

## Minor Recipients Living with Parent(s)

Amend Section 30-763.4 to read:

30-763 SERVICE AUTHORIZATION (Continued)

30-763

.4 Exception when assessing needs in shared living arrangements: (Continued)

.44 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who have a legal duty pursuant to the Family Code to provide for the care of his/her child, IHSS may be purchased from a provider other than the parent(s) when no parent is able and available to provide the ~~services~~ IHSS tasks for any of the following reasons, and services must be provided during the parent(s) absence:

.441 ~~w~~When the parent(s) is absent unavailable because of employment or is enrolled in an educational or vocational training for vocational purposes program.

.442 ~~i~~f the parent(s) is physically or mentally unable to perform provide the needed services.

.443 ~~w~~When the parent is absent unavailable because of on-going medical, dental or other health-related treatment.

.444 ~~up to eight hours per week may be authorized for periods w~~When the parent(s) must be absent from the home in order to perform provide shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings who are minors, 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 parent(s) absence.

.45 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who have a legal duty under the Family Code to provide for the care of his/her child, the IHSS specified in Section 30-763.456 may be purchased from a parent under the following conditions:

.451 ~~All of the following conditions shall be met:~~

(a) ~~The parent has left full-time employment or is prevented from obtaining full-time employment because of the need to provide IHSS to the child; no other suitable provider is available and the inability of the provider to perform supportive services may result in inappropriate placement or inadequate care.~~

(a) For the purposes of this section, full-time employment means working an average of 35 or more hours per week regardless of worksite location.

- (b) ~~There is no other suitable provider available;~~
- (c) ~~If the child does not receive the listed services the child may inappropriately require out of home placement or may receive inadequate care.~~

.452 For the purposes of Section 30-763.451(b), a suitable provider is any person, ~~other than the recipient's parent(s), who is willing, able, and available, and qualified to provide the needed IHSS. A suitable provider who is a person having a duty pursuant to the Family Code need only be able and available to provide the needed IHSS; the person is only considered to be unavailable, if that unavailability occurs during a time the recipient must receive a specific service, for the following reasons: employment, enrollment in an educational or vocational training program, or employment searches.~~

~~.453 When both parents are in the home, a parent may receive a payment as an IHSS provider only under the following conditions:~~

- (a) ~~The conditions specified in Sections 30-763.451(a) through (c) shall be met.~~
- (b) ~~The nonprovider parent shall be unable to provide the services because he/she is absent because of employment or in order to secure education as specified in Section 30-763.441, or is physically or mentally unable to provide the services, as specified in Section 30-763.442.~~
- (c) ~~If the nonprovider parent is unable to provide services because he/she is absent for employment or educational purposes, payment shall be made to the provider parent only for services which are normally provided during the periods of the nonprovider parent's absence as indicated above.~~

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.453 Example: Both parents are employed full-time. Their child is eligible to receive IHSS. One parent quits his full-time job in order to provide IHSS to the child; the other parent retains full-time employment. If the other requirements in Section 30-763.451 are met, IHSS may be purchased from the parent who quit his job since he left full-time employment to provide IHSS to the child.

.454 Example: One parent is employed full-time; the other parent has never been employed, is at home, and is able and available to provide IHSS.

- (a) If the employed parent quit her job to provide IHSS to her child, IHSS could not be purchased from that parent since the conditions pursuant to

Section Section 30-763.451 are not met because the other parent is a suitable provider.

- (b) However, if the working parent did not quit her job, the non-working parent may qualify as a paid provider only if that parent is prevented from obtaining full-time employment in order to provide IHSS to the child and other requirements pursuant to Section 30-763.451 are met. If the non-working parent cannot be employed full-time for reasons other than the need to provide IHSS to the child, the non-working parent does not qualify as a paid provider.

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.455 A parent provider who meets the requirements in Section 30-763.451, shall be paid for performing authorized services regardless of the presence of another parent in the home, including non-work hours, weekends, and holidays.

.4546 The IHSS provided shall be limited to:

- (a) Related services, as specified in Section 30-757.13.
- (b) Personal care services, as specified in Section 30- 757.14.
- (c) ~~Assistance with travel, as specified in Section 30 757.15~~  
Accompaniment when needed during necessary travel to health-related appointments or to alternative resource sites.
- (d) Paramedical services, as specified in Section 30-757.19.
- (e) Protective supervision, as specified in Section 30-757.17, limited to ~~that~~ protective supervision needed because of the functional limitations of the recipient. This service shall not include routine child care or supervision.

.457 A recipient's parent(s) are not eligible to be providers for the Personal Care Services Program pursuant to Welfare and Institutions Code Section 14132.95(f).

.46 (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Assembly Bill 1773, Chapter 939, Statutes of 1992.

Reference: Sections 12300, 12309, and 14132.95, Welfare and Institutions Code; and the State Plan Amendment, approved pursuant to Section 14132.95(b), Welfare and Institutions Code; Section 11342.2, Government Code; and Miller v. Woods/Community Services for the Disabled v. Woods, Superior Court, San Diego County, Case Numbers 468192 and 472068.