

INITIAL STATEMENT OF REASONS

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

Section 30-752.1 through 30-752.15

Specific Purpose:

This section is being adopted to establish basic program eligibility requirements for all applicants and recipients regardless of what program they fall under: Personal Care Services, IHSS Plus Option, or residual. All In-Home Supportive Services (IHSS) applicants and recipients must 1) have a Medi-Cal determination, 2) submit a completed health care certification form, 3) be a California resident, 4) physically reside in the United States of America, and 5) live in his or her own home.

Factual Basis

The adoption of Manual of Policies and Procedures (MPP) Section 30-752.11 is necessary to comply with Welfare and Institution Code (WIC) Section 12300(g) which states all applicants and recipients need to comply with the Medi-Cal determination process. If they are denied for Federal Financial Participation (FFP) Medi-Cal then they can be eligible for Residual Determination, but only after a denial for FFP Medi-Cal.

The adoption of MPP Section 30-752.12 is necessary to comply with WIC Section 12309.1 which requires a completed health care certification form be received prior to the authorization of IHSS services for new applicants. Additionally, WIC Section 12309.1 requires the health care certification form indicate the applicant is unable to perform some activity of daily living, the applicant is at risk of out-of-home care and a description of any condition or functional limitation that has resulted in or contributed to the applicants need for services.

The adoption of MPP Section 30-752.13 is necessary to comply with Title 22, California Code of Regulations (CCR) Section 50320 which requires California residency as a requirement for Medi-Cal eligibility. The IHSS program is a benefit of the Medi-Cal program therefore, all applicant and recipients of the IHSS program must meet Medi-Cal requirements. Additionally MPP Section 30-770.41 requires California residency.

The adoption of MPP Section 30-752.14 is necessary to comply with Medi-Cal rules Title 22, CCR Section 51006(b) which states no services are covered outside the United States, except for emergency services. IHSS services are not considered “emergency services” under Title 22, CCR Section 51056(a). IHSS is a Medi-Cal benefit and therefore applicants and recipients must meet Medi-Cal eligibility rules.

The adoption of MPP Section 30-752.15 is necessary to comply with WIC Section 12300(a) which states the program is to assist individuals perform services in their own home or abodes of their choosing. Additionally, MPP Section 30-755.11 states a person is eligible for IHSS when they are a California resident living in his or her own home and meet other eligibility requirements.

Section 30-754 through 30-754.11(c)

Specific Purpose:

This section is being adopted to specify each applicant for services must obtain a health care certification before services can be authorized. Additionally, this section designates what elements the certification must indicate: the applicant is unable to perform some activity of daily living, the applicant is at risk of out-of-home care and a description of any condition or functional limitation that has resulted in or contributed to the applicants need for services. A LHCP must also sign the form, see 30-754.2 below. These required elements will help the IHSS social worker make a determination of service need.

Factual Basis:

This adoption is necessary to comply with WIC Section 12309.1 which requires a completed health care certification form be received prior to the authorization of IHSS services for new applicants. Additionally, WIC Section 12309.1 requires the health care certification form indicate the applicant is unable to perform some activity of daily living, the applicant is at risk of out-of-home care and a description of any condition or functional limitation that has resulted in or contributed to the applicants need for services.

Section 30-754.12 through 30-754.12(a)

Specific Purpose:

This section is being adopted to set a timeframe in which the applicant must have the health care certification returned to the county. Additionally, this section specifies when the 45 calendar day timeframe begins. The IHSS program is a benefit of Medi-Cal. Consistent with Medi-Cal rules, Title 22 CCR 50177 states there is 45-day timeframe for determining Medi-Cal eligibility. Adopting this section will keep the timeframe for returning the health care certification form consistent throughout the state.

Factual Basis:

This adoption of this timeframe is necessary to ensure applications are not left open/pending indefinitely. WIC Section 12309.1(e)(1) gives recipients 45 days to return the health care certification; therefore the department is adopting the same guidelines for applicants.

Section 30-754.13

Specific Purpose:

This section is being adopted to specify the health care certification is not required on subsequent reassessments for continued eligibility.

Factual Basis:

WIC Section 12309.1 states that before services are authorized a certification must be obtained by the applicant for services. The statute remains silent on subsequent reassessments; therefore the department is not requiring the health care certification for continued eligibility.

Section 30-754.2 through 30-754.213

Specific Purpose:

This section is being adopted to specify counties must accept other forms of documentation in lieu of the department approved health care certification form. The alternative documentation must meet the criteria specified in Sections 30-754.21 and 30-754.22 of the MPP. Alternative documentation must include all of the following elements: a statement or description indicating the applicant is unable to independently perform one or more activities of daily living, a description of the applicant's condition or functional limitation that has contributed to the need for assistance, and a signature from a licensed health care professional. Adopting these sections will ensure statewide consistency for acceptable forms of alternative documentation.

Factual Basis:

This adoption is necessary to comply with WIC Section 12309.1(c) which requires counties to accept alternative documentation, other than the department approved health care certification form, that meet the same requirements of the department approved health care certification form.

Section 30-754.22

Specific Purpose:

This section is being adopted to specify that alternative documentation submitted by applicants must be dated no earlier than 60 calendar days prior to submission.

Factual Basis:

This adoption is necessary to ensure alternative documentation submitted by applicants indicates their most current condition and functional impairments.

Section 30-754.23-30 through 754.23(b)

Specific Purpose:

This adoption is necessary to ensure IHSS program integrity by putting parameters around alternative documentation. The intent of statute was to allow for forms of alternative documentation. Statute lists examples of alternative documentation as clinical and casework documents.

Factual Basis:

This adoption is necessary to comply with WIC Section 12309.1(c), which requires counties to accept alternative documentation, other than the department approved health care certification form.

Section 30-754.3 through 30-754.312

Specific Purpose:

This section is being adopted to identify exceptions (i.e., circumstances) where services can be authorized prior to receiving a health care certification. These exceptions include: when services have been requested by or on behalf of an applicant who is being discharged from a hospital or a nursing home and services are needed to return safely to the community or when the county determines the applicant is at imminent risk of out-of-home placement.

Factual Basis:

This adoption is necessary to comply with WIC Sections 12309.1(a)(2)(A) and 12309.1(a)(2)(B) which states exceptions to authorizing services prior to receiving the health care certification include: when services have been requested by or on behalf of an applicant who is being discharged from a hospital or a nursing home and services are needed to return safely to the community or when the county determines the applicant is at imminent risk of out-of-home placement. The term imminent was added to differentiate between the general IHSS population, who are all presumably at risk of out-of-home placement and the individuals in need of an exception.

Section 30-754.32

Specific Purpose:

This section is being adopted to ensure that when an exception listed in MPP Section 30-754.3 has been granted to an applicant, the health care certification must still be requested at or before the time of the in-home assessment.

Factual Basis:

This adoption is necessary to ensure excepted applicants submit a completed health care certification (WIC Section 12309.1)

Section 30-754.33

Specific Purpose:

This section is being adopted to specify a timeframe to have the health care certification returned to the county for applicants who have been granted an exception in accordance with MPP Section 30-754.3. Excepted applicants must return the completed health care certification within 45 calendar days from the date the county requests it.

Factual Basis

This adoption is necessary to specify a timeframe in which the health care certification must be returned for applicants who have been granted an exception listed in MPP Section 30-754.3. Applicants who have been granted an exception are now recipients therefore, the same 45-day timeframe in statute [(WIC Section 12390.1(e)(2))] is extended to recipients.

Section 30-754.331

Specific Purpose

This section is being adopted to clarify the health care certification is not to be the sole determining factor for approval of IHSS need.

Factual Basis

This adoption is necessary to comply with WIC Section 12309.1(a)(3) which states the county shall consider the certification as one indicator of the need for in-home supportive services, but shall not be the sole determining factor.

Section 30-754.34 through 30-754.343

Specific Purpose:

This section is being adopted to advise that applicants who have been granted an exception listed in MPP Section 30-754.3 may be granted an additional 45 calendar days for good cause. Good cause means a substantial and compelling reason beyond the excepted applicant's control. Excepted applicants must notify the county of the need for a good cause extension no later than 45 calendar days from the date the county requests the certification. Counties have the discretion to determine on a case-by-case basis when good cause exists.

Factual Basis:

Applicants who have been granted an exception listed in MPP Section 30-754.3 are now recipients. Therefore this adoption is necessary to comply with WIC Section 12309.1(e)(1).

Section 30-754.4 through 30-754.42

Specific Purpose:

This section is being adopted to define the meaning of licensed health care professional for purposes of the health care certification. Licensed health care professional means an individual licensed in California by the appropriate regulatory agency, acting within the scope of his or her license or certificate as defined in the Business and Professions Code. Additionally, a licensed health care professional is 1) a licensed individual whose primary responsibilities are to diagnose or provide treatment and care for physical or mental impairments, or 2) conditions which cause or contribute to an individual's functional limitation.

Factual Basis:

This adoption is necessary to comply with WIC Section 12309.1(a)(1) which states a Licensed health care professional means an individual licensed in California by the appropriate regulatory agency, acting within the scope of his or her license or certificate as defined in the Business and Professions Code. Additionally, this adoption is necessary because the Business and Professions Code is very broad in who is licensed in the Business and Professions Code. The department needs to define more clearly what a licensed health care professional is so that the intent of the statute is carried out.

b) Identification of Documents Upon Which Department is Relying on

Senate Bill 72 (Chapter 8, Statutes of 2011)

c) Local Mandate Statement

These regulations do constitute a mandate on local agencies, but not on local 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.

d) Statement of Alternatives Considered

No other alternatives were identified or brought to the attention of CDSS that 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

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 because the regulations only apply to individuals applying for IHSS services.

f) Economic Impact Analysis

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 business in the State of California. This determination was made because these regulations only apply to individuals applying for IHSS services.

The benefits of the regulatory action to the health and welfare of California residents, workers 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.

The following documents were relied upon in proposing the regulatory action: Senate Bill 72 (Chapter 8, Statutes of 2011)

g) Benefits Anticipated from Regulatory Action

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.

h) Statement of Specific Technology or Equipment

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