

July 6, 2018

ALL COUNTY LETTER (ACL) NO.: 18-59

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

SUBJECT: IMPLEMENTATION OF ASSEMBLY BILL (AB) 1436 - IHSS:
AUTHORIZED REPRESENTATIVE

REFERENCE: [AB 1436](#) (CHAPTER 707, STATUTES OF 2015)
[ACL NO. 12-19](#), DATED APRIL 11, 2012
CIVIL CODE (CIV) SECTION [14\(a\)](#)
WELFARE AND INSTITUTIONS CODE (WIC) SECTIONS [10950](#),
[12300.3](#), [12305.81](#), [12305.87](#)

The purpose of this All-County Letter (ACL) is to provide counties with information and instructions for implementing provisions of Assembly Bill (AB) 1436, Chapter 707, Statutes of 2015, *In-Home Supportive Services: Authorized Representative*. This ACL also transmits the newly developed IHSS Designation of Authorized Representative form (SOC 839) and IHSS Cancellation of Authorized Representative form (SOC 839A) as well as the County IHSS Program Guidance Table Designation of Authorized Representative which provides a single-sheet guide on which individuals qualify to serve as an Authorized Representative and which parts of the SOC 839 those individuals should complete.

BACKGROUND

As signed by the Governor on October 9, 2015, AB 1436 added section 12300.3 to the Welfare and Institutions Code (WIC), which requires the California Department of Social Services (CDSS) to develop a statewide standardized form and procedures for an In-Home Supportive Services (IHSS) applicant or recipient to designate an authorized representative for purposes of the IHSS program.

In accordance with Section WIC 12300.3, CDSS developed a standardized form, SOC 839 (*IHSS Program Designation of Authorized Representative*), and procedures in consultation with the California Department of Health Care Services, the County Welfare Directors Association of California, representatives of IHSS applicants and recipients, and representatives of IHSS providers. This form is only intended to be completed for those individuals who will serve as authorized representatives to perform long-term functions for the IHSS applicant or recipient. The purpose of the form is not to designate individuals or legal services organizations who engage in short-term, limited legal representation, although these individuals or legal services organizations can choose to complete and submit the SOC 839 if they so choose.

Pursuant to Section 12300.3 (g), an authorized representative or legal representative who signs provider timesheets on behalf of a recipient must be designated on the Authorized Representative form. As the new standardized form, SOC 839, now includes this requirement for timesheet signature authorization information, it therefore replaces the former SOC 839 (*IHSS Recipient Time Sheet Signature Authorization*). If the applicant/recipient wishes to designate an Authorized Representative strictly for the purpose of timesheet signature authorization, he/she can use the new SOC 839. For those recipients who have completed and filed the IHSS Time Sheet Signature Authorization form, counties should request the recipients to complete and submit an updated SOC 839 (Designation of Authorized Representative) during the recipient's next reassessment.

FORM IMPLEMENTATION

In addition to identifying the applicant or recipient and the designated authorized representative, the form identifies the specific IHSS-related functions that the authorized representative may perform on the applicant or recipient's behalf. The applicant or recipient may use multiple forms to designate multiple authorized representatives to perform respective functions on the applicant or recipient's behalf.

The form also allows for a witness or notary public's signature, if necessary. Pursuant to Civil Code (CIV) section 14(a), an applicant or recipient who is not physically able to write may sign the form with an identifying mark that can be verified by an adult witness or notary public, provided that the witness or notary public also includes his or her own dated signature on the form. Due to the conflict of interest, the individual designated as the Authorized Representative on the SOC 839 cannot serve as the witness to verify the recipient's identifying mark. However, if the recipient signed the SOC 839 with the identifying mark in the presence of a staff member in the county IHSS office, the staff member can serve as the witness.

The Authorized Representative

An applicant or recipient may designate an individual who is at least 18 years of age to serve as his or her IHSS authorized representative. AB 1436 defines "authorized representative" as "an individual who is designated in writing, on a form developed by

the State Department of Social Services, by an applicant or recipient to accompany, assist, and represent an applicant or recipient for specified purposes related to the program.”

According to WIC section 12300.3(d), an authorized representative has “the responsibility to act in the applicant or recipient’s best interest, shall not have any other power to act on behalf of the applicant or recipient, except as specified in writing pursuant to this section, and shall not act in lieu of the applicant or recipient.” County IHSS program staff are required to have access to the applicant or recipient to obtain necessary information during assessments and meetings even in the presence of an authorized representative. The county shall not be prohibited from directly communicating with the applicant or recipient. The form instructions state that county access to the applicant or recipient is required.

Legal Representative and Authorized Representative

The applicant or recipient’s legal representative is not required to complete the form except to sign timesheets and/or other provider-related documents on the applicant or recipient’s behalf (see Timesheet and/or Other Provider-Related Documents Signatory on page four of this ACL). WIC section 12300.3(e) defines a “legal representative” as an individual “with the legal authority to act on behalf of the applicant or recipient that includes decision making authority for purposes reasonably believed to be related to the program.” The legal representative, who may also designate an authorized representative on the IHSS applicant or recipient’s behalf, is a court appointed-guardian or conservator, or for an applicant or recipient who is a minor, a parent or other individual determined by the county to be the legally authorized decision maker for the applicant or recipient.

The legal representative will indicate the basis for his/her status on the SOC 839. The statute does not require verification of the legal representative’s status to be presented to the county; however, the individual, by signing the SOC 839, acknowledges that the information presented is true and correct. If the county later discovers through other sources/information that the individual is not authorized to serve as the applicant or recipient’s legal representative and, therefore, has no legal authority to sign on behalf of the applicant or recipient, the information presented on the form will be considered null and void.

Criminal Conviction and Authorized Representative Eligibility

Pursuant to WIC section 12300.3(f), an individual who would be determined ineligible to serve as an IHSS provider due to a criminal conviction, as defined in WIC sections 12305.81 and 12305.87, shall not be permitted to serve as an authorized representative. However, a legal representative with such a criminal conviction is not prohibited from serving as an applicant or recipient’s authorized representative.

Individuals being designated as an applicant or recipient's authorized representative will not be required to be fingerprinted for a criminal background check; however, they will need to acknowledge on the SOC 839 that they have not been convicted of any crime defined under WIC section 12305.81 or 12305.87. If the authorized representative is also the applicant/recipient's IHSS provider, he/she would still need to complete a criminal background check as mandated by WIC section 12305.86.

Timesheet and/or Other Provider-Related Documents Signatory

The form also includes a section in which the applicant or recipient may designate a separate IHSS authorized representative for purposes of signing timesheets and/or other provider-related documents. As included in WIC section 12300.3(g), "an authorized representative who is a provider of services for the recipient may not sign his or her own timesheet on behalf of the recipient unless the authorized representative is" the IHSS applicant or recipient's legal representative. As referenced above, the applicant or recipient's legal representative must complete the associated form section to sign timesheets and/or other provider-related documents on behalf of the applicant or recipient.

Provider-related documents include, but are not limited to the SOC 426A (*IHSS Program Recipient Designation of Provider*), the SOC 862 (*IHSS Recipient Request for Provider Waiver*), and the SOC 2256 (*IHSS Program Recipient and Provider Workweek Agreement*). If an applicant or recipient's legal representative is authorized to sign any provider-related documents, the legal representative must also complete the associated form section as detailed above. However, as referenced in ACL 12-19 (dated April 11, 2012) and the Manual of Policies and Procedures section 30-776.741, the SOC 862 can be signed by the applicant or recipient's spouse or registered domestic partner even if such an individual will also be serving as the IHSS provider and is the individual named on the waiver as the person determined ineligible due to a criminal conviction pursuant to WIC section 12305.87.

Authorized Representative and State Administrative Hearings

Pursuant to WIC section 12300.3(c), the SOC 839 form does not authorize an individual to represent an IHSS applicant or recipient for the purposes of a state administrative hearing. The current process for designating an authorized representative to act on an IHSS applicant or recipient's behalf at a state administrative hearing is to have the applicant or recipient complete and submit form DPA 19 (*Authorized Representative*) in compliance with WIC section 10950. Information about Authorized Representatives for State Hearings can be found through the California State Hearings website at [State Hearings](#). The DPA 19 form can be obtained through this website.

FORM ACCESS

Upon release of this ACL, each county will be required to use the form as described in this ACL. The form, which is designated as “Required – No Substitutes Permitted,” has also been translated into the three threshold languages: Armenian, Chinese, and Spanish. Please visit the following CDSS Web page to access the form:

[Forms/Brochures](#)

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. Questions about translations may be directed to the Language Services Unit at LTS@dss.ca.gov.

COUNTY RESPONSIBILITIES

Essential to assessment, county IHSS social workers should continue to use standard processes to evaluate an applicant or recipient’s potential need for and/or benefit from an IHSS authorized representative. If the county social worker believes the applicant or recipient may not have the mental capacity to fully comprehend and/or sign the documentation necessary to apply for IHSS benefits, he/she should work with the applicant/recipient and/or his/her family by providing additional resources they can use to assist the applicant/recipient in completing the application and eligibility process for IHSS.

Form Distribution and Collection

Counties are responsible for the distribution and collection of the form, which will initially occur during the application to the IHSS program or during the initial assessment. Distribution and collection will also occur as requested by an applicant or recipient, as well as during annual reassessment as needed. During reassessment, the county has the responsibility to ask the applicant or recipient about changes of information regarding the authorized representative. If during reassessment or any other occasion in which an applicant or recipient requests to change information included on the previously submitted form, county staff should provide him/her with a new form to complete which will replace the previously submitted and filed form. Otherwise, if an applicant or recipient indicates that he or she does not need to change information included on the previously submitted form, county staff will make a notation of “no change” in the case notes or as part of the narrative in the reassessment interview.

The applicant or recipient may cancel all IHSS functions that an authorized representative may perform on his or her behalf by completing the SOC 839A (*IHSS Cancellation of Authorized Representative*) and submitting it to county IHSS program staff. Although the applicant or recipient may contact the county IHSS office and verbally request an authorized representative to be added or removed from his or her case, the change in authorized representative status will not be valid until the SOC 839 or SOC 839A has been completed and received in the county IHSS office.

Forms Management

County IHSS program staff are required to ensure that each collected form is completed, signed, and retained in the applicant or recipient's IHSS case file or electronic file. Pursuant to WIC section 12300.3(i), counties must also provide copies of the signed form to the applicant or recipient and the individual designated as the authorized representative.

Upon receipt of a completed form, county IHSS program staff shall enter the name(s) of the applicant or recipient's authorized representative(s) in the Case Management, Information and Payrolling System II (CMIPS II). Although current functionality on CMIPS II only allows a single authorized representative to be entered into the system, CMIPS II will undergo modifications to allow for multiple authorized representatives to be entered into the system. Further information on these modifications will be made available in a forthcoming ACL.

If you have any questions about this ACL, please contact the Adult Programs Policy and Quality Assurance Branch, Policy and Operations Bureau at (916) 651-5350.

Sincerely,

Original Document Signed By:

DEBBI THOMSON
Deputy Director
Adult Programs Division

c: CWDA