

FINAL STATEMENT OF REASONS

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

Sections 30-701(a)(4), (c)(4), (p)(6), (t)(1) and (t)(2)

Specific Purpose:

This "Special Definitions" section is amended to include definitions for the following terms used in these regulations: "applicant provider," "county," "prospective provider," "Tier 1 disqualifying crime," and "Tier 2 disqualifying crime." These definitions are adopted to ensure that the meaning of these terms, as they are used in these regulations, is clear and consistent and to prevent any possible misinterpretation when the terms are used. Current Sections 30-701(c)(4) and (5), (p)(6) and (7), and (t)(1) are renumbered to 30-701(c)(5) and (6), (p)(7) and (8), and (t)(3) respectively to accommodate the adoption of these definitions.

Factual Basis:

The definition of the term "applicant provider" is necessary to clarify that an applicant provider means an individual seeking to become a provider but who has not yet completed any of the provider enrollment requirements.

The definition of the term "county" is necessary to clarify that, only for the purposes of the provider enrollment requirements, as specified in Section 30-776, county means the county In-Home Supportive Services (IHSS) program office or any other organization or agency designated by the county to perform provider enrollment functions.

The definition of the term "prospective provider" is necessary to clarify that a prospective provider means an individual seeking to become a provider who has completed at least one, but not all, of the provider enrollment requirements.

The definition of the term "Tier 1 disqualifying crime" is necessary to clarify that a Tier 1 disqualifying means any one of the crimes specified in Welfare and Institutions Code (WIC) sections 12305.81(a)(1) and 12305.81(a)(2), namely: fraud against a government health care or supportive services program; a violation of subdivision (a) of Section 273a of the Penal Code (PC); a violation of Section 368 of the PC; or violations similar to PC 273a(a) or PC 368 in another jurisdiction.

The definition of the term "Tier 2 disqualifying crime" is necessary to clarify that a Tier 2 disqualifying means any one of the crimes specified in WIC sections 12305.87(b)(1), 12305.87(b)(2), or 12305.87(b)(3), namely: a violent or serious felony, as specified in PC Sections 667.5(c) and 1192.7(c); a felony offense for which a person is required to register

as a sex offender pursuant to PC section 290(c), or a felony offense for fraud against a public social services program, as defined in WIC sections 10980(c)(2) or 10980(g)(2).

Sections 30-776.1 through .122 (Repeal)

Specific Purpose/Factual Basis:

These sections are repealed and are being replaced by a more extensive section which will now include the enrollment requirements to become an IHSS provider.

Section 30-776.1

Specific Purpose:

This section is adopted to specify that an individual seeking to be a provider in the IHSS program must complete certain requirements before he/she can be enrolled as a provider or receive payment for providing services for an IHSS recipient.

Factual Basis:

This section is necessary to comply with the following WIC sections: §12305.81(a) – which requires that an individual seeking to be a provider complete, sign and submit in-person to the county a provider enrollment form; §12301.24(a) – which requires that an individual attend a provider orientation; §12301.24(b) – which requires that an individual sign a statement agreeing to certain conditions; and §12305.86 – which requires that an individual undergo a criminal background check conducted by the Department of Justice (DOJ). Each of these individual requirements is addressed in greater detail in subsequent sections.

Sections 30-776.2 through 30-776.211(b)

Specific Purpose:

These sections are adopted to specify: 1) that an individual shall have a maximum of 90 calendar days to complete the provider enrollment requirements; 2) that an individual who fails to complete all of the requirements within 90 calendar days shall be determined ineligible to be an IHSS provider; and 3) the actions that shall determine when the 90-calendar-day period has been initiated.

Factual Basis:

These sections are necessary to establish a standard time frame for completing the provider enrollment requirements that is not open-ended. Currently, there is no time limit for completing the requirements and this presents an operational difficulty for counties. An individual may complete one or more of the requirements, but not all of them, and the county is not able to determine whether the individual intends to complete the other requirements or has withdrawn from the process. Ninety (90) calendar days was established

because it is a reasonable amount of time for an individual to complete the requirements. The 90-day period begins either when an individual completes any one of the requirements or when a recipient designates the individual as the person who he/she wants to provide his/her services.

Sections 30-776.22 through 30-776.222

Specific Purpose:

These sections are adopted to specify that, at least 15 days prior to finding an individual who has failed to complete the provider enrollment requirements within the 90-calendar-day period ineligible to be a provider, the county shall provide notice to the individual to inform him/her of: 1) which requirement(s) remain to be completed, 2) the date by which the requirement(s) must be completed and 3) that if the requirements are not completed by that date, he/she will be determined to be ineligible to be a provider.

Factual Basis:

These sections are necessary to establish informing notice requirements counties must comply with before they can determine an individual to be ineligible to be a provider based on failure to complete the provider enrollment requirements in a timely manner. Before an individual is determined ineligible for failing to complete the requirements, he/she should be informed of which requirements he/she has yet to complete and be given the opportunity to complete them before being determined ineligible. The 15-day timeframe was established to allow the individual time to properly complete and resubmit the provider enrollment requirements but to not provide them with so lengthy a timeframe that the individual may forget and unknowingly bypass the deadline.

Modification

Sections 30-776.23 through 30-776.23(c)

Specific Purpose:

In response to testimony received, these sections are adopted to specify that the county may extend the period for which an individual may be allowed to complete the enrollment requirements beyond the 90-calendar-day period under certain circumstances of "good cause." Sections 30-776.321(a) and (b) are moved here as they are a part of the "good cause" criteria.

Factual Basis:

These sections are necessary to provide "good cause" exemptions to extend the period of time an individual has to complete the enrollment requirements. An individual should not be penalized for delays directly attributable to county error or the Department of Justice backlog in processing the results of an individual's criminal background check nor should an

individual be penalized if an unforeseen death or medical issue causes him/her to be unable to complete the enrollment requirements in a timely fashion. In these situations, the county should have flexibility to allow it to extend the period of completion of the provider enrollment requirements.

Sections 30-776.3 through 30-776.332(b)

Specific Purpose:

These sections are adopted to establish the policy that, under certain conditions, an individual can be paid retroactively for services he/she provided to an eligible IHSS recipient before the individual completed the provider enrollment requirements, as long as the services provided were authorized services and the individual was ultimately found eligible to be enrolled as a provider.

These sections also specify that in such circumstances, the individual may not be paid for services provided more than 90 days before the individual completes the provider enrollment requirements, unless there has been a delay that is not the fault of the individual, namely a county error, or a delay in the receipt of the criminal background check response from the DOJ.

In addition, these sections specify that when an IHSS recipient designates as his/her provider an individual who has not completed the provider enrollment requirements, the county must inform the IHSS recipient of the conditions and limitation on retroactive payment for those services provided before the individual completes the requirements. The county must inform the recipient that he/she will be financially responsible for paying for services provided if the individual is ultimately found ineligible to be a provider, or when the individual is found eligible, for any services provided more than 90 days back from the date the individual completed the provider enrollment requirements.

Factual Basis:

These sections are necessary to establish clear and reasonable policy that addresses a common situation that occurs in the IHSS program wherein an individual provides services for a recipient prior to completing the provider enrollment requirements. One of the central principles of the IHSS program is provider choice; that is, the recipient may choose who he/she wishes to be his/her service provider. It is a regular occurrence that the person the recipient chooses, whether it is a relative, neighbor, or acquaintance, has not yet begun – much less completed – the provider enrollment requirements.

Establishing the policy that an individual may be paid retroactively for authorized services he/she provides to an eligible recipient before the individual completes the provider enrollment requirement ensures that the recipient does not go without services he/she needs to remain safely in his/her own home because the individual he/she has chosen to be his/her provider is not yet enrolled. Limiting the length of time that an individual has to complete the enrollment requirements to 90 days allows sufficient time for the requirements to be

completed but at the same time encourages individuals to complete the requirements promptly. Prompt completion of the enrollment requirements limits the amount of time that a recipient is exposed to an individual who could potentially present a safety or security risk to the recipient because the individual may ultimately be determined ineligible to be a provider due to failure to pass the criminal background check.

Limiting the length of time for which an individual can receive retroactive payment from the IHSS program for authorized services provided to an eligible recipient before he/she completed the provider enrollment requirements limits the financial responsibility placed on the recipient should the individual ultimately be found ineligible to be an IHSS provider. The policy allows for circumstances in which the individual does not complete the requirements timely through no fault of his/her own. In such cases, retroactive payment may be made for services provided beyond the 90 day limit.

Modification:

In response to testimony received, Section 30-776.321 is amended to specify that the county shall extend the period for which an individual may be paid retroactively by 45 calendar days for "good cause" as specified in Section 30-776.23.

Handbook Section 30-776.34

Specific Purpose/Factual Basis:

This handbook section is included to provide an example using hypothetical dates to illustrate how the 90-day limit on retroactive payment from the IHSS program for authorized services that an individual provided to an eligible recipient before the individual completed the provider enrollment requirements would be applied.

Sections 30-776.4 and .41

Specific Purpose:

These sections are adopted to specify that one of the requirements an individual must fulfill prior to being enrolled as a provider or receiving payment for providing supportive services is the completion of a provider enrollment form.

Factual Basis:

This section is necessary to comply with WIC section 12305.81(a) which provides that each person seeking to become an IHSS provider be required to complete a provider enrollment form.

Sections 30-776.411 and .411(a)

Specific Purpose:

These sections are adopted to specify that the provider enrollment form includes statements indicating that an individual who has been convicted of, or incarcerated following conviction for, certain crimes within the last 10 years is not eligible to be enrolled as a provider or to receive payment for providing supportive services. These sections also specify which crimes are considered disqualifying and explain that, for ease of reference, the disqualifying crimes are categorized as either Tier 1 or Tier 2 crimes.

Factual Basis:

These sections are necessary to comply with the following WIC sections: §12305.81(a)(1), §12305.81(a)(2), §12305.87(h)(2), which (correspondingly) require that the provider enrollment form include statements to the effect that:

- An individual who, within the last 10 years, has been convicted of, or incarcerated following a conviction for, fraud against a government health care or supportive services program is not eligible to be enrolled as a provider or to receive payment for providing supportive services.
- An individual who, within the last 10 years, has been convicted of, or incarcerated following a conviction for, violation of subdivision (a) of Section 273a of the PC or Section 368 of the PC, or similar violations in another jurisdiction, is not eligible to be enrolled as a provider or to receive payment for providing supportive services.
- An individual seeking to be a provider understands that if, within the last 10 years, he or she has been convicted, or incarcerated following conviction for: 1) a violent or serious felony, as specified in subdivision (c) of Section 667.5 of the PC and subdivision (c) of Section 1192.7 of the PC; or 2) a felony offense for which a person is required to register as a sex offender under subdivision (c) of Section 290 of the PC; or 3) a felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of Section 10980 of the WIC, and he/she has not received a certificate of rehabilitation or had the information or accusation dismissed pursuant to Section 1203.4 of the PC, he or she will only be authorized to receive payment for providing services under an individual waiver or general exception.

Section 30-776.411(b)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement informing the applicant provider that as part of the provider enrollment process he/she is required to submit his/her fingerprints and undergo a criminal background check.

Factual Basis:

This section is necessary so that the applicant provider is aware that, in accordance with WIC section 12305.86(a), the county is required to investigate the background of any person who seeks to become a supportive services provider and that the investigation includes a criminal background check conducted by the Department of Justice pursuant to WIC section 15660.

Section 30-776.411(c)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement indicating that if the individual's responses to questions on the provider enrollment form or the results of the criminal background check indicate that the individual has been convicted of, or incarcerated following a conviction for, a disqualifying crime within the last 10 years, he/she will not be eligible to be enrolled as a provider or to receive payment for providing services.

Factual Basis:

This section is necessary so that the applicant provider is aware that, pursuant to WIC section 12305.81(a), he/she is not eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for any of the following crimes (which for ease of reference are designated Tier 1 crimes):

- 1) Fraud against a government health care or supportive services program, including Medicare, Medicaid or services provided under Title V, Title XX or Title XXI of the federal Social Security Act;
- 2) A violation of subdivision (a) of Section 273a of the PC;
- 3) A violation of Section 368 of the PC; or
- 4) A violation similar to those specified in 2) or 3) above, in another jurisdiction.

This section is also necessary so that the applicant provider is aware that, pursuant to WIC section 12305.87(b), he/she is not eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for any of the following crimes (which for ease of reference are designated Tier 2 crimes):

- 1) A violent or serious felony, as specified in subdivision (c) of Section 667.5 of the PC and subdivision (c) of Section 1192.7 of the PC;
- 2) A felony offense for which a person is required to register under subdivision (c) of Section 290 of the PC; or
- 3) A felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of WIC section 10980.

WIC section 12305.86(b) requires that the criminal background check shall be conducted at the provider's expense. Because of this requirement, the Department believes that it is important for an applicant provider to understand, before he/she pays the costs of fingerprinting and the criminal background check, that a conviction for any of the specified crimes within the last 10 years would disqualify him/her from being a provider. Providing this information in advance permits an individual who knows that there is a disqualifying conviction in his/her criminal background to make a more informed decision about whether to proceed with the provider enrollment requirements before paying the background check costs.

Sections 30-776.411(d) and (d)(1)

Specific Purpose:

These sections are adopted to specify that the provider enrollment form includes a statement indicating that if an individual has been convicted of, or incarcerated following a conviction for, a Tier 2 disqualifying crime(s), he/she may be eligible to be enrolled as a provider in spite of the conviction/incarceration if he/she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the PC, or the information or accusation against him/her has been dismissed pursuant to Section 1203.4 of the PC.

Factual Basis:

These sections are necessary to ensure that the individual is aware that, pursuant to WIC section 12307.87(c), an application to be a provider shall not be denied if the individual has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the PC or if the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the PC.

Section 30-776.411(d)(2)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement indicating that if an individual has been convicted of, or incarcerated following a conviction for, a Tier 2 disqualifying crime(s), he/she may be eligible to be enrolled as a provider in spite of the conviction/incarceration if a recipient, who has been informed of the Tier 2 disqualifying crime(s) for which he/she has been convicted/incarcerated, and who wishes to employ the individual in spite of his/her criminal background, submits to the county a waiver of the individual's exclusion.

Factual Basis:

This section is necessary to ensure that the individual is aware that, pursuant to WIC section 12307.87(d)(1), a recipient of services who wishes to employ a provider applicant who has been convicted of a Tier 2 disqualifying crime may submit to the county an individual waiver of the exclusion.

Section 30-776.411(d)(3)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement indicating that if an individual has been convicted of, or incarcerated following a conviction for, a Tier 2 disqualifying crime(s), he/she may be eligible to be enrolled as a provider in spite of the conviction/incarceration if he/she has applied to the Department and has been granted a general exception of the exclusion.

Factual Basis:

This section is necessary to ensure that the individual is aware that, pursuant to WIC section 12307.87(e)(1), an applicant who has been convicted of a Tier 2 disqualifying crime may seek from the department a general exception to the exclusion provided for in this section.

Section 30-776.411(e)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a brief explanation of the process that a recipient must follow to request a waiver of an individual's exclusion as a provider based on a Tier 2 disqualifying conviction/incarceration and rules and limitations pertaining to the provision of services under an individual waiver.

Factual Basis:

This section is necessary to make the applicant provider aware of the provisions of WIC section 12305.87(d), which permit a recipient of services who wishes to employ a provider applicant who has been convicted of a Tier 2 disqualifying crime to submit to the county a waiver of the individual's exclusion as a provider.

Section 30-776.411(f)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a brief explanation of the process for applying for a general exception of an individual's exclusion as a provider based on a Tier 2 disqualifying conviction/incarceration.

Factual Basis:

This section is necessary to make the applicant provider aware of the provisions of WIC section 12305.87(e), which permit an individual who has been convicted of a Tier 2 disqualifying crime to seek from the Department a general exception to his/her exclusion as a provider.

Section 30-776.411(g)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement indicating that completion of the provider enrollment form is one of the provider enrollment requirements and that an individual must complete all of the provider enrollment requirements before he/she can be enrolled as a provider and receive payment for providing services.

Factual Basis:

This section is necessary to make the provider aware of the requirements which, pursuant to the following WIC sections, an individual seeking to become a provider must complete before he/she can be enrolled as a provider and receive payment for providing services: §12305.81(a) – which requires that an individual seeking to be a provider complete, sign and submit in-person to the county a provider enrollment form; §12301.24(a) – which requires that an individual attend a provider orientation; §12301.24(b) – which requires that an individual sign a statement agreeing to certain conditions; and §12305.86 – which requires that an individual undergo a criminal background check conducted by the DOJ.

Section 30-776.411(h)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes fields for the individual to provide the following information: full name; date of birth; gender; home and mailing addresses; telephone number; Social Security number; driver's license or government-issued identification number, issuing state and expiration date; and primary spoken and written languages.

Factual Basis:

This section is necessary to make the applicant provider aware of the specific personal identifying information he/she will be required to provide when completing the provider enrollment form. The information that is collected is minimal and relatively standard and it is used to establish the person's identity, etc.

Final Modification:

In response to testimony received, Section 30-776.411(h) is amended to add an additional field to the provider enrollment form to allow the applicant provider to include his or her email address.

Section 30-776.411(i)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes questions asking whether the individual, in the last 10 years, has been convicted of, or incarcerated following a conviction for, a Tier 1 or Tier 2 disqualifying crime(s).

Factual Basis:

This section is necessary to comply with WIC sections 12305.81(a) and 12305.87(b), which prohibit an individual who, within the last 10 years, has been convicted of, or incarcerated following a conviction for, a Tier 1 or Tier 2 disqualifying crime. WIC section 12305.81(a) states that a person shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act or a violation of subdivision (a) of Section 273a of the PC, or Section 368 of the PC, or similar violations in another jurisdiction. For simplicity, the crimes specified in WIC section 12305.81(a) are categorized as Tier 1 disqualifying crimes. WIC section 12305.87(b) states that an applicant shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, a violent or serious felony, as specified in subdivision (c) of Section 667.5 of the PC and subdivision (c) of Section 1192.7 of the PC; a felony offense for which a person is required to register under subdivision (c) of Section 290 of the PC; or a felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of Section 10980. For simplicity, the crimes specified in WIC section 12305.87(b) are categorized as Tier 2 disqualifying crimes.

Section 30-776.411(j) (Post-Hearing 30-776.411(j) and (k))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a question asking, if the individual has indicated that, within the last 10 years, he/she has been convicted of, or incarcerated following conviction for, a Tier 2 disqualifying crime, whether he/she has obtained a certificate of rehabilitation or expungement (dismissal pursuant to PC Section 1203.4) of the conviction. Also, the form includes a statement indicating that if the individual has obtained a certificate of rehabilitation or an expungement, he/she must provide the county with a copy of the documentation.

Factual Basis:

This section is necessary so that an individual completing the provider enrollment form who has indicated that, within the last 10 years, he/she has been convicted of, or incarcerated following a conviction for a Tier 2 disqualifying crime, can indicate whether or not he/she has obtained a certificate of rehabilitation or expungement (dismissal pursuant to PC section 1203.4) of the conviction. The WIC section 12305.87(c) states that when an individual, within the last 10 years, has been convicted of, or incarcerated following a conviction for, a Tier 2 disqualifying crime, his/her application to be an IHSS provider shall not be denied if he/she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the PC or if the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the PC.

Final Modification:

In response to testimony received, proposed Section 30-776.411(j) is divided into two sections [(j) and (k)] for clarity to allow the regulations to separate the question regarding the certificate of rehabilitation or expungement from the requirement to provide a copy of the certificate of rehabilitation or expungement to the county.

Sections 30-776.411(k) and (k)(1) (Post-Hearing 30-776.411(l) and (l)(1))

Specific Purpose:

These sections are adopted to specify that the provider enrollment form includes a statement indicating that, by signing the form, the individual declares that he/she understands and agrees that he/she cannot receive IHSS program funds as payment for authorized services he/she provides to any eligible recipient of IHSS until he/she has completed the entire provider enrollment process and has been officially enrolled as a provider by the county.

Factual Basis:

These sections are necessary to ensure that the individual understands that, pursuant to the following WIC sections, he/she must successfully complete all steps of the enrollment process before he/she is eligible to receive payment from the IHSS program for providing authorized services to an eligible recipient: §12305.81(a) – which requires that an individual seeking to be a provider complete, sign and submit in-person to the county a provider enrollment form; §12301.24(a) – which requires that an individual attend a provider orientation; §12301.24(b) – which requires that an individual sign a statement agreeing to certain conditions; and §12305.86 – which requires that an individual undergo a criminal background check conducted by DOJ.

Final Modification:

Sections 30-776.411(k) through 30-776.411(k)(9) are renumbered to 30-776.411(l) through 30-776(l)(9) respectively to allow for the separation of Section 30-776.411(j) into 30-776.411(j) and (k).

Section 30-776.411(k)(2) (Post-Hearing 30-776.411(l)(2))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement indicating that, by signing the form, the individual declares that he/she understands and agrees that completion and submittal of the provider enrollment form is one of the requirements of the provider enrollment process.

Factual Basis:

This section is necessary to ensure that the applicant provider understands and agrees that, pursuant to WIC section 12305.81(a), each person seeking to provide supportive services is required to complete, sign under penalty of perjury, and submit to the county a provider enrollment form.

Sections 30-776.411(k)(2)(A) through (k)(2)(C) (Post-Hearing 30-776.411(l)(2)(A) through (l)(2)(C))

Specific Purpose:

These sections are adopted to specify that the provider enrollment form includes a statement indicating that, by signing the form, the individual declares that he/she understands and agrees that: he/she must complete all of the provider enrollment requirements within 90 calendar days; that the 90 calendar day period begins either when he/she completes the first enrollment requirement or when a recipient designates the individual as his/her provider; and that if he/she begins providing authorized services for an eligible recipient before he/she completes the provider enrollment requirements, and he/she is ultimately determined eligible to be enrolled as a provider, he/she will be eligible to be paid retroactively for services he/she provided before completing the requirements no more than 90 calendar days before he/she completed the provider enrollment requirements and was determined eligible to be a provider.

Factual Basis:

These sections are necessary to ensure that the individual understands and agrees with the policies that have been established which limit to 90 calendar days the amount of time an individual has to complete the provider enrollment requirements and the amount of time he/she can be paid retroactively for services he/she provided before completing enrollment requirements. These policies have been established to address a common situation that

occurs in the IHSS program wherein an individual provides services for a recipient prior to completing the provider enrollment requirements. Establishing the policy that an individual may be paid retroactively for authorized services he/she provides to an eligible recipient before the individual completes the provider enrollment requirements ensures that the recipient does not go without services he/she needs to remain safely in his/her own home because the individual he/she has chosen to be his/her provider is not yet enrolled. Limiting the length of time that an individual has to complete the enrollment requirements to 90 days allows sufficient time for the requirements to be completed but at the same time encourages individuals to complete the requirements promptly. Prompt completion of the enrollment requirements limits the amount of time that a recipient is exposed to an individual who could potentially present a safety or security risk to the recipient because the individual may ultimately be determined ineligible to be a provider due to failure to pass the criminal background check. Limiting the length of time for which an individual can receive retroactive payment from the IHSS program for authorized services provided to an eligible recipient before he/she completed the provider enrollment requirements limits the financial responsibility placed on the recipient should the individual ultimately be found ineligible to be an IHSS provider.

Section 30-776.411(k)(3) (Post-Hearing 30-776.411(l)(3))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a declaration indicating that, by signing the form, the applicant provider understands and agrees that, as part of the provider enrollment process, he/she must provide fingerprints and undergo a criminal background check, and that he/she is responsible for paying the cost of fingerprinting and the background check.

Factual Basis:

This section is necessary to ensure that the applicant provider understands and agrees that, pursuant to WIC section 12305.86(a), he/she is required to undergo a criminal background check conducted by the DOJ, and pursuant to WIC section 12305.86(b), that the criminal background checks shall be conducted at the provider's expense.

Section 30-776.411(k)(4) (Post-Hearing 30-776.411(l)(4))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a declaration indicating that the individual understands and agrees that, if it is found, either through the individual's responses on the form, the results of the criminal background check, or some other means, that within the past 10 years, he/she has been convicted of or incarcerated following a conviction for a Tier 1 exclusionary crime, he/she will not be eligible to be an IHSS provider, and the recipient who wished to hire him/her will be informed that he/she is

ineligible to be a provider because of a disqualifying criminal conviction which will not be specified.

Factual Basis:

This section is necessary to ensure that the individual understands and agrees that, pursuant to the following WIC sections, if it is found, either through the individual's responses on the form, the results of the criminal background check, or some other means, that within the past 10 years, he/she has been convicted of or incarcerated following a conviction for a Tier 1 exclusionary crime, he/she will not be eligible to be an IHSS provider, and the recipient who wished to hire him/her will be informed that he/she is ineligible to be a provider because of a disqualifying criminal conviction which will not be specified:

- § 12305.81(a), which specifies that a person shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act or a violation of subdivision (a) of Section 273a of the PC, or Section 368 of the PC, or similar violations in another jurisdiction;
- § 12305.86(a), which specifies that a county shall investigate the background of a person who seeks to become a supportive services provider and that the investigation shall include criminal background checks conducted by DOJ pursuant to Section 15660;
- § 12305.86(c)(1), which specifies that upon notice from DOJ that a prospective or current provider has been convicted of a criminal offense specified in Section 12305.81, the county shall deny or terminate the applicant's request to become a provider of supportive services to any recipient of the IHSS program; and
- § 12305.87(d)(1), which specifies that a recipient shall not be allowed to submit an individual waiver with respect to a conviction or convictions for offenses specified in Section 12305.81.

Sections 30-776.411(k)(5) and (k)(5)(A) (Post-Hearing 30-776.411(l)(5) and (l)(5)(A))

Specific Purpose:

These sections are adopted to specify that the provider enrollment form includes a statement indicating that, by signing the form, the individual declares that he/she understands and agrees that, if it is found, either through the individual's responses on the form, the results of the criminal background check, or some other means, that within the past 10 years, he/she has been convicted of or incarcerated following a conviction for a Tier 2 exclusionary crime, and he/she has not received a certificate of rehabilitation or had the conviction expunged, he/she will not be eligible to be an IHSS provider, unless an IHSS recipient who wishes to

hire him/her to provide services, requests an individual waiver, or he/she applies for and is granted a general exception.

Factual Basis:

This section is necessary to comply with WIC section 12305.87(h)(2), which specifies that the provider enrollment form shall include a statement that the individual understands that if he/she has been convicted, or incarcerated following conviction for a Tier 2 disqualifying crime in the last 10 years, and has not received a certificate of rehabilitation or had the information or accusation dismissed, he/she shall only be authorized to receive payment for providing services under an individual waiver or general exception, and upon meeting all other applicable criteria for enrollment as a provider in the program.

Section 30-776.411(k)(5)(B) (Post-Hearing 30-776.411(l)(5)(B))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement indicating that, by signing the form, the individual declares that he/she understands and agrees that, if it is found, either through the individual's responses on the form, the results of the criminal background check, or some other means, that within the past 10 years, he/she has been convicted of or incarcerated following a conviction for a Tier 2 exclusionary crime, and he/she has not received a certificate of rehabilitation or had the conviction expunged, the IHSS recipient who wishes to hire him/her as a provider will be informed of his/her conviction and the types of crimes for which he/she was convicted, and the recipient will be directed to keep the information confidential.

Factual Basis:

This section is necessary to comply with WIC section 12305.87(d)(2) which requires the county notify a recipient who wishes to hire a person who is applying to be a provider and who has been convicted of a Tier 2 disqualifying crime of that individual's Tier 2 disqualifying convictions.

Section 30-776.411(k)(6) (Post-Hearing 30-776.411(l)(6))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a declaration indicating that, by signing the form, the provider applicant understands and agrees that if he/she is ultimately enrolled by the county as an IHSS provider, and the person for whom he/she provides services receives IHSS through the Medi-Cal program, he/she will be considered to be a Medi-Cal provider of personal care services, and therefore, he/she will be required to comply with all Medi-Cal program rules relating to the provision of services.

Factual Basis:

This section is necessary to comply with WIC sections 12305.81(a), which states that the provider enrollment form shall be considered as an application to render services under the Medi-Cal program consistent with subdivision (c) of WIC section 14043.1. This is because a majority of recipients receive IHSS as a benefit of the Medi-Cal program.

Section 30-776.411(k)(7) (Post-Hearing 30-776.411(l)(7))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a declaration indicating that, by signing the form, the applicant provider understands and agrees that payment for the authorized services he/she provides to an IHSS recipient will be from federal, state and/or county IHSS funds, and any false statement he/she provides, including false entries on a timesheet or withholding of information, may be prosecuted under federal and/or state laws.

Factual Basis:

This section is necessary to ensure that the applicant provider understands the consequences of committing fraud in the IHSS program. Specifically, he/she agrees that, pursuant to WIC section 12301.25(b), a person who is convicted of fraud resulting from intentional deception or misrepresentation in the provision of timesheet information will be subject to criminal and/or civil penalties.

Section 30-776.411(k)(8) (Post-Hearing 30-776.411(l)(8))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a declaration indicating that, by signing the form, the provider applicant understand and agrees that he/she will be required to reimburse the state for any overpayment paid to him/her, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to him/her for services provided to any recipient.

Factual Basis:

This section is necessary to comply with WIC section 12305.81(a)(5), which requires that the provider enrollment form include a statement to the effect that the individual seeking to be a provider agrees to reimburse the state for any overpayment paid to him/her, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to him/her for services provided to any recipient.

Section 30-776.411(k)(9) (Post-Hearing 30-776.411(l)(9))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a declaration indicating that, by signing the form, the applicant provider understands and agrees that he/she will be required to provide services without discrimination based on race, color, national or ethnic origin, religion, gender, age, sexual orientation, or physical or mental disability.

Factual Basis:

This section is necessary to comply with applicable federal and state laws and their implementing regulations to ensure that no person shall, because of race, color, national or ethnic origin, religion, gender, age, marital status, political affiliation, sexual orientation, or physical or mental disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal or state financial assistance.

Section 30-776.411(l) (Post-Hearing 30-776.411(m))

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes the actual text of the PC and WIC sections which define the disqualifying Tier 1 and Tier 2 crimes.

Factual Basis:

This section is necessary to comply with WIC section 12305.81(b) which requires the provider enrollment form to include the text of subdivision (a) of Section 273a of the PC, and Section 368 of the PC.

This section is also necessary to comply with WIC section 12305.87(h)(1) which requires the provider enrollment form to include the text of subdivision (c) of Section 290 of the PC, subdivision (c) of Section 667.5 of the PC, subdivision (c) of Section 1192.7 of the PC, and paragraph (2) of subdivisions (c) and (g) of Section 10980 of the WIC.

Final Modification:

Section 30-776.411(l) is renumbered to 30-776.411(m) to allow for the separation of 30-776.411(j) into 30-776.411(j) and 30-776.411(k).

Section 30-776.412

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a statement indicating that, by signing the provider enrollment form under penalty of perjury, the individual declares that the information he/she has provided on the form is true and correct to the best of his/her knowledge.

Factual Basis:

This section is necessary to comply with WIC section 12305.81(a) which requires that each person seeking to become a provider shall sign a provider enrollment form under penalty of perjury.

Section 30-776.413

Specific Purpose:

This section is adopted to specify that the completed and signed provider enrollment form must be submitted to the county in-person by the individual seeking to become a provider.

Factual Basis:

This section is necessary to comply with WIC section 12305.81(a) which requires that the person seeking to become a provider submit the provider enrollment form to the county in-person.

Sections 30-776.414 through 30-776.414(b)(2)(A)

Specific Purpose:

These sections are adopted to: 1) specify that when the individual seeking to become provider submits the provider enrollment form to the county in-person, he/she must present and allow the county to photocopy, documents verifying his/her identity and 2) specify the identifying documents required and which forms of identification may be accepted.

Factual Basis:

This section is necessary to comply with WIC section 12305.81(a) which states that submission of the provider enrollment form shall include the photocopying by the county of original documentation verifying the provider's identity.

Final Modification:

Following the 15-day renote, Section 30-776.414(a) and Handbook Section 30-776.414(a)(1) are amended to clarify that acceptable forms of valid positive photograph identification include an identification issued by a federally-recognized Native American or Alaskan Native tribal organization.

Sections 30-776.415 through 30-776.416

Specific Purpose:

These sections are adopted to specify: 1) that the completed and signed provider enrollment form and copies of the individual's identifying documents must be retained in the provider's file, 2) the length of time that the documents must be retained depending on whether or not the individual is enrolled as a provider and 3) that the individual must be provided a copy of the completed and signed provider enrollment form for his/her records.

Factual Basis:

These sections are necessary to comply with WIC section 12305.81(a) which states that the county shall retain the provider enrollment form and a copy of the identification documentation in the file of the provider. The establishment of a reasonable retention schedule for the documents under differing circumstances is necessary to promote efficient and consistent information management practices statewide. The requirement that the individual be provided with a copy of the completed and signed provider enrollment form is established so that, if needed at a later date, the individual may refer to the information he/she provided and statements he/she agreed to under penalty of perjury.

Final Modification:

In response to testimony received, Sections 30-776.415 and 30-776.416 are amended to replace "applicant" provider with "prospective" provider in order to correct a wording error.

Sections 30-776.42 through 30-776.421(e)

Specific Purpose:

These sections are adopted to specify: 1) that one of the requirements an individual seeking to be a provider must fulfill is an in-person attendance at a provider orientation and 2) the information at minimum that must be presented at the provider orientation.

Factual Basis:

These sections are necessary to comply with WIC section 12301.24(a) which requires that all prospective providers must complete a provider orientation prior to enrollment.

Additionally, subparagraphs (1) through (5) of WIC section 12301.24(a) require that the provider orientation shall include, but not be limited to, the following information: the requirements to be an eligible IHSS provider; a description of the IHSS program; the rules, regulations, and provider-related processes and procedures, including timesheets; the consequences of committing fraud in the IHSS program; and the Medi-Cal toll-free telephone fraud hotline and internet web site for reporting suspected fraud or abuse in the provision or receipt of supportive services.

Modification

Section 30-776.42 is amended to clarify that the applicant provider attend the in-person provider orientation after completion of the provider enrollment application provided in Section 30-776.41. The WIC section 12301.24(e) requires that the provider orientation be completed in-person and WIC section 12301.24(e)(2) requires that the provider orientation be completed after the completion of the provider enrollment application.

Section 30-776.421(f) is being adopted to clarify that the applicable rules and requirements regarding wages and overtime pay are to be included in the orientation.

Final Modification:

In response to testimony received, Section 30-776.42 is amended to replace "applicant" provider with "prospective" provider in order to correct a wording error.

In response to testimony received, Section 30-776.421(e) is amended for clarity to add the word "number" behind the phrase "telephone hotline" and "in-home" in front of the phrase "supportive services."

Section 30-776.421(f) is amended to include language to specify that applicable rules and requirements regarding wages and compensation will be included in the orientation. This more general language will accommodate any future changes to wage and hour law which may be applicable to IHSS providers.

Modification

Section 30-776.422

Specific Purpose:

This section is adopted to specify that all oral and written materials presented at the orientation must be translated into all languages spoken by a substantial number of the population served by the IHSS Program.

Factual Basis:

This section is necessary to comply with Government Code section 7295.2 and WIC section 12301.24(e)(3) which require that all IHSS materials must be translated into all languages spoken by a substantial number of the IHSS Program population statewide and that the oral and written materials presented at the orientation must be translated into these languages.

Modification

Section 30-776.423

Specific Purpose:

This section is adopted to specify that representatives of the recognized employee organizations in each county shall be permitted to make a thirty-minute presentation at the orientation.

Factual Basis:

This section is necessary to comply with WIC section 13201.24(e)(4) which requires that the employee organizations for IHSS workers in each county must be permitted to make a thirty-minute presentation at the in-person provider orientation.

Section 30-776.43

Specific Purpose:

This section is adopted to specify that, at the conclusion of the provider orientation, the individual seeking to be a provider shall sign a provider enrollment agreement.

Factual Basis:

This section is necessary to comply with WIC section 12301.24(b) which requires that, at the conclusion of the provider orientation, the individual seeking to become a provider shall sign a statement agreeing that he/she understands the program rules and his/her responsibilities as a provider as they have been conveyed to him/her in the provider orientation.

Final Modification:

In response to testimony received, Section 30-776.43 is amended to replace "applicant" provider with "prospective" provider in order to correct a wording error.

Sections 30-776.431 and .431(a)

Specific Purpose:

These sections are adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual understands and agrees that attendance at the provider orientation and signing of the provider enrollment agreement are requirements of the provider enrollment process, and he/she must complete all of the requirements before he/she can be enrolled as provider and receive payment for providing services.

Factual Basis:

These sections are necessary to comply with WIC sections 12301.24(a) and (b) which require that an individual seeking to become a provider shall complete a provider orientation, and, in order to complete provider enrollment, at the conclusion of the provider orientation, he/she shall sign a statement specifying that he/she agrees to comply with program rules and requirements.

Final Modification:

In response to testimony received, Section 30-776.431(a) is amended to add the word "a" in front of "provider" to clarify the wording of the section.

Sections 30-776.431(a)(1) through (a)(3)

Specific Purpose:

These sections are adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual understands and agrees that he/she must complete all of the provider enrollment requirements within 90 calendar days; that the 90 calendar day period begins either when he/she completes the first enrollment requirement or when a recipient designates the individual as his/her provider; and that if he/she begins providing authorized services for an eligible recipient before he/she completes the provider enrollment requirements, and he/she is ultimately determined eligible to be enrolled as a provider, he/she will be eligible to be paid retroactively for services he/she provided before completing the requirements no more than 90 calendar days before he/she completed the provider enrollment requirements and was determined eligible to be a provider.

Factual Basis:

These sections are necessary to ensure that the individual understands and agrees with the policies that have been established which limit to 90 calendar days the amount of time an individual has to complete the provider enrollment requirements and the amount of time he/she can be paid retroactively for services he/she provided before completing enrollment requirements. These policies have been established to address a common situation that occurs in the IHSS program wherein an individual provides services for a recipient prior to

completing the provider enrollment requirements. Establishing the policy that an individual may be paid retroactively for authorized services he/she provides to an eligible recipient before the individual completes the provider enrollment requirements ensures that the recipient does not go without services he/she needs to remain safely in his/her own home because the individual he/she has chosen to be his/her provider is not yet enrolled. Limiting the length of time that an individual has to complete the enrollment requirements to 90 days allows sufficient time for the requirements to be completed but at the same time encourages individuals to complete the requirements promptly. Prompt completion of the enrollment requirements limits the amount of time that a recipient is exposed to an individual who could potentially present a safety or security risk to the recipient because the individual may ultimately be determined ineligible to be a provider due to failure to pass the criminal background check. Limiting the length of time for which an individual can receive retroactive payment from the IHSS program for authorized services provided to an eligible recipient before he/she completed the provider enrollment requirements limits the financial responsibility placed on the recipient should the individual ultimately be found ineligible to be an IHSS provider.

Section 30-776.431(b)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual acknowledges that he/she was given a description of the IHSS program and information about the requirements for and responsibilities of being provider, the consequences of committing fraud and instructions for reporting suspected fraud or abuse in the program.

Factual Basis:

This section is necessary to comply with WIC section 12301.24(b)(4) which requires that the individual seeking to become a provider shall sign a statement specifying that he/she understands and agrees to program expectations and is aware of the measures that the state or county may take to enforce program integrity.

Section 30-776.431(c)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual acknowledges that he/she received instruction and/or a demonstration of how to complete a timesheet and that he/she understands that only time worked to perform authorized services should be reported on the timesheet, that by signing the timesheet, he/she is certifying that the information reported on it is true and correct, that if he/she is convicted of fraudulently reporting information on the timesheet, in addition to any criminal penalties, he/she may be required to pay civil penalties of at least \$500, and not more than \$1,000, for each instance of fraud.

Factual Basis:

This section is necessary to comply with WIC section 12301.24(b)(2) which requires that the individual seeking to become a provider shall sign a statement specifying that he/she has received a demonstration of, and understands, timesheet requirements. Pursuant to WIC section 12301.25(b), the timesheet is required to include information indicating that an individual convicted of fraud for providing false information on the timesheet is subject to specified civil penalties. This section is necessary to ensure that the individual is aware of and understands the consequences of committing fraud in the IHSS program.

This section is also necessary to address the criminal and civil penalties for a conviction of fraudulently reporting information on the IHSS timesheet. The civil monetary penalties are set forth in WIC section 12301.25(b)(2).

Section 30-776.431(d)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual understands that he/she is required to complete the U.S. Citizenship and Immigration Services' (USCIS) Employment Eligibility Verification (Form I-9) to verify that he/she has a legal right to work in the U.S., and that the recipient(s) for whom he/she provides services will retain a copy of the completed form.

Factual Basis:

This section is necessary to ensure that the applicant provider is aware that, pursuant to the Immigration Reform and Control Act of 1986 (Public Law 99-603 [8 U.S. Code 1324a]), all employees (citizens and noncitizens) hired after November 6, 1986, must verify that he/she is legally authorized to work in the U.S. The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), requires that all employees hired after November 6, 1986, must complete the Employment Eligibility Verification Form (I-9). Employers must complete Section 2 of the I-9 by examining evidence of identity and employment authorization within 3 business days of the date employment begins, and signs and dates the certification in Section 2.

In the IHSS program, the recipient is considered to be the employer of the individual who provides his/her services, in that the recipient hires, trains, supervises and, if necessary, fires his/her provider. As the employer, the recipient is the person responsible for obtaining the completed Form I-9 from the individual seeking to be his/her provider, examining the documentation presented by the individual, and signing and dating the certification. The recipient is also responsible for retaining the Form I-9 in accordance with USCIS' requirements.

Section 30-776.431(e)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual understands that he/she has the option to submit Internal Revenue Services' Employee Withholding Allowance Certificate (Form W-4) to request federal income tax withholding and/or California Employment Development Department's Employee Withholding Allowance Certificate (Form DE 4) to request state income tax withholding from my wages, but if he/she does not submit Form W-4 and/or DE 4, no there will be no taxes withheld from his/her wages.

Factual Basis:

This section is necessary to ensure that the applicant provider is aware that, pursuant to Internal Revenue Code section 3402 (26 USC section 3402), and Section 31.3402(f)(2)-1(a) of the Employment Tax Regulations (26 CFR section 31.3402(f)(2)-1(a)), on or before the date on which an individual begins employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate relating to the employee's marital status and the number of withholding exemptions which the employee claims. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as a single person claiming no withholding exemptions. Also, pursuant to Unemployment Insurance Code sections 13040 and 13041, an employer shall use the exemption certificate filed by the employee with the employer for determining the number of withholding exemptions to be allowed in computing the tax required to be deducted and withheld, and if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

Section 30-776.431(f)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual understands that he/she cannot be paid for authorized services performed when the recipient is away from his/her home, for example, when the recipient is in the hospital or away on vacation, and that he/she must contact the recipient's social worker for approval of any services that may be performed when the recipient is away from the home.

Factual Basis:

This section is necessary to ensure that the individual understands that, pursuant to WIC section 12300, under most circumstances, services must be provided in the recipient's home as the purpose of the program is to provide supportive services to aged, blind, or disabled persons who are unable to perform the services themselves and who cannot safely remain in

their homes or abodes of their own choosing unless these services are provided. To ensure that the individual does not perform services for which he/she cannot be paid, it is critical that he/she understands that he/she must seek approval from the recipient's social worker for any services he/she is asked to provide when the recipient is away from home.

Section 30-776.431(g)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual understands that he/she will receive a notice informing him/her of the services he/she is authorized to perform for each recipient(s).

Factual Basis:

This section is necessary to comply with WIC section 12301.24(b)(1) which requires that the individual seeking to become a provider shall sign a statement specifying that he/she agrees that he/she will provide to a recipient authorized services. Also, this section is adopted to ensure that an individual is aware and understands that, pursuant to WIC section 12301.22, he/she shall receive a list specifying the approved duties to be performed for each recipient under the provider's care and a complete list of supportive service tasks available under the IHSS program. This will help to ensure that the provider is not asked by the recipient to perform duties/services that the recipient is not authorized to receive and, consequently, for which the provider cannot receive payment.

Section 30-776.431(h)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that the individual understands that he/she must cooperate with state or county staff to provide requested information related to the evaluation of a recipient's case.

Factual Basis:

This section is necessary to comply with WIC section 12301.24(b)(3) which requires that the individual seeking to become a provider shall sign a statement specifying that he/she agrees that he/she shall cooperate with state or county staff to provide any information necessary for assessment or evaluation of a case.

Section 30-776.431(i)

Specific Purpose:

This section is adopted to specify that the provider enrollment agreement shall include a statement indicating that, by signing the form, the individual accepts the responsibility to

follow all program rules and requirements explained at the provider orientation and that failure to follow the program rules and requirements may result in being terminated as a provider.

Factual Basis:

This section is necessary to comply with WIC section 12301.24(b)(5) which requires that all applicants shall sign a statement specifying that he/she agrees that he/she has attended the provider orientation and understands that failure to comply with program rules and requirements may result in his/her being terminated from providing services through the IHSS program.

Sections 30-776.432 through 30-776.433

Specific Purpose:

These sections are adopted to specify that the county must: 1) indefinitely retain the signed provider enrollment agreement in the provider's file, and that the document may be retained in an electronic format, and 2) provide the individual seeking to be a provider with a copy of the signed document for his/her records.

Factual Basis:

These sections are necessary to comply with WIC section 12301.24(d) which require that the county shall indefinitely retain this statement in the provider's file. Government Code section 12168.7 authorizes the storing of documents in electronic media. The requirement that the individual be provided with a copy of the signed document is established so that, if needed at a later date, the individual may refer to the statements with which he/she agreed to conform.

Final Modification:

In response to testimony received, Section 30-776.433 is amended to replace "applicant" provider with "prospective" provider in order to correct a wording error.

Section 30-776.44

Specific Purpose:

This section is adopted to specify that an individual seeking to become an IHSS provider must undergo a criminal background check conducted by the DOJ.

Factual Basis:

This section is necessary to comply with WIC section 12305.86 which requires that the county shall investigate the background of a person who seeks to become a supportive

services provider, and that the investigation shall include criminal background checks conducted by the DOJ pursuant to WIC section 15660.

Section 30-776.441 and Handbook Section 30-776.441(a)

Specific Purpose:

These sections are adopted to specify: 1) that the purpose of the criminal background check is to establish whether, within the last 10 years, an individual seeking to become a provider has been convicted of, or incarcerated following a conviction, for a crime that disqualifies the individual from being a provider, and 2) which criminal convictions are disqualifying.

Factual Basis:

These sections are necessary to comply with the following WIC sections which prohibit individuals convicted of, or incarcerated following a conviction for, certain crimes from becoming an IHSS provider:

- Pursuant to §12305.86(c)(1) - upon notice from DOJ that an individual has been convicted of, or incarcerated following a conviction for fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act, or a violation of subdivision (a) of section 273a of the PC, or section 368 of the PC, or similar violations in another jurisdiction, the county shall deny the individual's request to become an IHSS provider; and
- Pursuant to §12305.86(c)(2) - upon notice from DOJ that, within the last 10 years, an individual has been convicted of, or incarcerated following conviction for, a violent or serious felony, as specified in subdivision (c) of section 667.5 of the PC and subdivision (c) of section 1192.7 of the PC; a felony offense for which a person is required to register under subdivision (c) of section 290 of the PC; or a felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of section 10980 of the WIC, the county shall deny the individual's request to become an IHSS provider.

Sections 30-776.441(b) through (b)(2)

Specific Purpose:

These sections are adopted to specify that an individual who has certain disqualifying convictions on his/her criminal background, but who has received a certificate of rehabilitation or had the information or accusation against him/her dismissed pursuant to section 1203.4 of the PC, is not prohibited from being an IHSS provider.

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(c) which provides that enrollment as an IHSS provider shall not be denied if an individual who has been convicted of a violent or serious felony, as specified in subdivision (c) of section 667.5 of the PC and subdivision (c) of section 1192.7 of the PC; a felony offense for which a person is required to register under subdivision (c) of section 290 of the PC; or a felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of section 10980 of the WIC, has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the PC or if the information or accusation against him/her has been dismissed pursuant to section 1203.4 of the PC.

Sections 30-776.441(c) through (d)(3)

Specific Purpose:

These sections are adopted to establish definitions of the terms, "the last 10 years" and "incarcerated," as they relate to the time period for which an individual who has been convicted of, or incarcerated following a conviction for, a disqualifying crime is prohibited from being an IHSS provider.

Factual Basis:

These sections are necessary to establish clear and consistent definitions of the terms, "the last 10 years" and "incarcerated." Counties need clear definition of these terms so that they determine whether a conviction is disqualifying. Only convictions, or incarcerations following convictions, for specified crimes that occurred within 10 years are considered to be disqualifying; therefore, counties need to establish the dates and corrections statuses they must use to calculate the 10-year disqualification period.

Final Modification:

In response to testimony received, Section 30-776.441(c) is amended to remove the word "of" in front of the phrase "the criminal background check" in order to correct a wording error.

Second Final Modification:

Following the 15-day renote, a handbook section is provided under Section 30-776.441(c) to include an example demonstrating the method by which CORI results should be reviewed for results within the 10-year timeframe.

Section 30-776.441(e)

Specific Purpose:

This section is adopted to specify the if the criminal background check established that individual seeking to become a provider has been convicted of or incarcerated following a conviction for, a disqualifying crime within the last 10 years, he/she shall be deemed ineligible to be a provider.

Factual Basis:

This section is necessary to comply with the following WIC sections which prohibit individuals convicted of, or incarcerated following a conviction for, certain crimes from becoming an IHSS provider:

- Pursuant to §12305.86(c)(1) - upon notice from DOJ that an individual has been convicted of, or incarcerated following a conviction for fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act, or a violation of subdivision (a) of section 273a of the PC, or section 368 of the PC, or similar violations in another jurisdiction, the county shall deny the individual's request to become an IHSS provider; and
- Pursuant to §12305.86(c)(2) - upon notice from DOJ that, within the last 10 years, an individual has been convicted of, or incarcerated following conviction for, a violent or serious felony, as specified in subdivision (c) of section 667.5 of the PC and subdivision (c) of section 1192.7 of the PC; a felony offense for which a person is required to register under subdivision (c) of section 290 of the PC; or a felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of section 10980 of the WIC, the county shall deny the individual's request to become an IHSS provider.

Section 30-776.442

Specific Purpose:

This section is adopted to specify the individual seeking to become a provider is responsible for paying the costs of the criminal background check.

Factual Basis:

This section is necessary to comply with WIC section 12305.86(b) which provides that criminal background checks shall be conducted at the expense of the individual seeking to become a provider.

Section 30-776.45

Specific Purpose:

This section is adopted to specify that if an individual refuses or fails to complete any of the individual provider enrollment requirements, namely, the provider enrollment form, the provider orientation, the provider enrollment agreement or the criminal background check, the individual will be determined ineligible to be an IHSS provider.

Factual Basis:

This section is necessary to comply with WIC section 12301.24(d) which provides that refusal of the provider to sign the statement specifying that he/she understands and agrees to comply with program rules and requirements shall result in the provider being ineligible to receive payment for the provision of services and participate as a provider in the IHSS program.

Sections 30-776.46 and .461

Specific Purpose:

These sections are adopted to: 1) specify that an individual who completes the provider enrollment requirements shall not have to complete the requirements again as long as he/she remains active and continuously enrolled as a provider, and 2) establish a definition for the term, "active."

Factual Basis:

These sections are necessary to clarify that it is not necessary for an individual to complete the enrollment requirements multiple times, e.g., each time he/she acquires a new recipient for whom he/she provides services, etc., unless more than a year has elapsed since the individual was providing services and submitting timesheets for services he/she provided. There is no statutory authority to require an individual to complete the enrollment requirements more than once. Furthermore, statute provides that a county must accept a criminal background check clearance determination made by another county; therefore, in most circumstances, an individual would not be required to undergo the criminal background check more than once. However, once an individual has cleared his/her criminal background check and been enrolled as a provider, the county must continue to receive and evaluate subsequent arrest and disposition information from DOJ to determine if the individual is subsequently convicted of a disqualifying crime. DOJ requires that the county notify DOJ to discontinue sending subsequent arrest and disposition information when there is no longer a business need to receive the information, e.g., when an individual is no longer working. The one year inactivity period was established because one year is considered to be a reasonable time frame and because the Case Management, Information, and Payrolling System (CMIPS) is currently programmed to terminate individuals who have had no timesheet submittal activity for one year.

Sections 30-776.462 through 30-776.462(c)

Specific Purpose:

These sections are adopted to: 1) specify that as county shall accept a criminal background check clearance for an individual who has been deemed eligible by another county; 2) establish a definition for the term, "criminal background clearance;" 3) specify how the county can verify the existence of a clearance; and, 4) clarify that existence of a recipient's request for an individual waiver of an applicant/prospective provider's disqualification pursuant to Section 30-776.7 shall not constitute a criminal background clearance.

Factual Basis:

These sections are necessary to comply with WIC section 12305.86(e) which provides that a county authorized to secure a criminal background check clearance shall accept a clearance for an individual who has been deemed eligible by another county with criminal background check authority, to receive payment for providing services, and that existence of a clearance shall be determined by verification through CMIPS that another county with criminal background check authority has deemed the individual to be eligible to receive payment for providing services.

These sections also clarify that in situations in which an individual has been found ineligible to be a provider on the basis of a Tier 2 disqualifying conviction but a recipient requests an individual waiver of that person's disqualification pursuant to Section 30-776.7, the county's acceptance of the waiver request and existence of the waiver shall not constitute a criminal background clearance.

Sections 30-776.463 through 30-776.463(a)(3)(A)1. (Post-Hearing 30-776.463 through 30-776.463(a)(4)(A)1.)

Specific Purpose:

These sections are adopted to establish procedures and processes for counties to follow in situations in which an individual provides services to a recipient(s) in a county other than the one in which he/she underwent the criminal background check, or when an individual provides services for recipients in more than one county. These sections establish the common term, "originating county" for the county in which the individual underwent his/her criminal background check. The sections also assign specific responsibilities for both the originating county and the other county(ies) in which an individual is providing services. These responsibilities include evaluation of subsequent arrests and disposition of information and providing notice to the provider and recipients when an individual becomes ineligible to continue to provide services based on a subsequent conviction for a disqualifying crime.

Factual Basis:

These sections are necessary to comply with WIC section 12305.86(e) which specifies that a county authorized to secure a criminal background check clearance shall accept a clearance for an individual who has been deemed eligible by another nonprofit consortium, public authority, or county with criminal background check authority, to receive payment for providing services. Existence of a clearance shall be determined by verification through CMIPS that another county with criminal background check authority has deemed the current or prospective provider to be eligible to receive payment for providing services.

The 3-day time frame for a county that receives information about a subsequent arrest and conviction for a disqualifying crime of an individual providing services in another county(ies) to notify that county(ies) of the individual's disqualification is established to ensure the safety and security of the recipient(s) for whom the disqualified individual is providing services in that county(ies). It is critical that the other county(ies) be informed promptly so that the county can send notice to the recipient(s) to inform them that the individual is no longer eligible to provide services due to a conviction for a disqualifying crime. The time frame for notification which has been established serves to limit the amount of time the recipient(s) will be exposed to a potentially unsafe individual in his/her home.

Final Modification:

Section 30-776.463(a)(1) is adopted to specify that when an individual is providing services for recipients in more than one county, the originating county shall be responsible for providing enrollment documents to the other counties where the provider is providing services.

As a result of the proposed adoption of Section 30-776.463(a)(1), proposed current sections 30-776.463(a)(1) through (a)(3) are renumbered to (a)(2) through (a)(4) respectively.

Sections 30-776.5 through 30-776.583(c)(2)

Specific Purpose:

These sections are adopted to establish standard procedures and processes for counties to follow to carry out the requirement that each individual seeking to become an IHSS provider undergo a criminal background check conducted by DOJ for the purpose of determining whether the individual has been convicted of, or incarcerated following a conviction for a disqualifying crime within the last 10 years.

These sections specify:

- 1) That the county must establish and maintain authorization with DOJ to receive criminal background check information, and comply with all DOJ rules for the receipt, handling, storage, dissemination and destruction of criminal background check information;
- 2) That the county must provide individuals seeking to become IHSS providers with information and instructions on how to submit fingerprints for the criminal background check;
- 3) The types of responses counties may receive in response to an individual's submission of his/her fingerprints;
- 4) What criminal background information DOJ is statutorily required to collect and disseminate on individuals seeking to become IHSS providers; and
- 5) How the county must evaluate the information received from DOJ, and what determination the county must make depending on the type and content of the response received.

Factual Basis:

These sections are necessary to comply with the following WIC sections:

- Pursuant to § 12305.86(a) – which specifies that a county shall investigate the background of a person who seeks to become a supportive services provider. The investigation shall include a criminal background check conducted by the DOJ pursuant to WIC §15660, which specifies that when a person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home, DOJ shall secure the criminal record of a person to determine whether the person has ever been convicted of a violation or attempted violation of specified crimes.
- Pursuant to § 12305.86(c)(1) – which specifies that, upon notice from the DOJ that a prospective or current provider has been convicted of a (Tier 1) crime, as specified in § 12305.81, the county shall deny or terminate the applicant's request to become a provider of supportive services to any recipient of the IHSS program.
- Pursuant to § 12305.86(c)(2) – which specifies that, upon notice from the DOJ, that an applicant has been convicted of, or incarcerated following conviction for, a (Tier 2) crime, as specified in § 12305.87(b)(1), (2) and (3), the county shall deny the applicant's request to become a provider of supportive services to any recipient of the IHSS program. Pursuant to § 12305.86(c)(4), the Department has developed a written appeal process for providers determined ineligible to receive payment for the provision of services.

Final Modification:

In response to testimony received, Sections 30-776.582(a) and 30-776.583(c)(1) are amended to replace "applicant" provider with "prospective" provider in order to correct a wording error.

Section 30-776.59

Specific Purpose:

This section is adopted to specify that if the county receives verifiable documentation, indicating that, within the last 10 years, an individual seeking to be an IHSS provider has been convicted of, or incarcerated following a conviction for, a crime(s) similar to specified abuse of a child or abuse of an elder or dependent adult, in another jurisdiction, the individual is prohibited from being enrolled as a provider or receiving payment for providing services for an IHSS recipient.

Factual Basis:

This section is necessary to comply with WIC section 12305.81(a)(2) which provides that an individual who, in the last 10 years, has been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the PC or Section 368 of the PC, or similar violations in another jurisdiction, is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

The statute requiring that an individual seeking to be an IHSS provider undergo a criminal background check does not require or authorize a Federal Bureau of Investigation criminal background check; rather, the statute specifies that the criminal background check be conducted by the state DOJ. The results of the DOJ-conducted criminal background check would generally only include convictions, or incarceration following convictions, which occurred in California. Therefore, in order to comply with the statutory provision that prohibits from being a provider, an individual who has been convicted of, or incarcerated following a conviction for, a violation(s) similar to those specified in PC section 273a(a) or PC section 368, but occurring in another jurisdiction, it is necessary to specify that if verifiable information is received indicating that an individual has been convicted of such a crime in another jurisdiction, that information would serve to disqualify the individual from being enrolled as a provider or receiving payment for providing services for an IHSS recipient.

Sections 30-776.6 through 30-776.633(b)

Specific Purpose:

These sections are adopted to establish a standard time frame by which notices must be sent to inform both the individual seeking to become a provider and any recipient(s) the individual is seeking to provide services for, when an individual has been determined by the

county to be either eligible or ineligible to be enrolled as a provider or receive payment for providing services for an IHSS recipient. Also, these sections are adopted to establish standard content for the notices.

Factual Basis:

These sections are necessary so that an individual determined by the county to be either eligible or ineligible to be a provider, and any recipient(s) for whom the individual was seeking to provide services, receive timely and clear notice of the individual's eligibility or ineligibility to be a provider.

Proper notice of eligibility to both the individual seeking to be a provider and the recipient(s) is necessary so that both parties are aware that the enrollment requirements have been completed and that the individual has been enrolled as a provider and may begin providing services and receiving payment for services he/she provides for the recipient.

Proper notice of ineligibility to the individual seeking to be a provider is necessary so that the individual can take any necessary steps to resolve the issues that led to and/or appeal the determination of ineligibility.

Proper notice of ineligibility to the recipient(s) is necessary so that the individual(s) understands that if he/she can make alternate arrangements for the provision of his/her needed services, and that, if he/she chooses to receive (or continue to receive) services from the individual determined by the county to be ineligible, he/she will be financially responsible for paying for the services he/she receives from the ineligible individual.

The 20-day time frame that is established to allow a disqualified individual to continue to be paid for providing services strikes a balance between limiting the amount of time a recipient(s) is exposed to a potentially unsafe individual in his/her home and ensuring that the recipient does not go without needed services because his/her provider is immediately disqualified. The 20-day period allows approximately 5 days for the mailing of the notice, and approximately two weeks for the recipient to find and hire a new provider.

In addition, these sections are necessary to comply with the following WIC sections:

- Pursuant to WIC § 12305.86(c)(3) – which requires that when an individual is found ineligible to be a provider based on information included in his/her criminal offender record information (CORI) response as provided to the county by DOJ, along with the notice of ineligibility, the county shall provide the individual with:
 - 1) An unmodified/unaltered copy of his/her CORI response as provided to the county by DOJ; and
 - 2) Information in plain language on how he/she may contest the accuracy and completeness of, and refute any erroneous or inaccurate information in, his/her CORI.

- Pursuant to WIC § 12305.86(c)(4) – which requires that the Department shall develop a written appeal process for individuals who are determined ineligible to receive payment for the provision of services under the IHSS program.

Final Modification:

In response to testimony received, Sections 30-776.61, 30-776.611, and 30-776.62 are amended to replace "applicant" provider with "prospective" provider in order to correct a wording error.

Sections 30-776.7 through 30-776.72

Specific Purpose:

These sections are adopted to specify policies and procedures related to individual waivers of certain disqualifying convictions. These sections specify that a recipient is permitted to employ as his/her provider an individual who has been determined ineligible to be a provider based on a conviction(s) (or incarceration following a conviction[s]) for certain disqualifying crimes, if the recipient, after having been informed of the individual's disqualifying criminal conviction(s), requests an individual waiver of the individual's exclusion.

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(d)(1) which specifies that:

- A recipient who wishes to employ as his/her provider an individual who has been determined ineligible to be a provider based on a conviction(s) (or incarceration following a conviction[s]), within the last 10 years, for a violent or serious felony, as specified in subdivision (c) of section 667.5 of the PC and subdivision (c) of section 1192.7 of the PC; a felony offense for which a person is required to register under subdivision (c) of section 290 of the PC; or a felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of section 10980 of the WIC, may submit to the county an individual waiver of the exclusion; and
- A recipient is not permitted to submit an individual waiver to employ as his/her provider an individual who has been determined ineligible to be a provider based on a conviction(s) (or incarceration following a conviction[s]), within the last 10 years, for fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act, or a violation of subdivision (a) of section 273a of the PC, or section 368 of the PC, or similar violations in another jurisdiction.

Sections 30-776.73 through 30-776.732(b)

Specific Purpose:

These sections are adopted to specify that when a recipient wishes to hire an individual who would otherwise be excluded from being a provider on the basis of a Tier 2 disqualifying conviction(s), the county must send a notice to the recipient informing him/her about the individual's disqualifying convictions and include, along with the notice, an individual waiver form. These sections also specify what information must be included on the individual waiver form.

Factual Basis:

These sections are necessary to comply with WIC sections 12305.87(d)(2) which specifies that the county must inform a recipient who wishes to hire a person who has been excluded as a provider based on a conviction for a Tier 2 disqualifying crime, of the individual's disqualifying convictions. These sections are also necessary to comply with WIC section 12305.87(d)(3) which specifies that the individual waiver form developed by the Department and used by all counties must include 1) a space for the county to include a reference to any PC sections and corresponding offense names or descriptions that describe in plain language the disqualifying conviction(s) that the individual has in his/her background; and 2) a statement that the recipient, or his/her authorized representative, if applicable, is aware of the individual's conviction(s), and that he/she agrees to waive the individual's exclusion as a provider based on the conviction(s) and employ the applicant as his/her service provider.

Sections 30-776.74 through 30-776.742

Specific Purpose:

These sections are adopted to specify that the individual waiver must be signed by the recipient or his/her authorized representative and returned to the county, and that the county must retain the waiver form and the CORI until the conviction(s) is no longer within the 10-year disqualification period. These sections also specify that, other than certain individuals, an individual acting as a recipient's authorized representative may not sign an individual waiver of his/her own disqualifying conviction(s). Furthermore, these sections specify that the county shall provide notice to the recipient acknowledging receipt of a valid or an invalid waiver. These sections also specify that, upon receipt of a valid waiver, the county shall provide notice to the individual seeking to be a provider informing him/her that he is eligible to provide services to the recipient who signed the waiver. Finally, these sections specify that if the individual began providing services before a valid waiver request was received by the county, he/she can receive payment for authorized services he/she provided no more than 90 days before the date the county acknowledged receipt of the valid waiver.

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(d)(4) which specifies that:

- The individual waiver form shall be signed by the recipient or by the recipient's authorized representative, if applicable, and returned to the county welfare department by mail or in person;
- Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of a recipient, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative; and
- The county shall retain the waiver form and a copy of the provider applicant's CORI search response until the date that the conviction(s) that are the subject of the waiver request are no longer within the 10-year period disqualification period.

These sections are also necessary so that an individual determined by the county to be either eligible or ineligible to be a provider, and any recipient(s) for whom the individual was seeking to provide services, receive timely and clear notice of the individual's eligibility or ineligibility to be a provider.

Finally, the sections are necessary to establish a reasonable policy to address situation in which an individual begins providing services for a recipient before the individual is determined eligible to be a provider for that recipient on the basis of a recipient-requested waiver. Establishing the policy that an individual may be paid retroactively for authorized services he/she provides to an eligible recipient before the county acknowledges receipt of a waiver ensures that the recipient does not go without services he/she needs to remain safely in his/her own home and that he/she receives them from the provider of his/her choice. Limiting to 90 days the length of time for which an individual can receive retroactive payment from the IHSS program for authorized services provided to an eligible recipient before the county acknowledges receipt of a valid waiver is consistent with the policy established for retroactive payment when an individual has not completed the enrollment process.

Sections 30-776.75 and 30-776.751(a)

Specific Purpose:

These sections are adopted to specify that an individual providing services to a recipient under an individual waiver may provide services only for the recipient who requested the waiver. In addition, these sections specify that the waiver only applies to the conviction(s) specified in the waiver, and that a new waiver would be required if the individual were subsequently convicted of another disqualifying Tier 2 crime(s).

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(d)(5) which specifies that: a provider hired pursuant to an individual waiver may be employed only by the recipient who requested that waiver; the waiver shall only be valid with respect to convictions that are specified in that waiver; and, a new waiver shall be required if the provider is subsequently convicted of another Tier 2 disqualifying crime.

Section 30-776.76

Specific Purpose:

This section is adopted to specify that an individual who was disqualified from being a provider on the basis of a conviction for a Tier 2 crime but who is eligible to receive payment for services provided to a recipient because the recipient requested a waiver of the individual's exclusion, is permitted to provide services to an additional recipient(s) if the additional recipient(s) request an individual waiver of the individual's exclusion.

Factual Basis:

This section is necessary to comply with WIC section 12305.87(d)(6) which specifies that a provider who is eligible to receive payment for services provided pursuant to an individual waiver shall not be precluded from being eligible to receive payment for services provided to one or more additional recipients who obtain waivers.

Section 30-776.77

Specific Purpose:

This section is adopted to specify that an individual who is eligible to receive payment for services provided to a recipient under an individual waiver shall not be permitted to provide services to an additional recipient(s) in a county other than the originating county unless and until he/she undergoes another criminal background check in the county(ies) in which he/she wishes to provide services under a waiver.

Factual Basis:

This section is necessary to comply with WIC section 12305.87(d)(2) which provides that when an individual seeking to become an IHSS provider is determined to be ineligible to provide or receive payment for providing services on the basis of a Tier 2 disqualifying conviction, the county is required to send a notice informing the recipient(s) for whom the individual is seeking to provide services that the individual is ineligible to be a provider unless the recipient requests a waiver of the individual's disqualification. The notice, as well as the accompanying individual waiver form, must include specific information about the disqualifying conviction, i.e., PC section and offense name/description. This information may only be obtained from the CORI that the county in which the individual

underwent his/her criminal background check received from DOJ. Other counties would not have access to this required information because, due to CORI confidentiality requirements, they are prohibited from sharing CORIs and/or information taken from CORIs with another entity, including other counties. Thus, in order for a county other than the originating county to comply with the notice requirements, the individual who wishes to provide services for a recipient under the conditions of a waiver must undergo another criminal background check in the county(ies) in which he/she wishes to provide services under a waiver.

Final Modification:

In response to testimony received, Section 30-776.77 is amended to add the words "to the same recipient or any" in order to clarify that an individual receiving payment for IHSS services provided to a recipient under an individual waiver shall not be permitted to provide services to a recipient in a county other than the originating county unless and until he/she undergoes another criminal background check in the new county regardless of whether the recipient for whom the individual is providing services is the same recipient or an additional recipient.

Modification

Sections 30-776.8 through 30-776.82(a)(2)

Specific Purpose:

These sections are adopted to specify that a currently enrolled provider who has been working under an individual waiver can become eligible to work for another provider or multiple providers without an individual waiver or general exception if the ten-year time frame following conviction or incarceration for a disqualifying felony conviction has lapsed and certain necessary conditions have been met.

These sections are also adopted to specify that the county verification of the lapse of the ten-year time frame and approval for the enrolled provider to work for additional recipients without the need for individual waivers or general exception will only occur when the enrolled provider requests additional recipients.

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(b) which provides that an individual is eligible to serve as an IHSS provider with no restrictions after the ten-year time period following conviction or incarceration following a conviction has expired.

Further, pursuant to WIC section 12305.87, county IHSS offices need to ensure that all enrolled providers continue to be qualified after they have been enrolled; therefore, counties must continue to request that DOJ send subsequent arrest and/or disposition information for those individuals, and upon a subsequent arrest and/or disposition notification they must

evaluate the information received from DOJ to determine whether there is cause to disqualify an individual. In order to ensure that there has not been a gap in the county's subsequent arrest and/or disposition information, there must not have been a period in which DOJ was not providing subsequent arrest and/or disposition information to the county for the enrolled provider. Additionally, the county must review the subsequent arrest and/or disposition to ensure that the enrolled provider has had no disqualifying convictions during the previous ten-year period.

Sections 30-776.8 through 30-776.832 (Renumbered to 30-776.9 through 30-776.932 after public hearing of January 8, 2014)

Specific Purpose:

These sections are adopted to establish standard procedures for counties to follow when subsequent arrest and/or disposition information is received from DOJ on an individual who passed the initial criminal background check requirement. These sections provide guidelines for counties to evaluate the information received to determine whether an individual previously enrolled as a provider has since been convicted of a disqualifying crime.

Factual Basis:

These sections are necessary to comply with the following WIC sections which prohibit individuals who, within the last 10 years, have been convicted of, or incarcerated following a conviction for, the following crimes from being enrolled as a provider or receiving payment from the IHSS program for providing supportive services to a recipient:

- Pursuant to WIC § 12305.81(a) – Fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act, or a violation of subdivision (a) of section 273a of the PC, or section 368 of the PC, or similar violations in another jurisdiction; and
- Pursuant WIC § 12305.87(b) – A violent or serious felony, as specified in subdivision (c) of section 667.5 of the PC and subdivision (c) of section 1192.7 of the PC; a felony offense for which a person is required to register under subdivision (c) of section 290 of the PC; or a felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of section 10980 of the WIC.

The criminal background check that an individual undergoes prior to being enrolled as an IHSS provider, establishes that, up to that point in time, the individual has not been convicted of any disqualifying crimes. In order to ensure that an individual is not convicted of a disqualifying crime after he/she has been enrolled as a provider, counties must request that DOJ send subsequent arrest and/or disposition information, and they must evaluate the information received from DOJ to determine whether there is cause to disqualify an individual. Although counties may receive both subsequent arrest and disposition

information, counties may only disqualify an individual on the basis of a conviction for a disqualifying crime.

Modification

Sections 30-776.8 through 30-776.832 are renumbered to 30-776.9 through 30-776.932 to allow for the adoption of new Section 30-776.8 et seq.

Final Modification:

In response to testimony received, Section 30-776.921(b)(2)(A) is amended to remove the words "and any" in order to clarify the wording of the section.

Sections 30-777.1 through 30-777.12

Specific Purpose:

These sections are adopted to establish responsibility for determining whether an individual seeking to be a provider for an IHSS recipient is authorized to work in the United States (U.S.).

Factual Basis:

These sections are necessary to comply with the Immigration Reform and Control Act of 1986 (Public Law 99-603 [8 U.S. Code 1324a]) which provides that it is unlawful for a person or other entity to hire for employment in the U.S. an individual knowing that he/she is an alien not lawfully admitted into the U.S. for permanent residence, or not otherwise authorized to be employed in the U.S.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), requires that all employees (citizens and noncitizens) hired after November 6, 1986, must complete the Employment Eligibility Verification Form (I-9). Employers must complete Section 2 of the I-9 by examining evidence of identity and employment authorization within 3 business days of the date employment begins, and sign and date the certification in Section 2.

In the IHSS program, the recipient is considered to be the employer of the individual who provides his/her services, in that the recipient hires, trains, supervises and, if necessary, fires his/her provider. As the employer, the recipient is the person responsible for obtaining the completed Form I-9 from the individual seeking to be his/her provider, examining the documentation presented by the individual, and signing and dating the certification. The recipient is also responsible for retaining the Form I-9 in accordance with USCIS' requirements.

Modification:

As a result of testimony received, Handbook section 30-777.111 is amended to clarify that the recipient is to retain a copy of the completed Form I-9. Handbook section 30-777.112 is included to direct the county to retain a copy of the completed Form I-9 on behalf of the recipient. This provision allows for a more secure retention of the form in accordance with USCIS' requirements because many of the recipient employers are elderly or disabled and may not be capable of retaining the form in a method necessary to ensure the confidential information contained in the form.

Final Modification:

In response to testimony received, Section 30-777.12 is amended to remove a closing parenthesis at the end of the sentence to correct a punctuation error.

b) Identification of Documents Upon Which Department Is Relying

- Senate Bill (SB) 1104 (Chapter 229, Statutes of 2004), Section 49
- Assembly Bill of the Fourth Extraordinary Session of 2009 (ABX4) 4 (Chapter 4, Statutes of 2009), Section 27
- ABX4 19 (Chapter 17, Statutes of 2009), Sections 3 and 11
- Assembly Bill (AB) 1612 (Chapter 725, Statutes of 2010), Sections 23 and 24
- AB 876 (Chapter 73, Statutes of 2011)
- SB 878, Ch. 679, Statutes of 2014
- 8 United States Code, Section 1324a
- 26 United States Code, Section 3402
- 26 Code of Federal Regulation, Section 31-3402(f)(2)-1(a)

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

The California Department of Social Services (CDSS) did not consider any other alternatives to the proposed regulatory action because the authorizing legislation specified that CDSS implement the provisions for which the regulations are proposed through All County Letters or similar instruction until regulations are adopted.

The CDSS has determined 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

The CDSS has determined 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 seeking to become IHSS providers and to the recipients for whom they seek to provide services.

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 requirement, contained in these regulations, that individuals seeking to become IHSS providers undergo a criminal background check, could possibly impact businesses in the state that provide Live Scan fingerprinting services by increasing the number of individuals who seek such services. Although this will be an ongoing requirement for all individuals seeking to become IHSS providers, the bulk of the impact has already occurred because the requirement was implemented by All County Letter in November 2009, and the large number of individuals who were already IHSS providers at that time had until December 2010 (initially, June 2010) to comply with this requirement. Therefore, the ongoing impact, though difficult to predict, is likely to be insignificant.

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 provider enrollment requirements promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that the individuals seeking to become providers do not have a criminal background of disqualifying convictions. Additionally, the provider enrollment requirements promote program integrity by ensuring that providers understand and agree to comply with program rules and regulations.

The following documents were relied upon in proposing the regulatory action: SB 1104 (Ch. 229, Stats. of 2004); ABX4 4 (Ch. 4, Stats. of 2009); ABX4 19 (Ch. 17 Stats. of 2009); AB 1612 (Ch. 725, Stats. of 2010); AB 876 (Ch. 73, Stats. of 2011); and SB 878 (Ch. 689, Stats. of 2014).

g) Benefits Anticipated from Regulatory Action

The Department anticipates that these proposed regulations will benefit program stakeholders by consolidating the rules relating to IHSS provider enrollment requirements, which have to date been released via multiple ACLs, into single place, the Manual of

Policies and Procedures. The provider enrollment requirements themselves promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that the individuals seeking to become providers do not have a criminal background of disqualifying convictions, or if they do, recipients are made aware of the fact, and they may still elect to have these individuals as their providers (*by requesting a waiver*) in spite of it. Additionally, the provider enrollment requirements promote program integrity by ensuring that providers understand and agree to comply with program rules and regulations.

h) Statement of Specific Technology or Equipment

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

i) Testimony and Response (January 8, 2014 public hearing)

These regulations were considered as Item #2 at the public hearing held on January 8, 2014 in Sacramento, California. Written testimony was received during the 45-day comment period from November 22, to 5:00 p.m. January 8, 2014. The comments received and the Department's responses to those comments follow.

County Welfare Directors Association of CA (CWDA), (Diana Boyer, Senior Policy Analyst) submitted the following comments (Comments #1 – 4).

Section 30-776.411

1. Comment:

30-776.411 indicates that prospective provider must complete all of the provider enrollment requirements within 90 calendar days; please specify what steps he/she should take if the process is not completed within that time. Does he/she have to complete all steps again?

Response:

The CDSS thanks the testifier for the comments for consideration. The CDSS believes that the testifier made a typographical error and intended to refer to Section 30-776.2 as this is the section relating to the 90 calendar day requirement for the prospective provider to complete the provider enrollment requirements. Operating on that assumption, Section 30-776.21 specifically states that the county shall deem ineligible a prospective provider who does not complete all of the enrollment requirements within 90 calendar days of initiating the enrollment process and would be required to complete all of the enrollment steps again in order to be enrolled as an IHSS provider. The CDSS has added language to Section 30-776.23 to clarify that, if the applicant provider can show "good cause" for why he or she was delinquent in completing the four necessary steps of the IHSS provider enrollment process, the county may extend

the period for which an individual may be allowed to complete the enrollment requirements beyond 90 calendar days.

Section 30-776.432

2. Comment:

30-776.432 states that Pursuant to Government Code section 12168.7, the signed provider enrollment agreement may be retained in electronic format, as long as it is not substantially altered from its original form. Does this apply to all forms signed by the provider?

Response:

The CDSS thanks the testifier for this comment for consideration. The application of the statement in Section 30-776.432(a) regarding the retention of forms in electronic format is limited to the signed provider enrollment agreement. While other forms signed by the provider may or may not fall under the provisions of Government Code section 12168.7, such a determination goes beyond the scope of these regulations.

Section 30-777.111

3. Comment:

30-777.111 States, "The completed Form I-9 shall be retained in such a manner as to protect the provider's confidential information, including but not limited to his/her social security number, address and telephone number." Please specify who retains the I-9, the recipient or the county.

Response:

The CDSS thanks the testifier for the comment for consideration. The CDSS has revised Handbook section 30-777.111 to clarify that the completed Form I-9 should be retained by the recipient and has added Handbook section 30-777.112 which instructs counties to also retain a copy of the form on behalf of the recipient as it would assist IHSS recipients who, due to age or disability, may not have the means or ability to properly store the form for retention. In both cases, the form should be retained in such a manner as to protect the provider's confidential information.

Section 30-776.42

4. Comment:

30.776.42 – "The applicant provider shall attend an in-person provider orientation." The requirement for "in-person" attendance at the orientation is not consistent with the Statute, and reduces county flexibility in providing alternative ways for providers to

meet this requirement that still meets the statutory intent (such as verified, on-line training followed up by in-person meeting with county IHSS staff to verify the individual's identify and sign the required forms). The Legislature intended for providers to complete the training and did not specify whether the training is to be completed "in person" at a County office. Please delete "in-person" to be consistent with the statute, per below:

WIC 12301.24. (a) Effective November 1, 2009, *all prospective providers must complete a provider orientation at the time of enrollment*, as developed by the department, in consultation with counties, which shall include, but is not limited to, all of the following: ...

Response:

The CDSS thanks the responder testifier for the comment for consideration. The CDSS disagrees with the testifier's assertion that requiring providers to attend an in-person provider orientation is inconsistent with the statutory language of the applicable statute, WIC section 12301.24. As a result of the passage of SB 878 in September 2014, WIC section 12301.24(e)(1) has been amended to state that the provider orientation described in WIC section 12301.24(a) must be an onsite orientation that all prospective providers must attend in person. Therefore, alternative methods of providing the orientation materials (such as an online orientation) are no longer permitted.

j) Testimony and Response (February 4, 2015 public hearing)

These regulations were considered as Item #1 at the public hearing held on February 4, 2015 in Sacramento, California. Written testimony was received during the 45-day comment period from December 19, 2014 to 5:00 p.m. February 4, 2015. Oral comments were also received at the February 4, 2015 public hearing. The comments received and the Department's responses to those comments follow.

Fresno County DSS IHSS QA/QI & Program Integrity (Bambi Heckmann, Program Specialist) submitted the following comments (Comments #1 – 30).

Section 30-701(c)(6)

1. Comment:

CRT – Please spell out the acronym.

Response:

The CDSS thanks the testifier for the comment. The section in question provides a definition for CRT, it stands for Cathode Ray Tube and it is spelled out in the

current regulations. In this package, this section is not being amended, it is only being renumbered.

Section 30-776.211

2. Comment:

Initiating the enrollment process shall be defined as either:

(a) Completing any one of the enrollment requirements specified in Sections 30-776.41, 30-776.42, 30-776.43, and 30-776.44, or

(b) Being designated by a recipient (in writing) as the individual from whom the recipient elects to receive his/her authorized services.

For subsection (b), shouldn't it also be based on the date the recipient will begin to receive services from the provider?

Response:

The CDSS thanks the testifier for the comment. Since the applicant provider can begin providing authorized services to the recipient prior to beginning the enrollment process without contacting the county, such an activity cannot qualify as the initiating action of the provider enrollment process. The initiating activity must be an action that either the provider (through the completion of one of the enrollment requirements) or the recipient (through the designation process) initiates through the county IHSS office.

Section 30-776.23(c)

3. Comment:

An unforeseen illness, hospitalization, or other medical issue prevents the individual from completing the enrollment requirements.

Change "prevents" to "preventing".

Response:

The CDSS thanks the testifier for the comment. Based on the grammatical structure of the statement, we feel the original wording works best.

Section 30-776.4

4. Comment:

Provider Enrollment Requirements – The title of this subsection should be titled something differently since the overall section has the same title.

Response:

The CDSS thanks the testifier for the comment. We have chosen to revise the title of the overall section to "PROVIDER ENROLLMENT" in order to maintain the subsection title as "Provider Enrollment Requirements."

Section 30-776.41

5. Comment:

The applicant provider shall complete a provider enrollment form.

It should say "packet" instead of "form".

Response:

The CDSS thanks the testifier for the comment. We have chosen to maintain the word "form" instead of "packet," as this word more accurately describes the document completed by the applicant provider during the initial enrollment process.

Section 30-776.411

6. Comment:

The provider enrollment form includes the following elements.

It should say "packet" instead of "form".

Response:

The CDSS thanks the testifier for the comment. We have chosen to maintain the word "form" instead of "packet" for the reason specified in Comment 5 above.

Section 30-776.411(h)

7. Comment:

Fields for the individual to provide the following information: full name; date of birth; gender; home and mailing addresses; telephone number; Social Security number; driver's license or government-issued identification number, issuing state and expiration date; and primary spoken and written languages.

There should also be a field for email address.

Response:

The CDSS thanks the testifier for the comment. We have revised Section 30-776.411(h) to include a field for the applicant provider's email address.

Section 30-776.411(j)

8. Comment:

(j) If the individual has indicated that, within the last 10 years, he/she has been convicted of, or incarcerated following conviction for, a Tier 2 disqualifying crime, a question asking whether he/she has obtained a certificate of rehabilitation or expungement (dismissal pursuant to Penal Code section 1203.4) of the conviction. If the individual has obtained a certificate of rehabilitation or an expungement, a statement indicating that he/she must provide the county with a copy of the documentation.

Recommendation:

(j) If the individual has indicated that, within the last 10 years, he/she has been convicted of, or incarcerated following conviction for, a Tier 2 disqualifying crime, a question asking whether he/she has obtained a certificate of rehabilitation or expungement (dismissal pursuant to Penal Code section 1203.4) of the conviction.

(k) If the individual has obtained a certificate of rehabilitation or an expungement for a Tier 2 disqualifying crime, a statement indicating that he/she must provide the county with a copy of the documentation.

Response:

The CDSS thanks the testifier for the comment. We have revised Section 30-776.411(j) to separate the two sentences into two sections. This revision also necessitates the renumbering of subsections 30-776.411(k) and 30-776.411(l) to 30-776.411(l) and 30-776.411(m) respectively.

Section 30-776.411(k)

8a. Comment:

(k) A declaration indicating that the individual understands and agrees that:

Recommendation:

(i) A declaration indicating that the individual understands and agrees that:

Response:

The CDSS thanks the testifier for the comment: As stated on the response to Comment 8, Section 30-776.411(k) has been renumbered to 30-776.411(l)

Section 30-776.411(k)(2)

9. Comment:

Completion and submittal of the provider enrollment form is one of the requirements of the provider enrollment process; and

It should say "packet" instead of "form".

Response:

The CDSS thanks the testifier for the comment. We have chosen to maintain the word "form" instead of "packet" for the reason specified in Comment 5 above.

Section 30-776.411(k)(2)(B)

10. Comment:

The 90 calendar day period begins either when he/she completes the first enrollment requirement or when a recipient designates the individual as his/her provider;

Shouldn't it say "The 90 calendar day period begins either when he/she completes the first enrollment requirement **or when a recipient designates the individual will begin to serve as his/her provider;**"?

Response:

The CDSS thanks the testifier for the comment. Section 30-776.211(b) defines one of the actions that initiates the enrollment process is "Being designated by a recipient (in writing) as the individual for whom the recipient elects to receive his/her authorized services." As stated in Comment 2, since the applicant provider can begin providing authorized services to the recipient prior to beginning the enrollment process without contacting the county, such an activity cannot qualify as the initiating action of the provider enrollment process.

Section 30-776.411(k)(8)

11. Comment:

He/she will be required to reimburse the state for any overpayment paid to him/her, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to him/her for services provided to any recipient;

Change "warrant" to "payment".

Response:

The CDSS thanks the testifier for the comment. Since a "warrant" is defined as "a document that certifies or guarantees," the State of California uses that word to describe the paycheck or direct deposit document received by employees to indicate the amount of pay they have received for the work provided. Therefore, Section 30-776.411(k)(8) is correct in stating that the amount of the overpayment will be deducted from any future warrant provided to the individual for payment of services provided to any recipient.

Section 30-776.415

12. Comment:

The county shall retain the signed provider enrollment form and copies of the applicant provider's identification documents in the individual's provider file.

Change "applicant" to "prospective".

Response:

The CDSS thanks the testifier for the comment. Section 30-776.415 has been amended to reflect this correction.

Section 30-776.416

13. Comment:

The county shall provide the applicant provider with a copy of the completed provider enrollment form for his/her records.

Change "applicant" to "prospective".

Response:

The CDSS thanks the testifier for the comment. Section 30-776.416 has been amended to reflect this correction.

Section 30-776.42

14. Comment:

The applicant provider shall attend an in-person provider orientation. The applicant provider may only attend the in-person provider orientation after he/she has completed the requirements of Section 30-776.41.

Change both instances of the word "applicant" to "prospective".

Response:

The CDSS thanks the testifier for the comment. Section 30-776.42 has been amended to reflect this correction.

Section 30-776.421(c)

15. Comment:

IHSS Program rules, regulations, and requirements.

The word "Program" should be lowercase, as it is in 30-776.421 (b).

Response:

The CDSS thanks the testifier for the comment. Section 30-776.421(c) has been amended to reflect this correction.

Section 30-776.421(e)

16. Comment:

The Medi-Cal toll-free telephone fraud hotline and internet web site for reporting suspected fraud or abuse in the provision or receipt of supportive services.

Recommendation:

The Medi-Cal toll-free telephone fraud hotline **number** and internet web site for reporting suspected fraud or abuse in the provision or receipt of **in-home** supportive services.

Response:

The CDSS thanks the testifier for the comment. Section 30-776.421(e) has been amended to reflect this correction.

Section 30-776.43

17. Comment:

At the conclusion of the provider orientation, the applicant provider shall sign a provider enrollment agreement.

Change "applicant" to "prospective".

Response:

The CDSS thanks the testifier for the comment. Section 30-776.43 has been amended to reflect this correction.

Section 30-776.431(a)

18. Comment:

Is required to attend the provider orientation, sign the provider enrollment agreement, and complete all of the other enrollment requirements before he/she can be enrolled as provider and receive payment for providing services;

Recommendation:

Is required to attend the provider orientation, sign the provider enrollment agreement, and complete all of the other enrollment requirements before he/she can be enrolled as a provider and receive payment for providing services;

Response:

The CDSS thanks the testifier for the comment. Section 30-776.431(a) has been amended to reflect this correction.

Section 30-776.441(a)

19. Comment:

A list of Tier 2 disqualifying crimes may be accessed on CDSS' website at: http://www.cdss.ca.gov/agedblinddisabled/res/Tier2_Crimes.pdf

Why isn't there a link to a list for Tier 1 crimes?

Response:

The CDSS thanks the testifier for the comment. Tier 1 crimes are very strictly defined in statute (namely Welfare and Institutions Code section 12305.81(a)(1-4)); therefore, there is no need to establish a list of crimes which are disqualifiable

under that code section. Tier 2 crimes, however, are subject to interpretation based on the guidelines established in Welfare and Institutions Code section 12305.87(b)(1-3). Therefore, the CDSS has established a list on our website which lists those crimes determined to fall under the purview of this code section as disqualifiable felony crimes.

Section 30-776.441(c)

20. Comment:

The last 10 years shall be defined as any point in time during the period 10 years immediately preceding the date of the criminal background check results are received by the county.

Remove the word "of" after the word "date".

Response:

The CDSS thanks the testifier for the comment. Section 30-776.441(c) has been amended to reflect this correction.

Section 30-776.531

21. Comment:

the county may provide the following information:

Shouldn't it say "shall" instead of "may"? That way it would ensure Providers are aware of the requirements and it would prevent them coming back to ask for assistance from county staff later.

Response:

The CDSS thanks the testifier for the comment. The providing of the information detailed in Section 30-776.531 is purely voluntary by the county. While the CDSS agrees with the testifier that the information should be provided to the prospective provider to prevent him/her from coming back to ask for assistance from county staff later, the CDSS cannot mandate the information be provided.

Section 30-776.531(e)

22. Comment:

Notification that if the individual seeking to become a provider is a minor the Live Scan agency may require the individual to provide parental consent for fingerprinting.

There should be a comma after the word "minor".

Response:

The CDSS thanks the testifier for the comment. Section 30-776.531(e) has been amended to reflect this correction.

Section 30-776.57

23. Comment:

Conviction information for offenses requiring registration as a sexual offender shall be disseminated without regard to when the conviction or incarceration occurred.

Does this mean a Provider can be deemed ineligible for IHSS if they are convicted for offenses requiring registration as a sexual offender, regardless of when those offenses occurred?

Response:

The CDSS thanks the testifier for the comment. Section 30-776.57 is not concerned with ineligibility criteria. It is instead referring to the dissemination criteria used by the California Department of Justice (DOJ) to determine the CORI information released to counties for the purposes of determining a prospective provider's eligibility to serve as an IHSS provider. This section states that the DOJ will only disseminate information if a conviction occurred within ten years of the date of the request for information or if the conviction occurred over ten years prior but the subject of the request was incarcerated within ten years of the request for information. Conviction information for those individuals convicted of crimes for which they must register as a sex offender is disseminated regardless of the ten-year timeframe; however, the county must determine if the conviction or incarceration occurred within the ten-year timeframe. If the conviction or incarceration occurred over ten years prior, it cannot be used as the basis for an ineligibility determination.

Section 30-776.741

24. Comment:

Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of a recipient, an individual shall not sign his/her own individual waiver form as the recipient's authorized representative.

Does this mean a parent provider can sign a waiver themselves, allowing them to be an IHSS provider despite their Tier 2 crime conviction, without authorization from any

other person connected to the Recipient in some way? It seems like this is a conflict of interest.

Response:

The CDSS thanks the testifier for the comment. As detailed in ACL 12-19 (April 11, 2012), AB 876 (Chapter 73, Statutes of 2011) amended Welfare and Institutions Code section 12305.87(d)(4) to specify that "a parent, guardian, or person having legal custody of a minor recipient" could sign his or her own individual waiver form as the recipient's authorized representative.

Section 30-776.741(a)(1)(B)

25. Comment:

Provide notice to the individual indicating that he/she is eligible to begin providing and receive payment for providing authorized services for the recipient who signed the waiver.

Questions:

What if the individual who signed the waiver is trying to be the Provider? Wouldn't that person receive a different notice?

What if the individual who signed the waiver is neither the Recipient nor the person trying to be the Provider? Wouldn't that person receive a different notice as well?

Response:

The CDSS thanks the testifier for the comments. If the individual who signed the waiver met one of the criteria set forth in Welfare and Institutions Code section 12305.87(d)(4), he or she would receive the standard notice and would not receive any sort of special notice. We have developed specific notices to inform both the recipient and the provider of the receipt and filing of the waiver with the county IHSS office. If an authorized representative who is neither the provider nor the recipient has signed the waiver on behalf of the recipient, it is not necessary to inform that individual of the receipt and filing of the waiver.

Section 30-776.742

26. Comment:

The county shall retain the waiver form and a copy of the individual's criminal offense record information until the date that the convictions that are the subject of the waiver request are no longer within the 10-year exclusionary period.

Questions:

What about offense records for sexual offenders as referenced in Section 30-776.57?
Would those records always be kept?

Response:

The CDSS thanks the testifier for the comment. Since the information regarding the IHSS provider's status as a registered sex offender is immaterial if the offense or incarceration occurred over ten years prior to the individual's serving as an IHSS provider, the information about the offenses need not be kept beyond the ten-year timeframe even if the DOJ is required to disseminate this information to the counties regardless of the timeframe.

Section 30-776.921(a)

27. Comment:

If the notification includes information only about a subsequent arrest, and not disposition of a subsequent arrest, whether or not the arrest is for a disqualifying crime, the county shall not take any action to deem individual ineligible.

Question:

Why would we not have access to the disposition of the offense? I think it is needed if we are to uphold the eligibility criteria for IHSS Providers.

Response:

The CDSS thanks the testifier for the comment. Section 30-776.921(a) covers those instances in which an IHSS provider has been arrested for a subsequent crime that has the potential to remove the provider's eligibility status but the provider has not yet been convicted of the crime. In those cases, when the provider has not yet been convicted of the crime for which he or she was arrested, the county cannot take any action to deem the provider ineligible. The county can only take such action after the provider has been convicted of the exclusionary crime.

Section 30-776.921(b)(2)(A)

28. Comment:

The county shall provide the individual and any and

Remove the words "and any".

Response:

The CDSS thanks the testifier for the comment. Section 30-776.921(b)(2)(A) has been amended to reflect this correction.

Section 30-777.12

29. Comment:

http://www.uscis.gov/I-9).

Remove the parentheses.

Response:

The CDSS thanks the testifier for the comment. The parentheses at the end of section, which is a typographical error, has been removed.

General Comment

30. Comment:

Shouldn't the words "recipient" and "provider" be capitalized throughout the regulation?

Response:

The CDSS thanks the testifier for the comment. Since "recipient" and "provider" are generic terms used to describe individuals in the IHSS program rather than specific individuals, capitalization is not warranted.

County of Los Angeles, Department of Public Social Services (Nestor Requeno, Director, Intergovernmental Relations Section) submitted the following comments (Comments #31 – 35).

Sections 30-776.22 through .222

31. Comment:

Prior to determining an individual who has failed to complete the enrollment requirements within 90 calendar days ineligible to be a provider, the county shall send a notice to the prospective provider informing him/her that he/she will be determined ineligible to be a provider unless he/she completes the remaining provider enrollment requirements.

.221 The notice shall include the following:

- (a) The specific provider enrollment requirements that the individual has failed to complete.
- (b) The date by which the individual must complete the requirements or be determined ineligible.

.222 The notice shall be sent at least 15 calendar days before the 90-day time period for completing the enrollment requirements ends.

Recommendation:

We recommend the State provide details how the Counties should implement this process.

CMIPS II is not programmed to automatically send out these notices. If initiating the notice is a manual process, there will be substantial additional workload in LA County.

LA County recommends the counties be notified which Providers have not completed the enrollment process within 90-days.

LA County recommends counties be notified 15-days before that date so that they may be processed timely.

LA County recommends the IHSS Provider SSN and Enrollment Status Report in CMIPS II be revised as follows:

1. Separate the report by county district offices;
2. Include a "Began Enrollment Date" to allow County staff to determine what date to send out this new notice.
3. Program CMPIS II to automatically send out the notice.

Response:

The CDSS thanks the testifier for the comments and recommendations. The CDSS appreciates the necessity for automation in this area. The CDSS will work to make all efforts to assist the counties in automating these processes.

Section 30-776.321

32. Comment:

The county shall extend the period for which an individual may be paid retroactively by an additional 45 calendar days for "good cause," as specified in Section 30-776.23.

Recommendation:

The CMIPS II, IHSS Provider SSN and Enrollment Status Report, in its current format does help to identify a Los Angeles Provider who actually meets the requirements, but has not received payment within 135 days.

LA County recommends (sic) the State to add the following language:

.321 ... may be paid retroactively by an additional 45 calendar days, **or at the discretion of the county**, for "good cause..."

Response:

The CDSS thanks the testifier for the comment and recommendation. However, the language as it currently reads in Section 30-776.321 already provides the county discretion through its broad definition under Section 30-776.23 of what constitutes "good cause." The examples provided under Section 30-776.23 are not all-inclusive and the county could institute the 45-calendar day extension for any reason it constitutes is "good cause." Therefore, the additional recommended language is unnecessary.

Sections 30-776.33 through .34

33. Comment:

When a recipient designates an individual who has not completed the enrollment requirements as the individual from whom he/she elects to receive his/her authorized services, the county shall inform the recipient

.331 Of the conditions and limitations on retroactive payment for services provided prior to an individual's completion of the enrollment requirements, and

.332 That the recipient shall accept financial responsibility for paying for the following:

(a) In the case of an individual who is ultimately deemed ineligible – any and all services provided; or

(b) In the case of an individual who is ultimately deemed eligible but who completes the enrollment requirements more than 90 calendar days from the date he/she begins providing services – any and all services provided between the date the individual begins providing services and the date 90 days prior to the date that he/she completes the enrollment requirements.

HANDBOOK BEGINS HERE

.34 Example:

An individual

Recommendation:

Currently in CMIPS II, Providers are not linked to Recipients prior to the Providers completing all of the enrollment requirements. Counties are unable to notify a recipient that the person they are hiring has not completed the enrollment requirements.

LA County recommends that CMIPS II be programmed to automatically send out this notice.

Response:

The CDSS thanks the testifier for the comments and recommendations. The CDSS appreciates the necessity for automation in this area. The CDSS will work to make all efforts to assist the counties in automating these processes.

Sections 30-776.741(B) and (B)1.

34. Comment:

Provide notice to the individual indicating that he/she is eligible to begin providing and receive payment for providing authorized services for the recipient who signed the waiver.

1. If an individual began providing authorized services for the recipient before a valid waiver request was received by the county, the individual cannot be paid retroactively for services he/she provided more than 90 days back from the date that the county acknowledged receipt of the valid waiver request.

Recommendation:

LA County recommends (sic) that the current State notice regarding the approval of a waiver, include language regarding the retroactive pay only going back to 90 days from the date the county acknowledged receipt of the valid waiver.

Response:

The CDSS thanks the testifier for the comment and recommendation. The IHSS Program Notice to Recipient of Provider Eligibility Acknowledgement of Receipt of Waiver will be revised after the regulations have been approved and published to include language reflecting the recommended change.

Section 30-776.932

35. Comment:

An individual who has been enrolled as a provider has stopped providing services for any recipient for a period longer than one year.

Recommendation:

In LA County we are concerned that workload associated with this process is enormous and time-consuming for large counties with a provider population of 20,000-150,000.

In LA County, our Public Authority has limited access to the CMIPS II system. The concern in LA County is that our Public Authority will send a No Longer Interested Letter to the DOJ, while at the same time the provider is coming back in through the

enrollment process. This can cause LA County to run into situation where the DOJ no longer informs us of arrests/convictions for someone who is now back in the process phase. We recommend the State further looking into a solution for this.

Response:

The CDSS thanks the testifier for the comment and recommendation. As provided in ACIN I-61-14 (October 3, 2014), the county procedures for this process have been outlined which will allow the county to remove such providers from their active rolls without the attendant negative issues addressed in the comment above. The CDSS will continue to work with the counties (especially the more populated counties) to streamline this process.

Sacramento County IHSS Public Authority (Rick Simonson, Executive Director) provided both oral and written comments. The following are oral comments (Comments #36 – 37).

Section 30-776.321

36. Comment:

I have some issues that I like to address in the proposed regulations. One is the 90-day retroperiod for payment. I know it says early on in the regulations that if there is a delay outside of the control of the individual, like the DOJ hasn't come back with, that that timeframe can be modified, but then later in the document it never talks about that, if there is a delay outside of the control of the individual, so to me it seems a little unclear whether there really is a 90-day retroperiod or if it can be extended longer than that based on, typically the DOJ not getting information back to public authorities, doesn't happen frequently but every now and then we have somebody that takes three, six, eight months before we get something from the DOJ or get a report from the DOJ and in the meantime that person has been working and, I think deservedly needs to be paid, so I just want to make sure that the regulations clearly state that there can be a modification to the 90 days.

Response:

The CDSS thanks the testifier for the comment. While the CDSS understands that there have been occasions in which the DOJ has taken considerably more time to process certain criminal background checks on prospective providers, we feel any further extension beyond the 135 days (90-day initial retroactive period, plus the additional 45 day extension for "good cause") would be problematic since the ability to document and accurately justify authorized service times beyond that time period could be compromised, especially given the composition of the IHSS recipient population (the elderly and disabled). The CDSS has been communicating with the DOJ to determine how the two agencies can work together to reduce the processing time of criminal background checks for

prospective IHSS providers in an effort to reduce the processing time below the 135 calendar day threshold.

Section 30-776.422

37. Comment:

My next comment may not relate directly to the information in this but it does talk about the provider enrollment forms and the provider enrollment forms, the 426, the 846, 426a, the others that have to be completed by the provider and/or recipient. Essentially they're legal documents and ostensibly to combat fraud if there's something down the road, is an indication of what the person signed for. I understand that the regulations require counties to translate those forms into any of the threshold languages in that county in addition to the provide..., in addition to materials there available at the provider orientations, but since it's a legal document, I really want to encourage the State of California to consider translating those forms that have to be signed. You know a misplaced word, something translated incorrectly, could mean the difference between a form being valid or invalidated, so I think it's pretty risky to allow counties to translate those particular forms, not knowing what you may get. I'm not saying we don't have resources or capable, I'm just saying sometimes you get something that's not quite accurate.

Response:

The CDSS thanks the testifier for the comment. However, we feel that this comment is outside the scope of these regulations and needs to be addressed in a different forum.

The following are written comments (Comments #38 – 40).

Section 30-776.463(a)(3)

38. Comment:

This section has a 3-day requirement for notice requirement to providers working in other counties for **subsequent arrests** and conviction information. Since subsequent arrests are not cause to terminate a provider nor is there a requirement to notify IHSS recipients of subsequent arrests, what is the reason for providing that information? Please limit **to subsequent convictions**.

The **3-day** time frame for a county that receives information about a **subsequent arrest** and conviction for a disqualifying crime of an individual providing services in another county(ies) to notify that county(ies) of the individual's disqualification is established to ensure the safety and security of the recipient(s) for whom the disqualified individual is providing services in that county(ies). It is critical that the other county(ies) be informed promptly so that the county can send notice to the recipient(s) to inform them

that the individual is no longer eligible to provide services due to a conviction for a disqualifying crime. The time frame for notification which has been established serves to limit the amount of time the recipient(s) will be exposed to a potentially unsafe individual in his/her home.

Response:

The CDSS thanks the testifier for the comment. Section 30-776.463(a)(3) actually only mentions the informing of other counties for subsequent convictions. The reference to the subsequent arrest information in Section 30-776.463(a)(3)(A)(1) is simply to inform the counties that they should not send subsequent arrest information provided by the DOJ to other county offices as this information is confidential.

Section 30-776.77

39. Comment:

This section appears to require that a provider must get a DOJ background check in additional counties in which they work. This is contrary to current statute which now exempts a second background check when working in a second county. If it is the intent to require additional background check(s), to be enforced, a notice requirement will be necessary for those providers currently being paid in more than one county and a timeframe established in which the additional background check(s) must be performed.

This section is necessary to comply with WIC section 12305.87(d)(2) which provides that when an individual seeking to become an IHSS provider is determined to be ineligible to provide or receive payment for providing services on the basis of a Tier 2 disqualifying conviction, the county is required to send a notice informing the recipient(s) for whom the individual is seeking to provide services that the individual is ineligible to be a provider unless the recipient requests a waiver of the individual's disqualification. The notice, as well as the accompanying individual waiver form, must include specific information about the disqualifying conviction, i.e., PC section and offense name/description. This information may only be obtained from the CORI that the county in which the individual underwent his/her criminal background check received from DOJ. Other counties would not have access to this required information because, due to CORI confidentiality requirements, they are prohibited from sharing CORIs and/or information taken from CORIs with another entity, including other counties. Thus, in order for a county other than the originating county to comply with the notice requirements, the individual who wishes to provide services for a recipient under the conditions of a waiver must undergo another criminal background check in the county(ies) in which he/she wishes to provide services under a waiver.

Response:

The CDSS thanks the testifier for the comment. Section 30-776.77 is necessary to comply with Welfare and Institutions Code section 12305.87(d)(2) which provides that when an individual seeking to be enrolled as an IHSS provider has been convicted of a Tier 2 disqualifying crime, the county must send a notice informing the recipient(s) for whom the individual is seeking to provide services that the individual is ineligible on the basis of that conviction unless the recipient requests an individual waiver of the individual's disqualification. Since this notice must include specific information that can only be obtained from the CORI and the originating county is not allowed to share that information with the second county due to confidentiality issues, in order for the second county to comply with the requirements of WIC section 12305.87(d)(2), the individual must undergo a second DOJ criminal background check in order for the second county to obtain access to the individual's CORI. Please note that this need for another criminal background check is only for those IHSS providers who are providing services via an individual waiver.

Section 30-776.411(k)(9)

40. Comment:

This section requires that providers make services available without respect to specific protected classes. Since IHSS recipients receive the benefit of provided services, can recipients agree to honor the same standard when hiring? Registry recipients regularly specify that they want referrals of a particular race, gender, age, sexual orientation, etc. (BTW...our Registry does not track any of the protected classes, except gender when, by policy, there may be reason to limit to a particular gender.)

Specific Purpose:

This section is adopted to specify that the provider enrollment form includes a declaration indicating that, by signing the form, the applicant provider understands and agrees that he/she will be required to provide services without discrimination based on race, color, national or ethnic origin, religion, gender, age, sexual orientation, or physical or mental disability.

Factual Basis:

This section is necessary to comply with applicable federal and state laws and their implementing regulations to ensure that no person shall, because of race, color, national or ethnic origin, religion, gender, age, marital status, political affiliation, sexual orientation, or physical or mental disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal or state financial assistance.

Response:

The CDSS thanks the testifier for the comment. Section 30-776.411(k)(9) is necessary to comply with applicable federal and state laws and their implementing regulations to ensure that no person shall, because of race, color, national or ethnic origin, religion, gender, age, marital status, political affiliation, sexual orientation, or physical or mental disability, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal or state financial assistance. Because these regulations detail the IHSS provider enrollment process, the methods by which an IHSS recipient chooses and hires his or her provider are beyond the scope of these regulations.

k) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from July 29, 2015, to August 12, 2015 was received. The comments received and the Department's responses to those comments follow.

Los Angeles County – Department of Public Social Services (Gail Washington, IHSS Program Director) submitted the following comments (Comments #1 – 9).

Section 30-701(t)(3)

1. Comment:

Turnaround timesheet means a three-part document issues by the state consisting of the paycheck, the statement of earnings, and the timesheet to be submitted for the next pay period.

Recommendation:

Recommend to clarify and define what is meant by "three-part document". Currently, IHSS Providers receive their timesheets separately from their statement of earnings. Also, those providers who are signed up for direct deposit do not receive a paycheck.

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. The CDSS believes that no further clarification of the issue is necessary as the Section 30-701(t)(3) clearly states that the "three-part document" consists of the paycheck/warrant, the statement of earnings, and the timesheet to be submitted for the next pay period. The testifier is correct that those providers who receive direct deposit will not receive a paycheck, they will

receive a warrant stating their earnings for the pay period which substitutes for the paycheck in the "three-part document."

Section 30-776.211(b)

2. Comment:

Being designated by a recipient (in writing) as the individual from whom the recipient elects to receive his/her authorized services.

Recommendation:

Recommend that the regulations specify that the designation (in writing) the recipient cannot back-date the document to reflect a period greater than 90 days.

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. The "back-dating" of the designation document by the recipient to reflect a period greater than 90 days will have no bearing on the deadline for completion of the provider enrollment process or on retroactive payments to a provider upon completion of the enrollment process. The 90-day provider enrollment process deadline will be set for 90 days from the receipt of the designation document with the county IHSS office or public authority. The retroactive payment from the program for authorized services provided by the provider prior to completion of enrollment will likewise be set for 90 calendar days back from the date of completion of the enrollment requirements, regardless of the date set forth by the recipient on the designation documents.

Section 30-776.222

3. Comment:

The notice shall be sent at least 15 calendar days before the 90-day time period for completing the enrollment requirements ends.

Recommendation:

Recommend that the timeframe is streamlined to the standard 10 day Notice of Action timeframe, to prevent any confusion among providers or recipients.

Recommend that the regulation allow a 10 day notification period in those instances that counties fail to take timely action to notify the provider of the timeframe for completing the enrollment requirements.

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. The 15-day timeframe set forth in this section was established to allow the applicant provider to be informed in enough time for him/her to complete the necessary provider enrollment requirements before the end of the 90-day deadline. A 10-day timeframe would be insufficient in this regard. The standard 10-day Notice of Action timeframe is used to inform recipients of important information regarding their status. It is not used for providers.

Further, the county is given the option in Section 30-776.23 to extend the provider enrollment processing period an additional 45 days beyond the initial 90 days in situations in which the county has caused a delay in the process by not taking timely action to notify the provider of the timeframe deadline. Therefore, the 10-day notification period is unnecessary.

Section 30-776.23

4. Comment:

The county may extend the period for which an individual may be allowed to completed (sic) the enrollment requirements by an additional 45 days...

Recommendation:

Allow counties a degree of flexibility when dealing with CBI results. Allow the period to be extended by an additional 45 days for extenuating circumstances (strictly related to CBIs). In LA County, according to our Public Authority, CBI results can take anywhere between 4-6 weeks to complete and we have had cases that extend beyond 6 months.

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. When using CBI, we assume the testifier means CORI (Criminal Offender Record Information). The current regulations grant an additional 45-day extension to the initial 90-day provider enrollment processing timeframe if the county IHSS office or public authority believes there is "good cause" to justify the extension. This additional 45 days extends the period of the processing timeframe to 135 days. In drafting these regulations, CDSS conducted research using data provided by the California Department of Justice which showed that 99.66% of CORI results were completed within 120 days after submission by the county IHSS offices or public authorities. Therefore, CDSS has determined that any extension to move the period of provider enrollment beyond the 135 days due to a delay in receipt of CORI results would be unnecessary and extraneous.

Section 30-776.414(a)(1)

5. Comment:

(1) Examples of acceptable identification include: a driver license or identification card issued by a state department of motor vehicles, a U.S. passport, or a U.S. military identification card.

Recommendation:

Recommend to include the following documents as examples of acceptable identification:

- Permanent Resident Card.
- Native American Tribal Document, or a Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native tribal document.

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. However, CDSS has added clarifying language to the regulations to indicate that Native American and Alaskan Native identification documents are an acceptable form of identification to be used during the IHSS provider enrollment process. Changes have been made to Sections 30-776.414(a) and 30-776.414(a)(1) to include the acceptance of such identification documents.

Section 30-776.431(f)

6. Comment:

(f) Cannot be paid for authorized services performed when the recipient is away from his/her home,...

Recommendation:

Recommend to include "**services not authorized or**" to read:

(f) Cannot be paid for **services not authorized or** authorized services performed when the recipient is away from his/her home,...

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. CDSS believes the additional language is unnecessary as the IHSS program requirements have established that all services

performed by providers within the program must be authorized before payment for those services will be made.

Section 30-776.441(c)

7. Comment:

(c) The last 10 years shall be defined as any point in time during the period 10 years immediately preceding the date **of** the criminal background check results are received by the county.

Recommendation:

Clarification is needed to define the point of time reference for 10 year period. Can the point of reference also be: the date the individual was released or the date of his/her conviction? Recommend to include an example to clarify the issue.

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. However, for the sake of clarity, CDSS has added an example in the handbook section of the regulations to demonstrate the method by which CORI results should be reviewed for results within the 10-year timeframe.

Section 30-776.531(e)

8. Comment:

(e) Notification that if the individual seeking to become a provider is a minor the Live Scan agency may require the individual to provide parental consent for fingerprinting.

Recommendation:

Recommend to include the definition of a "Minor" for the purposes of being a provider.

Response:

The CDSS thanks the testifier for the comment. This comment falls outside of the scope of the 15-day re-notice. CDSS believes additional language defining the word "minor" is unnecessary as the legal definition of a minor is an individual under the age of 18 as is defined within State statute.

Section 30-776.77

9. Comment:

An individual who is eligible to receive payment for services provided to a recipient under an individual waiver shall not be permitted to provide services to ~~an~~ **the same recipient or any** additional recipient(s) in a county other than the originating county, as defined in Section 30-776.463, unless and until he/she undergoes another criminal background check in the county(ies) in which he/she wishes to provide services under a waiver.

Comment:

1. Section 30-776.463(2) [sic] indicates that a county shall accept a criminal background check clearance for an individual who has been deemed eligible by another county when a Criminal Offender Record Information response does not include any disqualifying convictions as described in Section 30-776.583(b).
2. Section 30-776.463 (a)(4)(A) 1 indicates that the originating county may share confidential information with other counties in order to substantiate the disqualifying notice sent to the providers.
3. WIC Section 12305.87(e)(2) indicates that this confidential information can be share with the department when the provider requests a general exception to the exclusion.

Recommendation:

To include that the originating county may also share this confidential information with other counties when:

1. The recipient moves to another county along with the provider who has a current individual waiver to a Tier 2 disqualifying conviction. This will create a smooth transition to the ICT process.
2. A provider providing services under an individual waiver in the originating county wants to provide services in another county. This will reflect in savings for the providers and expedite the process.

Response:

The CDSS thanks the testifier for the comment. The prohibition against the sharing of Criminal Offender Record Information documents between counties derives from California Department of Justice regulations and requirements for dissemination of CORI documentation. CDSS cannot detail a requirement in regulations that is contrary to State statute or to the regulations of another State agency. Therefore, the recommendation of the testifier cannot be implemented.