



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



EDMUND G. BROWN JR.  
GOVERNOR

May 9, 2018

ALL-COUNTY LETTER NO: 18-52

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY IN-HOME SUPPORTIVE SERVICES PROGRAM  
MANAGERS

SUBJECT: RELEASE OF IN-HOME SUPPORTIVE SERVICES (IHSS) CASE  
RECORDS TO APPLICANT/RECIPIENT OR AUTHORIZED  
REPRESENTATIVE

REFERENCE: [MANUAL OF POLICIES AND PROCEDURES \(MPP\) SECTIONS 19-005.1, 19-005.2, 19-005.4, 19-006, 19-008, 20-005, 20-007, 20-300.23, 20-352.1, 21-115, 22-051, 22-073.232\(c\), 22-201.5\(a\)\(9\), 22-300.23, 22-305.5\(i\), 22-352.1, 30-009.26; WELFARE AND INSTITUTIONS CODE \(WIC\) SECTIONS 10850.2 and 14100.2\(a\); HEALTH AND SAFETY CODE \(HSC\) SECTIONS 123110, and 123115; EVIDENCE CODE \(EC\) SECTION 1040; CALIFORNIA CODE OF REGULATIONS, TITLE 22 SECTION 51009; ACL 16-02 \(January 20, 2016\); ACL 17-102 \(September 29, 2017\)](#)

The purpose of this letter is to remind county IHSS programs of statutory and regulatory requirements as well as current California Department of Social Services (CDSS) policies that govern the authority of an applicant or recipient to inspect his or her case record. This ACL reiterates information provided in [ACL 16-02 Access to Public Assistance Case Records Reminders and New Case Record Inspection Request Form](#) as it pertains to the In-Home Supportive Services Program (IHSS).

## **I. APPLICANT/RECIPIENT CASE RECORDS**

Pursuant to [MPP section 30-009.26](#), counties are required to maintain a case record for each applicant and recipient that establishes eligibility and a need for services. The purpose of public assistance and social service records is to evidence eligibility and delivery of public social services. The applicant's or recipient's case record should only contain facts relevant to his or her case. ([MPP section 19-008](#))

Required and Recommended Practices to Facilitate Applicant/Recipient Inspection of His or Her Case Record

Counties should inform an applicant/recipient of the types of information and documents that are contained in his or her case record that he or she is authorized to inspect. Applicant/recipients should not be asked to state their reason for requesting to inspect their case record. Questions regarding an applicant/recipient's request to inspect their case record should be limited to those necessary to assist the applicant/recipient in identifying the case record information they want to inspect.

Counties must comply with an applicant/recipient's request to inspect his or her case record. Inspection should be provided as expeditiously as possible to ensure the applicant's/recipient's needs are met (e.g., request may be related to a state hearing). The county may determine in conjunction with county counsel, as necessary, if specific documents requested by an applicant/recipient are privileged and may not be released ([MPP section 19-006](#)) or otherwise confidential under applicable laws referenced in the [General Access to Inspect Case Records](#) section below.

An applicant/recipient must be able to inspect any and all documents (except those determined to be privileged or confidential) in his or her case record regardless of whether the document is maintained in paper or electronic format, including scanned documents that are uploaded and stored separately from the IHSS automated system, CMIPS II.

If an applicant/recipient requests to inspect a document in his or her case record that contains a mixture of privileged and non-privileged information as well as confidential and/or nonconfidential information, the county should assess whether the privileged and/or confidential information can be redacted or obscured to allow the applicant/recipient to inspect the remaining non-privileged and/or non-confidential portions of the document. This may require the county to print a copy of the document, redact the privileged and/or confidential information, and allow the applicant/recipient to inspect a copy of the redacted document. There may be circumstances in which the county determines that the entire document must be withheld to protect privileged and/or confidential information. Counties are strongly encouraged to consult with their county counsel in determining whether documents must be withheld or redacted to protect privileged and/or confidential information. Such consultations should be completed expeditiously to avoid an unwarranted delay in allowing an applicant/recipient to inspect his or her case record.

Counties are strongly encouraged to establish and publish written policies to assist county staff in facilitating applicant/recipient requests to inspect a case record and to ensure that an applicant/recipient understands his or her right to inspect his or her case record.

### General Access to Inspect Case Records

In general, an applicant's intake and/or recipient's case record is confidential and not open to examination for any purpose not directly connected with the administration of the program. The exceptions to this general rule are very limited and are specified in statutes and regulations. In the limited circumstances when some portion of a case record may be inspected, counties must still ensure that confidential and privileged information is not disclosed.

[Welfare and Institutions Codes \(WIC\) section 14100.2\(a\)](#) states, in part, "...all types of information, whether written or oral, concerning a person, made or kept by any public officer or agency in connection with the administration of any provision of this chapter, Chapter 8 (commencing with Section 14200), or Chapter 8.7 (commencing with Section 14520) and for which a grant-in-aid is received by this state from the United States government pursuant to Title XIX of the Social Security Act shall be confidential, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program...."

[WIC section 10850\(a\)](#) states, "except as otherwise provided in this section, all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of that program."

[WIC section 10850.2](#) provides an exception to this general rule when an applicant/recipient desires to inspect his or her own case record:

"Notwithstanding the provisions of Section 10850, factual information relating to eligibility provided solely by the public assistance recipient contained in applications and records made or kept by any public officer or agency in connection with the administration of any public assistance program shall be open for inspection by the recipient to which the information relates and by any other person authorized in writing by such recipient."

[California Code of Regulations, Title 22 Section 51009](#) states, in part, "All individual medical records of beneficiaries acquired by individuals or institutions providing care, the Department, or any other state or local agency, or by any organization contracting to provide administrative services under this program, shall be confidential and shall not be released without the written consent of the beneficiary or his personal representative..."

[MPP section 19-005.4](#) provides that an applicant/recipient "may inspect the case records including the entire case narrative relating to the applicant or recipient which are held by DSS, DHS or any agency supervised by DSS with the following exceptions listed in Section 19-006." [MPP section 19-006](#) prohibits disclosure of privileged

information as defined by the Evidence Code, which includes documents covered by the attorney-applicant/recipient privilege and the identity of an informer, among others. However, where the case record includes the applicant/recipient's own medical records, the applicant/recipient is the holder of the privilege, so the privilege does not prevent an applicant/recipient from inspecting them.

General Access to Inspect a Case Record by a Person Authorized by the Applicant/Recipient

In general, non-privileged, non-confidential documents in a case record may only be inspected by the applicant/recipient who is the subject of the case record. However, other persons or groups, on behalf of the applicant/recipient, may have authorization to inspect the same documents that the applicant/recipient has authorization to inspect. Specifically, an applicant/recipient may provide written authorization for another person or group—an authorized representative (AR)—to inspect the applicant/recipient's case record. ([MPP section 19-005.2.](#)) An AR may be anyone the applicant/recipient chooses, including legal counsel hired and retained by the applicant/recipient to represent the applicant/recipient's interests. For purposes of this letter, any reference to "applicant/recipient" also includes the applicant/recipient's AR. **NOTE: The AR authorized to inspect an applicant/recipient's case record may or may not be the same person acting as the AR for purposes of representing the applicant/recipient at an administrative hearing.**

In addition to access by an applicant/recipient's AR, a parent or guardian of a minor is generally authorized to inspect documents in a case record that pertain to a minor with some exceptions, such as when a health care provider determines that inspection of a document retained by the county would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being ([Health and Safety Code section 123115\(a\)\(2\)](#)).

A written authorization for an AR to inspect documents in the applicant/recipient's case record must include the name of the AR and must be signed and dated by the applicant/recipient. ([MPP section 19-005.21.](#))

Once written authorization is provided, the AR is then authorized to inspect the same non-privileged, non-confidential documents that the applicant/recipient would be authorized to inspect. The written authorization shall expire one year from the date on the signed document unless the applicant/recipient expressly limits access by the authorized representative to a shorter period or informs the county that the authorization has been revoked. ([MPP section 19-005.21.](#)) If the written authorization to inspect an applicant/recipient's case record pertains to a pending appeal or fair hearing (state administrative hearing), the time period, unless explicitly limited or revoked by the applicant/recipient, shall extend to the final disposition of the issue involved in the fair hearing or, where applicable by the courts. ([MPP section 19-005.21.](#))

Telephone authorizations may be accepted by a county in lieu of written authorization when the applicant/recipient has adequately identified himself or herself to the county ([MPP section 19-005.22](#)). Counties should ensure that adequate forms of identification are provided by an applicant/recipient or AR prior to allowing access to inspect a case record. ([MPP section 19-005.22](#).)

An applicant/recipient is not required to provide written authorization to allow inspection of a case record by another person when an applicant/recipient is physically present, accompanied by the person, and verbally authorizes the person to inspect documents in his or her case record. ([MPP section 19-005.21](#))

The county must provide the requested documentation as soon as practicably possible. All counties must establish specific timeframes to respond to case records requests. Barriers to records access such as the need for additional time to review and redact confidential/privileged information or call documents from archives should be accounted for in the timeframes; however, the established timeframes must not result in unreasonable delays.

#### Limitations on Access to Inspect a Case Record: Privileged or Confidential Information

As described above, counties must allow an applicant/recipient to inspect non-privileged, non-confidential documents in his or her own case record. However, a recipient generally may not access a document that pertains to the IHSS provider, unless the IHSS provider who is the subject of the document has signed a written release authorizing the inspection. For example, even routine information received from the provider should be assessed by counties to determine if the recipient has authorization to inspect a requested document.

Other examples of confidential and/or privileged information and documents that an applicant/recipient may not be authorized to inspect include: information regarding any Adult or Child Protective Services referrals; domestic abuse; criminal background; information pertaining to minors authorized by law to consent to medical treatment; and information received from a third party that was not obtained pursuant to an authorization from the applicant/recipient. In such circumstances, counties are strongly encouraged to consult with county counsel to determine whether inspection is authorized.

Due to the wide variety of individual circumstances and non-disclosure provisions that might be applicable when responding to an applicant/recipient request to inspect documents in his or her case record, it is the responsibility of the counties to perform individual assessments of each applicant/recipient request to determine if and when an applicant/recipient has authorization to inspect a document in his or her case record in its entirety or as appropriately redacted.

Again, counties are strongly encouraged to consult with county counsel when assessing whether documents in an applicant/recipient's case record must be redacted or withheld based on privilege and/or confidentiality.

Applicant/Recipient Access to Inspect His or Her Case Record When a State Hearing is Pending or Being Considered

[MPP section 22-051](#) provides that, upon request, the county shall allow the claimant in a state hearing to examine the case record during regular working hours consistent with [MPP section 19-005](#). ([MPP section 22-051.1](#).) It also provides that if portions of the case record are privileged under the provisions of [MPP section 19-006](#), the claimant shall be entitled to inspect such material only if the claimant is the holder of the privilege. ([MPP section 22-051.11](#).) It further provides that the claimant shall have the right prior to and during the hearing to examine non-privileged information that the county has used in making its decision to take the action that is being appealed. ([MPP section 22-051.2](#).)

Privilege is a right or protection that is given to a person during legal proceedings, but which also extends to general file access. This privilege covers communications between an individual and professionals such as physicians, psychotherapists, and lawyers. Any documentation from these individuals would be considered privileged information and would therefore only be disclosed to the individual who holds the privilege. This information may also be shared with any individual authorized to inspect the recipient's case record.

Additionally, [MPP section 22-073.232\(c\)](#) provides that the county must provide any and all information that can be of assistance to the claimant in preparing for the hearing. This includes revealing to the claimant any and all regulations and evidence.

An applicant/recipient who has requested a state hearing has the same authorization described above to inspect non-privileged, non-confidential documents in his or her case record during business hours.

Although third party documentation included in the recipient's case record may be considered confidential and not open to inspection, any third-party documentation that is admitted as evidence by the Administrative Law Judge (ALJ) during a state hearing will be made available to the recipient and/or the recipient's authorized representative as detailed [in ACL 17-102 \(September 29, 2017\) County Hearing Representative's Pre-Hearing Responsibilities](#).

If a recipient is scheduled for a state hearing and has concerns regarding the non-disclosure of confidential or privileged information, the recipient and the state will conduct an In-Camera Process prior to the state hearing to determine what information is considered privileged or confidential. Following presentation of asserted privilege or confidential information to the Administrative Law Judge (ALJ), both parties shall be provided the opportunity to argue their positions before the ALJ as to the allegation of



privilege or confidentiality, or relevance of the information to the matter at hand. The ALJ will determine whether all or part of the information is privileged or confidential, as well as determine the relevance of the information to the matter at hand. *Note: If the information is determined to not be relevant, a determination about whether the information should be excluded based on privilege or confidentiality does not need to be reached.*

The ALJ shall exclude all or any portion of the information if disclosure is forbidden by law, or, as a matter of justice, the reason(s) for finding the information privileged or confidential outweigh(s) the reason(s) for not finding the information privileged or confidential. If only part of documentary information is excluded, the party asserting the privilege or confidentiality will be responsible for redacting that portion of the excluded document prior to admittance of the information at hearing. The party asserting the privilege or confidentiality may be ordered to disclose the information that the ALJ orders to be disclosed; if that party refuses, the information shall be excluded from the record, and shall not be considered or relied upon in any way by the ALJ when rendering his or her decision. Any part of the information which the ALJ orders excluded cannot be admitted into evidence, nor can the ALJ in any way consider or rely upon any information that has been excluded in order to render a decision. Where a document is deemed admissible, the ALJ may need to provide the other party time to respond by either continuing the hearing or holding the record open for response and rebuttal.

It should also be noted that in addition to documents contained in the case record, the county must also reveal to the applicant/recipient laws and regulations applicable to the state hearing, including those that are favorable to the applicant/recipient, and must reproduce without charge, or at a charge related to the cost of reproduction, the regulations and other policy materials necessary for an applicant/recipient or AR to determine whether a state hearing should be requested or to prepare for a state hearing. ([MPP section 22-051.3.](#))

## **II. FRAUD INVESTIGATIVE FILES**

Special Investigation Units (SIUs) are established as separate organizations, independent of the county organizations performing eligibility and benefit determination functions. ([MPP sections 20-005.2](#) and [20-007.21.](#)) SIUs investigate activity that may constitute fraud and prepare investigative reports on completed investigations. (MPP section [20-007.3.](#)) SIU investigators have unrestricted access to IHSS files, records, and personnel that may be relevant to an investigation. (MPP section [20-007.32.](#)) Investigative files created and maintained by SIUs are separate and distinct from the case records created and maintained by the counties' eligibility and benefit determination personnel.

SIU investigative files are confidential under [WIC Section 10850](#) and, similar to case records, disclosure is limited to actions connected with the administration of the program. However, inspection of investigative files is far more restricted than inspection of case records and, unlike client case records, SIU investigative files are not available

for general inspection.

Information and documents contained in an SIU investigation file are confidential and disclosure is limited to actions connected with the administration of the program. ([Title 45, Code of Federal Regulations, section 205.50](#); [WIC section 10850](#).) The fact of, or information concerning, a referral to the SIU shall not be disclosed to unauthorized persons. ([MPP section 20-005.322](#).) Unauthorized persons include a client, except when the information has been used or relied upon by the county in taking an administrative action and either a fair hearing on those issues has been requested or a hearing pertaining to that administrative action has been initiated.

A document or information from an investigative file may only be disclosed:

- 1) To prosecuting authorities involved in civil or criminal prosecutions in connection with the administration of the program. Information from an SIU investigative file may be provided to a prosecuting authority when the SIU refers a case to the prosecuting authority or when the prosecuting authority requests it. ([MPP section 20-005.1](#); [MPP section 20-007.35](#));
- 2) To other county staff when information in the SIU file is necessary for administration of the program, which includes initiating and pursuing an administrative action that may result in a state hearing. ([MPP section 20-300.23](#); [MPP section 20-352.1](#));
- 3) To a client when the county has taken an administrative action and a hearing has been requested, subject to the county properly asserting that certain information is privileged or confidential, and subject to the documents being relevant to the issues in the pending hearing. Prior to and during the hearing, the client is authorized to examine relevant, non-privileged, non-confidential information and documents that the county has used in making its decision to take the administrative action that is the subject of the hearing. ([MPP section 22-051.2](#), [MPP section 22-201.5\(a\)\(9\)](#), and [MPP section 22-305.5\(i\)](#).)

### **III. BEST PRACTICES TO PROCESS REQUESTS**

It is recommended that counties provide guidance and training to all county workers (i.e., social worker, county administrative staff, county hearing worker, etc.) on how to respond to an applicant/recipient request to inspect any part of his or her case record and how to assess whether a document should be withheld or redacted to protect privilege and/or confidentiality.

It is recommended that counties provide guidance to county workers on how to inform an applicant/recipient of the types of documents that he or she is authorized to inspect. An applicant/recipient shall not be required to submit a Public Records Act request to inspect his or her case record. Counties may also not condition case record inspection upon requesting a hearing or upon issues listed in a hearing request. County workers should ensure that they understand what documents the applicant/recipient wishes to



inspect and should assist the applicant/recipient when warranted. A county worker should schedule an appointment, if necessary, for an applicant/recipient to inspect his or her case record as soon as practical during normal business hours that will allow sufficient time, if needed, for the county worker to review and determine if any of the requested documents should be withheld or redacted to protect privilege and/or confidentiality. The county worker's review should be completed expeditiously to avoid an unwarranted delay. A county worker should be prepared to provide an applicant/recipient access to inspect the requested documents at the scheduled appointment.

It is recommended that counties provide guidance to county workers regarding how to review a case record and how to determine when documents need to be redacted or withheld to protect privilege and/or confidentiality. It should be specifically noted that when a document contains privileged and/or confidential information, it does not necessarily mean that the document may be withheld, since the privileged and/or confidential information may be able to be redacted to allow an applicant/recipient to inspect the remaining non-privileged, non-confidential information in the document.

At the scheduled appointment, if applicable, county workers shall facilitate the document inspection by any combination of options below:

- (1) provide hard copies of the requested information or documents.
- (2) provide read-only access on the automated system to the applicant/recipient of the requested information or documents and hard copies of any documents the applicant/recipient would like to take with them.
- (3) if possible, provide a PDF file of the requested documents that have been scanned.

Regardless of the option used to facilitate the document inspection, hard copies of nonprivileged, non-confidential information must be provided to the applicant/recipient if requested. County workers should be capable of navigating or assisting an applicant/recipient to navigate through a county's automated system. County workers should carefully navigate through a county automated system in the presence of an applicant/recipient to ensure that the applicant/recipient does not inspect information that does not pertain to him or her or has been determined to be privileged and/or confidential, unless the system has been programmed to prevent applicant/recipient access to privileged and/or confidential information and documents. In general, whether the applicant/recipient's inspection is conducted in paper or electronic form, the inspection should occur in an area that is private, to prevent other persons who are not authorized from inspecting the documents. County workers are not required to be present when an applicant/recipient inspects requested documents if the documents have been reviewed and confidential or privileged documents have been withheld or

properly redacted. County workers should provide the recipient and or their authorized representative sufficient time to review the case record.

If a dispute arises between an applicant/recipient and the county worker regarding the requested inspection of all or portions of the case record, it is recommended that counties develop and implement a dispute resolution process that may include a review and assessment by a first line supervisor of the county worker who prepared the information or documents for inspection. It is also recommended that counties identify reasonable timeframes in which an applicant/recipient will be informed of the county decision regarding the dispute. Counties are strongly encouraged to post the dispute resolution process, if applicable, on their websites.

#### Applicable Fees for Duplication of Inspected Documents

1. Copying Fees for General Inspection:

Counties may provide free copies of requested documents to applicant/recipient or may charge an applicant/recipient for copying the requested documents.

2. Copying Fees for a State Hearing:

Pursuant to [MPP Section 22-051.3](#), counties shall "...reproduce without charge, or at a charge related to the cost of reproduction, the specific policy materials, including regulations, necessary for an applicant or recipient, or his/her authorized representative, to determine whether a state hearing should be requested or to prepare for a state hearing."

#### Inspection and Translation of Documents

Counties are reminded that in accordance with the [Americans with Disabilities Act](#) (ADA), counties are required to provide reasonable accommodation (i.e., enlarged print, Compact Discs, IHSS staff reading the documents, etc.) to an applicant/recipient who is unable to inspect requested documents from his or her case record in the original form.

Questions regarding the content of this ACL may be directed to the Policy and Operations Bureau within the Adult Programs Policy and Quality Assurance Branch at (916) 651-5350.

Sincerely,

***Original Document Signed By:***

DEBBI THOMSON  
Deputy Director  
Adult Programs Division