requirements to qualify for this exemption. I further declare that all of the information I have provided on this form is true and correct to the best of my knowledge. I understand that verification of this information will occur at the time of my IHSS recipient's reassessment to determine if I still qualify for this exemption. I agree to adhere to all requirements for overtime under this exemption. If I no longer meet the three (3) requirements for this exemption I will no longer qualify for this exemption and I must notify the county immediately. I understand that I will then be subject to the existing overtime limitation restrictions.

PROVIDER SIGNATURE:	DATE:
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PROVIDER'S PRINTED NAME:

FOR STATE USE ONLY

STAFF NAME:	DATE:
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NOTES:

******* IMPORTANT INFORMATION – PLEASE READ CAREFULLY *********TO: IN-HOME SUPPORTIVE SERVICES (IHSS) RECIPIENT**

You are receiving this notice because you have been identified as a current IHSS recipient with an IHSS provider who meets the following conditions on or before January 31, 2016:

1. Your IHSS provider works for two or more IHSS recipients.
2. Your IHSS provider lives in the same home as all of the IHSS recipients he/she provides services to.
3. Your IHSS provider is related to both you and the other recipient(s) receiving services from him/her in your home as your parent, stepparent, adoptive parent or grandparent or is your legal guardian.

Beginning February 1, 2016, providers in the IHSS/Waiver Personal Care Services (WPCS) program will be paid overtime if they work more than 40 hours a week. A new state law limits the maximum weekly number of hours an IHSS provider can work in a workweek to 66 hours a week for IHSS and WPCS combined.

Your IHSS provider may be eligible for an exemption to the workweek limitation if he/she meets the three (3) requirements listed above, on or before January 31, 2016.

Providers who meet all three (3) requirements will be allowed to work up to a maximum of 90 hours per workweek and up to a maximum of 360 hours a month under this exemption. This means that your IHSS provider will be able to continue to meet your IHSS needs by working up to 90 hours per workweek and up to 360 hours a month combined for all IHSS recipients. If your IHSS provider works up to these maximum weekly and monthly hours and you or the other IHSS recipient(s) in your household still have IHSS hours left, then you or the other IHSS recipient(s) will need to hire another IHSS provider to work the rest of the IHSS hours.

We have sent a notice to your IHSS provider to tell him/her about this exemption. If your IHSS provider is interested in this exemption, he/she must complete, sign and date the In Home Supportive Services Program Live-in Family Care Provider Overtime Exemption form (SOC 2279) and return it to the California Department of Social Services (CDSS) by April 1, 2016.

If your IHSS provider no longer meets the three (3) requirements above, your IHSS provider will no longer qualify for this exemption and you and your IHSS provider must notify the county immediately.

If you have any questions about this exemption, please call CDSS at (916) 551-1011.

******* IMPORTANT INFORMATION – PLEASE READ CAREFULLY *********TO: IN-HOME SUPPORTIVE SERVICES (IHSS) LIVE-IN FAMILY CARE PROVIDER**

You are receiving this notice because you have been identified as a current IHSS provider and you meet the following conditions on or before January 31, 2016:

1. You provide IHSS services to two or more IHSS recipients.
2. You live in the same home as all of the IHSS recipients that you provide services to.
3. You are related to the IHSS recipients to whom you provide services as his/her parent, stepparent, adoptive parent or grandparent or you are his/her legal guardian.

Beginning February 1, 2016, state law limits the maximum weekly number of hours an IHSS/Waiver Personal Care Services (WPCS) provider can work in a workweek. Providers who work in IHSS/WPCS will be paid overtime if they work more than 40 hours a week, but providers shall not work more than 66 hours a week for IHSS and WPCS combined.

You may be eligible for an exemption to the 66 hour work week limitation if you meet the conditions in 1, 2 and 3 above. You will be allowed to work up to a maximum of 90 hours per workweek and up to a maximum of 360 hours a month under this exemption.

However, even with this exemption, you cannot work more than 90 hours per workweek or more than 360 hours per month. If your hours for your recipients are more than that, your IHSS recipients will have to hire another IHSS provider to work the rest of their IHSS hours.

If you would like this exemption, you must complete, sign and date the enclosed form, In Home Supportive Services Program Live-in Family Care Provider Overtime Exemption (SOC 2279). You must return the SOC 2279 to the California Department of Social Services (CDSS) in the enclosed envelope by April 1, 2016.

If your circumstances change so that you no longer meet the three (3) requirements above, you will no longer qualify for this exemption and you must notify the county immediately.

If you have any questions about this exemption or how to complete the SOC 2279, please call CDSS at (916) 551-1011.