

June 8, 2018

ALL- COUNTY LETTER (ACL) NO.: 18-67

TO: ALL-COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERS

SUBJECT: AVAILABILITY OF DEPARTMENT OF HEALTH CARE SERVICES
(DHCS) STANDARDIZED IN-HOME SUPPORTIVE SERVICES
(IHSS) FRAUD REFERRAL MEMORANDUM OF UNDERSTANDING
(MOU) AND COUNTY IHSS OVERPAYMENT RECOVERY
REQUIREMENTS

REFERENCE: [WELFARE AND INSTITUTIONS CODE \(WIC\) §§12305; MANUAL OF
POLICIES AND PROCEDURES \(MPP\) § 30-768.321; ALL COUNTY
LETTER \(ACL\) NO. 13-83, DATED SEPTEMBER 27, 2013; ACL NO.
13-110, DATED DECEMBER 31, 2013.](#)

The purpose of this ACL is to inform counties of the availability of a standardized IHSS Fraud Referral MOU between counties and DHCS and to reiterate IHSS overpayment recovery requirements resulting from county fraud referrals.

BACKGROUND

Assembly Bill 19 fourth extraordinary session (ABX4 19), amended components of the California WIC, Sections 12305.7, 12305.71, and 12305.82, requiring the California Department of Social Services (CDSS) to develop protocols clarifying state and county roles and responsibilities for the implementation and execution of standardized program integrity measures in the IHSS program. In March 2013, the IHSS *Uniform Statewide Protocols for Program Integrity Activities* (USPs) were completed and were later implemented in September 2013 (released via [ACL 13-83](#)).

One of the measures included in the USPs is statewide communication and coordination for program integrity efforts between state and county offices. The purpose is to develop a coordinated and standardized process for IHSS fraud referrals and investigations that fosters collaborative working relationships across jurisdictions and to avoid duplication of program integrity efforts.

IHSS FRAUD REFERRAL PROCESS

As outlined in the USPs ([ACL 13-83](#)), counties are required to follow a standardized process for reviewing IHSS fraud complaints and, where appropriate, refer them for investigation. Per the USPs, counties without an MOU with DHCS shall send all IHSS fraud referrals over \$500 directly to DHCS for investigation. If a county receives a complaint which appears to be under \$500, and upon investigation is determined to involve over \$500 in fraud, the county should confer with DHCS to decide jurisdiction for continued investigation. Counties that enter into an MOU with DHCS should abide by the terms of the MOU. To better assist counties, a standardized IHSS MOU is now available. The newly standardized IHSS MOU will supersede earlier versions; counties that previously had an agreement with DHCS must replace the agreement with this new format within 90 days of this communication, if they have not already done so.

AVAILABILITY OF STANDARDIZED IHSS FRAUD REFERRAL MOU

In collaboration with CDSS, DHCS developed a standardized IHSS Fraud Referral MOU to assist counties with IHSS program integrity activities. The purpose of the MOU is to minimize duplication between agencies, ensure proper referral tracking and reporting in instances where DHCS delegates a portion of its investigative responsibility to the county, and reduce exposure of IHSS recipients and providers to redundant interactions with multiple investigative entities. The MOU is intended to supplement the IHSS USPs and does not supersede any requirements contained therein.

The MOU is an agreement between county IHSS, DHCS and county investigative agencies (District Attorney or Special Investigation Unit) regarding the investigation of IHSS fraud referrals. The MOU is primarily designed for those counties that prefer to share jurisdiction with the State for investigating all IHSS fraud referral cases in their respective counties. However, per DHCS, the MOU can also be modified for counties where IHSS fraud referral investigations will be conducted solely by county agencies. CDSS will provide those counties with MOUs in which county agencies are investigating IHSS fraud with read-only access to the Case Management, Information and Payrolling System (CMIPS) for purposes of investigating fraud referrals. A sample of the MOU and instructions are enclosed.

COUNTY IHSS OVERPAYMENT RECOVERY REQUIREMENTS

Pursuant to [WIC, Section 12305.83 \(c\)\(1\)](#) and the requirements outlined in the IHSS Quality Assurance and Quality Improvement (QA/QI) Policy Manual (released via [ACL 13-110](#)), counties must take all appropriate actions to recover the full amount of identified IHSS overpayments in alignment with all state and county policies and procedures.

Thus, counties should attempt recovery for all identified overpayments regardless of whether the overpayment was initially identified by the county or by DHCS. As such,

IHSS fraud referrals investigated by DHCS that do not result in prosecution will be returned to counties for overpayment recovery. Counties should continue collection efforts in accordance with [MPP, Section 30-768.321](#) and pursue recovery of these overpayments using all available means, including civil litigation in small claims and/or Superior Court, if necessary.

For IHSS fraud referrals that are prosecuted and result in an order of restitution (even if part of a plea agreement) that is less than the amount of the original overpayment, counties should continue to recover the remaining balance, as the order of restitution does not supersede the counties' ability to collect the total amount of the original overpayment. Counties receiving court-ordered restitution should process the payment as a Cash-In-Door recovery and enter the amount into CMIPS. Counties that receive court-ordered restitution payments and require additional information to process the payment into CMIPS may contact DHCS for assistance.

To ensure that overpayment recovery funds resulting from court-ordered restitution are appropriately routed, CDSS, in partnership with DHCS, has developed a memorandum instructing IHSS investigators, prosecutors and Superior Courts to return these funds back to the county where the original overpayment occurred. DHCS will distribute the memorandum on a case by case basis as a means of assisting the counties with IHSS overpayment recovery efforts. A sample of this memorandum is also enclosed for your quick reference.

For questions regarding this ACL, please contact the Adult Programs Policy and Quality Assurance Branch, Program Integrity Unit at (916) 651-0554 or via e-mail at ihss-pi@dss.ca.gov.

Sincerely,

Original Document Signed By:

DEBBI THOMSON,
Deputy Director
Adult Programs Division

Attachments

c: CWDA

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES, COUNTY IHSS
AGENCY, AND COUNTY INVESTIGATIONS AGENCY

I. PURPOSE

This Memorandum of Understanding (MOU) is being executed between the California Department of Health Care Services (DHCS), the **COUNTY IHSS AGENCY** and the **COUNTY INVESTIGATIONS AGENCY** pursuant to the program integrity protocols established in the "In-Home Supportive Services (IHSS) Uniform Statewide Protocols" dated March 21, 2013, as part of the commitment to deter and prosecute fraud and maintain program integrity within the IHSS Program. This MOU is intended as a supplement to the Uniform Statewide Protocols and does not otherwise supersede any portion of that document.

The purpose of this MOU is to provide a framework to prevent duplication of effort and to ensure appropriate case tracking and reporting in instances where the DHCS is delegating to the county some portion of its responsibility to investigate IHSS fraud. Any errors in communication where multiple agencies have jurisdiction over a case can result in serious adverse outcomes. Thus, the intent of this is to form a working relationship promoting communication and coordination between the DHCS, the **COUNTY IHSS AGENCY** and the **COUNTY INVESTIGATIONS AGENCY**.

II. RESPONSIBILITIES

A. COUNTY IHSS AGENCY:

1. The **COUNTY IHSS AGENCY** will coordinate with the DHCS and the **COUNTY INVESTIGATIONS AGENCY** to develop a protocol for triage and referral of fraud complaints that is consistent with the Uniform Statewide Protocols. Triageed fraud complaints resulting in Fraud Referrals will be referred to the **COUNTY INVESTIGATIONS AGENCY** with a copy to the DHCS. The DHCS will be notified via email sent to fraud@dhcs.ca.gov.
2. When the **COUNTY IHSS AGENCY** becomes aware that an administrative action is warranted on an IHSS case, they shall pursue that action to the extent permissible, including but not limited to recovery, reduction in case hours, and case terminations, unless doing so might interfere with a pending or ongoing investigation. The **COUNTY IHSS AGENCY** shall coordinate with the **COUNTY INVESTIGATIONS AGENCY** and/or the DHCS to make the determination when administrative action should be delayed.
3. The **COUNTY IHSS AGENCY** will maintain copies of all complaints, referrals, reports and any other pertinent documents as required by the Uniform Statewide Protocols and any other governing laws and regulations.
4. The **COUNTY IHSS AGENCY** will continue to provide statistical data to the DHCS (via email to: fraud@dhcs.ca.gov) and the California Department of Social Services (CDSS) on a quarterly basis in the format specified by the CDSS.
5. In the event any entity cancels this agreement, the **COUNTY IHSS AGENCY** will utilize established DHCS referral modalities in accordance with statute.

6. The **COUNTY IHSS AGENCY** will assist the **COUNTY INVESTIGATIONS AGENCY** and the DHCS in acquiring all necessary IHSS documentation requested by either Agency for the purpose of investigating IHSS fraud. At the request of the **COUNTY INVESTIGATIONS AGENCY** and as determined appropriate by the CDSS, the **COUNTY IHSS AGENCY** will provide access to the IHSS Case Management, Information and Payrolling System (CMIPS) for use in IHSS investigations. As directed in Welfare and Institutions Code (WIC) Section 12305.82(b)(2), the information shared shall only be used for purposes of preventing and investigating suspected fraud in the IHSS Program, and shall otherwise remain confidential.

B. COUNTY INVESTIGATIONS AGENCY

7. The **COUNTY INVESTIGATIONS AGENCY** will accept all Fraud Referrals from the **COUNTY IHSS AGENCY** and review them to determine if there is reliable evidence that an IHSS provider or IHSS recipient has engaged in IHSS fraud in connection with the provision or receipt of IHSS.
8. The **COUNTY INVESTIGATIONS AGENCY** will take the lead role in investigating Fraud Referrals received from the **COUNTY IHSS AGENCY**.
9. Prior to opening an IHSS case from any referral source other than the **COUNTY IHSS AGENCY**, the **COUNTY INVESTIGATIONS AGENCY** will deconflict with the DHCS by sending (via email to: fraud@dhcs.ca.gov) the subject(s) name, date of birth, and social security number, as well as the nature of the complaint and name(s) of associated recipient(s)/provider(s) to prevent potential duplication of effort.
10. The **COUNTY INVESTIGATIONS AGENCY** will provide regular referral status updates to the **COUNTY IHSS AGENCY**.
11. The **COUNTY INVESTIGATIONS AGENCY** will provide statistics to the DHCS on a quarterly basis. This data will be provided via email (to fraud@dhcs.ca.gov) as an excel spreadsheet using the attached template (Attachment A).
12. When the **COUNTY INVESTIGATIONS AGENCY** becomes aware that an administrative action is warranted on an IHSS case, they will provide sufficient information to the **COUNTY IHSS AGENCY** to proceed with such action, unless doing so would interfere with an ongoing investigation.
13. In the event the **COUNTY INVESTIGATIONS AGENCY** is unable to operate according to the provisions in this MOU, the AGENCY will cancel this agreement as set forth in Section III.
14. When a case promulgated by the **COUNTY INVESTIGATIONS AGENCY** results in the conviction of an IHSS provider, or the **COUNTY INVESTIGATIONS AGENCY** becomes aware of circumstances surrounding a criminal conviction that they believe disqualifies a provider from the IHSS Program pursuant to WIC Section 12305.81, that would not trigger an exclusion of the provider without such knowledge of the circumstances surrounding the conviction, the **COUNTY INVESTIGATIONS AGENCY** shall refer the issue to the California Department of Social Services, Adult Programs Division, Program Integrity Unit for review.
15. Whenever the **COUNTY INVESTIGATIONS AGENCY** becomes aware of a conviction of an IHSS provider for a crime substantially related to the practice of providing IHSS, the **COUNTY INVESTIGATIONS AGENCY** shall request a suspension of the provider from the Medi-Cal Program by completing form DHCS 9094, [Request for Suspension of Medi-Cal Payment Eligibility](#), and forwarding

it with a cc to the **COUNTY IHSS AGENCY**, to: Office of Legal Services, MS 0010, Attn: Mandatory Suspension Desk, Department of Health Care Services, P.O. Box 997413, Sacramento, CA 95899-7413.

C. CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES

16. Upon receipt of a fraud complaint from the **COUNTY IHSS AGENCY**, the DHCS will conduct a case review to determine if the complaint already exists in their case tracking system. Should the DHCS find that they already have a complaint on the subject, they will notify all other parties to this agreement, and unless agreement is made to the contrary, will become the primary investigative Agency for the complaint.
17. The DHCS will continue to conduct IHSS fraud investigations in **COUNTY IHSS AGENCIES** based on referrals generated through their internal protocols. The DHCS may make additional case referrals to the **COUNTY INVESTIGATIONS AGENCY** as determined appropriate by the two Agencies.
18. The DHCS will be available to assist the **COUNTY IHSS AGENCIES** in joint investigations as needed.
19. When the DHCS becomes aware that an administrative action is warranted on an IHSS case, they will provide sufficient information to the **COUNTY IHSS AGENCY** to proceed with such action, unless doing so would interfere with an ongoing investigation.
20. The DHCS will meet quarterly with the **COUNTY AGENCIES** to discuss cases and policy issues.
21. The DHCS reserves the right to take any case in the event the **COUNTY INVESTIGATIONS AGENCY** fails to refer a case for investigation and/or prosecution.
22. The DHCS will provide quarterly statistical data to the CDSS.

III. DURATION

This MOU shall remain in effect until a request to cancel the MOU is made, in writing, by any party. The MOU will be cancelled 30 days after the request to cancel notification is received from the requesting party. Notification to the DHCS must be sent to fraud@dhcs.ca.gov

BY: _____

XXX, Title
COUNTY IHSS AGENCY

BY: _____

XXX, Title
COUNTY INVESTIGATIONS
AGENCY

BY: _____

Laura Wilbur, Chief
CA Department of
Health Care Services,
Investigations Branch

Dated: _____

Dated: _____

Dated: _____

ATTACHMENT A:

COUNTY INVESTIGATIONS SUMMARY REPORT	
Reporting Agency:	
Reporting Date Range:	Choose an item.
Total Fraud Referrals Received	
Fraud Referrals Received from County IHSS Agency	
Fraud Referrals Received from DHCS (if applicable, otherwise N/A)	
Fraud Referrals Received from Other Sources	
Investigations Opened	
Investigations Completed	
Cases Referred for Prosecution	
Criminal Complaints Adjudicated	
Search Warrants/Subpoenas Served	
Number of Arrests Made	
Administrative Action Warning Letters Issued	
Cases Referred to Recovery	
Providers Referred to DHCS for Mandatory Provider Suspension	



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

INSTRUCTIONS

Thank you for your interest in entering a Memorandum of Understanding (MOU) with the California Department of Health Care Services (DHCS). Please take the following steps to tailor the form for your county and submit your request:

1. Replace all bolded instances of: **COUNTY IHSS AGENCY**, **COUNTY INVESTIGATIONS AGENCY**, and **COUNTY** (including the ones in the title) with the appropriate name and/or abbreviation for the entity that fills that role in your county.
2. Update the signature blocks and have the appropriate authority sign the document.
3. Scan and forward a copy of the signed document to fraud@dhcs.ca.gov (you can also send any questions to this vanity email).
4. Forward the original document with the appropriate signatures to:

Department of Health Care Services
Investigations Branch
P.O. Box 997413, MS 2500
Sacramento, CA 95899-7413

Attention: Intake Manager

Upon receipt, DHCS will review the MOU request. When the Chief of the DHCS Investigations Branch (IB) approves the request, DHCS will execute the contract and return a signed copy for your records.

Please note- Do not proceed with the terms of the contract until you have a copy of the fully executed contract signed by the IB Chief of Investigations, the contract is not fully executed until signed by all parties.



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

MEMORANDUM

DATE: June 12, 2018

TO: SUPERIOR COURTS, PROSECUTORS AND INVESTIGATORS

FROM: LAURA WILBUR, Chief
Department of Health Care Services,
Audits & Investigations Division, Investigations Branch

SUBJECT: IN-HOME SUPPORTIVE SERVICES (IHSS) OVERPAYMENT RECOVERY AND
COURT ORDERED RESTITUTION DIRECTION

All IHSS overpayment recoveries resulting from court-ordered restitution should be routed to the county IHSS office where the IHSS overpayment originated and **not** to the Department of Health Care Services' Third Party Liability Division.

Per the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Section 30-768.11, an "Overpayment means that cash payment was made for the purchase of IHSS or services were delivered in an amount to which the recipient was not entitled."

Further, IHSS overpayments must be received by counties when identified per Welfare and Institutions Code Section 12305.83 (c)(1), which states that the county shall take all appropriate actions to recover the full amount of the overpayment. Additionally, the CDSS overpayment recovery policy, as specified in All-County Letter No. 13-110 (Release of the CDSS IHSS Quality Assurance/Quality Improvement Policy Manual, Page 14), states that counties are obligated to initiate recovery for all provider and/or recipient overpayments identified and must follow all State and County policies and procedures as pertains to the recovery of an overpayment.

Lastly, MPP Section 30-768.321 lists various overpayment recovery methods, including "Civil Judgement" and specifically states that counties may demand repayment and file suit for restitution. Thus, court-ordered restitution is one method for counties to recover overpayments.

Pursuant to the aforementioned guiding authorities, IHSS overpayment amounts resulting from court ordered restitution should be directed to the originating county.

For questions regarding this memo please email - Fraud@dhcs.ca.gov