

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 30-763.44

Specific Purpose:

For consistency with Welfare and Institutions Code (WIC) Section 12300(e) and the language in Section 30-763.45 (below), the following change was made to Section 30-763.44 "...who have a legal duty pursuant to the Family Code to provide for the care of his/her child..." In addition, "available" was added to explain that these regulations apply when no parent is "...able and available..." Language was also added to this section to further clarify that a non-parent provider can be paid only for In-Home Supportive Services (IHSS) that must be provided during the parent's absence.

Factual Basis:

The proposed language is necessary to be consistent with WIC Section 12300(e) by addressing the statutory parental duty to provide services to their minor children. Additionally, "available" was added to be consistent with Departmental policy that services can only be purchased by a provider other than the parent when a parent is either unable or unavailable. Language was also added to emphasize the Department's policy that a non-parent provider can be paid only for IHSS services that must be provided during the parent's absence.

Section 30-763.441

Specific Purpose:

The word "absent" was replaced with "unavailable" to define that this regulation takes effect when a parent is "unavailable." For example, if a parent works from home, the parent may not be absent; however, that parent may be unavailable due to their home employment. In addition, language changes were made, but it does not affect the intent of this regulation. The proposed changes include correctly capitalizing the word at the start of each sentence.

Factual Basis:

In regards to parental duty to provide services to their minor children, the proposed regulation change is necessary to be consistent with WIC Section 12300(e) which, in the Department's opinion, allows the purchase of supportive services for a child from a provider other than the parent, when the parent is unavailable to provide those services.

Section 30-763.442

Specific Purpose:

The proposed change replaces the word "perform" with "provide." This change will improve language consistency in this section; also, the first word of the section is capitalized.

Factual Basis:

The proposed change to the current regulation is necessary for language consistency in this regulation package and WIC Section 12300(e).

30-763.443

Specific Purpose:

The first word of the section is capitalized and the language in this section was amended to provide consistency in the new regulation while clarifying that a parent must be "unavailable" instead of only "absent" due to medical, dental or other health-related treatment. This change will improve understanding that the parent may be present in the home, but unavailable to assist the recipient due to the reasons outlined in this regulation.

Factual Basis:

These changes are necessary to provide consistency and to clarify the Department's policy that a parent must be unavailable instead of only absent as a reason to allow a non-parent provider to be paid to provide services.

Section 30-763.444

Specific Purpose:

Section 30-763.444 was amended to accurately reflect the intent of the regulation. The current regulation is confusing and results in inconsistencies with program uniformity. The word "perform" was changed to "provide" for consistency with this regulatory section. In addition, "search for employment" was added as a reason that a non-parent provider may be authorized up to eight hours a week for IHSS services that must be provided to the minor recipient during parental absence. The proposed regulation provides clarity about the availability of IHSS during periods of parental absence for the reasons specified in this regulation.

Factual Basis:

These changes are necessary to provide consistent language in this regulation section, and to be consistent with WIC Section 12300(f) by allowing respite care to relieve persons who are providing care without compensation.

Section 30-763.45

Specific Purpose:

Section 30-763.45 was amended to specify that this regulation applies to parent(s) who have a legal duty under the Family Code to provide care for his/her child. In addition, Section 30-763.456 is referenced to provide direction concerning which services may be authorized for minors living with their parents. Changes made to this regulation provide improved direction to the counties concerning the IHSS role of parents and their obligations under the Family Code.

Factual Basis:

This change is necessary because the Family Code is not referenced in the current regulation, and the addition of this language will make the regulation consistent with WIC Section 12300(e).

Sections 30-763.451 through .451(c)

Specific Purpose:

The regulation changes provide greater clarity and mirror statutory language of WIC Section 12300(e). Current Sections 30-763.451, .451(a), .451(b), and .451(c) are combined into Section 30-763.451 to add clarity.

Factual Basis:

These changes are necessary to mirror the statutory language contained at WIC Section 12300(e).

New Section 30-763.451(a)

Specific Purpose:

There is no current regulation to specifically address when a parent is considered employed full-time for the purposes described in WIC Section 12300(e). Amending the regulations to provide this definition will allow consistent application of 30-763.451. Also, included is "regardless of worksite location" due to questions and concerns from counties about parental employment from home.

Factual Basis:

The language is necessary to clarify full-time employment to be consistent with the Department's policy.

Section 30-763.452

Specific Purpose:

This section was amended to define both a suitable provider who does not have a legal duty pursuant to the Family Code, and a provider who does have a legal duty pursuant to the Family Code. "Able" was added to further define persons who do not have a legal duty pursuant to the Family Code. The word "qualified" was removed as it is presumed a provider is qualified to provide IHSS. The definition of a provider who does have a legal duty pursuant to the Family Code was expanded.

Factual Basis:

This language is necessary to clarify the Department's policy on suitable providers, and is consistent with WIC Section 12300(e) for determining when a person having a legal duty pursuant to the Family Code must leave full-time employment or is prevented from obtaining full-time employment.

Sections 30-763.453 through .453(c)

Specific Purpose:

The existing regulations create significant inconsistencies concerning the allocation of IHSS hours in two-parent homes; therefore, the existing regulation Sections 30-763.453 through .453(c) are repealed. The Director's Alternate Decision invalidated Section 30-763.453(c).

Factual Basis:

The Director's Alternative Decision invalidated Section 30-763.453(c) of the current regulations; therefore, repealing this regulation is necessary to be consistent with the Director's Alternate Decision and WIC Section 12300(e). Government Code Section 11342.2 states that no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. The California Supreme Court held that the Director of the California Department of Social Services need not apply nor enforce invalid regulations in state hearing decisions (*Woods v Superior Court of Butte County* (1981) 28 Cal.3d 668, 170 Cal.Rptr. 484, 620 P.2d 1032).

Handbook Section 30-763.453

Specific Purpose:

This handbook section provides an example which gives clarity in situations when a parent who quits full-time employment may be paid as an IHSS provider.

Factual Basis:

This handbook section is necessary to provide clarity to the issue of parental employment. It is also necessary to assist in the appropriate application of the revised regulations.

Handbook Sections 30-763.454 through .454(b)

Specific Purpose:

The current regulations do not provide examples of how parental work situations might impact IHSS for minor recipients living with their parent(s). The absence of examples results in inconsistent application and questions from counties. The proposed handbook examples provide clarity concerning qualifications to be a parent provider in two-parent homes.

Factual Basis:

This section states for a parent to be a paid provider, conditions under Section 30-763.45, must be met. The handbook examples are necessary to provide clear examples and Department direction for counties to apply the regulations to case situations.

Section 30-763.455

Specific Purpose:

The regulation states IHSS hours should not be deducted from a minor recipient's case due to the presence of a non-parent provider when the provider parent meets the criteria in Section 30-763.451.

Factual Basis:

This language is necessary to clarify the invalidation of Section 30-763.453(c) and is consistent with WIC Section 12300(e).

The Director's Alternate Decision invalidated 30-763.453(c), as the current regulations did not reflect statutory language. Government Code Section 11342.2 states that no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. The California Supreme Court held that the Director of the California Department of Social Services need not apply nor

enforce invalid regulations in state hearing decisions (*Woods v Superior Court of Butte County* (1981) 28 Cal.3d 668, 170 Cal.Rptr. 484, 620 P.2d 1032).

Section 30-763.456(c)

Specific Purpose:

Current Section 30-763.454 is renumbered to 30-763-456 to accommodate the adoption of new sections. Regulation Section 30-763.456(c) clarifies that IHSS does not provide "assistance" to health-related appointments or alternative resource sites; however, IHSS does provide accompaniment to health-related appointments or alternative resource sites. The use of the word "assistance" has a broad impact and may imply a requirement to provide transportation for recipients.

Factual Basis:

This change is necessary to provide clarity concerning medical accompaniment and is consistent with the Department's policy and WIC Sections 12300(b) and 12300(e)(3).

Section 30-763.456(e)

Specific Purpose:

This regulation was revised by removing the word "that" and replacing it with "protective supervision."

Factual Basis:

This language is necessary to provide clarity and is consistent with WIC 12300(e)(4).

Section 30-763.457

Specific Purpose:

The addition of this regulation provides clear direction concerning the Personal Care Services Program (PCSP).

Factual Basis:

The language is necessary to clarify PCSP regulations and is consistent with statute. Under WIC Section 14132.95(f), family members, including parents, are not eligible to provide PCSP.

b) Identification of Documents Upon Which Department Is Relying

WIC Sections 12300(b) and (e) and WIC Section 14132.95(f)
Government Code Section 11342.2

c) Local Mandate Statement

These regulations impose a mandate on local IHSS agencies, but not on school districts. There are no "State-mandated local costs" in these regulations that require State reimbursement under Section 17500 et. seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the Government Code.

d) Statement of Alternatives Considered

In developing this regulatory action, CDSS did not consider any other alternatives because no other practical alternatives exist.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because this action only pertains to eligibility determinations for IHSS with no significant fiscal effects.

f) Economic Impact Assessment

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment are as follows: These amendments will improve the health and welfare of California residents by increasing the overall IHSS program integrity in assessing the eligibility of applicants and recipients.

WIC Sections 12300(b) and (e), 14132.95(f), and Government Code Section 11342.2, are the documents relied upon in proposing the regulatory action.

g) Benefits Anticipated from Regulatory Action

This regulatory action will benefit IHSS applicants and recipients by enabling them to consistently receive IHSS eligibility determinations that are uniform with regulatory and statutory guidelines. The proposed regulations also benefit counties by providing greater clarity in the application of regulations concerning minor IHSS recipients. In addition, the regulatory updates should provide greater guidance to parents, counties, Administrative Law Judges, and other stakeholders.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.