

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 2 In-Home Supportive Services (IHSS) Health Care Certification

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held December 4, 2013, as follows:

Office Building # 8
744 P St. Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on December 4, 2013.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

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CHAPTERS

Manual of Policy and Procedure (MPP) Chapter 30

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed regulations adopt new language in the Manual of Policies and Procedures (MPP), Division 30, Chapter 30, Sections 30-752 et seq., In-Home Supportive Services (IHSS), Health Care Certification. In 2011, the legislature enacted Senate Bill 72, Chapter 8, which added Section 12309.1 to the Welfare and Institutions Code (WIC). The proposed regulations require applicants of the IHSS program to obtain a certification from a licensed health care professional (LHCP), as specified in WIC section 12309.1, as a condition of receiving IHSS benefits. The SB72 required California Department of Social Services (CDSS), in consultation with California Department of Health Care Services (CDHCS), to develop a standard certification form for this purpose. The California Department of Social Services In-Home Supportive Services Program Health Care Certification Form (SOC 873) was implemented by All-County Letter (ACL) No. 11-55 dated July 27, 2011, effective August 1, 2011. A follow up ACL addressing the exceptions to authorizing IHSS benefits prior to receiving the SOC 873 was released in November 2011.

The purpose of these regulations is to ensure that prior to authorization of IHSS, applicants provide SOC 873 signed by a LHCP declaring that the individual is unable to perform some activity of daily living independently, without IHSS the individual would be at risk of placement in out-of-home care, and that IHSS benefits are needed for the applicant/recipient to remain safely in their own home. Moreover, the LHCP's declaration on the SOC 873 is only one indicator of eligibility.

The proposed regulations define the basic eligibility requirements for the IHSS program, provides clear instructions to the counties of the timeframe for requesting SOC 873, provides the timeframe for an applicant/recipient to submit the LHCP signed SOC 873, and specifies the exception criteria for authorizing services prior to the county receiving SOC 873.

The regulations contained in this package concern IHSS applicants who are not included in the definition of small businesses pursuant to Section 11342 of the Government Code. As such, they do not impact small businesses either in terms of occupations, reporting requirements, competitiveness, fees, charges, or assessments. These regulations carry no compliance requirements for small businesses. Hence, small businesses will incur no information or transaction costs associated with compliance with these regulations.

ANTICIPATED BENEFITS

The Department anticipates that these proposed regulations will benefit program stakeholders by consolidating the rules relating to providing a health care certification for IHSS eligibility into a single place (i.e., the Manual of Policies and Procedures), which have to date been released via multiple ACLs. A further benefit of the health care certification regulations, is to promote program integrity (i.e., fraud prevention) by having a licensed health care professional declare the applicant has a legitimate need to receive IHSS benefits. Because these regulations are concerned only with ensuring that an applicant has a signed declaration of need for IHSS benefits, signed by a LHCP, they do not impose any additional costs or fees on individual, nor will they result in higher product prices or in diminished product choices or quality of good and services produced in the private sector.

The Department reviewed existing program regulations and determined that no other regulations address the requirements for providing a healthcare certification. These proposed regulations are not only consistent and compatible with existing state regulations but also with the intent of the Legislature in enacting SB 72 and WIC section 12309.1.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: No funding impact.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are state-mandated local costs that require reimbursement, which is provided in the Budget Act to cover any costs that local agencies may incur.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The 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 based on these regulations only apply to individuals applying for IHSS services.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to IHSS applicants, state and county agencies.

STATEMENT OF RESULTS OF 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: The Department anticipates that these proposed regulations will benefit program stakeholders by consolidating the rules relating to providing a health care certification for IHSS eligibility into a single place (i.e., the Manual of Policies and Procedures), which have to date been released via multiple ACLs. A further benefit of the health care certification regulations, is to promote program integrity (i.e., fraud prevention) by having a licensed health care professional declare the applicant has a legitimate need to receive IHSS benefits.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

The 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. No other alternatives were identified or brought to the attention of CDSS in this context.

AUTHORITY AND REFERENCE CITATIONS

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code and Chapter 939, Statutes of 1992. Reference: Section 12309.1, Welfare and Institutions Code.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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