



CDSS

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DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
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EDMUND G. BROWN JR.  
GOVERNOR

May 31, 2018

ALL COUNTY LETTER (ACL) NO. 18-58

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

SUBJECT: EXEMPTION FROM WORKWEEK LIMITS FOR EXTRAORDINARY  
CIRCUMSTANCES (EXEMPTION 2) STATE ADMINISTRATIVE  
REVIEW PROCESS

REFERENCE: [SENATE BILL \(SB\) 89; WELFARE AND INSTITUTIONS CODE \(WIC\) SECTION 12300.4; ACL NO. 16-07, DATED JANUARY 21, 2016; ACL NO. 16-22, DATED APRIL 1, 2016; ACL NO. 17-13, DATED APRIL 7, 2017; ACL NO. 18-31, DATED MARCH 22, 2018; AND ACL NO. 18-54, DATED MAY 17, 2018](#)

This ACL provides information and instructions for implementing the Exemption 2 State Administrative Review (ESAR) process for IHSS providers and recipients who the county has deemed to be ineligible for an Exemption 2. This ACL also transmits a new form to be used in the ESAR process.

## **BACKGROUND**

On June 27, 2017, [SB 89](#) (Chapter 24, Statutes of 2017) was enacted to formally establish the California Department of Social Services' (CDSS) existing Live-In Family Care Provider Exemption (Exemption 1) and Exemption 2. These exemptions were initially established in February 2016 to maintain continuity of care and to ensure that IHSS recipients potentially at risk of out-of-home placement can remain safely in their homes. When granted, the exemptions allow IHSS providers to work hours in excess of the 66-hour workweek limitation implemented by the passage of [SB 855](#) and [SB 873](#).

The SB 89 requires CDSS, with input from stakeholders, to establish and implement an administrative review process for Exemption 2 ineligibility determinations. This process,

which shall be referred to as the ESAR process, will provide recipients and providers an opportunity to present additional information regarding their case.

Finally, SB 89 also requires CDSS to record the number of ESAR requests that are received, the number of requests approved (those in which the county decision is overturned), and the number of requests determined ineligible (those in which the county decision is upheld). These statistics must be posted on the CDSS website at least every three months.

## **COUNTY RESPONSIBILITIES**

As stated in [ACL No. 18-31](#) and pursuant to [WIC Section 12300.4\(d\)\(3\)\(C\) and \(E\)](#), the county is required, at the time of assessment and reassessment, to evaluate each recipient to determine if their circumstances appear to indicate that the provider for that recipient may be eligible for an exemption. The county shall then inform those recipients about the potentially applicable exemptions and the process by which their provider may apply for the exemption. The county shall review the exemption request and determine whether the case meets the established Exemption 2 criteria based on the information provided in ACL No. 18-31.

### **Exemption 2 Documentation in the Case Management, Information and Payrolling System (CMIPS) II**

The county shall document all Exemption 2 requests, determinations and justification for determinations in CMIPS II in accordance with the guidance provided in [ACL No. 18-54](#). To ensure statewide consistency and assist with the ESAR process, it is imperative that the county document the basis for ineligibility determination on the provider's Person Notes screen, and include the following heading at the beginning of the note entry: "\*\*\*EXEMPTION 2 REQUEST DETERMINATION JUSTIFICATION." Including this heading will help to ensure that the information can be readily identified by ESAR Unit staff and minimize unnecessary requests for additional information from the county.

Although ACL No. 18-31 indicates that county staff may copy and paste all the information contained in the Exemption from Workweek Limits for Extraordinary Circumstances Referral Justification (SOC 2306) and the Secondary Evaluation Review Worksheet (SOC 2307) into the provider's Person Notes, the most critical information needed for the ESAR process is a clear and thorough summary of the factors that led to the county's determination. Thus, it is imperative that the county's documentation include the following:

1. Identification of the Exemption 2 criteria under which each recipient applied and was evaluated;

2. An explanation for why the county determined that the criteria for granting an Exemption 2 was not met;
3. A description of the reasonable attempts made by the recipients (or their authorized representative(s)) to hire an additional provider(s), including an explanation of why these attempts were not viable and how this information was verified by the county; and
4. A description of the assistance provided by the county to identify an additional provider(s), such as providing referral to the provider registry maintained by the Public Authority, and/or advising recipients (or their authorized representative(s)) to reach out to relatives, friends, neighbors or others in the recipients' network as potential providers.

#### Exemption 2 County Contact Person

Each county shall immediately update and maintain its [Very Important Contacts \(VIC\)](#) information to include both a primary and a secondary Exemption 2 contact person. These will be the individuals the ESAR Unit will contact if more information is needed regarding an Exemption 2 request that was deemed ineligible. For more information regarding VIC, please contact (916) 651-1069.

#### **EXEMPTION 2 STATE ADMINISTRATIVE REVIEW PROCESS**

The ESAR process is only intended for and available to providers and recipients who were determined ineligible for Exemption 2 by the county. If a provider or recipient disagrees with the county's ineligibility determination, he/she may request an administrative review by the ESAR Unit by completing the attached Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) State Administrative Review Request Form (SOC 2313) and submitting it by mail. The provider or recipient may not request an ESAR by telephone.

The mailed SOC 2313 must be postmarked within 45 calendar days of the date of the Notice to Provider of Ineligibility for Exemption from the In-Home Supportive Services Program Workweek Limits for Extraordinary Circumstances (SOC 2310) or the Notice to Recipient of Ineligibility for Exemption from the In-Home Supportive Services Program Workweek Limits for Extraordinary Circumstances (SOC 2310A). The completed SOC 2313 must be mailed to the following address:

California Department of Social Services  
Appeals, Administrative Review and Reimbursement Bureau  
Attention: Exemption 2 State Administrative Review Unit  
744 P Street, MS 9-12-04  
Sacramento, CA 95814

When an ESAR request is received by CDSS, the ESAR Unit will determine whether the request is complete and timely, i.e., submitted with a postmark date within 45 calendar days of the date of the SOC 2310 or SOC 2310A. If an ESAR request is not received timely, the provider and recipients will be notified in writing that the SOC 2313 is not being accepted by the ESAR Unit and that the county's ineligibility determination will stand.

If the ESAR request is received timely, overtime violations will be suppressed during the administrative review period regardless of the outcome of the ESAR review. The ESAR Unit will send written notice to the provider and the recipients that the ESAR request has been received and accepted for review. The notice to the provider will detail a telephone conference date and time, within ten business days of the date the ESAR request was received, and specify the telephone number that the ESAR Unit will use to contact the provider. If any of the recipients have indicated on the SOC 2313 that they have additional information to present during a telephone conference, the written notice will include this same information. Depending on the circumstances (i.e., whether the provider and recipient reside in the same home), either a single joint telephone conference involving the provider and recipient(s) or individual telephone conferences with each of the parties will be held. The notices will also provide the ESAR Unit's telephone number in the event the provider or recipients need to request a change to their appointment, request that an interpreter be provided for the telephone conference, or update their telephone numbers.

During the telephone conference, the provider and recipients will have the opportunity to present additional information that substantiates their qualifications for an exemption. This additional information may include documentation about past incidents of harmful impact on the recipient as a result of having services provided by another provider. Examples include, but are not limited to, letters from health care providers, family members, friends or others based on their observations or experience of how the health and/or safety of the recipient was negatively impacted by the introduction of a new provider. If the provider and/or recipients request to submit additional written documentation, the ESAR Unit will allow ten business days for the information to be sent via facsimile or mailed (postmarked). If the information is not submitted timely, the ESAR Unit will make a decision based solely on the information it has obtained through the SOC 2313 (and any accompanying documentation), the telephone conference, and the county documentation entered in CMIPS II.

In addition to the information provided by the provider and/or recipients, the ESAR Unit will review CMIPS II to evaluate county documentation regarding the Exemption 2 request and determination as well as other relevant case information (e.g., authorized hours and services, functional index rankings, assessment narratives, notes, etc.). If additional information is required from the county, the ESAR Unit will contact the county Exemption 2 contact(s) identified in the VIC. The county will have five business days to provide the requested information electronically to [ESAR@dss.ca.gov](mailto:ESAR@dss.ca.gov). This mailbox is

only to be utilized for the county to submit additional information or documentation and for the ESAR Unit to provide ESAR decisions to the county.

The ESAR Unit will review all the information collected and establish whether the evaluation and final determination were conducted in accordance with WIC section 12300.4 and policy guidance provided in ACL No. 18-31. Upon completion of its review of the information, the ESAR Unit will make a final decision to either uphold or overturn the county's ineligibility determination and will issue written notification to the provider, recipients and the county. In accordance with statutory requirements, the decision will be mailed within 20 business days of completing the telephone conference with the provider and/or recipients, unless the provider and/or recipient has requested additional time to submit information and CDSS has granted the request for additional time. The ESAR decision and the basis for it will also be viewable in the Administrative Review section of the Overtime Violation Exemption – Extraordinary Circumstance screen in CMIPS II. If the county's determination is overturned, the ESAR Unit will process and approve the Exemption 2 request and the provider will be required to complete and return the Exemption from Workweek Limits for Extraordinary Circumstances Approved Exemption Provider Agreement form (SOC 2308) to the county IHSS office. If the county's determination is upheld, the provider will be informed that he/she is required to adhere to existing workweek limits and the recipients will need to hire an additional provider(s) to work additional authorized IHSS hours.

## **CAMERA-READY COPIES AND TRANSLATIONS OF FORMS**

Camera-ready copies of the English language versions of the forms referenced in this ACL are available on the [CDSS Forms-Brochures web page](#). Upon completion of translations, CDSS will post Armenian, Chinese and Spanish versions on the [Translated Forms and Publications web page](#).

The designated Forms Coordinator for your county must distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited-English proficient populations, as required by the Dymally-Alatorre Bilingual Services Act ([California Government Code Section 7290 et seq.](#)) and by state regulation ([CDSS Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, Section 115](#)).

Questions about accessing the forms may be directed to the Forms Management Unit at [fmudss@dss.ca.gov](mailto:fmudss@dss.ca.gov). Questions about translations may be directed to the Language Services Unit at [LTS@dss.ca.gov](mailto:LTS@dss.ca.gov).

Questions regarding the content of this ACL may be directed to the Adult Programs Division's Appeals, Administrative Review and Reimbursements Bureau at (916) 654-3488.

Sincerely,

***Original Document Signed By:***

DEBBI THOMSON  
Deputy Director  
Adult Programs Division

Attachment