



CDSS

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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES

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Reason For This Transmittal

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by one or More Counties
- ☒ Initiated by CDSS

October 19, 2017

ALL COUNTY LETTER NO.: 17-105

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY IHSS PROGRAM MANAGERS

SUBJECT: REMOVAL OF VIOLATION BY THE CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES DUE TO
UNTIMELY COUNTY DISPUTE PROCESSING

REFERENCES: [ACL 16-44](#) (May 10, 2016); [ACL 16-46](#) (May 16, 2016);
and [ACL 17-25](#) (March 17, 2017)

This All County Letter (ACL) provides counties with information and direction when requesting the California Department of Social Services (CDSS) remove an In-Home Supportive Services (IHSS) violation from a provider record in the Case Management, Information and Payrolling System (CMIPS). Attachments to this ACL include an overview of required county contact with recipients and providers when an IHSS violation has occurred. This ACL will guide the counties in the process by which counties may request that CDSS inactivate a violation when the county 10-day dispute process has been exceeded for extraordinary circumstances resulting in a violation given to a provider in error. This ACL will provide:

- Process Overview
- Timeline for this Process
- Purpose

This ACL does not supersede any prior ACL regarding the Fair Labor Standards Act (FLSA) and Violations and is not to be used in place of the county dispute process, optional voluntary training for second violation or State Administrative Review (SAR) process for third and fourth violations. These processes mentioned must be utilized before requesting a CDSS review. The county must follow the guidelines from ACLs 16-44 and 16-46 which define when a dispute should result in a violation removal.

BACKGROUND

Effective February 1, 2016, CDSS implemented the provisions of Senate Bill (SB) 855 (Chapter 29, Statutes of 2014) and SB 873 (Chapter 685, Statutes of 2014) limiting both the number of authorized IHSS and Waiver Personal Care Services (WPCS) hours a provider is permitted to work in a workweek and the number of hours allowed for travel in a workweek. As a part of implementing these provisions, CDSS established escalating consequences called violations for violating the weekly authorized hour and travel hour limits and a process for providers to dispute violations received. As described in ACL 16-46 'County Dispute Process', when a violation is issued for exceeding any of the established limits, a violation notice and a violation dispute form are mailed to the provider at their address of record in CMIPS. To dispute a violation, the provider must submit the violation dispute form which must be received by the county within ten (10) calendar days of the date on the violation notice. The county must then enter the date the violation dispute form was received into CMIPS by the tenth (10th) business day from the date of the violation notice to have the violation considered for removal. Ten (10) business days from the date of the violation notice is the end of the dispute period.

With these strict time-frames there may be an occasion when the county is not able to enter a violation dispute received date into CMIPS by the tenth (10th) business day and prohibited after the (tenth) 10th day with the system enforced timeframes. Therefore, CDSS has established a process for counties to request CDSS remove a violation when the county has missed the time-frame allowed however the provider submitted the dispute timely. A county may only request CDSS remove a violation when it is due to an administrative error or other circumstances beyond the control of the provider and the county has determined that the violation would have been removed if the error had not occurred.

As a part of the implementation of the violation and dispute processes, counties are, and will continue to be, responsible for the ongoing outreach and education of providers and recipients to ensure they understand how violations happen, consequences of the violations, and the dispute processes once a violation has occurred.

CDSS Violation Removal Guidelines

The CDSS Violation Removal may be used for violations meeting the following conditions:

- A circumstance beyond the control of the provider is clearly identified, AND
- The provider filed the violation dispute timely but the county was not able to enter the dispute into CMIPS by the end of the allotted dispute period; and the county determined the dispute follows policy set forth in ACL 16-46 requiring that the hours are related to an unanticipated and immediate need that would have a direct impact on the IHSS recipient and are needed to ensure health and/or safety.

Request for CDSS Violation Removal

The following information describes the steps and actions counties must take to request a timely filed dispute of a violation to be overridden by CDSS:

1. The county determines the violation was subject to an override based on criteria described in ACL 16-46.
2. The county worker prepares an In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) Request for CDSS Violation Removal Request Form (SOC 2320) with the justification of why the timely dispute was not entered by the county in a timely manner and why the violation should be overridden. Counties may obtain the SOC 2320 from the CDSS website.
3. The county worker submits a completed SOC 2320 by attaching it to an email and submitting the email to CDSS at: FLSAViolationReview@dss.ca.gov
4. The county worker receives an initial receipt response via email from CDSS within one (1) business day of receiving a SOC 2320. The CDSS sends the county worker an email if the form is determined to be incomplete, and the request must be resubmitted. The response timeframe will restart with every resubmitted request.
5. The CDSS reviews the SOC 2320 and case evidence within CMIPS to determine appropriate action. The CDSS may request information related to the dispute filed by the provider to assist in the review.
6. The CDSS makes the decision to uphold or override within five (5) business days of an accepted, complete SOC 2320.
7. Once a determination is made by CDSS, CDSS sends an email informing the county of the decision.
8. When CDSS' decision is an approval of the override request, a second email is sent to the county once the violation has been inactivated in CMIPS. Inactivation of a violation by CDSS takes multiple steps in CMIPS spanning three (3) days. Upon receipt of the email, the county mails the system generated SOC 2263 and 2264 forms informing the provider and recipient of the removal of the violation.
9. When an inactivation is performed for violation 3 or 4, the county may need to update the provider status in CMIPS if the status was changed due to the violation. The county reassigns the provider to a case(s) when necessary based on recipient direction.

Timeline and Evidence Overview

Counties must submit a CDSS review request no later than 45 calendar days from the violation notice date and the end of the CDSS review acceptance period.

Before submitting a violation review request to CDSS, the county must determine that the provider violation dispute meets the criteria for a CDSS review described above. The process to inactivate a violation in CMIPS takes three (3) business days.

Note: This process is not to be used in lieu of the counties responsibility to perform timely processing of violation disputes. This process is only to be used for extraordinary circumstances outside of the provider's control. Additionally, only county personnel shall make these requests. Providers and recipients shall not use this process.

County Assistance to Providers and Recipients

Counties are responsible for the ongoing assistance, outreach and education of providers and recipients to ensure they understand the workweek and travel time limits, the escalating consequences for violating the limits and the provider dispute process for violations. Counties give information and assistance at the initial and annual assessment of recipients, provider orientation and if a violation(s) occurs.

Attached to this ACL is an overview of county actions and contact points that must occur during the violation process

Camera Ready Copies and Translations

For camera-ready copies in English, contact the Forms Management Unit at fmudss@dss.ca.gov. If your office has internet access you may obtain this form from the CDSS webpage at: [CDSS Website](#).

When translations are completed per MPP Section 21-115.2, including into Spanish, the translated forms are posted on the CDSS webpage. Copies of the translated forms can be obtained at: [Translated Forms and Publications](#).

For questions on translated materials, please contact Language Services at (916) 651-8876. Until translations are available, counties should send recipients who have elected to receive materials in languages other than English should be sent the English version of the form or notice along with the *GEN 1365-Notice of Language Services* and a local contact.

As already required by law, the County Welfare Departments shall ensure that effective bilingual services are provided. This requirement may be met through utilization of paid

interpreters, qualified bilingual employees, and qualified employees of other agencies or community resources. These services shall be provided free of charge to the applicant/recipient.

In the event CDSS does not provide translations of a form, it is the county's responsibility to provide the translation or appropriate interpretive services as applicable if an applicant or recipient requests it. More information regarding translations can be found in the California Department of Social Services Manual of Policy and Procedures Section 21-115.

If you have questions or comments regarding this ACL, please contact the Adult Programs Division County Assistance Line at (916) 551-1003.

Sincerely,

Original Document Signed By:

DEBBI THOMSON
Deputy Director
Adult Programs Division

Attachments

c: CWDA